



INDEPENDENT CONSUMER & COMPETITION COMMISSION

DETERMINATION

**NEW BRITAIN PALM OIL LIMITED
CLEARANCE APPLICATION
FOR
ACQUISITION OF SHARES IN
RAMU AGRI INDUSTRIES LIMITED**

Application Lodged Date : 17 June 2008

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1. Background

1.1 The Parties

This Determination relates to the application by New Britain Palm Oil Limited to acquire all the fully paid ordinary shares of Ramu Agri-Industries that it does not own. The Clearance application is made pursuant to section 81 of the *Independent Consumer and Competition Act 2002* (the ICCC Act).

New Britain Palm Oil Limited (NBPOL) – NBPOL is Papua New Guinea's largest oil palm plantation and milling operator with operations based in Hoskins, West New Britain Province. It is a publicly listed agri-industrial company majority owned by Kulim Bernhard of Malaysia, including a number of domiciled institutional investors such as Nambawan Super and Nasfund. The company's shares trade on both the Port Moresby and London stock exchanges.

NBPOL's core activity is the cultivation and processing of Oil Palm into Crude Palm Oil (CPO), Palm Kernel Oil (PKO) and Palm Kernel Expeller (PKE) for sales to both domestic and foreign markets notably, United Kingdom, Europe and Australia. The company has an established modern culture laboratory and seed processing facilities with production and sales of approximately 20 million seeds.

NBPOL currently maintains approximately 40,000 hectares of estate managed oil palms and sources additional oil palm fruit from independent growers (smallholders) who maintain 24,000 hectares. According to NBPOL forecast, it estimates that by the end of 2008, it will manage and operate oil palm plantations over an area in excess of 67,000 hectares, making it a substantial player in the global oil palm industry.

NBPOL also grazes beef cattle at its Numondo cattle farm in West New Britain Province and supplies the domestic market with Numondo beef products.

Ramu Agri Industries Limited (RAI) – RAI is a nationally owned diversified agricultural company with operations based in Ramu, Madang Province. The company is a publicly listed company; with shares trading on the Port Moresby stock exchange. It is the largest producer and exporter of sugar and beef in Papua New Guinea.

RAI cultivates cash crops such as palm oil; peanuts and cashew nuts, including production of molasses and ethanol. RAI markets its products under the brand name of Ramu Sugar, Ramu Beef, Ramu Palm Oil and Ramu Ethanol. RAI's diversification program is aimed at transforming the Markham Valley into a national food bowl.

RAI has current land holdings of approximately 30,000 hectares; which comprises over 4,500 productive hectares of oil palm plantations, with an established mill and associated infrastructure; 8,000 hectares currently under sugar cane; 14,000 hectares currently under beef cattle grazing and; between 2-3,000 hectares under other crops.

RAI grazes cattle and maintains a total of around 16,000 head of cattle in Ramu, Madang

Province.

2. Acquisition proposal

NBPOL has made an offer to RAI in accordance with the *Takeovers Code 1998* (the Takeovers Code) on 16 May 2008 to acquire all the fully paid ordinary shares of RAI that it does not own, for a consideration of K5.00 per share. This consideration per share has been increased to K6.10 per share on 6 June 2008 in response to a competing offer issued by WR Carpenters (PNG) Limited to acquire the shares in RAI for K6.00 per share.

NBPOL's offer is conditional on amongst other things, valid acceptances being received in respect of not less than 90 per cent of the RAI shares to which the offer relates (though this condition can be waived by the offeror in accordance with the terms of the Takeovers Code) and the approval of the Bank of Papua New Guinea and the Investment Promotion Authority.

The offer will remain open for acceptance for 30 days from the date of the offer document, subject to any extensions permitted under the Takeovers Code and unless the offer is withdrawn in accordance with the Takeovers Code. If NBPOL is successful in its bid, it will become the 100 percent owner of RAI. NBPOL currently owns 4,689,283 (19.45 percent) shares in RAI.

Amongst other regulatory approvals, NBPOL is seeking clearance from the Commission to proceed with its acquisition of the remaining shares in RAI.

2.1 *Stated Rationale for the Proposal*

The Directors of NBPOL consider Ramu as an excellent strategic and operational fit with NBPOL's existing 40,000 plus hectares of planted oil palm plantations. Ramu has 4,500 productive hectares of oil palm plantations; established mill and infrastructure, and approximately 16,000 hectares of land which the Directors expect to have the potential to be developed into oil palm plantations. Ramu is also considered well positioned to access freight facilities at Lae, and at virtually no deviation of the shipping route to/from NBPOL's current plantations at West New Britain¹.

The Commission notes NBPOL's announcement to the London stock exchange in December 2007 that its objective is to double its entire plantation area within seven to eight years. The acquisition of Ramu would allow NBPOL to expand significantly its oil palm plantations, providing approximately 50 per cent of its plantation development target once developed².

NBPOL submitted that the proposed acquisition, of RAI will not have, and will not be

¹ NBPOL's announcement of its US\$43.8m cash offer for Ramu Agri-Industries Ltd including long term leases over 30,000 hectares of land, 16th May 2008

² Ibid

likely to have, the effect of substantially lessening competition in a market.

3. Application for clearance

On 17 June 2008 NBPOL submitted a clearance application for the proposed acquisition of shares in RAI pursuant to Section 81 of the ICCA Act. The Commission is required to make a determination on whether or not to grant clearance of the share acquisition within 20 days of receipt of the application. The Commission was therefore required to make a determination by no later than 6 July 2008.

However due to delay in the provision of pertinent information by the applicant and submissions by other stakeholders, the Commission and the applicant agreed that the determination date should be extended to 14 July 2008.

4. Elements of a clearance

NBPOL applied for a clearance of the proposed acquisition under Section 81 of the ICCA Act. Section 81(3) of the ICCA Act provides that the Commission shall;

- *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*
- *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 decide whether to grant a clearance or not, it is required to assess the competition effect of the proposed acquisition in the relevant markets. Details of the Commission's assessment and analysis are outlined in section 9 of this determination.

5. Facts & Contentions in support of the application

In arguing that the share acquisition will not have or would not be likely to have the effect of substantially lessening competition in the market, the applicant submitted that there will be either no effect or negligible effect on competition arising from the acquisition in the market.

NBPOL submitted that in relation to the market for crude palm oil, most of this is exported and therefore the market for palm oil products in PNG (which is how the Act defines the market) will not be affected by the acquisition.

NBPOL claims the wholesale and retail markets for refined palm oil products will not be lessened. NBPOL is the only operator that owns a refinery where it processes crude palm oil into food and non-food palm oil products. RAI is not a competitor in these markets. There is import competition of refined palm oil products from major suppliers. The acquisition will therefore not change this outcome.

In addition, it asserted that there will either be no effect or negligible effect on competition in the wholesale and retail markets for cattle (beef) products. NBPOL is a relatively smaller player compared to RAI and neither party operates in the retail segment of the market. The market has many local competitors, import competition and low barriers to entry. Hence the acquisition of RAI by NBPOL is not likely to affect competition in this market.

6. Views from Industry Participants & Others

As part of the Commission's wider public consultation process to test the claims of the applicant, the Commission sought views from the wider public, selected stakeholders, including shareholders of RAI, other industry players such as Oil Palm Research Association, Livestock Development Corporation, Oil Palm Industry Corporation, Department of Agriculture and Livestock; including other relevant government agencies such as the Department of Treasury and the Department of Commerce and Industry.

The Commission received only a small number of submissions which are summarized below.

- 6.1. *WR Carpenter (PNG) Group of Companies (WRC)*** – WRC agrees with the statements made by NBPOL regarding the cattle industry in PNG and confirms that it does not see any effect on competition in this market.

In terms of palm oil production, WRC confirms that this is a fully exported product and there is no domestic market. The only domestic impact will be on prices to local growers for this raw product delivered to mills. While WRC does not operate in the palm oil industry and is not in a position to comment on this, it expressed the view that if the market is similar to the copra market in which WRC operates, then again it is in the export markets that drive this price and a regulatory commodity board is there to ensure pricing to growers is fair and reasonable.

WRC's other concern is the impact of NBPOL's takeover of RAI on RAI's other products. The NBPOL announcement to the London stock exchange infers that they are acquiring RAI for the land and that the intention would be to cease/reduce production of sugar (which would include the downstream products of molasses and ethanol) and plant the area with oil palm.

This will mean that PNG loses its own manufacturing plant for these domestically produced products and replacements will have to be imported.

- 6.2. *Department of Agriculture and Livestock (DAL)*** – DAL submitted that in principle, it has no difficulty with the statement made by NBPOL in connection with crude palm oil and other palm products.

In terms of beef, DAL believes that the removal of one domestic supplier from the market place is intrinsically undesirable. Their view is that decreasing the number of domestic beef suppliers from five to four reduces the number below a

desirable level in terms of competition between domestic suppliers. This will further reduce to three shortly when the new Malaysian owners of Markham Farm in the Markham Valley replace all its cattle (~800 head) with palm oil.

DAL also raised other relevant issues of concern. In this respect, it submits that considering competition from the perspective of ownership, DAL believes the control of a further section of the palm oil industry by Malaysian interests represent an unnecessary concentration of the national agriculture industry in foreign hands. Currently the great majority of the economic benefits arising from RAI operations remain within the country. RAI as a PNG-owned company has always taken a long term view in its investment decision so as to ensure maximum sustainability of all projects for the benefit of the local communities and the country as a whole.

In further support of its view, DAL states that while NBPOL has stated it has not “at this stage” identified any material changes likely to be made to the business activities of RAI, the possibility that sugar production could be replaced by palm oil production is undesirable. DAL believes it is the interest of the country to have a diversified and long-term sustainable domestic sugar industry from the perspective of food, economic and social security and avoiding economic risk through reliance on one crop

The Commission acknowledges comments by the above parties. It notes a number of concerns and is of the view that although such considerations are appropriate, consistent with law, these factors cannot be taken into consideration under the clearance application process.

If clearance is granted, this provides the applicant the legal certainty to proceed with its proposed acquisition without risking a contravention of the ICCC Act. But it needs to be noted that the Commission’s clearance decision relates only to an assessment of any lessening of competition which may arise from the acquisition. The Commission is not permitted to take into account whether the acquisition would be in, or contrary to, the national interest or would provide positive or negative public benefits. These are issues which may arise if authorisation were sought, but not where a clearance only is applied for, where competition is the only relevant issue.

The Commission's decision is independent of other regulatory approvals and does not stop any other party from bidding to acquire RAI, nor does it compel RAI shareholders to sell their shares to NBPOL. This is a private commercial and independent arrangement between the parties concerned.

7. Industry Characteristics

7.1 (a) Palm Oil Industry Participants

The palm oil industry in PNG comprises six (6) nucleus estate companies and some 18,000 smallholder growers. The nucleus estate companies are NBPOL, Hargy Oil Palms Limited

(Hargy), Higaturu Oil Palms, Milne Bay Estates, Poliamba and RAI. All but Ramu Agri Industries are subsidiaries of foreign agri-industrial firms.

NBPOL is the country's largest and leading oil palm plantation and milling operator based in Hoskins, West New Britain Province. It is majority owned by Kulim Berhad of Malaysia, but including a number of minority local shareholders.

Hargy operates in Bilalla, West New Britain Province and is a subsidiary of SIPEF of Belgium, a multi national agri-industrial based corporation.

Higaturu (Oro province), Milne Bay Estate (Milne Bay Province) and Poliamba (New Ireland Province) are owned by CTP Holdings Pty Ltd (CTP), a joint venture company incorporated in Singapore. Cargill is the majority shareholder of CTP and assume managerial and operational responsibilities of these three plantation companies in PNG.

RAI is based in Ramu (Madang Province) and is a nationally owned company with majority shareholders being the State, superannuation funds, PNG registered companies and provincial governments, amongst others. RAI previously specialised in the production of sugar and sugar by-products until recently when it undertook a diversification program and renamed its business from Ramu Sugar Limited to Ramu Agri-Industries Limited (RAI). RAI is a new entrant into the palm oil industry having planted its palm oil some 5 years ago. It has also commissioned a new palm oil mill intended for processing and shipping its first crude palm oil export during the year.

7.1 (b) Palm Oil Production

Palm oil industry is established in six (6) project areas as discussed above. The operation of each company is based around the nucleus estate-smallholder model whereby smallholders supply oil palm fruit to mills operated by the nucleus estate company. Each company plants, harvests and processes its own palm oil fruit into crude palm oil, including those sourced from small holders, and undertakes marketing of its products.

The production of palm oil is either located on Land Settlement Schemes which is a state lease land or Village Oil Palm Schemes, or on both. Village Oil Palm Schemes were introduced after the Land Settlement Schemes purposely to encourage more involvement in the industry by locals participating as smallholders.

The Commission understands that the palm oil industry companies use the FFB pricing formula to buy palm oil fruits, also referred to as fresh fruit bunch (FFB) from the smallholders. The formula is based on the calculation of the free on board (FOB) value of the primary palm products that are produced from one tonne of fresh fruit bunch. This value is then distributed through a pay out ratio (derived from the relative costs of the smallholder (growers) and milling company) to the small holder and the milling company.

The Commission notes that the FFB are firstly sterilized using a combination of steam and pressure, then threshed into separate and individual fruit-lets and pressed to extract crude palm oil (CPO) from the flesh of the fruit. The residual fibre and nuts are dried. The fibre is used as fuel to power the mill, while the nut is further processed and the shell is cracked to

extract the kernel which is then pressed to produce palm kernel oil (PKO) and palm kernel expeller (PKE).

Both CPO and PKO are core products of palm oil. These can be further processed to produce food and non-food products such as cooking oil, margarine, bio-diesel, soap, candles and industrial lubricants.

CPO is mainly traded on the world market and not consumed domestically. The Commission notes that each industry participant owns plantations and mills and processes their FFB into CPO, PKO and PKE. NBPOL is however, the only company with a palm oil refinery which it uses to produce a variety of food and non-food refined palm oil products. Refined palm oil products are also imported by major wholesale distributors.

PKE is used primarily as livestock feed. It is rich in protein and energy and is exported to Europe for feeding dairy cattle. PKE is also used as feed for swine, poultry, sheep and aquaculture.

Data from the Bank of Papua New Guinea shows that palm oil production has generally been growing since 2002, although lower production compared to the other years was recorded in 2005³. This growth is likely to continue into the foreseeable future and is attributable to factors such as an increase in domestic palm oil plantations as a result of entry into the market by new players, as well as expansion by existing players. The trend is driven by amongst other factors, current high prices of crude palm oil, high food prices and the emerging bio-fuel industry.

7.2(a) Cattle Industry Participants

A review of Papua New Guinea's Red Meat Industry in 2000 by the Australian Centre for International Agricultural Research (ACIAR) shows that Papua New Guinea's cattle industry has experienced a decline in cattle herd since independence despite a rise in domestic demand for beef. Cattle numbers peaked in 1976 at around 153 000 head with more than 1, 000 smallholder projects running a total of 50, 000 head. There has since been a sharp decline in both largeholder and smallholder sectors.

The review found that the national estimate was between 75, 000 and 90, 000 head. About eighty percent of these cattle are on largeholder properties occupying 113 000 hectares of grazing land. The remainder are on 550 smallholder farms on 78, 000 hectares of grazing land.

The decline was attributed mainly to poor management in animal and pasture management, withdrawal of government support, land tenure disputes and poor financing arrangements.

It was also reported that in terms of grazing land, there is an estimated 500,000 hectares of natural grasslands that is suitable for cattle production. About 78,000 hectares of these are

³ Bank of PNG, Quarterly Economic Bulletin - 26 June 2008 publication, Table 8.6 (BPNG website)

in Morobe Province, 43,000 hectares in Madang Province and 55,000 hectares in Central Province.

Cattle production is undertaken by both largeholders and smallholders. Companies owned the largeholder ranches while smallholder ranches are owned by clans and families, and sometimes by co-operative groups and business associations.

The Commission notes that these findings are somewhat consistent to the applicant's submission that there are currently 70, 000 head and the main producers are the largeholders.

The domestic cattle industry comprises of mainly producers and processors that wholesale mainly to the domestic market. Information supplied by the applicant show that there are currently 5 largeholder producers (ranches) of cattle and some smallholder producers. Largeholder cattle ranches include those owned by RAI, Trukai Industries, Koitaki, NBPOL and WR Carpenters' - Coconut Products. Some producers have their production and processing wholly integrated into their operations.

Table 1 below identifies the number of the cattle producers and the approximate herd of cattle each owns.

Table 1: Producer and Est. Cattle Herds		
Producer	Herd	Per cent
Ramu Agri Industries	16,000	21.3%
Trukai Industries	7,000	9.3%
Koitaki	5,000	6.7%
New Britain Palm Oil	4,300	5.7%
WR Carpenters – Coconut Products	5,000	6.7%
Smallholders	8,000	10.7%
Unaccounted	24,700	39.6%
Total	70, 000	

Source: NBPOL Clearance Application, 13th June 2008 and ICCC calculations

Table 1 shows that largeholder ranches supply the bulk of the beef meat requirements of the market compared to smallholder ranches. Of the largeholder ranches, RAI is the leading producer with 16, 000 head of cattle, while NBPOL is the smallest cattle producer.

The applicant submitted that this estimate is based on data provided by the Livestock Development Corporation. NBPOL submitted that it is a very small scale competitor in the wholesale market (less than 2 percent of the market). RAI is the largest local supplier but only has a market share itself of some 8 per cent.

7.2(b) Cattle Industry Production

The Commission notes that the ACIAR report studied the various beef market segments. It identified them as (1) Hospitality and Catering; (2) Urban Supermarket; (3) Trade stores and wholesale cash and carry outlets; (4) Kaibars; (5) Singsings; (6) Manufacturing- small goods market segments, and (7) Cannery.

The report identified that a substantial proportion of the beef aimed at the Hospitality and Catering segment of the market meets the demands of the mining projects. This segment of the market has exact requirements for quality consistency, consistency of supply of a particular cut and uniform portion size. The local producers are faced with low production volume and variable supply, and thus are finding it difficult to stay competitive against imports of cut specific boxed beef.

Urban supermarket segment of the market provides the major outlets for domestically produced primal cuts. Supermarket demand for quality beef outstrips the capacity of the local industry to supply this cuts; while the Cannery segment obtains its beef requirements mainly from imports with about 70 per cent of this imported beef being used by the two meat canneries– Hugo Cannery and James Barnes Cannery.

Papua New Guinea imports a substantial amount of its beef requirements due to insufficient domestic beef supply. The beef import is especially to meet the demand from Cannery and Hospitality and Catering market segments. The Commission notes that the ACIAR report found that about 70 per cent of the imported beef is consumed by the two canneries (Hugo and James Barnes Canning). The local industry supplies about 800 tonnes of beef per year to the canneries.

The Commission notes from the applicant’s submission that the local industry supplies only one third of the domestic demand, the remaining two thirds is imported.

8. Commission Assessment

8.1 The market

For the purposes of the ICCC Act, the market is defined under Section 45 (2) 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”.

Bearing in mind the definition of the market, the Commission would need to identify the relevant market/s for the purpose of establishing actual and/or potential competition effects in the relevant market/s.

In its submission to the Commission, NBPOL defined the relevant markets as the:

- i. market for crude palm oil;
- ii. wholesale and retail market for refined palm oil products;

iii. wholesale and retail market for cattle (beef) products

It submits that in relation to the market for crude palm oil, refined palm oil products and beef, there will either be no effect or a negligible effect on competition in those markets arising from the acquisition. In the case of the market for crude palm oil, the applicant submitted that the market does not exist within PNG and therefore is not a relevant market for the purposes of the Act.

The Commission notes the argument by the applicant that while the market for crude palm oil is a relevant market in so far as understanding the operations of the palm oil industry, the consideration of this market by the Commission is not relevant for the purpose of section 69 of the Act.

In this respect, the Commission finds the applicant's argument to be consistent with the definition of the relevant market pursuant to section 45(2) discussed above. The Commission also notes that for the purpose of section 69 of the ICC Act, the market for crude palm oil exports is exempted pursuant to section 66 (f) of the ICC Act.

The relevant market under section 45(2) of the ICC Act defines the market. This provision defines whether two or more products can be considered substitute goods and whether they constitute a particular and separate market for competition analysis within PNG. The relevant market also refers to a geographical and/or functional market within and outside of PNG, but only to the extent that arrangements, contracts and/or understanding such as business acquisition affects a market in PNG.

In regard to the wholesale and retail markets for refined palm oil products, the Commission notes that NBPOL is the only integrated firm. It uses some of its own crude palm oil as input to process and wholesale food and non-food palm oil products. The Commission also notes that NBPOL faces import competition from a number of established major wholesale distributors such as Panamex, Bimoli and Unison Pacific. Information submitted shows that NBPOL and RAI do not compete in the retailing segment of this market. For the purpose of section 45(2), the Commission does not discount that the proposed acquisition would enable the applicant to increase its production and wholesale volume of refined palm oil products and therefore have an impact in the domestic market, especially in the wholesale market for refined palm oil products.

For the purpose of this clearance application, the Commission also accepts that the proposed acquisition would likely have an effect in the domestic cattle (beef) industry within the wholesale and retail market for cattle (beef) products. The Commission notes that both NBPOL and RAI are competitors in this industry where each competes to supply the domestic market. Both parties however, only compete at the wholesale level. The Commission also notes that domestic supplies face competition from imports of beef carcasses and cut-specific packaged beef, including substitutes. In view of this market, the Commission has not received information contrary to this being the relevant market for the purpose of NBPOL's clearance application.

In considering the relevant markets, the Commission is of the view that the applicant's

argument is consistent with law and therefore accepts that the market for crude palm oil exports is not relevant for the purpose of the clearance application.

Further, the Commission notes that palm oil companies buy FFB from smallholders to compliment their plantation supplies to the mills and therefore consider that industry participants do compete to buy palm oil fruits from growers locally. In theory, the Commission expects industry participants to compete to buy FFB from smallholders and therefore considers that there is a market for buying palm oil fruits (FFB). The Commission however notes from industry participants that such a market does not exist in the palm oil industry, mainly because of the nucleus estate-smallholder model adopted by the industry where smallholders complement the supply of and sell to the project operator. This ensures the viability of project in light of shortage of land, including participation of smallholders. Growers also sell their fruits primarily to the project company within their immediate locality due to the geographical location, transportation cost and other logistic, including the nature of the FFB which is a perishable good that has to be transported and processes within a certain timeframe to enable maximum extraction of crude palm oil.

In addition, the Commission notes that RAI is also a key player in the sugar cane growing and sugar production markets, and is active in the retail sugar market. It is vertically integrated in the growing, production and retailing of sugar within PNG. However, with the acquisition by NBPOL, given there is no overlap activity currently by NBPOL in these markets, there is unlikely to be a substantial lessening of competition in these markets, at acquisition.

The Commission considers that acquisition is likely to have an impact on the domestic market within the meaning of section 45(2) for both wholesale and retail markets for refined palm oil products; and the wholesale and retail market for cattle (beef) products and market for buying palm oil fruits locally.

The Commission is however, of the opinion that the retail market for refined palm oil products is not a relevant market since the parties to the application do not compete in this market. Similarly, the Commission notes that NBPOL and RAI operate in two separate provinces and do not compete in the market for buying palm oil fruits locally for the reasons discussed above. These are only sourced from within each party's respective province, West New Britain and Madang respectively. In addition, the Commission is of the view that the sugar cane growing and production markets are not the relevant main markets for consideration under this application for reasons discussed above.

In this regard, the Commission therefore considers that the wholesale market for refined palm oil products; the wholesale and retail market for cattle (beef) products; and the market for buying palm oil fruits (FFB) locally are the relevant markets for the purpose of this clearance application.

9. Effects of Competition in the market

9.1 Wholesale market for refined palm oil products

The applicant submitted that NBPOL is the only domestic wholesale supplier of refined

palm oil products in PNG; and that RAI does not compete in this market. It expressed the view that there is no likelihood that RAI will do so in the foreseeable future. It also relayed that both firms do not operate in the retail segment of the market.

It claimed that RAI and NBPOL are not presently nor likely to become competitors in the wholesale or retail markets for refined palm oil products. The acquisition will therefore have no effect on competition in those markets.

In the absence of any contrary information, the Commission does not discount the views put forward by the applicant. Information before the Commission suggests that NBPOL is the only palm oil company that is vertically integrated. It owns and operates the Dami Oil Palm Research Station which produces and supplies the domestic industry and exports palm oil seeds. NBPOL also owns palm oil plantations, milling operations and the only palm oil refinery in PNG. RAI and other industry participants' operations are limited to plantations and milling operations.

The Commission notes that being the only refiner, NBPOL uses some of its crude palm oil as input into its refinery to produce refined palm oil products that are used in a number of food and non-food products such as frying oil, margarine, biscuits, noodles. Non-food uses include bio-diesel, industrial lubricants, printing inks, candles and detergents.

The applicant is the sole producer of refined palm oil products and wholesales these products to the domestic market. Major users and retailers include James Barnes (PNG) Ltd, Lae Biscuits Ltd, Laga Industries, Nestle (PNG) Ltd and Paradise Biscuits (PNG) Ltd.

The Commission understands that there are a number of major wholesale suppliers that import refined palm oil products in competition with what NBPOL supply the domestic market. These include, Panamex, Bimoli and Unison Pacific. It cannot be discounted the suppliers also import competing substitutes.

The clearance process requires consideration of what would happen in the future if clearance is granted. The Commission is required to identify and assess the likelihood of potential anti-competitive conduct(s) and/or behavior(s) and the extent to which the proposed acquisition may affect the competition landscape in the relevant markets.

The Commission is of the view that although NBPOL and RAI are both players in the palm oil industry, they are not competitors in the wholesale and retail markets for refined palm oil product because of the reason discussed throughout this determination. Thus the Commission considers that competition in the wholesale and retail market for refined palm oil products under the current circumstances where both firms are not competitors would be negligible.

9.2 *The wholesale and retail market for cattle (beef) products*

NBPOL submitted that it is a very small scale competitor in the wholesale and retail market for cattle (beef) products. NBPOL has less than 2 percent of the market. RAI is the largest local supplier but only has a market share itself of some 8 per cent. In addition, it asserted that both firms do not operate in the retail segment of this market. They only sell beef by

wholesale to retailers. The acquisition will have no effect on the retail market at all.

It asserted that from the estimated 70,000 cattle herd approximately 20,000 carcasses of cattle is processed each year. Of these, approximately 5,000 carcasses are supplied by RAI and 1,000 by NBPOL.

The carcasses are sold into the wholesale market for beef in PNG. None of them are exported. The wholesale market consists of the sale by producers to retailers in the urban centres. There are some direct sales from the abattoirs to the public, but these make up a negligible proportion of total sales.

It further submitted that in addition to local supply to the wholesale market, some 10,000 metric tonnes of beef are imported into PNG each year, which equates to approximately 40,000 carcasses. There is direct and open competition between many of the local suppliers and importers in this market where barriers to entry are low. Thus, the total wholesale market consists of approximately 60,000 carcasses per annum. In combination, RAI and NBPOL account for only 10 percent of this total market.

NBPOL thus claimed that the acquisition of RAI by NBPOL will not have the likely effect of affecting competition in this market.

The Commission notes that RAI is the leading cattle producer followed by Trukai and Koitaki. NBPOL has a small presence in the cattle industry compared to the rest of the industry participants. The acquisition of RAI by NBPOL would allow the applicant to own and manage the acquired cattle herds and graze land; and therefore become the leading cattle producer. With RAI currently holding about a quarter of the national market, NBPOL's acquisition of RAI would increase its market share to more than 30 percent.

The Commission notes from the 2000 ACIAR review that RAI has constructed a modern abattoir complete with boning out facilities, storage space and full by-product recovery systems. Based on this information and discussions under section 7.2(b), the Commission understands that most industry participants, if not all, have abattoirs where cattle beef is slaughtered and the processed carcasses are wholesaled domestically to leading supermarkets (Andersons Foodland, Best Buy, SVS and Boroko Foodworld), hotels and frozen meat distributors such as POM Freezers.

The Commission also notes that two thirds of beef is imported mainly by the major wholesaler distributors, hotels and meat canneries. NBPOL advised that its wholesale distribution of beef is mainly to Andersons Foodland Lae and within West New Britain Province where this is sold from its abattoir. The Commission however notes that Numudo beef is also sold in Anderson's Harbour City, Port Moresby.

The Commission observes that none of the domestically produced beef is exported. These are sold in the domestic market and notes that the demand for beef outstrips supply. The shortage in the market could be attributed to reports of decline in cattle herd since independence as discussed under section 7.2(b) above.

The Commission notes that the proposed acquisition would result in the removal of RAI

from the market; the Commission assumes that RAI's cattle operation would be integrated into NBPOL operations to compete with the existing players Trukai industries, Koitaki, WR Carpenters and smallholders. The Commission notes from media reports that RAI had plans to invest some K15 million over a span of three years to improve local breeding of improved cattle species to meet the rising domestic and international consumer demand for the meat. RAI believes the expansion would double capacity from 60-100 head of cattle per day, including the processing of pork. RAI has an abattoir that has the potential to process 40,000 cattle per year, though whether that would still occur post acquisition is unknown.

In this respect, the Commission notes that NBPOL is a small producer acquiring a bigger producer and notes that the acquisition would appear to provide NBPOL economies of scale and/or economies of scope. For example, PKE from its palm oil milling operations can be used as cattle feed supplement, through vertical integration.

In addition, information before the Commission suggests that the domestic beef industry is relatively small and competes predominantly with imports mainly from Australia and New Zealand. The Commission understands that the domestic price for beef is determined by the import parity price of imported product. The Commission is therefore of the view that the proposed acquisition would not substantially lessen competition in the beef market.

9.3 The market for buying palm oil fruits (FFB) locally

NBPOL and RAI both have their own palm oil plantations and buy additional FFB from smallholders to complement their local FFB supply. Their palm oil plantation activities are however in different regions of the country with effectively zero overlap. Because the smallholder FFB output requires access to a local buyer and mill, each organisation has considerable purchasing power within its local catchment area for FFB supply. While this can and may cause concern of competitive and negotiation imbalance, this situation will not directly be affected by the acquisition of RAI by NBPOL. No submissions have been received which suggest the purchasing behaviour of RAI (or NBPOL) will change as a result of this acquisition or NBPOL's stated aim of expanding its palm oil plantation acreage.

In this respect the Commission does not believe a further analysis of the effect of this acquisition on competition in the market for supply of FFB needs further consideration in coming to conclusion on this application. However, given the concentration of market power of largeholder over smallholder, and given the focus of increasing production and land under palm oil cultivation, the market behaviour of NBPOL regarding its wholesale purchases from smallholders needs to be carefully monitored after acquisition so that the potential for anti-competitive effects do not arise.

10. Statutory Factors taken into account in Assessing Competition

In addition to the assessment of the application, the Commission is required under Section 69(5) of the ICCA Act to take into account the following statutory matters. These are as follows:

[a] the actual and potential level of import competition in the market;

[b] the Nature and effect of barriers to entry in 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.*

In its supplementary submission to the Commission, NBPOL addressed these statutory matters.

10.1. The actual and potential level of import competition in the market

10.1.1 Wholesale market for refined palm oil products

The applicant estimates that imported refined oils account for some 25 per cent of the wholesale market, with the balance entirely produced by NBPOL from its refinery. It added that the information gathered by NBPOL is incomplete and, if anything, underestimates the level of import competition. The market is dynamically competitive and diverse.

NBPOL believes that at least 480,000 litres of refined oils are imported into PNG each month. The major importers are Bimoli, Panamex and Unison Pacific. NBPOL advised that other companies including Punjas, SVS and Seeto Kui are entering or planning to enter the import market as well.

The Commission notes the applicant's assertion that 25 percent refined oil in the wholesale market is imported and the balance is produced by NBPOL from its refinery. In addition, the Commission does not discount that this estimates could be inaccurate.

The Commission however, recognises that NBPOL has a monopoly over the production of refined palm oil products by virtue of it owning and operating the only palm oil refinery. The Commission is of the view that this is an open market where competitors can choose to build competing refinery capacity, though at a cost which does impose some constraints on entry to the refined palm oil market. Import competition does provide a discipline in the market.

10.1.2 The wholesale and retail market for cattle (beef) products

The applicant submitted that approximately two-thirds of the total volume of beef sold in PNG is imported. Importers and local suppliers compete directly and openly, and the market is vigorously competitive. Demand for beef is likely to continue to increase, and import competition is likely to increase correspondingly.

The Commission agrees that currently two thirds of domestic demand for beef is imported

mainly from Australia and New Zealand. The main importers are operators in the Hospitality and Catering and the Meat Canning Industry, including wholesale distributors of frozen meat. Domestic meat canneries use imported beef instead of domestic beef due to lack of adequate supply and throughput from domestic producers. The Commission also noted the ACIAR report that domestic canned meat products produced from domestic beef cannot be exported due to the lack of accreditation of abattoir facilities for meat processing. In the absence of any contrary information, the Commission accepts this finding.

10.2. The nature and effect of barriers to entry in the market

10.2.1 Wholesale market for refined palm oil products

The applicant submitted that the major barriers to entry into the palm oil industry relate to the acquisition of land, related infrastructure and the capital required for establishment. In order to grow a sustainable oil palm crop, a substantial area of land is required. As the most suitable land is held as customary land, there is a generally long time lag and a great deal of negotiation required to acquire this land. The land itself is not in short supply.

To establish a major oil palm development, a deep water port is required along with reliable all-weather roads for transporting the product to the port. This infrastructure is generally not available in conjunction with the suitable areas for cultivation, so that the lack of public investment in this basic infrastructure represents an existing barrier.

Oil palm development is relatively capital intensive. NBPOL estimates the establishment costs would total some K14, 000 per hectare of planted land.

NBPOL estimates that it would cost in excess of K45 million to build a refinery comparable to its own refinery, and therefore that the barriers to entry as a domestic supplier of refined oils are quite high, import competition is a completely viable alternative and there are no real barriers to entry affecting that part of the market. PNG is entirely capable of accessing the global market via import competition.

The Commission would agree that the palm oil operation is capital intensive and that there are significant associated structural barriers such as availability of and ownership of land and lack of appropriate infrastructure.

The Commission also notes the applicant's claim that two firms, Vitroplant Orangerie Bay Ltd and CP Sawit are at different stages of their project proposals to establish palm operations in Milne Bay and Central Province, respectively. The Commission also notes recent media reports of a land-owner palm oil company operating in West New Britain. Consequently, these indicate to the Commission that while there are significant barriers to entry, those barriers are not so onerous as to remove any scope and opportunity for potential entry.

10.2.2 The wholesale and retail market for cattle (beef) products

The applicant submitted that there are many small suppliers of beef in the domestic market, and the wholesale market is quite diverse. It claimed that this is indicative that there are low barriers to entry. The only barriers are the ability to acquire cattle and land on which to

graze them. Access to the market is straightforward. There are no significant technology or know-how barriers. PNG is not short of land on which cattle can be raised, as is indicated by the fact that the current herd is less than half the size of that at Independence.

As with barriers to entry in the palm oil industry, the Commission notes that there are structural barriers to entry into the beef cattle market. This includes land ownership issues, of which 97 percent is customary land. This often makes it difficult to parcel land into efficient grazing areas. The industry is also inhibited by poor and or deteriorating road infrastructure.

Other barriers include, access to capital, costs associated with fencing extensive parcel of grazing land and drilling bores to access groundwater. In addition the Commission understands that most abattoirs are old and in need of upgrading, with none built to export standards. Smallholder production is heavily dependent on institutional support for extension services for production, marketing and research and development and information; amongst others, for which Government support is lacking.

10.3. The number of buyers and sellers in the market

10.3.1 Wholesale market for refined palm oil products

NBPOL submitted that the companies that purchase refined palm oils include, James Barnes (PNG) Ltd, JKT Lim Ltd, Qun Quing Trading Ltd, Lae Biscuits Ltd, Punja & Sons Ltd, Natural Foods International Ltd, Laga Industries Limited, Nestle (PNG) Ltd, Arnott's (Paradise) Biscuits (PNG) Ltd, KK Kingston Ltd and Tropic Frond Oil Ltd.

In terms of the number of major sellers that compete in selling refined palm oils, NBPOL submitted that it is aware that these include Panamex, Bimoli, and Unison Pacific.

The Commission notes the applicant's view that a number of wholesales who source from the major distributors are considering their option to import directly.

The Commission considers that there are many buyers of refined palm oil products. It also notes that there are currently 4 sellers, with potential for additional 3 participants (Punjas, SVS, Seeto Kui) to enter the market.

Thus the Commission is of the view that there is competition in the market, although estimates provided by the applicant suggest that it supplies roughly 75 percent of the domestic market from its refinery, giving it a near dominant position. Nevertheless, there is both the potential for new entrants and a diverse range of substitutes to palm oil products that are being sought after to support a vibrant competitive import market. More particularly, the acquisition would not appear to particularly enhance that dominance.

10.3.2 The wholesale and retail market for cattle (beef) products

The applicant submitted that there is an enormous number of buyers in the wholesale market, including all supermarkets and medium to large hotels which buy direct. In Port Moresby, the major buyers are, Andersons Foodland, Best Buy, SVS, RH Hypermart,

Boroko Food World, POM Freezers and PNG Trading.

There are also numerous sellers of beef. It asserted that apart from a few larger holders such as RAI, Markham Farm and Trukai, the herd is spread in small numbers among many holders.

The Commission notes that largeholder producers of cattle include RAI, NBPOL, Koitaki, and WR Carpenters. The grazing and slaughtering of cattle for beef meat is undertaken by the largeholders utilising either the government run or privately owned abattoirs. Smallholder producers consist of numerous independent farmers and groupings.

The Commission also notes that there are many buyers in the market, with few sellers. Many wholesale buyers of beef resort to importing their beef requirements from the Australia and New Zealand markets.

10.4. The degree of countervailing power in the market

10.4.1 Wholesale market for refined palm oil products

Countervailing power refers to the ability of the buyer(s) or the seller(s) of a product or service to by-pass a particular seller or customer in the supply chain. Where there is potentially only one supplier, the countervailing power of customers may be very small.

The applicant submitted that because there are so many buyers, and the level of import competition is so high, buyers exercise very considerable countervailing power over NBPOL as producer. NBPOL's share of the market has declined in recent years and it expects this to continue. It is difficult to compete with the imported products.

On the supply side, the Commission notes that the applicant is the monopoly supplier of refined palm oil products and therefore does not discount that it holds a significant degree of countervailing power.

The Commission also notes that smallholder FFB growers have limited countervailing power and/or bargaining power when faced with the decision to sell their palm oil fruits. The Commission understands that buyers in the Hoskins area sell their FFB to NBPOL, while those in Bialla sell to Hargy. While the single local purchaser of the output of the smallholder FFB growers has reasonably strong bargaining power in purchasing fruit, the proposed merger will not alter this competitive situation at the local level in any substantive way. The need to have a large number of growers relatively near to the mill and transport infrastructure will not change the need for and competition for local FFB supply.

On the demand side, countervailing power is limited because of the applicant's monopoly position. However, the Commission is of the view that because of the threat of imports, there is some bargaining power (ability to negotiate on price, quality and service arrangements with suppliers) exercised by buyers in the palm oil market. Buyers have the option to either accept the price and contract terms of NBPOL or seek to import from the global market.

The Commission considers that bargaining power vary between buyers depending on the volume of their purchase and the duration of contracts. Smaller buyers would possess little bargaining power compared to larger buyers. In respect of long-term contracts, the Commission does not discount that buyers may be able to exert bargaining power on prices offered by the applicant given the benefits of long-term exclusivity arising from such contracts.

10.4.2 The wholesale and retail market for cattle (beef) products

The applicant submits that because there are numerous suppliers and strong import competition, all suppliers of beef into the wholesale market are subject to strong countervailing power wielded by retailers. The market is open and fiercely competitive on both price and quality.

On the demand side, the Commission notes that buyers hold some countervailing power where they can either source from wholesalers or directly from the producers. The Commission however, does not discount that minimum purchase requirements imposed by producers may limit the countervailing ability of buyers in the market.

In contrast, because of the numerous suppliers and strong import competition, the Commission is of the view that buyers possess a significant degree of bargaining power.

On the supply side, the Commission would agree that sellers have limited countervailing and bargaining power because of the reasons discussed above.

10.5. The likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins

10.5.1 Wholesale market for refined palm oil products

The applicant put forward that there is no such likelihood of the acquirer significantly increasing its prices. It added that RAI does not compete in this market therefore the acquisition will have no effect on NBPOL's position.

The Commission considers that since NBPOL is the main supplier to the domestic market, it can increase its prices; however the Commission considers that it cannot sustain high prices for longer periods. The Commission is of the view that it is unlikely that the applicant could significantly and sustainably increase prices of its refined palm oil products and therefore, profit margins in the market. Effectively the competitive nature of the market, mainly imports, substitutes and the bargaining power of buyers in the market would mitigate this from occurring. That is, if the applicant increases the price of its refined palm oils, it is certain to lose customers to imports.

10.5.2 The wholesale and retail market for cattle (beef) products

The applicant submitted that there is no such likelihood. Both NBPOL and RAI hold small market shares, and their combination will not give NBPOL any usable market power that would enable it to increase prices or margins. If it attempted to do so, it would be unable to

secure sales in the face of the competition that exists and will continue to exist.

The Commission is of the view that the likelihood of the acquirer increasing its prices and profit margin is very minimal because of the same reasons discussed under section 10.5.1 above. That is, if the applicant increases the price of its beef, it is certain to lose customers to other domestic suppliers including imports.

The competitive nature of the market, mainly imports, close substitutes beef such as lamb and pork, including other substitutes such as poultry and the bargaining power of buyers in the market would mitigate this from occurring.

10.6. The extent to which substitutes are available, or are likely to become available, in the market

10.6.1 Wholesale market for refined palm oil products

The applicant stated in its application that substitutes for refined palm oil include soybean oil, sunflower seed oil and canola seed oil. These products are not produced in PNG but are imported in margarine and cooking oil products.

The Commission accepts that there is demand side substitutability for oil base food products such as cooking oil and margarine in the market. The Commission however, does not have sufficient information to determine the extent to which these substitutes can cater for all the food and non-food palm oil products.

On the supply side, the Commission notes the level of import in this market and considers that buyers in the market can switch between sourcing their requirements from the applicant and importing.

10.6.2 The wholesale and retail market for cattle (beef) products

The applicant submits that while it is arguable that other red meat products are close substitutes for beef in the retail market, it is likely that there is a distinct wholesale market for beef. However, if beef became relatively very expensive, then other red meats may become direct substitutes even in the wholesale market. This acts as a permanent downward constraint on the price of beef.

The Commission also notes that there are many substitute red meat such as goat meat, lamb, pork and poultry products. The cattle (beef) market has experienced shifts towards the consumption of these other sources of red meat and protein, which shows that there are indeed sufficient substitutes available in the market.

10.7. The dynamic characteristics of the market, including growth, innovation and product differentiation

10.7.1 Wholesale market for refined palm oil products

The applicant did not adequately address this issue. It submitted that a new firm JKT Lim

may be planning the construction of a new refinery in Lae. It expressed the view that this would provide a very strong competitive threat to NBPOL.

The palm oil industry is experiencing growth, innovation and product differentiation due to record prices of petroleum fuel and increasing global concerns over climate effects. This provides the impetus for innovation and growth in the industry in search for green fuel and cost efficient production techniques.

10.7.2 The wholesale and retail market for cattle (beef) products

The applicant submitted that the market is dominated by imported beef. This, plus the lack of available state lease land for agriculture in PNG, means that there is not likely to be any significant development in the domestic production market.

As discussed above under section 10.2.2, the Commission notes the structural impediments of the cattle industry and the challenges faced by industry participants to expand the market. In view of this, the Commission is of the view that unless these issues are adequately addressed, there would be limited scope for product innovation and differentiation in the market. Any growth in the market would be attributed mainly to increase in the demand for beef products.

10.8. The likelihood that the acquisition would result in the removal from the market of a sustainable, vigorous and effective competitor

10.8.1 Wholesale market for refined palm oil products

The applicant submitted that RAI does not compete in this market, so this issue does not arise.

The Commission notes the applicant's contention that proposed acquisition would not result in RAI been removed as a sustainable, vigorous and effective competitor in the market.

As discussed, the clearance process requires the Commission to take into account the dynamic considerations of the market. The continued palm oil commodity price increase and research and development associated with product innovation and differentiation, amongst other factors such as the success of RAI diversification program would potentially enable RAI to consider wholesaling refined palm oil product; and therefore establish a competing refinery.

The economies of scale and scope achieved through its diversification program would make RAI a sustainable, vigorous and effective competitor. Accordingly, its acquisition by NBPOL would remove a vigorous competitor, but other competitors would remain, and imports would still constrain NBPOL from engaging in monopolistic practices.

10.8.2 The wholesale and retail market for cattle (beef) products

The applicant submitted that as NBPOL is currently a very minor participant in the

wholesale market, its combination with RAI will have no discernible effect. NBPOL is primarily a palm oil producer and has no plans for expansion of its beef cattle interests. It is really coincidental to the proposed acquisition that NBPOL has an existing small presence in that industry.

The Commission notes that the proposed acquisition would allow a relatively small player (NBPOL) to acquire the beef production business of the leading beef producer (RAI). As such, the Commission differs to the applicants view and considers that the proposed acquisition would result in the removal from the market a sustainable, vigorous and effective competitor.

The Commission also notes the applicants claim that it has no plans to expand its beef cattle interests and does not discount that the current herd numbers may either be maintained or cut to fit NBPOL's business model, which is centred around palm oil production.

Further, the Commission does not discount that competitors would be wary of NBPOL's decision and may take steps to increase their herd numbers. Similarly, buyers may switch suppliers or increase their imports. These outcomes should ensure that the market adjusts accordingly.

10.9. The nature and extent of vertical, integration in the market

10.9.1 Wholesale market for refined palm oil products

The applicant submitted that the domestic market is vertically integrated in that NBPOL is both a primary producer of crude palm oil and operates the only refinery for the product. There is no other vertical integration present in the market. This state of affairs already exists and will not be impacted or exacerbated by the acquisition.

As discussed, NBPOL is the only palm oil company that is vertically integrated. It owns and operates the Dami Oil Palm Research Station which produces palm oil seeds, for both the domestic industry and export. It also owns palm oil plantations, milling operations and the only palm oil refinery in the industry.

It cannot be discounted that by-products such as PKE from its palm oil operation are used as inputs into its cattle business as cattle feed. The Commission considers this to be the case with other industry participants that also operate cattle businesses, including RAI.

The Commission believes that the proposed acquisition will not result in any further vertical integration resulting from the merger of the two firms through this acquisition. Rather, it will allow NBPOL to become a horizontally integrated firm with diversified agri-industrial operations.

10.9.2 The wholesale and retail market for cattle (beef) products

The applicant submitted that there is very little vertical integration. RAI conducts a small retail outlet at its Ramu operation, and CPL and PNG Forest Ltd who are both cattle owners

operate one retail outlet each. Neither NBPOL nor RAI participates in the retail market.

The Commission believes that the proposed acquisition will not of itself result in significant vertical integration between the two firms because both firms are predominantly wholesalers of beef.

11. Summary and Conclusion

To grant a clearance under Section 81(3) of the ICCC Act, 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.

This requires analysis of the competition effects, if any, in the relevant market(s). 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 markets as (1) crude palm oil market, (2) the wholesale and retail market for refined palm oil products; and (3) the wholesale and retail market for cattle (beef) products.

The applicant submitted that crude palm oil market is not a relevant market for the purpose of the Commission’s consideration pursuant to section 69 of the Act.

The Commission notes the applicant’s claims are consistent with the relevant provisions of the ICCC Act and accepts that the crude palm oil market is an export market exempted from the application of section 69 to which the applicant’s application relates.

The Commission also considered the markets defined by the applicant and notes the applicant is the only domestic wholesale supplier of refined palm oil products. RAI is not a competitor in this market. In addition, it noted that whilst both NBPOL and RAI compete in the wholesale and retail cattle (beef) products, their operations is limited to wholesaling in the domestic market. The Commission also notes that neither NBPOL nor RAI compete in the retail refined palm oil products market.

The Commission notes that the acquisition would affect the ownership structure of RAI in the market, and consequently concludes that the relevant main markets for consideration is the wholesale market for refined palm oil products; and the wholesale and retail market for cattle (beef) products.

In addition, the Commission notes that the acquisition will allow NBPOL to become a substantial player in the sugar cane growing and sugar production markets. Whilst this acquisition will allow entry to another market which is an effective monopoly, it will not alter the current competitive position in this market because there will be not reduction in the number of competitors in this sugar growing and production market, at the point of acquisition.

In considering the competition effect in the relevant main markets, the Commission notes that there is negligible effect in the wholesale market for refined palm oil products. The Commission however, notes that there are some competition issues in the wholesale and retail market for cattle (beef) products due to the existing overlap in both firms' cattle operations.

The Commission considers that the competition effect is however, minimal mainly due to competitive nature of the market where there are a number of producers and the high concentration of import, including the availability of local and imported substitutes.

While the acquisition will increase NBPOL's existing market share in both relevant main markets, there are a number of factors which mitigate against a conclusion that the acquisition would result in a substantial lessening of competition.

- Although the acquisition would result in there being one less competitor, post acquisition, there is relatively a high number of suppliers of palm oil participating in the market. In regards to beef, there would be 3 largeholder beef producers remaining in the market, together with numerous smallholder producers. The market is relatively open to entry. There is scope for existing and new players to enter the relevant markets.
- There is adequate import competition in both relevant markets. The markets are open to imports and are competitive.
- The nature and effect of barriers to entry to the relevant market are considered to be not so high. There are signs of potential entrants seeking to enter the market, especially in the wholesale market for refined palm oil products. Favourable macroeconomic conditions, coupled with the Governments tariff reduction program and focus on agriculture, including increasing demand for beef, indicates that there are now strong incentives for import substitution in the cattle (beef) industry.
- Buyers possess a greater degree of bargaining power (though limited countervailing power) due to the role of imports in both relevant markets; and also numerous domestic suppliers, particularly for beef.
- NBPOL's ability to significantly and substantially increase prices or profit margin in the relevant markets is constrained by competing import prices, availability of alternative substitutes and suppliers especially for beef.
- There are a number of readily available substitutes in both the relevant main markets for refined palm oil and beef products.
- Product innovation and growth is likely in the wholesale market for refined palm oil products. There is also likelihood of innovation and/or product differentiation, including growth in the wholesale and retail market for cattle (beef) products as improved stock and pasture management skills and techniques and marketing is adopted.

- The acquisition will remove from the market a sustainable, vigorous and effective competitor in the two relevant markets discussed through this determination, though vigorous competition will remain.
- The acquisition will not add to existing vertical integration in the relevant main markets, rather horizontally where NBPOL will become a diversified company through its ownership of RAI's existing sugar, ethanol and other crop business.

12. Decision

In view of the above factors, analysis and considerations, the Commission notes and gives weight to the industry stakeholder's comments; and is satisfied that the proposed acquisition of Ramu Agri Industries Limited by New Britain Palm Oil Limited, would not have, and would not be likely to have, the effect of substantially lessening competition in the wholesale and retail markets for refined palm oil; and beef cattle products and hereby grants clearance for the proposed acquisition to proceed pursuant to Section 81(3)(a) of the *Independent Consumer and Competition Act 2002*.

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Thomas Abe
 (Commissioner)

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David Dawson
 (Associate Commissioner)

.....
Dr. Billy Manoka
 (Associate Commissioner)

14 July 2008

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