



**INDEPENDENT CONSUMER AND COMPETITION COMMISSION**

---

## **DETERMINATION**

**APPLICATION FOR  
CLEARANCE OF THE PROPOSED ACQUISITION OF  
MOBIL OIL NEW GUINEA LIMITED'S 50% INTEREST  
IN THE JOINT USER HYDRANT INSTALLATION (JUHI)  
AT JACKSONS AIRPORT**

**BY**

**SHELL PAPUA NEW GUINEA LIMITED**

**APPLICATION LODGED ON THE 9<sup>TH</sup> DECEMBER, 2005**

## **DETERMINATION**

### **Background**

#### ***Parties to the Proposed Acquisition***

This determination relates to the application pursuant to Section 81 of the Independent Consumer and Competition Commission Act 2002 (*Act*) by Shell PNG Limited (**Shell**) for Clearance of its proposed acquisition of Mobil Oil Niugini Limited's (**Mobil**) 50 per cent interest in the Joint User Hydrant Installation (JUHI) at the Port Moresby Jacksons International Airport (Jacksons Airport).

**JUHI** means the Joint User Hydrant Installation at the Jacksons Airport. This facility consists of fixed storage tanks, a hydrant distribution system and various office and workshop facilities. Shell and Mobil own these facilities on a 50:50 basis. JUHI is the distribution mechanism by which Mobil and Shell deliver Jet A-1 fuel from the fixed storage and hydrant systems to aircraft refueling at Jacksons Airport. Each party independently markets its own fuel to its own customers and invoices them accordingly.

**JV** means the Joint Venture agreement between Shell and Mobil detailing each participant's obligations and responsibilities under the Joint Venture. Currently, Shell is the nominated operator dealing with the daily affairs of the JUHI while Mobil participates as an investor, however their roles are interchangeable.

**Shell** is a fully registered PNG subsidiary of Shell International and participates in the wholesale distribution of oil based products including aviation fuel and oil based lubricants. Shell holds an approximate market share of 90.7 per cent in the product market of Jet A-1 at the Jackson's Airport.

**Mobil** is a fully registered PNG subsidiary of Exxon-Mobil and operates as a wholesale distributor of oil based products and lubricants including aviation fuel products in PNG. Mobil holds approximately 9.3 per cent of the market share at Jacksons Airport.

#### ***Acquisition Proposal***

Shell has made an application to purchase Mobil's 50 per cent interest in the JUHI at the Port Moresby Jacksons Airport and Mobil has expressed its desire to sell its stake in the JUHI to Shell.

## ***Application for Clearance***

Shell has lodged an application for Clearance of the proposed acquisition of the 50 per cent interest of Mobil in the JUHI pursuant to Section 81 of the ICCA Act, sub-section (3) of which provides that the Commission must within 20 days make a determination on whether or not to grant Clearance of the proposed acquisition.

The application was lodged on 9<sup>th</sup> December 2005, and the Commission was therefore required to make a determination on this application by 29<sup>th</sup> December, 2005. However, due to most industry executives being away on Christmas holidays, the Commission sought and was able to secure agreement of the applicant which now means the Commission is required to make the determination on or by 13<sup>th</sup> January, 2006.

## ***Elements of a Clearance***

Shell applied for a clearance of the proposed acquisition under Section 81 of the *ICCA Act 2002*. Section 81(3) of the Act provides that the Commission shall:

- a) if it is satisfied that the acquisition will not have, and will not be likely to have, the effect of substantially lessening competition in a market, by notice in writing to the person by or on whose behalf the notice was given, give a Clearance; or
- b) if it is not satisfied that the acquisition will not have, and will not be likely to have, the effect of substantially lessening competition in a market, by notice in writing to the person by or on whose behalf the notice was given, decline to give a Clearance for the acquisition.

In order for the Commission to arrive at the decision whether to grant a Clearance or not, it is required to assess the competition effect of the proposed acquisition in the relevant market.

## ***The market***

Section 45(2) of the *ICCA Act 2002* defines the relevant market as;

“...a reference to a market in the whole of PNG for goods and services as well as other goods and services that as a matter of fact and commercial common sense, are substitutable for them, including imports”.

In its submission, the applicant defined the relevant market in terms of the product market (aviation fuel distribution) as well as the geographical

localities being the various provincial airports including Jacksons Airport in PNG and regional international airports (Singapore, Manila, Cairns, Brisbane, Sydney).

It is agreed that while the provincial and regional sub-market are relevant; consistent with the ICC Act, the Commission is of the view that the distribution mechanism for the loading of Jet A-1 fuel at Jacksons Airport is the principal relevant market in this case.

(a) Alternative supplies at Jacksons Airport and import competition

In its application, the applicant suggests that the market for supply of Jet A-1 and avgas at Jacksons Airport is not limited to the supply of the products from the JUHI facility. The applicant claims that certain aircrafts have a substantial capacity to tanker fuel. These aircrafts typically uplift minimum fuel in Jacksons Airport and maximize uplift at other airports where economies of scale deliver lower fuel costs. The extent to which an aircraft can tanker fuel is dependent on a number of factors including the:

- inherent physical characteristics of the aircraft, fuel tank size, maximum take off and landing weight;
- passenger and cargo load;
- metrological conditions;
- availability of alternative landing facilities

The implication of this capacity to tanker is that it creates import competition in the market. Also the supply market at Jacksons Airport includes not only physical supply at Jacksons Airport but also at airports such as Singapore, Manila, Cairns, Brisbane, Sydney and provincial PNG locations.

While it may be argued that international aircrafts are able to source aviation fuel products in the regional international airports through the process of “tankering”, and thus provide competition, this competition is limited to only a few planes that travel abroad overseas. On the balance, the Commission is of the view that “tankering” provides some competition to the domestic fuel suppliers in PNG, and in this way does provide some alternative to the use of the JUHI facility in Port Moresby. However, the Commission notes that for the aircrafts that do not travel out of PNG and who use the JUHI facility at Jacksons Airport, this facility is the only currently operating hydrant system for delivering fuel to the aircrafts other than by use of individual tankers that deliver fuel directly to aircrafts on the airside of the passenger and freight terminals.

## ***The Effects of Competition in the Market***

### **Market share**

In describing the market to the Commission, the applicant provided its market share both at Jackson Airport as well as other regional international airports. In doing so, the applicant argued that its market share should be seen in the context of the broader market (regional international airports including PNG), which in aggregate represents only 20 per cent. This market share it argued does not put Shell in a position to exert excessive market power in the region. However, it should be noted that “market” is defined in the Act (section 45(2)) to be a market in the whole of Papua New Guinea. Therefore Shell’s market share in a regional South East Asian market is not relevant, though including refueling facilities at other domestic airports is relevant. Nevertheless, the availability of tankering (discussed above) from outside PNG may be a relevant consideration for assessing possible import competition.

Shell further submits that except for the Jacksons Airport facilities, Shell’s airport facilities elsewhere in the country would be disposed of, a reference to InterOil’s authorisation application before the Commission which will mean, if granted, InterOil taking over all other Shell operations in PNG. The result would be a reduction in Shell’s existing market share in the overall PNG market and the entry of InterOil as a new competitor.

The applicant also concedes that Mobil has withdrawn from the provision of into-plane aviation fuelling services at all provincial airports except at Jacksons Airport. Airlines of PNG have recently purchased Mobil’s Daru facilities and have entered into an agreement to acquire Mobil’s underground storage and into-plane assets at Jacksons which are separate from the JUHI. Airlines of PNG will undertake its own into-plane activity in early 2006 which will result in the volume of Jet A-1 delivered into-plane by Mobil to reduce from its current level of just under 10 per cent to near zero. As such, Airlines of PNG will become a competitor of Shell operating at Jacksons Airport, but outside the JUHI.

While it may be accepted that the above arguments may turn out to be quite valid and could very well impact the relevant market particularly in relation to InterOil’s proposed acquisition of Shell, this is not more than the occurrence of some future event which is not relevant in considering market shares in the current case. The fact of the matter from information that is before the Commission, Shell has a market share internally within PNG of 90.7 per cent, although in terms of those aircraft that travel outside of PNG, the market share is much lower. This market share potentially puts Shell in a position to exert some influence in the

market, particularly for those aircraft that use the JUHI at Jacksons and do not have access to other forms of fuel delivery.

The Commission has not discounted the claim that Mobil has exited the entire provincial airport and that Airlines of PNG has recently purchased Mobil's Daru and other facilities and has entered into an agreement to acquire Mobil's underground storage and into-plane assets at the Jacksons Airport. The Commission also appreciates that there are a few existing contractual agreements which Mobil is required to honour and therefore the transfer of Mobil's non-JUHI assets will see Airlines of PNG taking on the responsibility of delivering fuel primarily to its own fleet of aircraft. Airlines of PNG asserts that its decision to acquire Mobil's non-JUHI facilities both at and outside of the Jacksons Airport is basically to ensure security of supply to its operations in light of the scaling down of provincial airport refueling facilities by Mobil, and to some extent Shell. It concedes that although it would make economic sense for it to supply other operators in the outlying regions, it would need to arrange for insurance cover to protect itself from any fuel quality issues which could arise in terms of providing supply arrangements for other operators. This is a risk that Airlines of PNG is prepared to take, and thus it has advised that unless it can pass this risk on to the other airlines whom it might service, it is not inclined to extent its fuel servicing operations beyond the servicing of its own fleet.

Should Airlines of PNG decide to continue to supply other aircraft using the Mobil assets (but not including the hydrant arrangements through JUHI), Airlines of PNG would be potentially a competitor in the market because it would be supplying on commercial terms on behalf of Mobil using the underground storage and into-plane facility previously owned and operated by Mobil at Jacksons Airport. The Commission notes that although the purchase of the non-JUHI facilities by Airlines of PNG is to maintain its own fleet, there is a possibility that Airlines of PNG could become a competitor outside of the JUHI.

The Commission also notes that although the proposed acquisition will result in the JUHI facility being owned and operated by Shell, there will continue to be two suppliers (Shell and Mobil) of fuel in the aviation sector. The proposed acquisition is a transfer to Shell of the hydrant based fuel delivery assets (including storage tanks) currently jointly owned by Mobil and Shell. Furthermore, the sale of Mobil's non-JUHI facilities will see Airlines of PNG own these assets, while Mobil will continue to be a supplier of fuel to Airlines of PNG. The non-JUHI assets are potentially available as an alternate means of delivering fuel to aircraft at Jacksons Airport. The proposed sale of Mobil's interest in JUHI does not prevent Mobil, Shell, or any other fuel supply company from competing for the fuel supply tender to Air Niugini, Airlines of PNG

and the other aviation operators when these tenders come up for renewal. However, in the case of Mobil or any other supplier other than Shell, and should the sale of Mobil's interest in JUHI proceed, it would require some arrangement with Shell or Airlines of PNG to have access to the facilities embodied in the JUHI hydrant system or the non-JUHI facilities that Airlines of PNG have now acquired from Mobil. Such an access arrangement would be required even now should a third party (such as InterOil Products) tender for and win the contract to provide fuel to aircraft at Jacksons Airport.

### **Market characteristics**

Currently, the market in the aviation fuel distribution is dominated by Shell which is the sole provider of fuel to the provincial airports due to Mobil's decision to scale down its provincial airport operations and the decision by Air Niugini and other operators to award their fuel contracts to Shell. Mobil, on the other hand is currently confined to Jacksons Airport operations with supply arrangements to Airlines of PNG.

The market for aviation fuel products is a highly specialised market within the major market of wholesale distribution of refined petroleum products (oil based products and their derivatives).

Following the Commission's fuel review in September 2004, the wholesale distributor's margin for fuel products, namely petrol, diesel, kerosene and avgas, was capped at 24 toea per litre. The ex-refinery price is determined under the Agreement between InterOil and the Government. By contrast, the prices for Jet A-1 and other lubricants and derivatives of fuel products are determined by market forces (supply and demand) in the market. It should be noted however, that as kerosene and Jet A-1 are essentially the same product, and the wholesale margin is fixed by the Commission for kerosene, this sets a cap on the wholesale margin that a supplier of Jet A-1 can charge for this product.

Supplies of Jet A-1 for refueling purposes at Jacksons Airport, are provided by the InterOil refinery in Port Moresby, and amount to approximately 40 million litres of Jet A-1 per annum.

Avgas and other lubricants continue to be imported by Shell in drums from Shell Australia as compared to periodic bulk shipments which were previously the case (other firms having voluntarily left the market). This new approach is adopted due to the decline in the demand for avgas (greater use now being made of Jet A-1) and the need to keep supplies of avgas unsullied so as to meet aviation technical and safety standards. This is also necessary because of InterOil's inability

to provide avgas from the Napa Napa refinery. The import price of avgas is subject to price monitoring by the Commission.

### ***Arguments advanced by the Applicant***

The applicant submits that the sale by Mobil of its 50 per cent interest in the Jacksons Airport JUHI facility to Shell, and termination of the JV, would not lead to a substantial lessening of competition in the aviation fuel products market in PNG because:

1. The reduction in the Mobil presence will be off-set by the entry of InterOil as a supplier to the aviation market at many provincial airports;
2. Shell undertakes that it will permit a new entrant that meets the standard entry requirements to join the JUHI under the same terms and conditions that currently govern the relationship between Shell and Mobil;
3. Airlines of PNG will become a competitor in the market by undertaking its own into-plane operation at Jacksons Airport;
4. Mothballed equipment presently owned by Mobil at various provincial airports continues to provide an effective and low cost means of entry to the market by a potential competitor;
5. In all the circumstances Shell's market share is of the order of 20 per cent and accordingly its purchase of Mobil's JUHI assets would not constitute a substantial lessening of competition in the relevant market.

### ***Views from Industry Participants and others***

Views were sought from industry participants and also from other interested parties and these are summarised below;

1. **Air Niugini** submits the following in light of the InterOil's authorisation application before the Commission:
  - At present Air Niugini relies on competition between Shell and Mobil in order to ensure fair pricing even though both players' businesses rely on the transparency of the gate price of products from InterOil's refinery operations;
  - The acquisition will affect competition in the aviation products market;

- Shell will be an outright monopoly in the Jet A-1 aviation fuel market of which Air Niugini is the major customer consuming more than 50 per cent of the throughput through the JUHI. This will create a situation where Jet A-1 fuel will be supplied without adequate competition from a vigorous competitor. Competition will regulate the major supplier in terms of pricing and product safety requirements which are of high standard within the aviation industry;
  - Since Air Niugini is predominantly a major user of Jet A-1 and is in the aviation industry, its arguments in the authorisation case more or less mirrors its arguments in this Clearance case.
2. **Mobil;** Mobil maintained that they have been a joint partner with Shell for a number of years in the JUHI but in recent years have experienced little sales through the JUHI. In 2004, Mobil's sale through the JUHI was only 7 per cent compared to Shell's 93 per cent sales mostly to Air Niugini.

Mobil believes that there is little potential for more volume in sales at the Jacksons Airport. Meanwhile, it is in the process of undergoing a market structure change in its aviation business which will see Airlines of PNG own and operate the existing Mobil airside storage facilities at Jacksons Airport.

Furthermore, Mobil believes that the acquisition of its 50 per cent interest by Shell PNG Limited will have no effect of lessening competition and based on these arguments and reasoning, trusts that the Commission will grant Shell Clearance on this matter.

3. **Summer Institute of Linguistics (SIL);** SIL asserts in its submission that the acquisition by Shell of Mobil's 50 per cent interest in the JUHI could limit competition at Jacksons Airport, but, at the same time it could either increase or improve services.

SIL is of the view that the acquisition would change the competition for Jet A-1 as the price (margin) for Jet A-1 is currently not regulated by the Commission and the price (margin) for avgas is controlled. It expressed that the proposed acquisition is of smaller concern than the "highly publicised" purchase bid of Shell (PNG) Limited by InterOil Products Limited (IPL) as this will more likely reduce competition in fuel supply than the acquisition of Mobil's interest in the JUHI.

4. **Heli Niugini;** Heli Niugini serves the rotary wing aviation market and indicates in its submission to the Commission that it does not uplift fuel at the Port Moresby's Jacksons Airport. It uplifts mainly in Goroka and Mt Hagen through airside into-plane refueling facility.

However, they feel that the proposed acquisition will strengthen Shell's virtual monopoly status in all airports countrywide except the Jacksons Airport and will be a threat to the fuel supplies of aviation companies.

Heli Niugini claimed that Mobil has abandoned (mothballed) all their refueling facilities at all aerodromes outside of Port Moresby which left Shell PNG to fill the vacuum as the sole supplier since Mobil and Shell were the only two distributors in the aviation fuel products market. The acquisition would strengthen Shell's position to regulate fuel sales to operators in PNG.

5. **Niugini Oil Company (NOC);** Niugini Oil Company as the fourth largest player in the wholesale fuel distribution market asserts that the aviation fuel is a small market in PNG and that they will not be participating in this market. They are of the view that the acquisition should proceed as proposed by Shell because aviation fuel is very costly to manage in terms of storage and safety compliance. Hence it is feasible for one supplier to maintain supply and the quality of fuel to guarantee the safety of the traveling public. NOC also suggests that the Commission continue to control the pricing of aviation fuel products (that is avgas) and ensure that the fuel is safe for the public for the aviation industry.
6. **Mission Aviation Fellowship (MAF);** MAF submitted that a further 50 per cent acquisition by Shell would result in it having a 100 per cent interest in the JUHI. This would create a monopoly and substantially reduce competition in the market. MAF submits that with the limited number of players in that market there will probably be no competitor to Shell.
7. **Islands Petroleum Limited (IPL);** IPL submitted that Air Niugini was buying aviation fuel products from both Mobil and Shell who are the only distributors operating in the aviation fuel market. However, Shell gave Air Niugini an ultimatum for an all or nothing tender to which Air Niugini accepted. This spelt the end for competition in aviation fuel market and the proposed sale of this facility further recognizes that reality. IPL objects to the proposed acquisition and is concerned that it will shut out competition in the aviation fuel market.

## ***The Statutory Factors to be taken into account in assessing Competition***

To grant a Clearance under Section 81(3) of the *ICCC Act 2002*, the Commission must be satisfied, on the basis of the facts given, that the acquisition will not have, and will not be likely to have, the effect of substantially lessening competition in a market. The only test is the competition effect of the acquisition in the market.

This requires thorough analysis of the competition effect in the relevant market being the distribution mechanism for the loading of Jet A-1 at Jacksons Airport.

With respect to the arguments by the applicant and the six industry participants, the post acquisition effect on competition in the market must be assessed with respect to Section 69(5) of the *ICCC Act 2002*, which sets out a number of non-exclusive factors to be taken into account.

### **(a) Import competition**

The Applicant submitted that through the tankering capacity of international aircrafts, fuel supplied at regional international airports to aircrafts flying into Jacksons Airport provide actual import competition in the market. While the Commission accepts that there is import competition through the process of “tankering”, this competition is limited to only a few planes that travel out of PNG. The Commission notes that regional suppliers provide an alternative source of supply for airlines such as Air Niugini and Airlines of PNG and their aircraft flying overseas to ports such as Cairns, Brisbane, Sydney, Singapore, Manila and Narita.

The Commission understands that Jet A-1 is sourced from the Napa Napa refinery as per the Project Agreement for the supply of petroleum products in PNG. Under the JUHI Agreement Shell sources Jet A-1 on behalf of the parties to the agreement and carries out the quality control testing of Jet A-1 before the fuel is transferred into the JUHI facility whereby both Shell and Mobil independently market the product. The Commission notes that the supply of Jet A-1 in the aviation sector is not restricted to the JUHI facility alone. Jet A-1 can be supplied outside of the JUHI using tanker trucks to provide into-plane refueling service which is the practice in most provincial airports, but also including Jacksons Airport.

Information before the Commission suggests that the proposed acquisition will result in Shell being the sole owner of the distribution

facility for Jet A-1; however, this does not limit Shell as the only supplier in the aviation sector. Mobil will continue to supply Airlines of PNG and potentially InterOil Products may enter the market as a supplier. It is important to note that Shell PNG Limited, the proposed sole owner of the JUHI facility is a different company to that which owns the other Shell assets in PNG and which is the subject of a separate acquisition proposal involving InterOil Products.

Overall assessment indicates that there is some import competition in the market, although this is limited to those aircraft that fly to international ports where they are able to refuel and potentially avoid fuelling in PNG. It is possible for the Boeing 767 used by Air Niugini and the Fokker F100 aircraft also used by Air Niugini to benefit from this arrangement. It is understood that the Dash 8 aircraft used by Airlines of PNG to fly to Cairns and back may also be able to take on fuel such that they can minimise their refueling requirements in PNG.

**(b) Barriers to entry**

From the information supplied in the application, there are substantial entry requirements to the establishment of a competition hydrant refueling system at Jacksons Airport, based on technical and financial constraints. Competition in the refueling market will exist through new entrants operating outside of the existing JUHI facilities at Jacksons (for example using tankers to deliver fuel to aircraft) and at provincial airports. The mothballing of Mobil's facilities at provincial airports for example, provides an opportunity at relatively low cost to one or more new entrants acquiring those assets and entering the market.

The applicant conceded that the JUHI facility at the Jacksons Airport is used to service both domestic and international aircrafts. As such, the Commission is of the view that it would be commercially unviable to build a new JUHI at Jacksons Airport and, thus, is of the view that the costs of entry into the market are high. Similarly, the entry cost of a new entrant into the existing JUHI is high due to technical and financial requirements, although this may be readily overcome by a new entrant. For example, Shell has offered to selling the 50 per cent interest in JUHI that it proposes to obtain from Mobil if a suitable buyer can be found. Shell is also reported to be providing training to InterOil staff on the handling and safety testing of Jet A-1 fuel as the main type of fuel now handled through the JUHI. Furthermore, the Commission notes that there are potential alternatives to the delivery of fuel to aircraft outside of the use of the JUHI and the cost by comparison to the replication of the JUHI is reasonably low. This provides alternative competition to the JUHI installation.

It is noted that the likely new entrants to this fuel delivery market would be Airlines of PNG and possibly InterOil Products. InterOil Products is currently a supplier of petroleum products including kerosene in PNG, and even without the acquisition of the Shell's domestic wholesaling and retailing activity (but excluding the activities of Shell PNG Ltd), could potential enter the aviation Jet A-1 fuel supply market in its own right. Certainly, if the proposed acquisition of Shell's domestic operations proceeds, InterOil Products would be the owners of Shell's existing assets in most provincial airports other than the Jacksons Airport.

On the balance, the Commission is of the view that there are barriers to entry in terms of the building of a new competing JUHI facility at the Jacksons Airport but this is overcome in part by the undertaking by Shell to sell 50 per cent of its interest in the JUHI should a party wish to acquire this interest.

**(c) The number of buyers and sellers in the market**

Although, the applicant claims that the number of sellers in the market is increasing; it fails to provide an estimate of the number of buyers in the market. It argues that while Mobil would depart from ownership of the JUHI, InterOil and Airlines of PNG would enter the market.

The Commission considers that the possible entry of Airlines of PNG would not change the number of sellers in the market if the proposed acquisition proceeds. The entry of Airlines of PNG would merely replace Mobil, but in the supply of refueling services outside of the use of the JUHI. The only potential new entrant would be InterOil Products, which would potentially initially be operating in the provincial airports and not the Jacksons Airport. This would not prevent InterOil Products from seeking to enter the Jacksons Airport market at some future time, particularly if it could offer airline operating out of Jacksons Airport a service across all domestic aerodromes. Airlines periodically go to tender for the supply of fuel, and as all fuel supplied to Jacksons (with the exception of avgas for a very small number of aircraft) is supplied out of Napa Napa, there would be potentially an even playing field for InterOil Products to enter this market subject to appropriate access arrangements being agreed for the use of the JUHI or the use of some alternative arrangement such as the refuelling from tankers on the airside tarmac. The Commission also notes that the proposed undertaking by the applicant to sell up to a 50 per cent interest in the JUHI on the same terms as applied to the Shell/Mobil arrangement indicates that there is a potential for other entrants to have access to the existing JUHI.

In terms of the number of buyers in the market, the Commission's market research shows that there are a total of 13 main aviation operators, both fixed and rotary wing operators. This is not taking into account the many small independent operations in the market using Jet A-1.

**(d) The degree of countervailing market power**

The applicant did not address this factor adequately but from the information provided in the submission, it is argued that buyers of fuel will have the opportunity to purchase fuel outside Jacksons Airport (both at provincial domestic airports and regional international airports) and to negotiate with Airlines of PNG for the supply of fuel at Jacksons Airport outside the JUHI facility. It is argued by the applicant that there are low barriers to other suppliers providing this competition or to buyers seeking alternative supply sources.

Countervailing power is the bargaining power of consumers to negotiate on prices and service arrangements with suppliers. Where there is potentially only one supplier, the countervailing bargaining power of consumers may be very small.

In terms of the use of the JUHI for the delivery of fuel to aircraft at Jacksons Airport, there is only one such facility and so the ability of the customers to have a great deal of bargaining power is limited. This is the situation at present even without the proposed acquisition proceeding. The countervailing power that airlines have in term of their refueling arrangements is limited to refueling while overseas (limited to certain aircraft, but not to the whole domestic fleet), and refueling at other airports within PNG. For the moment, the suppliers at other domestic airports are the same as at Jacksons Airport, namely Shell (Mobil having voluntarily withdrawn from the market). Thus, the countervailing power of domestic airlines is limited. However, it is limited now regardless of the proposed sale. As the proponent has argued, if InterOil Products acquires the other Shell assets, this may at least provide an alternative domestic supplier for fuel at other ports, thus avoiding the use of the JUHI. However, this is not dependent on the sale of Mobil's interest in the JUHI.

The fact is, there is limited competition to the JUHI as the form of refueling aircraft at Jacksons Airport, and this limited competition exists now. The sale of the Mobil interest to Shell will not change the level of countervailing power held by airlines. However, the offer to sell up to 50 per cent of the ownership of the JUHI should be taken up if there is support for the sale to Shell PNG to proceed, as this would help to alleviate concern that in some way there had been a deterioration in the

countervailing power held by customers as a result of this proposed acquisition.

**(e) Likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices and profit margins**

The applicant submits that with the commencement of InterOil Products as a supplier in provincial airports, Airlines of PNG providing its own fuel facilities at Jacksons Airport and at least one other provincial airport, the opportunity for new entrants in provincial airports acquiring Mobil assets, and the potential for non-JUHI fuelling at Jacksons Airport, there is no significant possibility for Shell to increase prices or margins.

The Commission is of the view that there is a theoretical possibility for Shell to increase the price of Jet A-1 which is not regulated in the market, although any increase would be limited by the present wholesale margin cap on the price of kerosene (which could be sold as a substitute for Jet A-1) and the ability of alternate suppliers to have access to assets and facilities that would allow aircraft to be refueled airside at Jacksons Airport either with or without the JUHI.

The Commission is also of the view that when the current fuel supply contracts with aviation operators cease, Air Niugini and the other airlines will all look for competitive bids for their fuel supplies, and this competition between suppliers will determine to what extent Shell is able to use its position as the sole owner of the JUHI to increase prices with resulting adverse effects for airline passengers and those using airlines for freight purposes.

The Commission is of the view that the undertaking by the applicant to sell an interest of the JUHI to an interested potential entrant would alleviate concerns regarding access to the facility and the potential for competition in the market. Thus, this would mitigate the monopoly concerns of the industry as expressed above. Also, the ability to refuel aircraft using tankers rather than the hydrant system, and refuelling overseas would provide competition in the market. Further, if the Commission believes that there are some monopoly pricing issues that need to be examined at some time in the future, it may seek a reference to review and possibly apply price control to Jet A-1. This would provide added protection for the domestic airline industry and its customers

**(f) Availability of substitutes in the market**

The Commission notes that the provision of airside refuelling of aircraft from tankers is an alternative to the use of the hydrant system offered

through the JUHI. This system has been used in the past and could potentially be used again in the future.

**(g) The dynamic characteristics of the market**

It is submitted that the aviation fuel market is largely stable in volume and product types. The Commission notes that the market is matured, with little growth, innovation or product differentiation is unlikely.

**(h) Removal of a sustainable, vigorous and effective competitor**

The applicant submitted that Mobil is withdrawing from provincial airports and has a very small market share at Jacksons Airport through the JUHI. In these circumstances, the entities that are entering the market such as InterOil Products and, to an extent Airlines of PNG are more likely to be vigorous competitors than Mobil.

The Commission concedes that Mobil has a very small market share (9.3 per cent) due to its small client base. Through the proposed purchase of Mobil's non-JUHI assets, Airlines of PNG is likely to become a competitor, post acquisition. InterOil Products, subject to ICCC approval may own and operate refuelling facilities at a number of provincial ports which would provide some competition to Shell in the into-plane aviation fuelling services of Jet A-1, post acquisition.

Information before the Commission would suggest that the proposed acquisition would not result in the removal of a vigorous player in the market as this previous competitor, namely Mobil, has already left the aviation sector voluntarily.

**(i) Vertical integration in the market**

The applicant failed to address this factor adequately but from the information contained so far in its submission, the Commission is of the view that there is some vertical integration in the provision of the supply of Jet A-1 in the market. The Commission notes that the only vertical integration issue in the market is that Shell being a wholesale distributor of Jet A-1 will have sole ownership of the JUHI facility that is used to deliver Jet A-1 to aircraft at Jacksons Airport.

**Summary and Conclusion**

To grant a Clearance under Section 81(3) of the *ICCC Act 2002*, the Commission must be satisfied, on the basis of the facts given, that the acquisition will not have, and will not be likely to have, the effect of

substantially lessening competition in a market. The only test is the competition effect of the acquisition in the market.

This requires analysis of the competition effect in the relevant market. Section 45(2) of the *ICCC Act 2002* defines the relevant market as;

“...a reference to a market in the whole of PNG for goods and services as well as other goods and services that as a matter of fact and commercial common sense, are substitutable for them, including imports”.

The applicant defined the relevant market in terms of the product market (aviation fuel distribution) as well as geographical locality being the various provincial airports including Jacksons Airport and regional international airports. The Commission considers the relevant market to be the distribution mechanism for the loading of Jet A-1 at Jacksons Airport.

Although Shell and Mobil are the only two competitors supplying Jet A-1 through the JUHI in the aviation sector, the acquisition of the JUHI facility by Shell is a result of Mobil’s withdrawal from supplying Jet A-1 via the JUHI. As set forth above, this is due to low throughput at the JUHI by Mobil over recent years. However, the Commission considers that Mobil will remain as a competitor in the market as a wholesale distributor of Jet A-1 to the aviation sector.

In addition, the Commission notes that there is potential for additional operators entering the market either through the JUHI or through airside refuelling arrangements.

As part of Shell’s scheme of the undertaking to mitigate the likely competition effect in the market, it has proposed that should a third party in the future wish to purchase a share in the Jacksons JUHI facilities, Shell undertakes to sell an interest in the JUHI assets on the same terms and conditions that currently govern the JV. This is subject to the interested applicant meeting the minimum entry requirements necessary to ensure the maintenance of aviation fuel quality and financial stability.

The Commission would accept the proposal by Shell to disposed of an interest in the JUHI, if Shell disposes of 50 per cent of the interest it holds in the JUHI; based on same terms and condition afford to the new entrant(s) under Claus 19 of the current JV Agreement that exist between Shell and Mobil.

Further, should there be issues raised with respect to pricing of Jet A-1, the Commission will seek a reference to review the need for some form of more formal price regulation of Jet A-1.

In further assessing the post acquisition competition effect, the following non-exclusive factors as set out under Section 69(5) have been taken into account and are worth noting;

- There is some import competition in the market;
- While the nature and effect of barriers to entry to establish a new JUHI are considered to be high, on the balance, the cost of entry into using the existing JUHI and non-JUHI operations are moderate;
- There are currently two participants (Shell and Mobil) in the JUHI facility and while the proposed acquisition would result in the removal of one player, there is potential of new entrant(s) into the market;
- There is a possibility for Shell to increase the price of Jet A-1 which is not regulated in the market although this would be limited by the present wholesale margin cap on the price of kerosene;
- The potential for the delivery of Jet A-1 to aircraft using airside tankers would be a potential alternate form of delivery of fuel to that offered by the JUHI;
- There is little innovation or product differentiation likely;
- The acquisition will add to some vertical integration in the market, although this is not significant.

### ***Decision***

In light of the above overall assessment, and subject to the condition that the applicant gives an undertaking under Section 85(1) as outlined below, the Commission is satisfied that the acquisition of Mobil's 50 per cent interest in the JUHI at the Jacksons International Airport by Shell will not have, and will not be likely to have, the effect of substantially lessening competition in the market and hereby grants Clearance for the proposed acquisition to proceed pursuant to Section 81(3) of the Independent Consumer and Competition Commission Act 2002.

The Clearance is conditional on Shell giving an undertaking to the Commission that in the event that in future other persons wish to supply fuel through JUHI, Shell will offer to divest the requisite share of the

JUHI to that person or persons on terms similar to those applying to Applicants under clause 19 of the JUHI Joint Venture Agreement. The wording of the undertaking is to be settled between Shell and the Commission, and the written undertaking given, within 45 days of the date of this determination.



**Thomas Abe**  
(Commissioner)

**Paul Baxter**  
(Associate  
Commissioner)

**Chris Gideon**  
(Associate  
Commissioner)

**Forward all queries to:**

**Address:** Independent Consumer and Competition Commission  
P O Box 6394, BOROKO  
National Capital District  
Papua New Guinea

**Telephone:** (675) 325 2144

**Facsimile:** (675) 325 3980

**Website:** [www.iccc.gov.pg](http://www.iccc.gov.pg)