



**INDEPENDENT CONSUMER AND COMPETITION COMMISSION**

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**DETERMINATION**

**APPLICATION FOR CLEARANCE OF THE  
ACQUISITION OF HIGHWAY AUTOMOTIVES**

**BY**

**BOROKO MOTORS LIMITED**

## **DETERMINATION**

### **Background**

#### ***Parties and Acquisition Proposal***

This Determination relates to the application by Boroko Motors Limited for Clearance of its proposed acquisition of Highway Automotives from Steamships pursuant to Section 81 of the Independent Consumer and Competition Act 2002.

**Boroko Motors Limited** (BML) is one of the three major automotive dealers in PNG and is wholly owned by the WR Carpenter (PNG) group. The other major automotive dealers are Ela Motors and PNG Motors.

**Steamships Trading Company Limited** (STC) has operated as a major trading company in PNG for a very long time but has since ventured into a wide range of business interest in PNG including the Steamships Automotive Division trading as Highway Automotives which is the subject of the current application for clearance. Highway Automotives sells genuine and non-genuine automotive spare parts in Port Moresby and Lae and also holds franchises for Kenworth trucks, TCM Forklifts and Valvoline oil products.

Through a conditional Assets Sale Agreement BML proposes to acquire the assets of Highway Automotives from STC.

#### ***Application for Clearance***

BML has lodged an Application for clearance of the proposed acquisition of Highway Automotives pursuant to Section 81 of the ICC Act, Sub-section (3) of which provides to the effect that the Commission must within 20 (actual) days make a determination on whether or not to grant clearance of the proposed acquisition.

The application was lodged on 10<sup>th</sup> August, 2004 and the Commission therefore has until 30<sup>th</sup> August, 2004, to make a determination on this application.

#### ***Elements of a Clearance***

Section 81(3) of the ICC Act 2002 also 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; or
- (b) 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.

### ***The market***

An essential issue here is the competition effect in the relevant market and relevant market is statutorily defined under Section 45 (2) of the Act as;

“...a reference to a market in the whole of Papua New Guinea for goods and services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them, including imports”.

BML’s definition of the relevant market in its submission is somewhat unclear. In Part 1 it addresses the automotive market in PNG but then in the competition effect analysis of the acquisition under Part 2 of the submission, it focuses on what really are sub-markets of the automotive market, namely non-genuine spare parts, Kenworth trucks, TCM Forklifts and Valvoline oil. This is surprising taking into account that STC though not the applicant in this case, has had some experience in this through its previous dealings with the ICCC.

On the other hand, this should not be totally surprising as the competition effect in the automotive market resulting or likely to result from the proposed acquisition is not necessarily the issue here because Highway Automotives is not in the automotive dealership business as such. Rather it is in the business of supplying automotive spare parts as its core business and has franchises over Kenworth trucks, TCM Forklifts and also deals in Valvoline oil. By the same token, BML is not into supplying automotive spare parts except for after sale and service requirements nor is it involved in the supply of forklifts and oil and oil products.

That being the so, the relevant markets in this case are as follows;

- (1) Automotive Spare Parts
- (2) Trucks
- (3) Forklift, and
- (4) Automotive Lubricants

## ***The Effect on Competition***

### **Automotive Spare Parts**

In its submission, BML says that the non-genuine spare parts market in PNG is very competitive due to the numerous small “trade store” style spare parts outlets throughout the country. BML also points out that historically, it has not been involved in the supply of non-genuine spare parts, and thus, maintains that the proposed acquisition will not and is unlikely to result in lessening of competition in the market.

The ICCC accepts both propositions. It is quite evident in more recent years, that there has been a proliferation of small to medium enterprises mostly Asians dealing in automotive parts but mostly, non-genuine spare parts. It is also accepted that BML, as with the other major automotive dealers in PNG such as PNG Motors and Ela Motors, is not involved in the supply of non-genuine spare parts.

Active Engineering, Reliance Motors, Western Star Pacific and PNG Motors have all expressly said that their operations will not be affected as a result of the proposed acquisition.

### **Trucks**

Competition is unlikely to be affected as there are substitutes in other models ready available from other dealers and, of course, trucks can also be readily imported as there are no import restrictions.

### **Forklifts**

Forklifts is a very small market and in any case, Hastings Deering’s Caterpillar and UMW Equipment’s Toyota Forklifts will remain very strong competitor.

### **Automotive Lubricants**

Valvoline oil is just one of a number of oils that are available from a number of companies including InterOil, Shell, NOC and indeed many other distributors of oil products currently in the market, thus, competition is not going to be affected.

The following Table summarises competition in each of the relevant markets.

Relevant Markets	Market Players in the Relevant Markets		
	Highway Automotives	Boroko Motors	Other Competitors
Automotive Spare Parts	Importer & Retailer of Non-Genuine Auto. Spare Parts	Importer & Retailer of only genuine spare parts.	Ela Motors & PNG Motors both import & sell genuine parts only. But, there are numerous other non-genuine spare parts dealers who import direct from overseas and retail.
Trucks (10 Ton or above)	Holds franchise over Kenworth Trucks. Note that budgeted sales about 2 or 3 units per year – very minimal.	Holds franchise over; <ul style="list-style-type: none"> <li>▪ Nissan</li> <li>▪ Isuzu</li> <li>▪ Mercedes Benz</li> <li>▪ Mitsubishi</li> </ul>	Ela Motor has Franchise over; <ul style="list-style-type: none"> <li>▪ Toyota</li> <li>▪ Daihatsu</li> <li>▪ Hino</li> <li>▪ Renault</li> <li>▪ Mack Trucks</li> </ul> PNG Motors holds franchise over; <ul style="list-style-type: none"> <li>▪ Mazda</li> <li>▪ Ford</li> <li>▪ Hyundai</li> </ul>
Forklifts	Holds franchise over TCM Forklifts. Sales are about 5-6/year. Total market also is very small at about 10-12 units per year.	Does not deal in Forklifts	Hastings Dearing (Caterpillar) UMW Equipment (Toyota)
Automotive Lubricants	Holds franchise over Valvoline oil	Not a participant in oil products other than for after sale service requirements.	Lot of substitutes available from; <ul style="list-style-type: none"> <li>▪ InterOil(BP)</li> <li>▪ Shell</li> <li>▪ NOC</li> <li>▪ Mobil Oil</li> </ul>

### Statutory Factors taken into account in Assessing Competition

In addition to the assessment of the application by the applicant, it is necessary to assess the post acquisition effect on competition in the market and Section 69(5) of the ICCA Act 2002 sets out a number of non-exclusive factors to be taken into account in this respect.

In this respect and, with the exception of “The likelihood that the acquisition will result in the removal from the market of a sustainable,

vigorous and effective competitor”, the applicant did not address these factors directly and, again, BML could not express a view at the time of making this assessment. It is however, relevant to examine the following in the light of what the others in the market are saying and from what BML is generally saying in the submission and, of course, the ICCC’s own market enquiries. These are as follow;

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

BML is not in the business of supplying non-genuine automotive spare parts, or oil products, nor is it in the business of supplying forklifts. We have also confirmed that the Kenworth truck franchise is a relatively small one, and Kenworth trucks compete directly with other large road vehicles such as Mercedes Benz, all of which are fully imported. Non-genuine spare parts that are supplied by Highway Automotives are imported, distributed and sold by a number of independent companies/businesses. There are no restrictions on imports and ready access can be obtained to this area of supply as is indicated by the growth in the number of participants in this market over recent years.

The Kenworth distributorship is a franchise and for a limited range of vehicles. There are other suppliers of trucks in the market (vis-à-vis PNG Motors and Ela Motors) with offer alternatives and here again, there are no imports restrictions which allow for importation at will by interested parties.

**(b) The Nature and Effect of Barriers to Entry to the Market**

Non-genuine automotive spare parts market is a rapidly growing market particularly at the small to medium size business and barriers to entry are considered to be low.

As regards Kenworth trucks, TCM forklifts and Valvoline oil the low barriers to entry to these markets are likely to remain as there are numerous substitutes available. No import restrictions also mean that access to alternatives are readily available.

**(c) Number of Buyers and Sellers in the market.**

Competition in the heavy vehicles (10 tonnes and up) such as the Kenworth truck line and Hino and Mack trucks is limited to the three major dealers of BML, Ela Motors and Wamp Nga Group and, due to the same reasons in (b) above, market share and therefore, competition are unlikely to be affected.

**(d) Degree of Countervailing power in the market**

Countervailing power exists in the market in terms of the buyers' ability to choose between competing products. For the same reasons outlined above, ready access to competing products will mean that countervailing power is not affected by this proposal.

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

Due to the very competitive nature of the automotive non-genuine spare parts and the very small size of TCM trucks, forklifts and Valvoline markets, the acquirer will be unable to increase prices and profit margins.

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

As has been highlighted above, substitutes are readily available in all the relevant markets.

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

In all markets there is product differentiation and is part of a competitive market.

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

Highway Automotives will be sold to another owner in PNG irrespective of whether the BML proposal is given clearance or not. This will remove a competitor from the market because Highway Automotives is primarily involved in business activities which are different from BML's activities.

**(i) Nature and Extent of Vertical Integration in the market.**

This is not a strongly vertically integrated market as all products are fully imported.

Having undertaken a thorough assessment of BML's submission and taking into account the views of market participants, the ICCC accepts the proposition that the acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in the market.

## **Summary and Conclusion**

To grant a clearance under Section 81(3) of the ICCA Act, 2002, the ICCA 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. The only test is the competitive effect of the acquisition.

The relevant markets have been defined as Automotive Spare Parts, Trucks (10 tonnes and over), Forklifts and Automotive Lubricants. Competitive effect in all these markets has been found to be negligible, if not, nil due mainly to the small size of the markets and the availability of substitutes and the fact that there are no import restrictions which means that interested parties may import these products at will.

In further assessing the post acquisition competitive impact, the following non-exclusive factors as set out under Section 69(5) have been taken into account and are worth noting;

- The actual and potential level of imports is not at issue,
- The nature and effect of barriers to entry are low,
- Number of buyers and sellers are limited,
- Countervailing power is unaffected,
- The buyer is not able to significantly and sustainably increase prices and profit margins,
- Substitutes are readily available,
- Presence of Product differentiation and brand loyalty,
- The proposal is unlikely to remove from the market a sustainable, vigorous and effective competitor.

## **Decision**

In view of the above factors and considerations, the ICCA is satisfied that the acquisition of Highway Automotives by Boroko Motors Limited will not have, and will not be likely to have, the effect of substantially lessening competition in a market and hereby grants clearance for the proposed acquisition to proceed pursuant to Section 81(3) of the Independent Consumer and Competition Act 2002.

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**Thomas Abe**  
**Acting Commissioner**

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**Paul Baxter**  
**Associate**  
**Commissioner**

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**Chris Gideon**  
**Associate**  
**Commissioner.**