ICCC reserves rights on Oil Search purchase of Pac LNG’s interest in PRL 15

The Independent Consumer and Competition Commission (ICCC) has informed the parties to the acquisition that it reserves all its rights in relation to the purchase of the shares or assets of companies associated with Pac LNG in PRL 15 (the Elk/Antelope gas fields) by Oil Search Limited.

The Acting Chief Executive Officer of the ICCC, Mr Elastus Geroro, said: “The Commission had previously issued media statements reserving its rights on two prior proposals for the acquisition of interest in PRL 15. These were; Exxon Mobil’s interest to acquire a part of InterOil’s stake; and Oil Search’s interest to acquire a part of Total SA’s stake. This acquisition is no different.

“In each of the previous cases, the Commission pointed out that if the proposals were not cleared or authorised by the Commission, it reserved all its rights under law, including for divestiture and pecuniary penalties.

“In addition, aggrieved private parties can sue for damages caused by an acquisition that contravenes section 69.”

Section 69 of the ICCC Act prohibits acquisition of assets or shares of a business that would have, or would be likely to have, the effect of substantially lessening competition in a market.

However, parties may seek exemption from the application of Section 69 of the ICCC Act by seeking a Clearance (which is a competition assessment) or authorisation (which is a test whether public benefit outweighs any lessening of competition likely from the acquisition).

Mr. Geroro said that neither party had sought clearance or authorisation.

He added “Natural gas is a powerful enabler of economic development, not only for power generation, but also for domestic and industrial uses, where it is a much lower-cost fuel. Downstream processing and manufacture, e.g. metal fabrication, is made much more efficient and competitive with imports, because of the considerably lower costs for gas as fuel.

The economic benefits, as observed in other countries, is that the industrial growth, business opportunities and employment are boosted, with improvements to living standards and reduction of poverty, all significant contributors to ‘grass roots’ development.
The role of the ICCC is to secure competitive markets to maximize efficiency, national economic growth and to improve the lives of citizens by raising living standards broadly and, in particular, to alleviate poverty.”

Authorised by:

Elastus Geroro
Acting Chief Executive Officer

**Backgrounder**

The Commission has the right under the *Independent Consumer and Competition Commission Act* 2002 to take legal action in relation to possible contravention of section 69 of the ICCC Act. That includes action against the acquirer for injunctions and pecuniary penalties; and action under Section 95 against relevant individuals for aiding, abetting, counselling, procuring; inducing or attempting to induce any other person; or being knowingly concerned in, or party to; or conspiring with any other person to, contravene Section 69 of the ICCC Act.

In addition, any aggrieved party has the right to take legal action for damages for any loss or damage caused by the acquirer for alleged contravention of Section 69.

However, parties may seek exemption from the application of Section 69 of the ICCC Act by seeking a Clearance under Section 81 or applying for an Authorization under Section 82. In the case of a clearance notice, the Commission will assess the competition effects of the proposed acquisition and if it is satisfied that the acquisition will not have, or will not be likely to have, the effect of substantially lessening competition in a market, it gives clearance for the proposed acquisition to proceed. For an authorization application, the Commission will focus its assessment on the public benefit aspects of the proposed acquisition to see if the benefit to the community (including the parties to the proposed acquisition, the Government, citizens and other relevant stakeholders) would outweigh any detriments resulting from lessening of competition in a market. If the proposed acquisition satisfies that test, authorisation is granted.

In this matter, the Commission initiated inquiries with the parties but no application for clearance or authorisation was received.

A copy of the Commission’s brochure titled “Business Acquisitions: Understanding Clearance and Authorisation provision of the ICCC Act 2002” is attached for the information of the public which elaborates on the two processes.