



INDEPENDENT CONSUMER AND COMPETITION COMMISSION

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DETERMINATION

**APPLICATION FOR AUTHORIZATION OF THE
ACQUISITION OF NEBIRI QUARRY AND MONIER LIMITED**

BY

T G CONSTANTINOU (JR.)

DETERMINATION

Background

This determination relates to an application for authorization of a business acquisition under section 82 of the ICC Act 2002.

Parties

T.G. Constantinou Jr. (the purchaser) is one of Sir George Constantinou's sons and has been the Manager of Rouna Quarries Limited, a company owned by his parents, for a long time. It is accepted that T.G. Constantinou Jr. is making the acquisition and not the Constantinou Group nor a company within the Constantinou Group of companies but, it should be noted that the purchaser has a very strong relationship by being Sir George's son and, of course, he is the Manager for Rouna Quarries Limited.

Steamships Group of Companies (the seller) has operated as a major trading company in PNG for a very long time but has since ventured into a wide range of business interests in PNG including, quarrying at Nebiri at 12 Mile on the Sogeri Road and Monier (PNG) Limited at 6 Mile in Port Moresby, both subjects of current application for authorization.

Proposed acquisition

The purchaser proposes to acquire from Steamships Group of Companies the assets, including plant and equipment, aggregate stocks and the quarry rock source at Nebiri, located at 12 Mile and, the businesses operated by Monier (PNG) Limited at 6 Mile with the exception of the concrete block making plant. This plant was relocated to Monier in Lae (Monier Lae is not being sold) prior to the proposed sale. The other businesses of Port Moresby branch of Monier (PNG) Limited, the subject of the proposed sale include; Monier allied products (plastic and fibreglass) and Transit Mix (ready-mixed concrete).

Application for Authorisation

As a result of enquires following media reports of the proposed acquisition of Nebiri Quarries and Monier (PNG) Limited by T.G. Constantinou Jr. (the applicant), an Application pursuant to Section 82 of the Independent Consumer and Competition Commission Act, 2002, for authorization of the above transaction was lodged by the applicant on the 17th March, 2004. The application was lodged together with a supporting Submission intended to provide the basis for the granting of the necessary authorization by the Commission.

Section 82 (3) of the ICC Act provides to the effect that the Commission must within 72 days make a determination on whether or not to grant authorisation of the proposed acquisition.

This would have meant the Commission making the determination on or by the 28th May, 2004.

However, the application and, in particular the submission, was found to be deficient in a number of aspects the most important being that the submission lacked or did not provide sufficient basis in terms of public benefits accruing as a result of the acquisition, to enable the Commission to make an informed decision in this matter. Consequently, during a meeting on the 28th April, 2004, the applicant was requested to provide further information in support of the application. The applicant responded with a Supplementary Submission on the 10th May, 2004.

This effectively extended the 72 day time frame required for the Commission determination of this application by the number of days taken to submit the additional information. Thus, the Commission will now make a determination on or by the **9th June, 2004.**

Elements of an Authorisation

The Applicant applied for an Authorisation under Section 82 of the ICCC Act.

Section 82 (3) 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 for the acquisition; or
- (b) if it is satisfied that the acquisition will result, or will be likely to result , in such a benefit to the public that it should be permitted by notice in writing to the person by or on whose behalf the notice was given, grant an authorization for the acquisition; or
- (c) if it is not satisfied as to the matters referred to in Paragraphs (a) or (b), by notice in writing to the person by or on whose behalf the notice was given, decline to give a clearance or grant an authorization for the acquisition.

The application for authorization was made under the general provision of Section 82 but the applicant in his submission specifically seeks authorization under Section 82(3)(b) of the Act. The application is under section 82 and section 82(3) (b) only relates to what the ICCC must determine.

Relevant market

Relevant market is defined under Section 45 (2) of the Act as;

“...a reference to a market in the whole of Papua New Guinea 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 his submission, the applicant did not clearly define the relevant market other than segmenting the quarry market as having two sub-markets namely; the high end and low end of the market. The high end of the market was defined by the applicant as being quarry products (aggregates) used mainly for road construction, airport tarmacs and pavements, etc, while the low end of the market was defined as referring to lower quality aggregates used in the production of concrete products such as blocks, pipes, pavers and ready-mixed concrete. The products were further defined by the applicant into their sub markets of; (a) Sand and gravel and (b) Concrete products.

The ICCC would reject this distinction between the high and the low end of the market, and also considered the sand market separate from the quarry aggregates market. The other relevant markets as accepted by the Commission were concrete products and ready-mix concrete in PNG or a part of PNG.

The applicant also, though not explicitly spelt out in the submission, attempts to define and confine the quarry market in terms of the geographical location of the quarries to the National Capital District (NCD). The ICCC is not totally convinced that this is the relevant geographic market because the ability to supply products such as concrete blocks, pipes, culverts and pavers is not limited to and by the NCD boundary.

State of competition

(a) Quarry Aggregates and Sand

Up until a few years ago, Nebiri Quarries and Rouna between them enjoyed 90% (Nebiri 60% and Rouna 30%) of the supply side of the sand and gravel markets. Both of these quarries and, to a lesser extent another competing supplier, Riverside, were the main suppliers of sand and gravel in the NCD with Nebiri and Riverside supplying the total sand and gravel requirement for Monier (PNG) Limited's Port Moresby branch. At this time, Rouna was selling to other users while also supplying sand and gravel for its own consumption in its concrete products plant. This situation changed considerably when Nebiri scaled down its sand and quarry business and eventually maintained only very minimal operations at the site and then eventually became dormant. Rouna Quarry also, at that time, had and still has its own on-going viability problems due to the depletion of its limestone sources at its current site. The Rouna quarry is now basically overgrown with grass and bushes and is no longer active. Competition in the sand and gravel market therefore, has become rather erratic and as a result, prices have been driven upwards considerably.

(b) Concrete products

Competition in the supply of concrete products such as blocks, pipes and pavers, has been limited to Monier and Rouna Quarries Limited. More recently, and because of the limited availability of raw materials and the general down turn in the economy, Rouna Quarries had ceased production of most concrete products excepting pavers. The company has been able to maintain some activity by sourcing its sand and gravel requirements from the Vanapa River through an arrangement with the landowners. Nebiri's cessation of operations has contributed to the relocation by Steamships of the Monier concrete products plant at 6 Mile to its Monier, Lae Branch. This has effectively

removed what local competition there has been between Rouna Quarries and Monier and virtually left a vacuum in the market for concrete products produced in the NCD.

However, this is expected to change as new players enter the market such as Columbia which is also based at 6 Mile in Port Moresby. Columbia is owned by an Italian and is involved in producing a limited range of concrete products with its raw materials sourced from Vanapa River. Furthermore, if George Constantinou Jr. was to make a move to take over Rouna then competition in this market, and indeed the aggregate and ready-mix concrete markets, will no doubt take on a different dimension altogether. In the submission, the applicant did not specifically envisage this. However, he did foreshadow the possibility but this is very much a decision for shareholders in Rouna who are Sir George and his wife. If George Constantinou Jr. was to make an application for such an acquisition, the Commission would need to consider very carefully whether to give a clearance or authorisation for such acquisition, and there should be no presumption that such a clearance or authorisation would be given.

(c) Market for ready-mixed concrete

The four main suppliers of ready-mixed concrete are Rouna, Transitmix (owned by Monier), Homeguard and PNG Readymix.

In its submission, the applicant submits that there are four main suppliers of ready-mixed concrete the principal players being; Nebiri Quarry (60%), Rouna (30%) and Curtain Brothers (10%). The applicant also submits that the major construction companies also produce their own ready-mix concrete when required. The market in the NCD therefore, is unlikely to support the continued operation of the four main suppliers. Hence, competition is likely to decrease as there is a possible reduction in the market participants.

The ICCC acknowledges the limited competition in the industry and the effect of the current downturn in the building industry on the viability of the four suppliers. The ICCC also acknowledges that some big users of ready-mix concrete, such as Curtin Brothers, produce their own ready-mix when they need it for certain purposes. Also, with the limited supply of raw materials, there is likely to be continuing upward pressure on price as the ready-mixed concrete industry has to pay higher prices for the remaining raw materials. But the situation could also change very quickly and markets could improve and the ICCC would need to take this into account.

Competition Effect

In assessing the competition effect in the market resulting from the acquisition, it is necessary to examine the nature of competition both before and after the proposed acquisition bearing in mind that, competitive effect after the proposed acquisition is not necessarily the effect immediately after the proposed acquisition but rather, what is likely to happen in the future. The legislative test in Section 82 (3) is a prospective one, otherwise the phrase "...will not have, or will not be likely to have..." would not be required under the Act. This is relevant in the context of the close relationship the applicant has with Rouna Quarries Limited and the Constantinou Group of Companies, although the applicant has specifically made it clear that he is entering into this deal

on his own behalf and not on behalf of his family. It is nevertheless, an important factor from the ICCC point of view which cannot be totally disregarded. This is important because if Rouna Quarries Limited were involved in this acquisition, the applicant was acquiring Nebiri and Monier on behalf of the Constantinou Group of companies, the assessment of the competitive effect of the proposed acquisition would be quite different. As it is, the applicant is making this acquisition on his own behalf, and thus the competitive effect of the proposed acquisition is likely to be different.

It is also important to note that market share is a major indicator of relative competitiveness of each of the market participants. However, this does not always give a total indication of the competition effect of an acquisition now and at some time in the future.

Bearing in mind the particular circumstances of the two major players in the market, effective competition in the current case has been very much influenced by the circumstances of the two major players in the market; Nebiri Quarry Limited's dormant status and Rouna Quarry Limited's difficulties in terms of its own viability due to the depletion of its limestone reserves. Rouna quarry may never return to quarrying again unless it is able to secure some new raw material source.

Statutory Factors taken into account in Assessing Competition

In assessing the post acquisition effect on competition in the market, Section 69 (5) of the ICCC Act 2002 sets out a number of non-exclusive factors to be taken into account. The applicant has addressed these factors in the submission and the applicant's submission together with the Commission's views are detailed below;

(a) The actual and potential level of import competition in the market:

Applicant: The suppliers of quarry products have access to rock supply locally and finished products are produced domestically. Due to practical problems (such as weight, breakages, insurance costs and other associated costs in freighting aggregates, etc.) surrounding the importation of quarry products, there is no competition from imports.

Commission: the Commission accepts that there are limited opportunities for the importation of quarry products into NCD from outside of PNG. There are some opportunities for the importation of certain quarry products from outside PNG, although these would be at the more expensive end of the market and would in all probability not normally directly compete with products produced in PNG.

(b) The nature and effect of barriers to entry to the market

Applicant: Access to resources particularly limestone rock, the high capital costs and the effect of the exchange rate are considered by the applicant to be major factors hindering entry of new competitors into the market. Access to a sustainable reserve of rock supply involves negotiating with landowners which can be difficult. Compensation issues and transport costs can also be considered

as a barrier to entry to the market. With respect to exchange rate, the applicant submits that due to the depreciation of the Kina over the last 5 years it has become more expensive for quarry operators to purchase necessary equipment such as crushers, screening plants and supporting equipment. Hence, barriers are considered to be high.

Commission: The ICCC accepts that the barriers to entry are high.

(c) Number of buyers and sellers in the market

Applicant: There are a number of buyers and sellers in the markets. In his submission, T.G.Constantinou indicated that some suppliers in the quarry aggregates market are also users of their own products, thus, competition is centered around or limited to the main quarry operators.

Commission: The Commission notes that there is a high degree of interdependence within the industry, with the main players supplying much of the raw material to related firms for purposes of producing concrete products and ready mixed concrete. The market would appear to be highly concentrated.

(d) Degree of countervailing power in the market

Applicant: The applicant submitted that the degree of countervailing power in the market would be the propensity of customers of the industry to import substitutes at a lower cost than that of a locally made concrete product.

Commission: Countervailing power is the ability of customers to influence the pricing or other supply behaviour of the businesses from whom they purchase goods or services. In terms of the sand and gravel markets, the major users of the products produced by this part of the industry are the industry itself as a result of the vertical integration between the ownership of the sand and gravel quarries and the concrete products and ready mixed concrete producers who are the main customers of the sand and aggregate suppliers. Thus there is no obvious evidence of countervailing power in this part of the overall industry. Furthermore, with decreasing ready availability of sources of supply of sand and aggregate, there is less opportunity for those customers of the sand and gravel quarries who are independent of the ownership of those quarries to exercise any market power over those suppliers.

In terms of the customers of the concrete product and ready mixed concrete suppliers, there is no evidence that there is an ability of these customers to exercise any market power. Again, the constraints on the availability of the supply of raw materials, limits the opportunity for alternate suppliers of these products to generate competition in the market. Also, the consumers themselves, although potentially large customers of product for particular projects, are usually undertaking works on behalf of others and may not be under pressure to use what ever market power they hold at any one time and as part of any one project to force price discounting.

Therefore, the Commission agrees with the applicant that there is little if any countervailing power evident in the market.

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

Applicant: The applicant has submitted that the acquisition will not translate into substantial or significant increases in prices or profit margins due to;

- (1) A number of current quarry producers and suppliers (for example, those supplying for own consumption such as Curtin Brothers and Global Construction) can easily expand their operations to make products,
- (2) The acquisition merely involves a change of ownership and does not affect the structure nor the existing market conditions, and
- (3) The likelihood that Steamships can still supply concrete products to NCD from Lae using their shipping lines.

Commission: The Commission does not accept that the availability of other suppliers is sufficient to ensure that the acquirer could not increase prices and profits. The evidence points to limits in terms of the ability of quarry operators gaining access to supplies of raw material from which product can be produced. While some of the large construction groups may be tempted to source their own raw material, there is a cost involved in gearing up to meet their needs, not the least of which will be the ability to gain landowner agreement to the opening of new quarry sites. Lack of access to suitable quarry sites is a factor of the market regardless of whether or not the acquisition proceeds, so in this sense the acquisition will not necessarily aggravate this problem. Thus, the applicant is correct in the statement that the acquisition will simply change the ownership of one of the players in an industry which already is suffering from supply constraints, and therefore market pressure to lift prices (subject to the overall level of demand across the NCD economy).

In terms of the supply of concrete products and ready mixed concrete, on the basis of the applicant's own submission, there is limited ability for other suppliers to compete effectively by either importing product or shipping product domestically within PNG. The relative value of the concrete products and their weight mean that domestic freight charges will quickly render any supply options from elsewhere in PNG uneconomic and non-commercial.

The Commission concludes that the raw material supply issues in the NCD are probably of a larger concern in terms of the ability of the applicant to exercise market power to increase prices and profits, and thus in this context, the applicant is unlikely to be able to significantly and sustainably increase prices and profits above levels that would have occurred anyhow given the raw material supply constraint.

(f) Extent to which substitutes are available or are likely to become available in the market

Applicant: There are no ready substitutes available in the market although with respect to concrete block pipes, there are substitutes in terms of steel pipes.

Commission: The Commission does not accept that steel pipes are a substitute for concrete pipes, if for no other reason the cost differential is so great, and the technical characteristics are so different there is no likelihood of one being substituted for another on a regular commercial basis.

(g) Dynamic characteristics of the market, including growth, innovation and product differentiation

Applicant: There is very little opportunity for innovation and product differentiation. Furthermore, market growth is very much dependent on Government or donor funded projects, and thus, market growth opportunities are unpredictable. On this basis, it may be accepted that the market in the NCD has shrunk over the last 12 months as a result of the lack of such projects but, it could grow quite rapidly given the recovery now taking place in the economy.

Commission: the Commission accepts the applicant's views on the market growth opportunities. The Commission also notes that the products involved here are primarily 'mature' products, that is they are not the subject of any major new innovation such as to create new competitive opportunities. While innovation does occur in the manufacture of concrete products and ready mixed concrete, little if any innovation occurs from within PNG and thus the ability of the supplier to provide a more competitive environment through innovation is for all intents and purposes, non-existent in PNG.

(h) Likelihood that the acquisition would result in the removal from the market of a sustainable, vigorous and effective competitor

Applicant: Noted that Nebiri has been placed into a mothball situation, and the concrete products capability of Monier has been moved to Lae.

Commission: Given that Nebiri has been dormant and the concrete products capability of Monier has been moved to Lae, it is accepted that it is unlikely that a sustainable, vigorous and effective competitor will be removed from the market as a result of the acquisition. [From experience in Australia and elsewhere this is the most important factor]

(i) Nature and extent of vertical integration in the market

Applicant: The applicant (T.G.Constantinou) submits that the nature and extent of vertical integration varies across the market. A situation that would amount to a vertical integration would be where suppliers of quarry products use their own supplies for production of finished quarry products.

Commission: The market has exhibited a high degree of vertical integration in that the main quarry operators are suppliers to their own concrete product and ready mixed concrete operations. However, with the movement of the Monier concrete products operations to Lae, this high level of vertical integration has been reduced. Nevertheless, the nature of the market and the products produced lends itself to a high level of market integration.

On the basis of consideration of the issues presented by the applicant and based on information obtained from other sources, the Commission must decide whether the proposal is likely to have the effect of substantially lessening competition in a market. The Commission notes that the market already has a high degree of concentration and vertical integration. There are limited alternative suppliers and entry to the industry is also restricted by the need to gain access to raw materials and the initial set-up costs for a new operator.

Despite assurances to the contrary regarding the close relationship between the applicant and the present owner of the main competitor, Rouna Quarries, the Commission is concerned that the proposal could have the effect of substantially lessening competition in the market. Effectively the largest part of the industry will be in the hands of the same family, and it is acknowledged that the applicant has in fact been the Manager of the Rouna Quarries' operation on behalf of his parents who own that business.

Thus, the ICCC is not satisfied that the acquisition will not, or will not be likely to have the effect of substantially lessening competition in the market.

This leads to the need to make an assessment on the second part of the Section 82 (3) test relating to whether or not the ICCC is satisfied that the acquisition will result, or will be likely to result in such a benefit to the public that it should be authorized.

In its supplementary submission, the applicant submits that the acquisition will result, or will be likely to result in, such a benefit to the public that it should be permitted by way of authorization to proceed with its proposed acquisition of Monier and Nebiri Quarries Limited. It should be noted here that the benefits must accrue as a result of the proposed acquisition and not be something that will happen anyway.

To support his claim, the applicant has provided the following advice to the ICCC:

Public benefits

(a) Local competition

Applicant: The applicant submits that due to the downturn in the NCD market and the economy generally, both quarry operators (Nebiri and Rouna) are concerned about their own viability as quarry product businesses and maintain that if the current situation continues, there is a risk that both businesses could become non-viable and close down.

Commission: Creation of a competitive environment is the ultimate objective of the ICCC and will be promoted where possible. However, it is not clear from the submission how a change in ownership will address the issue of the slowdown in the industry and the difficulties being faced by the two main quarries. The Commission does acknowledge however, that the Nebiri Quarry was already mothballed at the time the applicant sought to acquire the business (see discussion blow), and in this sense the applicant has ‘revived’ what was otherwise a failed business. Therefore it could be argued that the applicant has benefited the market by introducing a potential ‘new’ competitor to the market. However, the Commission notes its concerns regarding the link between the applicant and the current owners of the Rouna Quarry and the potential that this creates for action to limit competition between the two businesses. The Commission does not consider that the proposal adds significant benefit in terms of competition in the market.

In terms of the concrete products market, the Commission notes that this business has been moved to Lae and therefore the applicant will not be restoring competition to the market in this area. The ready mixed concrete and plastics/fiberglass operations were continuing under the existing owner and so no new competition has been added in these areas.

(b) Local manufacturing capability

Applicant: The applicant claims the acquisition will result in maintenance of manufacturing capability of concrete product making, and retention of local skills and down stream processing. Once the acquisition is finalized, local manufacturing capability will be enhance.

Commission: The Commission agrees that the applicant will take over the ready mix concrete operations, but these are already in operation and there is no evidence that there were about to be closed down. The applicant will not be re-opening the concrete products division which has moved to Lae. Thus, the benefit of local manufacturing capability is not demonstrated.

(c) Employment

Applicant: The applicant concedes that the acquisition will cause a slight reduction in employment but, says that this is due to Steamship’s relocation of the concrete product plant to Lae as well as the shrinking demand in the NCD market.

In his supplementary submission, the applicant submits that 41 workers (about 40 %) of the retrenched workers of Steamships have been reemployed and altogether the applicant has recruited 161 workers. In addition to this, the establishment of a new entity named Hari Limited to service and maintain heavy vehicles used for Monier’s ready mixed concrete has created employment for 18 skilled and semi-skilled workers.

Commission: These employment benefits are accepted by the ICCC as these jobs would have been lost had the acquisition not proceeded. The ICCC also acknowledges your letter of 7th June, 2004, wherein the applicant has undertaken to provide continuing employment for staff at least for the next 12 months.

(d) Employment benefits for local staff

Applicant: In its supplementary submission to ICCC, the applicant submits that Nebiri Quarries Limited will offer employment benefits to its staff members. These benefits would be provided in the form of staff housing and financial assistance through loans. An annual budget of about K50, 000 has been allocated for this purpose.

Commission: These employment benefits should be seen as part of the cost of employing staff, and thus in this sense they represent part of the overall obligation of the applicant to appropriately compete for their labour. However, these benefits would not have been paid had the applicant not re-employed much of the staff that had been made redundant by Steamships on their departure from the Monier concrete products operation and mothballing of the Nebiri quarry. Thus, on this basis, the Commission accepts that these employment benefits should be recognised in terms of this evaluation.

(e) Government revenue

Applicant: It is submitted that the acquisition of Nebiri Quarry and Monier operations, and their subsequent ongoing operation will enable the government to earn revenue from Nebiri Quarries Limited in the form of personal income tax, land rentals and company tax.

Commission: The Commission accepts that where there had previously been a shut down of the business and the applicant has re-opened the business, there is potentially a government revenue effect. The effect will only occur where the staff and capital that was otherwise employed in the business (in this case Nebiri Quarries) was not otherwise employed elsewhere. In the case of Nebiri quarries it would appear that the labour resources at least would have been made redundant as there are little alternative opportunities for paid employment for staff with these skills at this time in the NCD.

In terms of the Monier plant, the concrete products division has been redeployed to Lae and therefore there is no appreciable increase in government revenue from the proposed acquisition. The ready mixed concrete products and plastic/fiberglass operations were continuing at the time of the acquisition and thus there is no net benefit in terms of government revenue.

Thus, the overall benefit is limited to the additional personal income tax payable by the staff that were re-employed at the Nebiri Quarries when the quarries were taken out of mothballs.

(f) Training and technology transfer

Applicant: The applicant submits that since the proposed acquisition, it has undertaken a number of initiatives for its local staff in the areas of staff training and technology transfer. A new computerized accounting package and specialist training are being planned with considerable cost and re-investment.

Commission: The Commission is willing to accept that there is some technology transfer and training occur here as a result of the acquisition and at a level that would not have otherwise occurred.

(g) Related Industries

Applicant: The applicant has argued that it will promote business linkages beneficial to the economy through its involvement in this industry.

Commission: The ICCC will accept that Nebiri Quarries Limited will continue to promote business linkages with other related industries that use quarry material and concrete products as their main inputs, and industries that supply goods and services to the concrete and quarry producers. The links with and establishment of Hari Limited as a specialist group responsible for maintaining the transport and other machinery at the ready mix plant is a good example of this activity resulting in 18 additional staff having been taken on.

(h) Product trade (export and domestic)

Applicant: The applicant submits that prospects for trade in the quarry business is limited as most countries would have their own domestic producers. There is however, opportunity for trade in other areas, for example, the applicant advises that a request has been received by Monier for the supply of a fibre glass 'banana' boat fully equipped with features that suit the waters of North Queensland. This order arose as a result of the initiative of the applicant and, if the order is won, it will result in potential for export of this product and pave the way for further exports to the benefit of PNG's export trade.

Commission: The ICCC would agree that it is possible that the awarding of the banana boat contract to Monier would lead to the potential for increased product supply and subsequently growth of the company and the industry.

Summary and conclusion

The applicant in the present case, seeks clearance of the proposed acquisition of Nebiri Quarry Limited and Monier (PNG) Limited's Port Moresby branch under Section 82(3)(a) of the ICCC Act on the basis that the proposed acquisition will not have, or will not be likely, to have the effect of substantially lessening competition in the market

If clearance is not granted then, the applicant seeks authorization on public benefits grounds pursuant to Section 82(3)(b) of the Act which provides, "...the Commission

shall, if it is satisfied that the acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted,grant an authorization for the acquisition;”.

The applicant defines the relevant market in terms of the high and the low end of the sand and gravel market; the high end denoting those high grade aggregates used in road and air port tarmac construction where as the low end refers to aggregates used in concrete product manufacturing. The market share is given as: Nebiri (60% low and 35% high), Rouna (30% low and 15% high) with the rest shared by Curtain Brothers, Global Construction and Dekenai Construction.

The ICCC rejected the distinction between high and low end of the market, and also considered the sand market separate from the quarry aggregates market. The other relevant markets as accepted by the Commission were concrete products and ready-mix concrete. Notwithstanding these differences in terms of the definition of the market, the Commission has noted the highly concentrated nature of the market, the high level of vertical integration particularly between sand and aggregate supplies and concrete products and ready mixed concrete production, the limited opportunities for new entry, and the negligible degree of countervailing power held by customers of the industry.

The applicant submitted a number of arguments in support of his claim for clearance, the main ones being;

- Dormant state of Nebiri
- The acquisition is merely a change in name, thus competition is not affected.
- Steamships will still compete in the market from Monier, Lae.
- Competition is restricted to quarry operators as other players are producing for their own consumption.

In addition to this, there are also statutory requirements under Section 45 of the Act, which need to be considered in assessing the post competitive effect of the proposed acquisition in the market, namely:

- Potential for import competition.
- Barriers to entry.
- Ease of entry.
- Number of buyer and sellers in the market.
- Countervailing power in the market.
- Likelihood of price increases and margins resulting from the acquisition.
- Availability of substitutes
- Dynamic characteristics of the market.
- Removal of a vigorous competitor from the market, and
- Vertical integration as a result of the acquisition.

On the basis of its consideration of all these issues, the Commission noted that there continued to be a close family link between the applicant and the current owners of the other main operator in the market in the NCD, namely Rouna Quarries, and concluded that it could not be satisfied that the proposed acquisition would not have or be likely

to have the effect of substantially lessening competition in the market. Thus a clearance can not be given.

In considering the arguments in favour of an authorisation, the Commission must consider whether the benefits to the public that will result or are likely to result are such that an authorisation should be granted. So far as the public benefit arguments advanced in the supplementary submission are concerned, it should be noted that not all public benefits are accepted. Rather only those benefits that result because of the acquisition are taken into account.

On this basis, the public benefits found to be appropriate and resulting from the acquisition are:

- Reemployment of 41 retrenched staff of Steamships, resulting in a total of 161 workers recruited by the previously mothballed Nebiri Quarries Limited is a benefit to the public. If the acquisition did not take place these 41 employees of Steamships would be unemployed and would contribute to a higher rate of unemployment in the country. Hence employment is a public benefit that results from the acquisition.
- Provision of employment benefits for local staff of Nebiri Quarries Limited can be seen as benefits. These benefits would not have been paid (or would not been continued) if the staff had remained unemployed.
- Training and technology transfer with the continuation of apprenticeship and other training that would have been lost had staff not been reemployed.
- Personal Income Taxation paid to the Government that would not have otherwise been paid if the re-employed staff had remained out of work.
- Product trade (export prospect) would not have been possible without the initiative by the applicant.

The public benefits vary in importance or degree but the Commission is looking at them in aggregate.

The Commission also notes that the ability of the various market participants to compete will to a large extent be determined by their ability to gain access to new sources for quarried materials. The current physical limitations on the availability of raw materials will, independently of the proposed acquisition, impact on the overall level of future competition in this industry and the prices that consumers will need to pay for products produced by the industry.

The Commission therefore concludes that the acquisition will result or is likely to result in such benefit to the public that it should be permitted by way of an authorisation under Section 82 (3) (b) of the ICCA Act.

Determination

Having reviewed the application made by Mr T.G. Constantinou and considered all the relevant facts, the Commission has decided that:

- It is not satisfied that the proposed acquisition will not have, and will not be likely to have, the effect of substantially lessening competition in the market and therefore declines to issue a notice under Section 82 (3)(a) of the ICCA Act whereby a clearance for the acquisition could be given;
- It is satisfied that the acquisition will result, or will be likely to result, in such benefit to the public that therefore decides that the proposed acquisition should be given permission to proceed by way of an authorisation under Section 82(3)(b) of the ICCA Act.

This determination will be effective as from [9th June, 2004] and will be placed on the ICCA Public Register.

Thomas Abe
Acting Commissioner

Paul Baxter
Associate Commissioner

Chris Gideon
Associate Commissioner