

INDEPENDENT STATE OF PAPUA NEW GUINEA

Independent Consumer and Competition Commission Act 2002

Act, Sec 82

Form ICC-3

NOTICE OF APPLICATION FOR AUTHORISATION OF BUSINESS ACQUISITION

To: Independent Consumer and Competition Commission

A Notice is submitted under Section 82 of the *Independent Consumer and Competition Act 2002* for Authorisation for a Business acquisition (Section 69)

1 (a) Name of Applicant: S.P.I. Distribution Limited (**InterOil**)

(b) Address in PNG for service of documents:

PO BOX 1971, Port Moresby, NCD, Papua New Guinea

(c) Short description of business carried on by applicant in PNG and outside PNG, if appropriate:

InterOil is an oil and gas company operating in Papua New Guinea. InterOil has positioned itself to own assets through the entire value chain - from the well-head to retail. InterOil is an active participant in the upstream, midstream and downstream petroleum sectors within PNG.

2 (a) Description of the proposed acquisition, including details of the assets or shares to be acquired in PNG and outside PNG, if appropriate:

InterOil has entered into an agreement with Shell Overseas Holdings Limited (a United Kingdom corporation) to acquire the whole of the issued share capital of Shell Oil Products (PNG) Limited (**SOPL**), a PNG corporation (**SOPL Acquisition**).

3 (a) Grounds for grant of authorisation: see Appendix A.

(b) Facts and contentions relied on in support of those grounds. see Appendix A.

4 If you require confidentiality for any material as part of the application please specify.

InterOil requests that the Commission treats all the contents of this application as confidential.

Date: August 2009

Applicant

DIRECTIONS

1. If there is insufficient space on this form to provide the required information, please attach additional pages
2. If the application is made by or on behalf of a firm, the name of the firm is to be inserted into 1 (a) and the application is to be signed by a person authorized by the applicant to do so.
3. In item 1 (c) describe the part of the applicant's business relating to the subject matter of the agreement or practice in respect of which the application is made.
4. The consideration of applications for authorization is a public process. Unless a claim for confidentiality has been granted, or, where it has been rejected, unless the material has been withdrawn, all documents provided to the Commission containing information which will form part of the consideration of the application will be placed on the public record.
5. In relation to claims for confidentiality, the Commission may, at its discretion, reject any claim. In this case you will be provided with an opportunity to withdraw the information for which confidentiality is sought.
6. The ICCC has 72 days from the date of the application to decide this application or it will be deemed authorized. However time can be extended in certain cases.
7. Please supply six (6) copies of any application and where possible a disk of application.

Appendix A - Submission

SUBMISSION TO INDEPENDENT CONSUMER AND COMPETITION COMMISSION (COMMISSION) BY S.P.I DISTRIBUTION LIMITED (INTEROIL) FOR A AUTHORISATION UNDER SECTION 82 OF *THE INDEPENDENT CONSUMER AND COMPETITION COMMISSION ACT 2002* (ACT) IN RELATION TO THE ACQUISITION OF THE ISSUED SHARE CAPITAL OF SHELL OIL PRODUCTS (PNG) LIMITED

1. Introduction

S.P.I. Distribution Limited, a Bahamas corporation (**InterOil**), has entered into an agreement with Shell Overseas Holdings Limited (a United Kingdom corporation) to acquire the whole of the issued share capital of Shell Oil Products (PNG) Limited (**SOPL**), a PNG corporation (**SOPL Acquisition**). The Share Purchase Agreement (**SPA**) for the SOPL Acquisition is subject to a condition precedent that InterOil obtains an approval from the Commission in relation to the SOPL Acquisition under the *Independent Consumer and Competition Commission Act 2002 (Act)*.

2. The relevant law

Section 82(1) of the Act provides:

A person who proposes to acquire assets of a business or shares may give the Commission a notice seeking authorisation for the acquisition.

Section 82(3) provides that in response to a notice seeking an authorisation under section 82(1) of the Act, 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 authorisation for the acquisition.*

Therefore, unlike the procedure and process followed for a notice seeking clearance for a business acquisition under section 81 of the Act, consideration of an application for an authorisation such as this is a two staged process. It necessarily requires the Commission to be first of all satisfied that the acquisition will not have, or is unlikely to have, the effect of substantially lessening competition in the market. If it is so satisfied then the Commission is obliged to grant a clearance.

On the other hand, if it is not so satisfied then the Commission shall decline giving a clearance and move to the next stage where it will consider if the public benefits accruing

are such that they outweigh any lessening of competition that may arise as a result of the acquisition and therefore grant an authorisation.

Elements of a clearance

Section 69(1) of the Act provides:

69 (1) A person shall not acquire assets of a business or shares if the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market

Section 69 of the Act provides:

69 (5) Without limiting the matters that may be taken into account for the purpose of Subsection (1) in determining whether the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market, the following matters shall be taken into account:—

- (a) the actual and potential level of import competition in the market;*
- (b) the nature and effect of barriers to entry to the market;*
- (c) the number of buyers and sellers in the market;*
- (d) the degree of countervailing power in the market;*
- (e) the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins;*
- (f) the extent to which substitutes are available, or are likely to become available, in the market;*
- (g) the dynamic characteristics of the market, including growth, innovation and product differentiation;*
- (h) the likelihood that the acquisition would result in the removal from the market of a sustainable, vigorous and effective competitor;*
- (i) the nature and extent of vertical integration in the market.*

Elements of an authorisation

Section 82(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 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.

3. Background

On 21 November 2005 InterOil Products Limited (**IPL**) applied for authorisation under the Act to acquire Shell Papua New Guinea Limited (**Shell PNG**) (**Shell PNG Acquisition**). The Commission granted that authorisation on 22 February 2006.

Before completion of the Shell PNG Acquisition:

- (a) Shell PNG acquired the 50% interest of Mobil Oil Products Limited (**Mobil**) in the Joint User Hydrant Installation facility (**JUHI**) at Jackson's Airport (**Shell/Mobil JUHI Acquisition**); and
- (b) after such acquisition of Mobil's interest in the JUHI, Shell PNG transferred its 100% interest in the JUHI to a new entity, (SOPL) in order for Shell to continue to supply aviation fuel at Jackson's Airport via the JUHI after Shell PNG was sold to IPL.

Accordingly, the only current presence of Shell in Papua New Guinea is its shareholding in SOPL which only owns and operates the JUHI.

The Shell/Mobil JUHI Acquisition was itself the subject of a clearance application and approval by the Commission on 13 January 2006. The Commission's approval was conditional on Shell PNG and SOPL entering into an undertaking with the Commission which provided that SOPL would offer to divest its share of the JUHI to those persons who wish to supply fuel through the JUHI on terms similar to those applying to applicants under clause 19 of the JUHI Joint Venture Agreement dated 13 March 2003 between Shell PNG and Mobil Oil New Guinea Ltd (**JUHI JV Agreement**).

Shell PNG and SOPL entered into such an undertaking on 17 February 2006 (**JUHI Undertaking**).

S.P.I. Distribution Limited is incorporated in the Bahamas and does not itself carry on business in Papua New Guinea. It is the holding company of IPL. All business operations of the InterOil group in the market described in paragraph 5(a) below are conducted by IPL. Accordingly, this submission will refer to IPL rather than S.P.I. Distribution Limited in the analysis of that market.

4. Submission

Based on the grounds and the facts provided hereinafter and relied upon, it is InterOil's submission that the SOPL Acquisition **would not have**, or would not **be likely to have**, the effect of **substantially lessening competition in a market**. InterOil would therefore consider the Commission should give clearance for the SOPL Acquisition pursuant to section 82(3)(a) of the Act.

Alternatively, and even if it is considered that there may be some unsubstantial lessening

of competition in a market, the public benefits are such that they outweigh any lessening of competition that may occur as a result of the SOPL Acquisition, hence, the Commission should grant the necessary authorisation under section 82(3)(b) of the Act.

5. Clearance

In order to understand whether a particular acquisition would have or would be likely to have the effect of substantially lessening competition it is necessary to examine and determine:

- the relevant market in which the business or shares of the business the subject of this acquisition operates;
- the state of competition in the market; and
- the likely effect of the acquisition in question on competition in that market.

(a) Market

A clearly defined market is necessary for competition effect analysis and section 45(2) of the Act defines a market as being “*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 sense, are substitutable for them, including imports.*”

It is our submission that the relevant market is **the wholesale distribution of aviation fuels in Papua New Guinea.**

In reality, IPL and SOPL do not operate in the same geographic regions. IPL only provides refuelling services to aviation operators at provincial and outlying airfields whereas SOPL’s operations are confined to Jackson’s Airport by virtue of its 100% interest in the JUHI. This is the sole asset of SOPL and SOPL does not engage in any other type of fuel distribution.

If the relevant markets were defined by geographic boundaries within Papua New Guinea, clearly no competition effects would result from the SOPL Acquisition as IPL does not operate at Jackson’s Airport and SOPL does not operate at other airfields.

Accordingly, for the purposes of this submission, the relevant market under consideration is the wholesale distribution of aviation fuel throughout the whole of Papua New Guinea (**Market**).

(b) State of competition in the Market

The current suppliers with their respective share of the Market are as follows;

- IPL (30%)
- SOPL (63%)

- Airlines PNG (7 %)

In analysing the state of competition in the Market, it should be noted that due consideration should be given to the following factors:

- (i) Competition in the Market is already limited due to major players choosing to leave the Market. The subsequent acquisitions which contributed to this position have been duly authorised and cleared by the Commission under the Act.
- (ii) Further, SOPL exclusively acquires all of its aviation fuels from IPL. Hence, SOPL's share of the Market is based on supply from IPL. IPL invoices SOPL at a wholesale margin similar to that of any wholesale paying customer in various other petroleum product markets supplied by IPL. In turn, SOPL then supplies such aviation fuels to customers at Jackson's Airport through the JUHI delivery system. As a result, all customers in the Market are currently purchasing aviation fuels ultimately supplied by IPL.

In this sense, IPL and SOPL could only be in competition with each other in respect of the prices charged, and the delivery system used (tanker trucks vs the JUHI), for the supply the same aviation fuels, but in reality this competition does not exist. Such features of the Market will not be affected by the SOPL Acquisition and the ongoing operation of the JUHI.

All of these factors demonstrate that the current level of competition in the Market is low even before the SOPL Acquisition completes. The SOPL Acquisition therefore would not substantially lessen the already low level of competition which currently exists in the Market.

(c) Likely effect of the SOPL Acquisition on competition in the Market

In analysing the likely competition effect, it is important to note that the test here is a prospective one, ie, what is likely to occur in terms of competition in the future as a result of the proposed acquisition.

Furthermore, and for purposes of the present proposal it is our view that the SOPL Acquisition must be considered in isolation from the earlier transactions (including the Shell PNG Acquisition and Shell/Mobil JUHI Acquisition) which have been duly authorised and cleared by the Commission under the Act.

From analysis within those parameters, it is our firm contention that the SOPL Acquisition will not have, and will not have the likely effect of substantially lessening competition in the Market. In general, this view is based upon the following factors:

- SOPL is exiting the Market any way as a result of Shell's own global rationalisation program.
- If anything, the SOPL Acquisition will enhance competition through the efficiencies created as a result of the elimination of a supplier in the supply

chain.

- Import competition can not be discounted easily. This means that it is possible that planes servicing regional ports could also “tanker” fuel to the disadvantage of the local suppliers.
- This is not a perfectly competitive Market due to the regulatory regime of the Commission which either exists or has the potential to exist through price control and monitoring mechanisms under the *Prices Regulation Act* (Chapter 320). The pricing formula agreed to between the State and InterOil Limited as part of the Project Agreement also acts as an additional deterrent in this respect.
- The introduction of the competition law of which the current application is a part, also contains adequate provisions for curtailing non-price and anti-competitive behaviour.

In making an assessment of the post-acquisition effect on competition in the Market, the Commission is required to take into account the statutory factors set out in section 69(5) of the Act.

These factors, with the appropriate input by InterOil, are as follows:

(i) Actual and potential level of import competition in the Market

Even with respect to that segment of the Market at Jackson’s Airport, the supply of aviation fuels (being avgas and Jet A-1) is not limited to the supply of such products via the JUHI.

Certain aircraft operators at Jackson’s Airport have capacity to “tanker” fuel which does not require access to the JUHI. This means that certain customers (ie. aviation operators) may uplift minimum fuel at Jacksons Airport and maximise uplift at other airports (including airports throughout South East Asia, Australia and the Pacific) which may be able to supply fuel at lower cost. This uplifted fuel from foreign sources may then be subsequently used in Papua New Guinea. In this way, fuel used at regional centres acts as import competition to suppliers in Papua New Guinea.

In the Shell/Mobil JUHI Acquisition Clearance Determination, the Commission acknowledged that “*the Commission is of the view that “tankering” provides some competition to the domestic fuel supplies in PNG*”¹. Even in respect of aircraft which do not travel outside of PNG and cannot “tanker” fuel from foreign sources, aviation operators may use individual tanker trucks that deliver fuel directly to such aircraft on the airside of the passenger and freight terminals without the use of the JUHI and without supply from SOPL.

This is demonstrated by PNG Ground Services which is owned by Airlines of

¹ Determination of the Application for Clearance of the Proposed Acquisition of Mobil Oil New Guinea Limited’s 50% Interest in the Joint User Hydrant Installation at Jacksons Airport dated 13 January 2006, page 4

PNG conducting into-plane aviation fuelling services for all Airlines of PNG aircraft at Jackson's Airport separate to the JUHI. This is in addition to the Airlines of PNG's operations at other provincial airports.

Whilst Airlines of PNG's operations have only been with respect to its own fleet up until now, there is clear potential for Airlines of PNG to become a significant competitor in the market.

(ii) Nature and effect of barriers to entry into the Market

The normal market forces that affect a company's ability to enter into and grow in the Market will not be changed or affected at all by the completion of the SOPL Acquisition. No barriers will be affected or implied as a result of the SOPL Acquisition.

Even after completion of the SOPL Acquisition, the terms of the JUHI Undertaking will continue to bind SOPL. This maintains the current arrangements with respect to the potential for a new entrant into the Market through the use of the JUHI.

There is also considerable potential for new entrants to enter the Market given the relatively low cost of delivering aviation fuels via tanker trucks at Jackson's Airport and other provincial airports. Such tanker truck arrangements are an effective alternative to delivery via the JUHI.

This has been confirmed by the Commission in its statement in the Shell/Mobil Acquisition Determination 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*"².

(iii) Number of buyers and sellers in the Market

The current suppliers in the Market are:

- (A) IPL - at provincial airports;
- (B) PNG Ground Services which is owned by Airlines of PNG - at provincial airports and Jackson's Airport (non-JUHI) through the use of ex-Mobil facilities of underground storage and into plane assets; and
- (C) SOPL – via the JUHI at Jackson's Airport only.

SOPL is exiting the Market and the number of suppliers will decline from 3 to 2. This will occur regardless of the Commission's decision on this authorisation application. We note that the number of suppliers of aviation fuels at Jackson's Airport will continue to be 2 regardless of the Commission's decision.

² Determination of the Application for Clearance of the Proposed Acquisition of Mobil Oil New Guinea Limited's 50% Interest in the Joint User Hydrant Installation at Jacksons Airport dated 13 January 2006, page 12

Whilst the number of suppliers in the Market will decline from 3 to 2, IPL has been supplying all of SOPL's aviation fuels in any event.

IPL has already acquired much of Shell's capacity to supply aviation fuels when it acquired Shell PNG in 2006 after receiving authorisation from the Commission. As noted in the determination by the Commission for the authorisation of the Shell PNG Acquisition, Shell (through SOPL) only retained its capacity to service Jackson's Airport through its interest in JUHI as it saw its servicing of international airlines as part of its "wider global activities"³. All other assets of Shell have already been transferred to IPL. The SOPL Acquisition represents the final step in the voluntary withdrawal of Shell from conducting business in Papua New Guinea.

Furthermore, whilst the number of suppliers in the Market may be reducing by 1, the SOPL Acquisition does not prevent Shell, Mobil or any other fuel supply company from entering or re-entering the Market and competing for fuel supply tenders of relevant customers including Air Niugini, Airlines of PNG and other aviation operators when those tenders come up for renewal.

The acquisition by Airlines of PNG of Mobil's airside storage facilities independent of the JUHI demonstrates the ease with which the number of suppliers may be increased by a new entrant into the Market.

The JUHI Undertaking, which will continue after the SOPL Acquisition completes, also facilitates the entry by a new supplier into the Market.

The number of customers in the Market will be unaffected by the SOPL Acquisition.

(iv) Degree of countervailing power in the Market

Countervailing power is the bargaining power of customers to negotiate in the prices, quality and service arrangements with suppliers.

There are only relatively few but large customers of aviation fuels in the Market and these will exert competitive influence on suppliers. Such customers have the ability to secure aviation fuels from suppliers such as Airlines of PNG and potential entrants in the Market.

Airlines of PNG is a pertinent example of how a customer has countervailing power. Airlines of PNG established its own operations for the supply of aviation fuels itself and use those delivery assets at Jackson's Airport and provincial airports acquired from Mobil to service its own fleet. This example could conceivably be reproduced by other large aviation operators either by purchasing its own delivery assets like Airlines of PNG or acquiring an interest in the JUHI in accordance with the JUHI Undertaking or sponsoring a new entrant.

(v) Likelihood that the acquisition would result in the Applicant being

³ Determination of the Application for Authorisation of the Proposed Acquisition of Shell (PNG) Limited dated 22 February 2006, page 5.

able to significantly and sustainably increase prices or profit margins

IPL's ability to increase prices is mitigated by the following factors:

- (A) Airlines of PNG providing its own distribution of aviation fuels at Jackson's Airport and certain provincial airports in respect of its own fleet;
 - (B) the opportunity for new entrants to acquire delivery assets at provincial airports to compete with IPL;
 - (C) the potential for new entrants to conduct non-JUHI fuelling operations at Jackson's Airport in addition to Airlines of PNG; and
 - (D) the potential for new entrants to purchase an interest in the JUHI in accordance with JUHI Undertaking;
 - (E) the potential for international aviation operators at least to refuel overseas and "tanker" fuel providing import competition as noted in paragraph 5(c) above.
- (vi) Extent to which substitutes are available or are likely to become available in the market**

There are limited opportunities for substitutes to become available in the Market given that InterOil Limited currently supplies IPL, which in turn supplies SOPL, with the same aviation fuels from the Refinery.

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

The market for the wholesale distribution of aviation fuels is a mature market with largely stable volumes and product types.

However, there are major new projects currently being planned for Papua New Guinea which will lead to an upturn in general economic activity and an overall growth in the Market. With that growth will come the opportunity for increased competition with more customers and suppliers.

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

Shell decided to retain its interest in the JUHI (through its shareholding in SOPL) merely to service international airlines as part of its wider global activities. In effect, SOPL represents the remnants of Shell's presence in Papua New Guinea after the Shell PNG Acquisition by IPL.

Shell has decided that such operations are no longer required as part of its wider global activities and has placed SOPL up for sale in order to exit the Market completely. SOPL is exiting the Market on its own volition regardless of the outcome of the authorisation application. IPL, however, will continue to

maintain its association with Shell and has in place a Technical Services Agreement with their aviation business to ensure that operations continue to run to the highest possible standards.

Shell's sole presence in PNG since the Shell PNG Acquisition has been through its shareholding in SOPL only. As noted above, SOPL sources all of its aviation fuels from IPL. Hence, SOPL is providing the same products as IPL to aviation operators. Its ability to effectively compete with IPL and Airlines of PNG in respect of the supply of aviation fuels to aviation operators is constrained by the fact that SOPL is only able to service a portion of the Market – ie. at Jackson's Airport via the JUHI. SOPL is not able to supply domestic aviation operators at the vastly more numerous provincial airports around Papua New Guinea.

(ix) Nature and extent of vertical integration in the Market

There will be enhanced vertical integration as a result of the SOPL Acquisition as a result of IPL acquiring another means of distribution (namely the JUHI) of aviation fuels to its customers.

However, this will not result in a substantial lessening of competition in the Market given that SOPL currently sources all of its aviation fuel supplies from IPL and will not adversely impact on the prices of such aviation fuels.

It should be also be noted that the potential import competition referred to in paragraph 5(c) will further mean that the enhanced vertical integration will not have a substantial lessening of competition in the Market.

6. Authorisation - Benefits and Positive Outcomes of the SOPL Acquisition

InterOil submits that the SOPL Acquisition will also result, or would be likely to result in such a benefit to the public that it should be granted an authorisation under section 82(3)(b) of the Act.

InterOil makes the following submissions to demonstrate this:

(a) InterOil is committed to PNG

InterOil is committed to Papua New Guinea and has demonstrated its long term commitment primarily through continuing investment in its upstream exploration activities and in its midstream and downstream operations. InterOil has already made significant investments in Papua New Guinea including the construction and ongoing operation of its Refinery at Napa Napa. InterOil is currently committed to further significant investment in Papua New Guinea as part of its ongoing exploration efforts and the commercialisation of the Elk/Antelope gas field. InterOil has spent over 2 Billion kina in Papua New Guinea.

Importance of a strong, healthy, player

Papua New Guinea benefits from having a healthy, efficient and economically

viable player within the petroleum products sector that is committed to PNG. Unlike its competitors, all aspects of InterOil's business take place in Papua New Guinea, a capital intensive, cost sensitive and highly-regulated business environment.

Given these pressures on InterOil's business, InterOil needs to diversify and grow its activities across all of its business segments to ensure that it has the requisite scale and stability to be an economically viable player.

A strong downstream aviation fuel distribution business, enhanced by the SOPL Acquisition can assist the business, and continue to attract foreign capital into Papua New Guinea.

Future InterOil investment

InterOil is investing heavily in Papua New Guinea and is developing the Elk/Antelope gas field. It is currently estimated that the production wells will supply approximately 650-900 mmcfcpd of feedstock for a single train 3.5-5.0 mtpa liquefied natural gas (LNG) plant to be constructed at Napa Napa, near Port Moresby.

The potential returns for Papua New Guinea arising out of this investment resulting in the construction of an LNG plant are significant and quantifiable. Benefits would accrue to Papua New Guinea in terms of employment opportunities, revenues for both landowners and the State and opportunities to establish businesses and industries in the form of a Petrochemical plant around the existing refinery and LNG plant.

The SOPL Acquisition further supports and stabilises InterOil's downstream business operations, underpinning the success and the significant investments required in the mid and upstream businesses.

(b) Alternatives to the SOPL Acquisition

Shell has already divested itself of the bulk of its PNG assets and has demonstrated its intention to exit the market completely. In the event that the SOPL Acquisition is not allowed to proceed, Shell will find an alternative means to remove its last presence in PNG. Such an alternative could include mothballing, dismantling or removing the JUHI. Such a result would bring obvious disadvantages to the Market and the country as a whole.

InterOil maintains that it is in the interests of Papua New Guinea to have an operator who desires to do business in the country.

(c) Employment

InterOil is already a major employer in Papua New Guinea, with over 560 of directly employed national staff throughout InterOil's exploration, refinery and downstream distribution operations.

SOPL maintains a staff of 22 citizens in its Port Moresby office.

InterOil is committed to retaining all staff currently employed by SOPL. As previously mentioned, InterOil does not have a Jackson's Airport presence and will need staff to operate and maintain the JUHI. In addition, the proposed investments outlined within this application will create further significant employment opportunities for Papua New Guineans.

The scale and stability of InterOil's operations is a key factor which allows InterOil to employ Papua New Guineans of all skill levels. The SOPL Acquisition will improve such scale and stability of InterOil's downstream businesses. InterOil is committed throughout all of its businesses to employ, develop, maintain and train Papua New Guineans.

(d) Training and technology transfer

Those employees of SOPL integrated into InterOil's business, will gain access to additional training and development opportunities as InterOil looks to increase efficiencies and improve services as a consequence of the SOPL Acquisition.

(e) Efficiency gains

As a consequence of the SOPL Acquisition, InterOil will be able to improve the operations of the JUHI drawing on its expertise within the InterOil business and also through the Aviation Technical Support Agreement that IPL has with Shell.

The resulting economies of scale can then be passed onto consumers in the form of improved services. Following completion of the SOPL Acquisition, InterOil will review the operations of the business and where required, undertake necessary capex and opex to maintain the JUHI.

The SOPL Acquisition may allow for improved efficiencies which also open up opportunities to develop Jackson's Airport as a fuelling hub for both domestic and foreign carriers. This is particularly the case where the efficiencies generated make it attractive from a cost perspective to refuel aircraft in Port Moresby rather than South East Asian or other nearby countries. Any increase in the quantity of fuel sold has flow on benefits for both the State and its citizens.

(f) Environmental

InterOil will continue to maintain the highest standards of operations in conjunction with the Technical Services Agreement IPL has with Shell, which includes the requirement to undertake an independent annual audit assessment and a follow up on actions required from each report.

7. Summary

7.1 No substantial lessening of competition in Port Moresby

InterOil submits that the SOPL Acquisition will not substantially lessen competition in the Market for the following reasons:

- (a) The Market is already characterised by a low level of competition. When

reviewed in isolation, the SOPL Acquisition will not reduce this level of competition.

- (b) SOPL is not a sustainable, effective or vigorous competitor given that:
 - (i) it represents only the remnants of Shell's operations in PNG after it sold its other businesses to IPL in 2006;
 - (ii) Shell has decided to leave the Market;
 - (iii) it sources all of its supply from IPL; and

- (c) There are relatively low barriers to entry into the Market by virtue of:
 - (i) the JUHI Undertaking which allows new entrants to purchase 50% in the JUHI in accordance with the terms of the JUHI Undertaking and clause 19 of the JUHI JV Agreement; and
 - (ii) the ability for "tankering" and tanker truck delivery to compete against the JUHI at Jackson's Airport.

- (d) There is, by way of the "tankering" concept, actual and potential import competition from suppliers of aviation fuel outside Papua New Guinea to aviation companies operating in Papua New Guinea, particularly at Jackson's Airport.

- (e) The ability of the few large customers (ie aviation operators) to exercise countervailing power against suppliers by:
 - (i) just as Airlines of PNG has done, bypassing IPL and SOPL and vertically integrating (in Airlines PNG's case by acquiring Mobil's distribution assets at Jackson's Airport and certain provincial airports) to become a supplier of aviation fuels to its own fleet of aircraft; or
 - (ii) sponsor a new entrant in the Market with relatively low barriers to entry; and
 - (iii) in the case of international airlines, bypass IPL and SOPL by using imported fuels exclusively and "tankering" into PNG.

- (f) The SOPL Acquisition will allow IPL to review its aviation operational activities with the potential to introduce efficiency gains to the benefit of all customers

7.2 Public benefits

InterOil submits that even if the Commission is not satisfied that the SOPL Acquisition will not have, and will not be likely to have, the effect of substantially lessening competition in the Market, the SOPL Acquisition should be granted authorisation on the basis of the following benefits to the public which will result or will be likely to result:

- (a) The SOPL Acquisition provides opportunities for InterOil to grow its business,

creating an efficient, effective and stable player within the industry.

- (b) InterOil is committed to investing in Papua New Guinea and is actively pursuing opportunities in its downstream, midstream and upstream businesses. This investment results in benefits to both citizens of Papua New Guinea and the State.
- (c) Completion of the SOPL Acquisition is preferable to the possible alternatives when Shell exits the Market. Such an alternative could include the mothballing, dismantling or removal of the JUHI completely.
- (d) Of significant public benefit and somewhat unique to the alternative of authorising the SOPL acquisition by IPL is that IPL already operates a network of 11 aviation locations around regional airfields in PNG as a result of the 2006 acquisition, duly authorised from the Commission, of the bulk of the Shell PNG business interests,. IPL has therefore established considerable knowledge and expertise in managing and operating aviation operations in PNG. The acquisition of the SOPL operation at Jackson's will uniquely allow IPL to conduct a wholesale review of the aviation refuelling operations throughout the country and to introduce identified efficiency gains to the benefit of the aviation customers and to the general public.
- (e) We would further highlight to the Commission that the public interest is best served by ensuring that professional, efficient, environmentally safe aviation services are provided and maintained at **all** key regional airfield locations as well as at Jackson's. IPL is in a position to do just this, whereas any other alternative outcome for the SOPL operations cannot deliver such an outcome.
- (f) The SOPL Acquisition will assist the InterOil group to gain the necessary economies of scale and financial stability to progress the proposed LNG project estimated to cost around USD\$5 billion. This is a very significant public benefit and can be linked directly with the SOPL Acquisition as was the case in the authorisation granted in respect of the Shell PNG Acquisition.
- (g) The proposed LNG and petrochemical development will have multiplier effect on;
 - Employment generation;
 - Government revenues;
 - Vital infrastructure development;
 - Education including skills and technology transfer;
 - Improved health and welfare services; and
 - General growth and development of the PNG economy to make it competitive regionally and internationally.

8. Conclusion

The Applicant submits that the proposed acquisition of the issued shares in SOPL is not an acquisition that would have, or is likely to have, to substantially lessen the effect of competition in the market for the supply of aviation fuels in Papua New Guinea.

If clearance under section 82(3)(a) of the Act is not given, InterOil submits that the SOPL Acquisition will generate such benefits for the public that it should be permitted and granted authorisation under section 82(3)(b) of the Act.