INDEPENDENT STATE OF PAPUA NEW GUINEA

Independent Consumer and Competition Act 2002

Act, Sec 82

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:
Independent Public Business Corporation (IPBC)

(b) Address in PNG for service of documents:
PO Box 320
Port Moresby, NCD
PAPUA NEW GUINEA

(c) Short description of business carried on by applicant in PNG and outside PNG, if appropriate.
The IPBC is a 100% State-owned Statutory Corporation that holds assets and investments on behalf of the state. The range of assets held is broad and includes (for example) Air Niugini, PNG Power and, of relevance for this application, PNG Ports Corporation.

PNG Ports Corporation Ltd serves the nation’s needs for the transportation of goods and people and acts as Papua New Guinea’s gateway to the world as the primary national port facilities provider. It is the sole authority over all declared ports in the country and manages 15 of the 23 declared ports in PNG (Lae, Port Moresby, Kimbe, Madang, Alotau, Rabaul, Kavieng, Oro Bay, Kieta, Buka, Vanimo, Lorengau, Wewak, Daru and Aitape).

Traditionally the core business of PNG Ports was to act as a land lord authority where berthing, pilotage and wharfage services are provided for shipping companies and storage provided for container and generalised cargo transiting through its ports. PNG Ports is also vested with a delegated authority by the Department of Transport (DoT) to provide harbour management and maritime compliance responsibilities at all land/water interfaces (wharves and jetties) declared and non-declared ports and harbours throughout the country.

In its remodernisation effort the company has begun investing in terminal infrastructures, facilities and people and has undertaken customer care approach to establish relationships and work closely with customers and business partners and key stakeholders to provide quality services.
(a) Description of the proposed acquisition, including details of the assets or shares to be acquired in PNG and outside PNG, if appropriate.

The IPBC proposes to acquire Motukea Port from Curtain Bros (PNG) Ltd. The acquisition consists of three berths of 530m, 19 ha of reclamation hardstand, sheds, offices, 14 ha of swing basin and 27 ha of adjoining seabed lease.

3 (a) Grounds for grant of authorisation:

The IPBC considers that the acquisition results in significant public benefits that outweigh any potential reduction in competition that could occur in the short run. As a result, authorization for the proposed acquisition should be granted under section 82(3) of the the Independent Consumer and Competition Commission Act 2002.

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

The facts and contentions relied on in support of these grounds are set out in detail in the attached letter. The IPBC is also currently working on a more detailed cost benefit analysis of the proposed acquisition to demonstrate the precise nature of how public benefits outweigh any potential reduction in competition that could occur in the short run.

In brief, the public benefits identified by IPBC are:

- The alleviation of capacity constraints at the Port. The port is expected to exceed its current operational capacity in 2015. This would create public costs as constraints at the port lead to either queuing or higher prices for shipping lines. In either case, this generates costs which are passed on to freight users and, eventually, consumers.
- Reduce landside traffic issues created in Port Moresby by the port. The port is currently located extremely close to the Port Moresby CBD. This means that any freight moving in or out of the port must first negotiate the heavily trafficked CBD and then may also have to pass through densely populated areas to the east of the CBD. This creates costs related to congestion, noise, pollution and accidents. Relocation to Motukea would significantly reduce these costs and create public benefits.
- Allow for the redevelopment of valuable downtown land in Port Moresby. The port is located very close to the CBD on some of the highest value land in Port Moresby. Relocating the port to Motukea would free up this land and allow it to be redeveloped at its highest value use – creating public benefits the nature of which will depend exactly on how the land is reused.

4 IPBC believes that the information provided in this submission is sensitive in nature and should be treated as Commercial-In-Confidence. IPBC requests your utmost care and consideration in this matter.

Date: 12 August 2014

[Signature]

Mr Wasantha Kumarasiri, OBE
Managing Director
Independent Public Business Corporation
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 item (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.
INDEPENDENT STATE OF PAPUA NEW GUINEA

The Independent Consumer and Competition Commission Act 20002

Act, Sec 81

NOTICE OF APPLICATION FOR CLEARANCE OF BUSINESS ACQUISITION

A Notice is submitted under Section 81 of the ICCC Act 2002 for Clearance for a Business acquisition (Section 69)

1  (a) Name of Applicant:
    Independent Public Business Corporation (IPBC)

    (b) Address in PNG for service of documents:
        PO Box 320
        Port Moresby, NCD
        PAPUA NEW GUINEA

    (c) Short description of business carried on by applicant in PNG and outside PNG, if appropriate.
        The IPBC is a 100% State-owned Statutory Corporation that holds assets and investments on behalf of the state. The range of assets held is broad and includes (for example) Air Niugini, PNG Power and, of relevance for this application, PNG Ports Corporation.

        PNG Ports Corporation Ltd serves the nation’s needs for the transportation of goods and people and acts as Papua New Guinea’s gateway to the world as the primary national port facilities provider. It is the sole authority over all declared ports in the country and manages 15 of the 23 declared ports in PNG (Lae, Port Moresby, Kimbe, Madang, Alotau, Rabaul, Kavieng, Oro Bay, Kieta, Buka, Vanimo, Lorengau, Wewak, Daru and Aitape).

        Traditionally the core business of PNG Ports was to act as a land lord authority where berthing, pilotage and wharfage services are provided for shipping companies and storage provided for container and generalised cargo transiting through its ports. PNG Ports is also vested with a delegated authority by the Department of Transport (DoT) to provide harbour management and maritime compliance responsibilities at all land/water interfaces (wharves and jetties) declared and non-declared ports and harbours throughout the country.

        In its remodernisation effort the company has begun investing in terminal infrastructures, facilities and people and has undertaken customer care approach to establish relationships and work closely with customers and business partners and key stakeholders to provide quality services.
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 to be inserted in 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 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 clearance 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 the opportunity to withdraw the information for which confidentiality is sought.

6. The ICCC has twenty (20) days from the date of application or it will be deemed authorized. However, time can be extended in certain cases.

7. Please supply six (6) copies of the application and, where possible, a disk of the application.
2 (a) Description of the proposed acquisition, including details of the assets or shares to be acquired in PNG and outside, if appropriate. The IPBC proposes to acquire Motukea Port from Curtain Bros (PNG) Ltd. The acquisition consists of three berths of 530m, 19 ha of reclamation hardstand, sheds, offices, 14 ha of swing basin and 27ha of adjoining seabed lease.

3 (a) Grounds for grant of Clearance: The IPBC considers that the proposed acquisition would not have, and will not be likely to have, the effect of substantially lessening competition in the market. As a result, the proposed acquisition should be given clearance under Section 81(3) of the Independent Consumer and Competition Commission Act 2002.

(b) Facts and contentions relied on in support of those grounds. The facts and contentions relied on in support of these grounds are set out in detail in the attached letter.

In brief, firstly, the IPBC notes that the ICCC has consistently found that there is not currently strong competition in the market. However, the IPBC recognizes that the previous decisions by the ICCC were made at a point in time and in circumstances prevailing at that time. The IPBC therefore considers that, taking into account factors set out in section 69(5) of the Independent Consumer and Competition Commission Act 2002, the current reduction in market participants and competitors is of a minor, ineffective competitor. Over time, the level of competition in the market is determined by the strong competitive nature of the industry (with its surmountable barriers to entry, growing market, technological change and homogeneous good). These factors will not be affected by the proposed acquisition and so there is expected to be ongoing competitive tension in the market.

4 IPBC believes that the information provided in this submission is sensitive in nature and should be treated as Commercial-In-Confidence. IPBC requests your utmost care and consideration in this matter.

Date: 12 August 2014

Mr Wasantha Kumarasiri, OBE
Managing Director
Independent Public Business Corporation