Puma Energy PNG Limited
Level 1, PWC Haus
Harbour City
NCD

Port Moresby
PO Box 169 Port Moresby

Switchboard: +675 309 9400
Facsimile: +675 309 9471

Mr Paulus Ain
Commissioner and Chief Executive Officer
Independent Consumer and Competition Commission
P.O. Box 6394
Boroko
National Capital District
Papua New Guinea

14 July 2017

Dear Mr Ain

RE: PACIFIC ENERGY AVIATION LTD APPLICATION FOR AUTHORISATION TO ACQUIRE PNG GROUNDS SERVICES LIMITED (PEAL Acquisition)

Thank you for your letter dated 4 July, 2017 which we received on Thursday 06 July 2017, seeking submission from NGE Energy PNG Ltd (**NGE**) on the PEAL Acquisition.

Firstly, we are surprised to have a short timeframe in order to respond to this assessment as it does not allow for sufficient time to provide thorough responses and for proper public consultation in relation to this important issue. The time provided has not allowed NGE to fully consider the implications of the PEAL Acquisition. As a result, this letter sets out NGE's initial, high level concerns and may not articulate in depth the competition reasons why the PEAL Acquisition should not be granted clearance and the extent of NGE's objection.

We strongly oppose PEAL's acquisition for the reasons outlined below, and further articulated in this letter. Clearance should not be granted as the acquisition would have or be likely to have, the effect of substantially lessening competition in one or more markets in Papua New Guinea. Of note, the acquisition will:

- eliminate any competition which currently exists at Jackson's Airport in the supply of ground services, particularly in relation to into-plane fuel supply;
- create a monopoly supplier at Jackson's Airport, with PEAL taking 100% market share of all contracts for the supply of ground services;
- prevent potential competitors from having access to fuel customers through dominating access to infrastructure essential to the efficient supply of fuel at Jackson's Airport, thereby exacerbating barriers to market entry; and
- place PEAL in a position where it can act unconstrained in its operations at Jackson's Airport.

The flow on effects from the PEAL Acquisition are substantial. A monopoly provider of services at Jackson's Airport will mean unconstrained access to essential infrastructure, limited or no restraint on pricing and no alternatives for airlines but to attain the services of PEAL.

We provide the following responses to the questions set out in your letter in accordance with your numbering.

1. *The relevant market(s) or overlapping business areas (of PEAL and PNGGS) you think the proposed acquisition would affect.*

The relevant market for the purposes of assessing the PEAL Acquisition is *the distribution and inter-plane supply of Jet A-1 fuel at Jackson's Airport* (**relevant market**).

This market definition reflects the direct overlap between PEAL and PNGGS in the supply of into-plane supply of Jet A-1 fuel. It is also reflective of PEAL's forthcoming wholesale supply and distribution through self-supply of Jet A-1 fuel.

The product dimension of the market being Jet A-1 fuel reflects that 99% of all fuel supplied at Jackson's Airport is this fuel type. Into-plane supply of aviation fuel is the manner in which fuel at individual airports is supplied under contracts between into-plane suppliers and airlines. The fuel is supplied under arrangements with companies that operate the airport fuelling infrastructure, as well as perform the actual into-plane fuelling services through fuel trucks.

In considering the geographic dimension of the market, the area of relevant competition is Jackson's Airport, and the competitive effects of the PEAL Acquisition should be limited to this area of competitive tension...This approach is consistent with global competition regulators analysis of into-plane supply of aviation fuel on an airport-by-airport basis.

A Jackson's Airport based aviation fuel market is also appropriate because, generally:

(a) airlines select the supplier on an airport-specific basis;
(b) access to a site, storage and equipment is on an airport-by-airport basis; and
(c) the demand for fuel at one airport does not materially affect the demand at another airport. The ability for an airline to turn to another airport to obtain fuel in response to a price rise is severely restricted due to Jackson's Airport being the major international airport in PNG, and the only airport available to many airlines.

Should the ICCC consider that the above market be further segmented, NGE considers that the relevant markets identified in the ICCC's 2015 decision of NGE's proposed acquisition of PNG Ground Services (**PNGGS**) are appropriate product dimensions. However, the geographic dimension of the markets should be limited to Jackson's Airport. Therefore, the relevant markets would be:

a) The wholesale supply of Jet A-1 to Jackson's Airport;
b) The aviation refueling of Jet A-1 as a retail function at Jackson's Airport;
c) The wholesale supply of Avgas to Jackson's Airport;
d) The aviation refueling of Avgas as a retail function at Jackson's Airport;
e) Wholesale supply of aviation lubricants and other oil based derivatives to aircraft operators at Jackson's Airport;
f) Retail supply of aviation lubricants and other oil based derivatives to aircraft operators at Jackson's Airport.

2. *Whether or not the proposed acquisition will have, or will be likely to have the effect of substantially lessening competition in the market(s) identified in (1) above. Your response should make reference to or take into account the barriers to entry, level of import competition, number of buyers and sellers and other degree of countervailing power in the above market(s).*

The proposed acquisition would have, or will be likely to have the effect of substantially lessening competition in any relevant market. The creation of a monopoly supplier at Jackson's Airport, will effectively eliminate any competition that currently exists.

These conclusions are supported by the following arguments.

Number of buyers and sellers

Currently PEAL and PNGGS are the only two into-plane suppliers at Jackson's Airport, and by approving the PEAL Acquisition, this will create a monopoly supplier, with PEAL having complete control over the retail function of the market. Although PNGGS's current market is not as substantial as PEAL's, by eliminating PNGGS as a competitive constraint, there will be a detrimental change in the market which will move from having "some" competition, to "no" competition.

Buyers in the relevant market are local and international airlines. PNG Air is currently serviced by PNGGS (PNGGS is currently the wholly owned subsidiary of PNG Air), Air New Guinea, Qantas, Virgin, and Philippine Airlines, who are all serviced by PEAL.

Barriers to entry

Post the PEAL Acquisition, barriers to entry into Jackson's Airport will be extremely high, if not insurmountable.

PEAL's current market position already creates a substantial barrier to entry through its contracts with large, stable customers. It also is the operator of, and controls access to, the Joint User Hydrant Installation (**JUHI**) facility at Jackson's Airport.

PEAL's effective control over the JUHI which is the main method of supply to airlines which require refuelling at Jackson's Airport supports the conclusion that there will be no foreseeable, effective competition from alternative suppliers.

Unilateral effects

The PEAL acquisition will remove any competitive constraint in such a way that the unilateral market power already experienced by PEAL will be increased. A situation where PEAL will hold 100% of contracts with airlines at Jackson's Airport, will result in it having unconstrained control over price and service levels.

PEAL will also be uninhibited from exerting market power in its negotiations for access to essential infrastructure at Jackson's Airport, particularly in relation to access to the JUHI system. PEAL's monopoly control over the retail function of the market, without competitive constraint will enable it to unilaterally increase its prices for services provided.

3. *Do you think the proposed acquisition will encourage or discourage new entrants into the market and why?*

The PEAL Acquisition will discourage new entrants.

To enter a market and compete against a monopoly provider who has monopoly access to existing assets at Jackson's Airport will be near impossible as PEAL will be able to derive efficiencies from full and unencumbered access to the JUHI at the airport, in addition to holding the supply contract for all airlines that land at Jackson's Airport.

A new entrant would need to provide a competitive offering beyond that of a monopoly provider in order to shift current airline contracts away from PEAL. Even if the new entrant could secure a contract for supply, its ability to obtain access to essential fuelling infrastructure at the airport is uncertain. Moreover, being able to provide services at a cost less than a monopoly provider, will require a significant amount of monetary investment to meet the pricing proposal of PEAL.

NGE also understands that storage infrastructure is being built by PEAL at Jackson's Airport and NGE assumes there will be no access rights given to a potential new entrant. If such access was proposed, it would be at a price prohibitive to any effective entry, let alone price competition.

PEAL's unencumbered access to the JUHI system at Jackson's Airport may also deter entry as obtaining access may be perceived as impossible. Although this system is jointly owned by the NAC and PEAL, PEAL currently has a lease over the capacity owned by NAC. PEAL will undoubtedly seek to protect its position against third party access through efficiency arguments, and as a monopoly provider, with contracts for all airlines, will be in a strong negotiating position to retain clear and single access rights.

4. *Are there any other issues that you would like the ICCC to take into consideration in its assessment of the proposed acquisition? If so, please provide the details.*

The ICCC granting clearance for the PEAL Acquisition would be the approval of a monopoly position for the into-plane supply at Jackson's Airport. This monopoly position will significantly increase barriers to entry and with no competition present, will allow PEAL to impose monopoly pricing on its customers.

For the reasons set out above, we submit that the proposed acquisition will have, or would be likely to have the effect of substantially lessening competition in any relevant market and the ICCC should not grant clearance, as on any view, the ICCC could not be satisfied that the PEAL Acquisition will not reduce or hinder competition substantially.

Yours Sincerely

J L Collings
Country General Manager
Puma Energy (PNG) Limited