

benefit to the public that the acquisition should be allowed to go ahead notwithstanding any anti competitive effects of the acquisition.

Draft determination

Upon reaching its preliminary decision the ICCC will issue a draft determination (and summary of reasons) to the applicant and any person who has an interest in the application. A copy of the decision will also be placed on the public register.

Pre-decision conference

The applicant and interested parties will be invited to inform the ICCC if any of them wish to hold a conference to discuss the draft determination.

If there is no such request the ICCC may of its own volition decide to hold a conference Alternatively it may decide to issue a final determination.

If there is a request the ICCC will appoint a time, date and place for the conference and advise the applicant and interested parties.

At the conference the ICCC will be represented by a member(s) of the Commission. The applicant, interested parties and any other person decided by the ICCC may participate at the conference. Parties cannot be represented by solicitors or lawyers (but may be accompanied by a solicitor or lawyer or another person) and the media will not be admitted.

A record of the conference will be made and provided to all those participating. A copy will be placed on the public register.

Determination

Following the conference the ICCC will issue a final determination.

Conditional authorization

The ICCC may make a draft determination and final determination subject to conditions.

Revocation of or variation of an authorization

Where an authorization was granted on the basis of false or misleading information or where the authorization was subject to conditions not subsequently met or where there was a material change in circumstances, the ICCC may revoke or vary an authorization. Such variation or revocation would not take place without giving parties with an interest in the application the opportunity to make submissions.



INDEPENDENT CONSUMER & COMPETITION COMMISSION

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AUTHORIZATION PROCESS

***A short guide to the authorization process
under the ICCC Act 2002***

Forward

The Independent Consumer and Competition Commission (ICCC) is responsible for administering the ICCC Act as well as a number of other pieces of legislation. The law is designed to enhance the welfare of the people of PNG by encouraging competition, fair trading and efficiency in business as well as preventing anti-competitive behaviour.

In certain circumstances the ICCC may grant immunity from legal action or in other words exemption for certain anti-competitive behaviour provided, in general terms, the applicant can satisfy the ICCC that the anti-competitive behavior results in a benefit to the public that outweighs any anti competitive detriment. This is the authorization process.

This pamphlet is designed to help government, businesses and the professions understand how the relevant provisions operate and to assist parties preparing an application for authorization. The ICCC is not providing legal advice and parties should seek their own advice on the relevant provisions of the law.

Lodging an authorization application

There are four key steps involved in applying for authorization. They are:

- discuss the proposed application in advance with ICCC;
- lodge a valid application using the correct form;
- pay the prescribed non-refundable fee; and
- provide a comprehensive submission in support of the application.

An application for authorization must be lodged on the appropriate form (which can be downloaded from the ICCC's website). All the questions on the form must be answered and it must be accompanied by a comprehensive submission outlining why the ICCC should grant authorization – see further below. There is a statutory fee for lodging the application. The applicant should set out the names and addresses of all parties to the application and it would be helpful also if it suggested names of possible interested parties.

Any questions or queries should be forwarded to the ICCC's Head Office - details shown below.

Informal discussion process

The ICCC suggests you discuss a proposed application with the Commission before it is formally lodged. The ICCC can provide guidance on whether the behaviour might raise competition concerns under the law, the types of public benefits that might be raised, the types of anti competitive detriment that may be relevant and the authorization process.

The authorization process

Once a valid application has been lodged the ICCC will:

- place a copy of the application and supporting documents (to the extent that they do not contain commercially sensitive

Information) (see also below)) on a public register. This register will be available for all to peruse;

- invite all parties with an interest in the matter to lodge a submission (written or verbal) on the application. Such submissions, subject to confidentiality, will also be placed on the public register;
- provide a copy of all submissions lodged to the applicant and invite the applicant to respond;
- conduct its own research and enquiries in the marketplace;
- issue a draft determination (see overleaf) setting out the reasons for its proposed decision;
- invite the applicant and all those who have expressed an interest in the application or who have lodged a submission, to call a conference with the ICCC if they are dissatisfied with the draft decision;
- hold a conference; and
- issue a final determination, setting out the reasons for its decision.

Public register

The authorization process is a transparent and public process designed to allow claims made by the applicant and any interested party to be tested.

All documents, subject to confidentiality, will be placed on the public register. An electronic version of the register will be maintained by the ICCC. This can be accessed through the ICCC website - www.iccc.gov.pg

The applicant and interested parties may seek confidentiality for material that is commercially sensitive or for other justifiable reasons. Such information would include costs of production, revenue and sales information, etc. Not all confidentiality requests, however, are granted and the ICCC would not normally exclude a general submission from the public register. Where the Commission grants confidentiality, the relevant parts of documents will be excluded from the public register.

Any request for confidentiality should identify the confidential information and the reasons for which confidentiality is claimed. If confidentiality is granted the ICCC will take this information into account in reaching its decision but will not disclose the information. If confidentiality is not granted the person making the submission will be informed.

Public benefits/detriments

A range of benefits/detriments to the community have been accepted in various jurisdictions with similar laws to PNG. Benefits may include:

- fostering business efficiency, especially where it results in improved international competitiveness;
- industry rationalization resulting in more efficient allocation of resources and lower or contained production costs;
- expansion of employment or prevention of unemployment in efficient industries or employment growth in particular regions;
- promotion of industry cost savings resulting in contained or lower

prices at all levels of the supply chain;

- promotion of competition in industry;
- promotion of equitable dealings;
- growth of export markets;
- development of import replacements;
- economic development, for example, development of natural resources through encouraging exploration, research and capital investment;
- assisting efficient small business, for example, guidance on pricing and costings or marketing initiatives which promote competitiveness;
- industry harmony;
- measures that enhance the environment;
- reducing corruption or the potential for corruption;
- improvement in the quality or safety of goods and services and expansion of consumer choice;
- supply of better information to consumers and business to permit informed choice in their dealings;
- lowering transactions costs

Detriments may include:

- a reduction in the number of effective competitors.
- increased restrictions on entry;
- constraints on competitiveness by market participants, affecting their ability to innovate effectively and conduct their affairs efficiently, competitively and independently.

When will the ICCC grant authorization

In relation to applications, that are not business acquisitions, the onus is on the applicant to satisfy the ICCC that broadly:

in all the circumstances the arrangements would result or be likely to result in a benefit to the community that would outweigh any resulting lessening of competition.

That benefit must result directly or indirectly from the arrangements for which authorization is sought. In other words, there must be a nexus between the benefits resulting from the arrangements and the restrictions in the arrangements.

In relation to business acquisitions please refer to the Business Acquisitions pamphlet. Again the onus is on the applicant to satisfy the ICCC. Broadly there is a two stage process for business authorization applications. Firstly, the ICCC will consider if there is or is likely to be a substantial lessening of competition in the market as a consequence of the proposed acquisition. If not, a clearance is granted. If so, the ICCC has to be satisfied that the acquisition will result or be likely to result in such a