INDEPENDENT CONSUMER & COMPETITION COMMISSION

Papua New Guinea's Consumer & Competition Watchdog

DETERMINATION & REASONS

Clearance Application

by

Kumul Petroleum Holdings Limited

in respect of its Proposed Acquisition of Additional Interest in

PNG LNG Project

from

Santos Limited

Commissioners:

Mr. Paulus Ain – Commissioner and Chief Executive Officer
Mr. Edward Willett – Associate Commissioner (Non-Resident)

Date of Registration	: 3rd November 2023
Public Register Number	: C2023/42
Date of Release	: 05th December, 2023

Contents

1. INTRODUCTION

1. This Determination relates to the Clearance Application (the **"Application"**) submitted by Kumul Petroleum Holdings Limited ("**KPHL** or the **"Applicant"** or the **"Acquirer"**) for its proposal to acquire additional interest in the PNG LNG Project from Santos Limited (**"Santos"**).

2. The Applicant applied to the Independent Consumer and Competition Commission (**"ICCC"**) seeking Clearance for its proposal to acquire up to a 5 per cent project interest in the PNG LNG Project from Santos (the **"Proposed Acquisition"** or **"Proposed Transaction"**).

3. As fully explained in the latter parts of this Determination, the Proposed Transaction will be implemented in two steps; 1) a Share Sale and Purchase Agreement; and 2) a Call Option Deed which would give effect to the execution and completion of the Asset Sale and Purchase Agreement. If fully implemented, KPHL's interest in the PNG LNG Project will increase to 21.8%.

4. The ICCC received the Application on 30th October, 2023 and registered it on 03rd November, 2023. The Clearance Process commenced thereafter.

5. Clearance is a statutory process outlined under section 81 of the *Independent Consumer and Competition Commission Act 2002* ("**ICCC Act**"). Section 81 of the ICCC Act requires the acquirer of a proposed merger or acquisition that meets either of the mandatory notification thresholds to apply for Clearance from the ICCC. The ICCC then assesses the likely competition effects, if any, of the proposed transaction in the relevant market(s). If the ICCC is satisfied that the proposed transaction would not have, and would not be likely to have, the effect of substantially lessening competition in a market, it must give a Clearance for the transaction to proceed. On the other hand, the ICCC must decline to give clearance if it is NOT satisfied that the proposed transaction would not, or would not be likely to, have the effect of substantially lessening competition in a market. The ICCC may, at its own discretion, direct a person giving notice under Section 81 to give notice under Section 82(1) where it reasonably believes the proposed acquisition requires notice seeking authorization.

6. If the ICCC gives a Clearance, it protects the transaction from being legally challenged for potential breach of the ICCC Act after it is consummated.

7. Clearance is an adjudication process; hence, the onus is on the applicant to satisfy the ICCC that the proposed acquisition would not, or would not be likely to, have the effect of substantially lessening competition in any market(s).

8. It is also important to note that Clearance only applies to *proposed transactions*. If a proposed transaction which was subject of a Clearance application was concluded prior to the ICCC giving a decision, a Clearance given will be invalid.

The ICCC, therefore, can challenge the transaction if it believes that the acquisition has infringed the relevant provisions of the ICCC Act.

9. The ICCC is required by the ICCC Act to give a decision on a Clearance Application within twenty (20) days[1] after the date of registration. However, if the ICCC requests further information from the applicant (or as agreed between the ICCC and the Applicant), the 'clock' for the 20-day countdown is stopped on the date such request was made; and restarted after the day the requested information is provided by the applicant (or on the date as agreed between the ICCC and the applicant).

10. The ICCC assesses Clearance applications in a public and transparent manner. As such, after registering this Application, the ICCC publicly announced the Proposed Acquisition and invited relevant stakeholders and the public to provide their views on the potential competition impacts the Proposed Acquisition may have in any markets in PNG. All relevant comments and submissions received from stakeholders and the public are summarized and discussed under the relevant section of this Determination.

11. The public consultation process also enables the ICCC to test publicly the applicant's claim regarding the actual and potential competition impacts the Proposed Acquisition would have, or would likely have, in any markets in PNG.

12. All public documents relating to this Application have been placed on the ICCC's Public Register. They are also available on its website; www.iccc.gov.pg. Stakeholders can enquire with the ICCC on 312 4600 or infor@iccc.gov.pg to access any public copies of the documents if they cannot be accessed online.

2. BACKGROUND

2.1 The Parties

2.1.1 Kumul Petroleum Holdings Limited ("KPHL")

13. KPHL (Registration No. 1-100145) is Papua New Guinea's national petroleum and energy company, established and incorporated under the *Companies Act 1997* and the *Kumul Petroleum Holdings Authorization Act 2015.* The shares in KPHL are held directly beneficially for and on behalf of the Independent State of Papua New Guinea ("**State**").[2]

14. The principal objective of KPHL is to hold and develop petroleum interests and projects in PNG, participate in the PNG LNG Project and to participate in the exploration for and the development, production, processing, transportation and marketing activities of oil and gas in PNG. Consistent with that mandate, KPHL currently participates in the conduct of oil and gas development,

[1] The counting of the 20 days includes public holidays and weekends and starts right after the date of registration of the application.

[2] Applicant's Submission in support of its Clearance Application to ICCC 30th October 2023

production, processing and marketing activities, including all related upstream, midstream and downstream activities.[3]

15. KPHL, on behalf of the State, currently holds a 16.57 per cent participation interest, and is a significant JV partner, in the ExxonMobil led PNG LNG Project (which is the subject of this Proposed Transaction). Apart from this, KPHL also has interests in a number of other petroleum licenses; and is currently the owner and operator of four petroleum licenses in the country (refer to Table 1).

16. KPHL's license interests in various oil and gas fields are outlined in Table 1 below:

Table 1: KPHL's License Interests

Project or Petroleum Development License			
License	**Field**	**KPH Interest %**	**Operator**
PNG LNG		16.57%	ExxonMobil
PDL 1	Hides	20.50%	ExxonMobil
PDL 7	Hides	20.50%	ExxonMobil
PDL 8	Angore	20.50%	ExxonMobil
PDL 9	Juha	20.50%	ExxonMobil
PDL 3	SE Gobe	21.4%	Oil Search[4]
PDL 5	Moran	11.28%	Oil Search
PDL 10	Stanley	10.00%	Arran Energy (Niugini) Limited
Petroleum Retention Licenses			
PRL 14	Lehi, Cobra, Bilip	37.44%	Oil Search
PRL 28	Ubuntu	20.00%	Arran Energy
PRL 40	Pukpuk, Douglas, Langia & Weimang	20.00%	Arran Energy
PRL 47	Pandora	100.00%	KPHL
PRL 48	Kimu	100.00%	KPHL
PRL 49	Barikewa	100.00%	KPHL
PRL 50	Uramu	100.00%	KPHL

Source: *KPHL Website: Licence Interests - Kumul Petroleum Holdings*

17. As the State's nominee, KPHL has a mandated option to take up to 22.5% equity in any operational petroleum project.[5]

18. Apart from conducting oil and gas development, production and marketing activities in PNG, KPHL is also involved in the power supply generation and capacity building through its Kumul Petroleum Academy.

[3] Applicant's Submission in support of its Clearance Application to ICCC 30th October 2023
[4] Now Santos after the Santos and Oil Search Merger in 2021
[5] KPHL Website: Accessed Home - Kumul Petroleum Holdings

2.1.2 Santos Limited ("Santos")

19. Santos is an Australian pioneered energy company dually listed on the Australian Securities Exchange market ("ASX: STO") and PNG National Stock Exchange market ("PNGX: STO") following its merger with Oil Search Limited (Oil Search) in 2021. It is a leading supplier of natural gas in Australia and also supplies the Asian markets. Its activities include the exploration and development, production, transportation and marketing of hydrocarbons (crude oil, natural gas).[6]

20. Santos' five core long-life operational asset hubs are: Cooper Basin; Queensland and NSW, Papua New Guinea, Northern Australia and Timor-Leste, and Western Australia.

21. The merger with Oil Search in 2021 added further assets in Papua New Guinea (additional equity in PNG LNG and operated oil fields) and North America (Alaska) to Santos' portfolio.[7] Hence, Santos operates all of PNG's producing oil fields (Kutubu, Agogo, Moran and Gobe Main) and currently holds a 42.5 per cent interest in the PNG LNG Project. These oil fields produce both oil and associated gas and some of the natural gas produced at the PNG LNG Project are from these oil fields.

22. In addition to operating all of PNG's oil fields and its interest in the PNG LNG Project, Santos' portfolio also includes:

- 51% interest in the Alaska Pikka Project;
- 38.5% interest in the P'nyang Gas Project;
- 22.8% interest in the Papua LNG Project;
- Additional interests in other pre-development LNG growth opportunities (exploration and appraisal interests) [8] including petroleum prospecting licenses and petroleum retention licenses;
- Holds 50% interest in both the NiuPower Limited and NiuEnergy Limited. The other 50% is owned by KPHL; and
- Owns and operates the Hides Gas-to-Electricity Project ("Hides GTE") where gas is purchased from the PNG LNG project and then sold to the Porgera JV partners under a long-term supply arrangement.

2.2 The PNG LNG Project

23. The PNG LNG Project is the only current operational LNG project in PNG and has been operating since the start of production in 2014. It is an integrated LNG development that includes gas production and processing facilities that extend

[6] ICCC Determination (A2021/38) of Oil Search and Santos Merger 7th December 2021.

[7] Applicant's supporting submission, p.5

[8] With the merger with Oil Search in 2021, Santos now holds all of Oil Search's independent interests in a number of exploration and appraisal assets

from Hela, Southern Highlands, Western and Gulf provinces to Port Moresby in Central Province.[9]

24. The facilities are connected by over 700 kilometers of onshore and offshore pipeline and include a gas conditioning plant in Hides and a liquefaction and storage facility near Port Moresby.[10]

25. Gas is sourced from the Hides gas fields together with associated gas from the Santos' operated oil fields (Moran, Kutubu and Gobe fields) and transported along the 700-kilometer-long pipeline to the LNG Plant near Port Moresby where it is converted into liquid form (as Liquefied Natural Gas (LNG)) for shipment. The Condensate, separated from the Hides Gas Conditioning Plant (HGCP), is directed along its own Pipeline to the Kutubu Central Processing Facility and later the Kumul Marine Terminal for export. Gas is also supplied domestically to Independent Power Producers such as NiuPower and Dirio Gas & Power Companies for domestic power generation.

26. The PNG LNG Project produces over 8 million tonnes of LNG each year (MTA) to four major customers in the Asian Region; and is anticipated to produce more than 11 trillion cubic feet of natural gas over the life of the PNG LNG facilities.[11]

27. ExxonMobil PNG Limited (EMPNG) (a subsidiary of the ExxonMobil Corporation (ExxonMobil))[12] is the project operator on behalf of its Co-venture Partners: KPHL, Santos, JX Nippon Oil & Gas Exploration Corporation (JX Nippon) and Mineral Resource Development Company (MRDC). The respective project interests of the co-venture partners are shown in Table 2 below.

Table 2: PNG LNG Project Partners and Interests.

Co-venture Partners	Project Interests (%) (Current)
ExxonMobil	33.2
KPHL	16.8
Santos	42.5
JX Nippon	4.7
MRDC	2.8

Source: PNG LNG - PNG LNG

2.3 The Proposed Acquisition

28. According to the Applicant, the Proposed Acquisition will be implemented in two (2) steps:

[9] ExxonMobil Website: Accessed PNG LNG - PNG LNG at 07 November 2023.
[10] ExxonMobil Website: Accessed PNG LNG - PNG LNG at 07 November 2023
[11] PNG LNG - PNG LNG
[12] Exxon Mobil Corporation is a Multinational oil and gas company based in Texas, USA.

1) Firstly, KPHL will acquire a 2.61912% Project Interest in the PNG LNG Project via the acquisition of all the shares in Lavana Limited (a subsidiary of Santos) (**"Lavana"**), pursuant to a Share Sale and Purchase Agreement between Santos International Holdings Pty Ltd (**"SIH"**) (a subsidiary of Santos) and KPHL (**"Share SPA"**).

   Completion of the Share SPA is not subject to finance and is conditional only on KPHL obtaining clearance from the ICCC on or before 31st December, 2023.

2) Secondly, upon completion of the Share SPA, SIH will procure another Santos' Subsidiary, Oil Search (Tumbudu) Ltd (**"OST"**) to enter into a Call Option Deed under which OST will grant, Lavana and KPHL (as Purchaser Guarantor), an option to acquire a further 2.38088% Project Interest in the PNG LNG Project on the terms and conditions set out in the Call Option Deed and the Asset Sale and Purchase Agreement (Asset SPA) (Call Option). The Call Option must be exercised on or before 30 June 2024.

   Upon exercise of the Call Option, Lavana, OST and KPHL will execute and complete the Asset SPA to deliver a further 2.38088% interest in the PNG LNG Project to KPHL.

   The Asset SPA is subject to completion of the Share SPA and satisfaction of various conditions precedent, including KPHL obtaining clearance from the ICCC.

29. If fully implemented, the Proposed Acquisition will increase the equity interest of KPHL in the PNG LNG Project by 5% to 21.8% (refer to Table 3 below), increasing PNG's interest in the PNG LNG Project and the financial returns for KPHL.

Table 3: KPHL Project interest in the PNG LNG Project: Pre and Post-Acquisition

Co-venture Partner	Project Interest (Current)	Project Interest (after completion of Share SPA)	Project Interest (after competition of Asset SPA)
KPHL	**16.8%**	**19.4%**	**21.8%**
Santos	42.5%	39.9%	37.5%
ExxonMobil	33.2%	33.2%	33.2%
JX Nippon	4.7%	4.7%	4.7%
MRDC	2.8%	2.8%	2.8%

Source: *Applicant's Supporting to ICCC*

3. COMMENTS FROM STAKEHOLDERS

30. As part of its assessment of the Application, the ICCC invited relevant stakeholders and the public, to provide their views on the potential competition impacts the Proposed Acquisition may have on any markets in PNG. Stakeholders consulted include the petroleum industry players, relevant

Government departments/regulators and businesses. Some of the views and comments have been summarized below.

3.1 Kumul Consolidated Holdings Limited ("KCHL")

31. KCHL stated on the outset, that, the State has the right to acquire a 22.5% interest in any petroleum development project, under the Oil and Gas Act; and KPHL as the State nominee is also authorized under its own Act to participate in this industry. Hence, the proposed acquisition is consistent with the Government's Policy to participate in the Hydrocarbon industry. KCHL also stated that the current Government supports such acquisitions which increases PNG's participation; and benefits, in the hydrocarbon industry.

32. KCHL further stated that in terms of competition, the parties participate in the downstream electricity business, through Niu-Power as their Joint Venture operating company that supplies 58MW of gas fired electricity to PNG Power's Port Moresby Grid. As such, KCHL opines that the acquisition will position the partners to further improve and expand their services in the downstream industry.

33. In summarizing its competition views, KCHL provided the following considerations based on the perspective of markets that operate within the upstream, midstream and downstream segment of the industry:

- there are some levels of import competition at the downstream market segment, but very limited at the upstream market.

- There are very high barriers to entry in the upstream, midstream and downstream, but firms with access to global finance and other resources can easily overcome these barriers.

- With data from the Department of Petroleum and Energy, there are fewer players in the industry with less than 5 hold PDL: and majority hold PRL and PEL licenses; the buyers in the upstream market are international buyers, and few domestic buyers for downstream segment.

- As prices of oil and gas products are determined globally, post-acquisition, it is not feasible for the acquirer to exert any influence on price of increased profit margins as this driven by global markets for the products.

- Substitutes, in general, in this market are limited; and although Santos is a very vigorous competitor, the acquisition is significantly small to remove the competitor in the market.

- There is some level of vertical integration in the market between both Santos and KPHL, however, this acquisition would not affect that level of vertical integration.

34. All in all, KCHL submits that the acquisition does not have the effect, or likely effect of substantially lessening competition in the crude supply and electricity market, nor does it have any effect in either the upstream, midstream or downstream segments of the hydrocarbon industry.

3.2 Brian Bell Group ("Brian Bell")

35. Brian Bell in its submission stated that the Proposed Acquisition supports PNG Government's objectives to have a greater equity interest in the development of its natural resources. Brian Bell supports this initiative and can see the flow of benefits into PNG but on the condition that there are strong governance practices in place to protect this interest.

36. Brian Bell supports the Proposed Acquisition subject to the following conditions:

- There must be transparency between all the parties which, as part of corporate governance best practices, requires disclosure of all relevant information to inform decision-making;
- The protection of PNG citizens cannot be compromised and will remain high on the agenda;
- Gas affordability price(s) must be monitored by ICCC to ensure public at large is not disadvantaged; and
- Proper due diligence conducted by KPHL before the final decision is made including an independent assessment of the fair value of the PNG LNG Project.

3.3 Papua New Guinea Customs ("PNG Customs")

37. Although PNG Customs is of the view that there are no serious competition concerns arising from the Proposed Acquisition, it stated the following:

38. The Proposed Acquisition creates an internal transfer of Project Interest within the PNG LNG Project itself, subsequently increasing project interest for KPHL, whilst decreasing that of Santos. However, post-acquisition following share SPA, and execution of Call Option Deed, the market share dynamics in terms of parties with largest share of project interest remain unchanged with Santos still having the largest share of project interest, then Exxon Mobil, KPHL, JX Nippon and MRDC.

39. The Proposed Acquisition creates a 5% increase in Project Interest for KPHL in the PNG LNG Project, that is in line with the newly released Medium Term Development Plan (MTDP) IV 2023-2027), which sets out an ambitious goal to grow our economy to K200 billion by 2030. The increase in Project Interest will

mean larger dividends received by KPHL on behalf of the State, for further investment and to fund the National Budget.

40. PNG Custom's only concern is that such increases in interests given to KPHL cannot be given at the expanse of tax concessions granted to resource Project Developers by the State. This would mean that significant revenue that could be collected by PNG Customs/IRC will now be counted as forgone by the State.

41. PNG Customs is mandated with the functions of Border Security, Trade Facilitation and Revenue Collection, which it performs on behalf of the State. Projects like the PNG LNG Project, have positive effects on trade inflows with large amounts of capital and technical expertise brought into the country. Increases in trade flows improve Revenue Collections through taxes and duties by PNG Customs to fund the National Budget.

3.4 JX Nippon Oil & Gas Exploration Corporation ("JX Nippon")

42. According to JX Nippon, the Proposed Acquisition will support the PNG Government's objective of increasing equity in the PNG LNG Project and intends to work with both KPHL and Santos to ensure the success of the Proposed Acquisition. JX Nippon also stated that it does not believe that the Proposed Acquisition will have any anticompetitive effects in the relevant markets. JX Nippon, therefore, supports the Proposed Acquisition.

3.5 Island Petroleum Limited ("IPL")

43. IPL is of the view that the Proposed Acquisition will not have a material impact on the competition landscape in the wholesale and fuel industry that they operate in.

3.6 BSP Financial Group Limited ("BSP")

44. BSP is of the opinion that the Proposed Acquisition will have no anti-competitive impacts given that it will not unduly increase existing barriers to entry or likely reduce the level of competition in that segment of the energy industry.

3.7 Mineral Resources Development Company ("MRDC")

45. MRDC stated that the Proposed Acquisition is in line with the government's objective for the people of PNG to have a greater interest in the development of their natural resources. As such, it does not see any potential anti-competitive effects on the market from the proposed transaction. MRDC, therefore, supports the Proposed Acquisition.

3.8 Others

46. Credit Corporation PNG Limited, Total Energies EP PNG Limited and iPi Group had no objections to the Proposed Acquisition.

4. ICCC'S EVALUATION

4.1 Competition Assessment

4.1.1 Definition of Relevant Market

47. Before assessing any likely competition effects of a proposed transaction, it is necessary to firstly identify the *relevant market(s)*. The relevant market sets the boundaries (or limits) within which competition between the parties involved in the proposed transaction is considered to exist or likely to exist; and therefore, the potential competition effects of a proposed acquisition (or merger) could sufficiently be assessed and determined.

48. In trying to identify the relevant market(s), the ICCC takes into consideration the area(s) of overlap in the business activities and or where there are vertical relationships between the concerned parties of a proposed acquisition. If an area of overlap and or supply relationship has been identified, then there is a need for one to discuss the possible market(s), including substitution possibilities, and eventually identifying the relevant market(s) the proposed acquisition is likely to affect in terms of lessening of competition. The ICCC then proceeds to undertake competition effects assessment of the proposed acquisition (or merger); and makes a determination on the application.

49. The ICCC Act defines market under section 45(2) as follows:

"A reference in this Part to the term "market" is 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."

Applicant's definition of the relevant market

50. The Applicant submitted that, given the nature of the Proposed Transaction, being solely a transfer of up to 5% interest in the PNG LNG Project from Santos to KPHL, it will not have any effect on any relevant market.

51. The PNG LNG Project is an export-focused LNG project, with some production reserved for domestic gas supply. Therefore, the Proposed Transaction is most relevant to *the market for the supply of domestic gas in PNG* and *the market for the supply of LNG for export.*

52. For completeness, the Applicant submitted that the other related non-relevant markets in which the Parties operate in PNG are as follows:

- *market for the exploration and appraisal for oil and gas in PNG;*
- *domestic power generation/ electricity supply; and*
- *market for the supply of condensate.*

ICCC's definition of the relevant market

53. To identify the relevant market, the ICCC must take into consideration all the business activities of both KPHL and Santos as well as their geographical operations. This exercise assists the ICCC to identify the area(s) of business overlaps or existing supply relationships to form the basis of determining the *relevant* market for purposes of assessing likely competition effects assessment of this Proposed Acquisition.

54. The ICCC notes that Santos' business activities include the exploration and development, production, transportation and marketing of oil and gas. In PNG, Santos operates and holds majority of the existing Petroleum Prospecting Licenses (PPLs) followed by ExxonMobil and TotalEnergies.[13] It also holds interests in other Petroleum Retention Licenses (PRLs) projects which are currently in their commercial pre-development stage such as the P'nyang Gas Project (P'nyang) (PRL 3) and the Papua LNG Project (Papua LNG) (PRL 15). Santos also operates all of PNG's oil producing fields which provides associated gas to the PNG LNG Project.

55. KPHL on the other hand, participates in the development and production aspect of the upstream oil and gas sector in PNG. KPHL wholly owns and operates four (4) PRLs which are 'stranded' gas fields[14] of Kimu, Barikewa, Uramu and Pandora – two onshore and two offshore respectively; and holds interest in a number of other stranded gas fields which are operated by Santos and Arran Energy (Niugini) Limited (Arran Energy). It also holds interests in SE Gobe and Moran Oil fields.

56. As mentioned elsewhere in this Determination, both Santos and KPHL have interests in PNG LNG Project as joint venture partners. The PNG LNG Project Co-venture Partners are: KPHL, Santos, JX Nippon Oil & Gas Exploration Corporation, Mineral Resource Development Company and ExxonMobil (Project Operator). Table 2 on page 7 of this Determination shows the current interests of each of the JV Partners.

57. The PNG LNG Project, produces and supplies natural gas and condensates. Natural gas is piped along the 700-kilometer pipeline to the LNG Plant site in Port Moresby where it is liquified and shipped as LNG whilst condensates are piped along its own pipeline to the Kutubu Central Processing Facility to be combined with crude oil from Santos' operated oil fields and exported as "Kutubu Blend" from the Santos operated Kumul Marine Terminal.

58. The ICCC understands that the technical and commercial operations of the PNG LNG Project are governed by the PNG LNG Coordinated Development and Operating Agreement as amended and restated on 8 December 2009 (**"CDOA"**)

[13] PNG-Chamber-of-Mines-and-Petroleum-Media-Workshop-Information_Final-04Aug2021.pdf

[14] Stranded gas fields are natural gas fields that has been discovered, but remains unusable for either physical or economic reasons: Accessed; Role of stranded gas in increasing global gas supplies | U.S. Geological Survey (usgs.gov).

together with related project agreements under which ExxonMobil, as the designated operator, does the LNG and gas sales and marketing on behalf of its JV partners.

59. The ICCC, however, notes that ExxonMobil independently does its own marketing of its condensates from the PNG LNG Project whilst Santos does the marketing of the other condensates on behalf of the other remaining JV partners (including KPHL). The ICCC also noted that a small portion of Santos' sales of condensates is supplied domestically to the Puma Energy operated Napa Napa oil refinery.

60. The ICCC also understands that whilst almost all of the natural gas is committed for exports, the PNG LNG Project supplies some gas for domestic use for power generation purposes. Gas is supplied to domestic independent power producers (IPPs) under gas supply agreements where ExxonMobil, as the Project operator, administers these supply agreements and is nominated as the seller by and on behalf of the Co-venturers (including KPHL and Santos). Approximately 20 percent of Port Moresby's power demand is reliably supplied by PNG LNG gas. Another 40 percent of capacity was added to Port Moresby's market with the commencement of gas supply from the PNG LNG Plant to the 58-megawatt NiuPower power plant[15].

61. According to the Applicant, the PNG LNG Project supplies gas to NiuEnergy Limited (NiuEnergy) which in turn supplies gas to NiuPower Limited (NiuPower) to generate electricity from its Port Moresby power station to PNG Power's Port Moresby grid for distribution to Port Moresby consumers. The ICCC noted that both NiuEnergy and NiuPower are jointly owned (50% interest each) by KPHL and Santos. The ICCC further noted that KPHL and Santos are also co-venture partners in the Hides gas fields (PDL1 and PDL2) which supplies portions of its gas to the Santos operated Hides Gas-to-Electricity Project (Hides GTE Project) (currently not operational) which is then sold to the Porgera Joint Venture (PJV) under a long-term supply agreement.

62. Considering all the available information, the possible markets available in terms of the parties' business activities discussed above include:

- Upstream market for the exploration and development of oil and gas in PNG;
- Midstream market for production and transportation of oil and gas in PNG;
- Downstream market for liquefaction and export of gas;
- Downstream market for the domestic power generation/electricity supply using gas; and
- Downstream market for marketing and sale of LNG.

63. In its assessment of the relevant market, the ICCC considers that the relevant market should be specific within the business activity where the Proposed

[15] PNG LNG - PNG LNG

Acquisition is happening and that is within the PNG LNG Project. As such, the ICCC concurs with the Applicant's propositions on the following as relevant markets in the downstream segment of the market:

- *the market for the supply of domestic gas in PNG;* and
- *the market for the supply of LNG for export.*

4.1.2 Substantial Lessening of Competition Considerations

64. The only test for a Clearance under section 81 of the ICCC Act is that the ICCC must be *"…satisfied that the acquisition will not have, and will not be likely to have, the effect of substantially lessening competition in a market …".* The non-exhaustive statutory factors listed under section 69(5) of the ICCC Act guides the ICCC's assessment of the potential competition effects of any proposed transaction.

65. In its consideration of this Proposed Acquisition, the ICCC notes the following:

- The Parties' position in any markets (aside from the PNG LNG Project) in the oil and gas industry in PNG would remain the same post-acquisition;

- The Proposed Acquisition would not have any effect in terms of change of PNG LNG Project's operatorship, production and supply of natural gas (and condensate) for international and domestic use including the market sale structure of the project. The Proposed Transaction is just a mere transfer of project interests;

- ExxonMobil, as the designated operator of the PNG LNG Project under the CDOA, does marketing and sales of natural gas (except condensates) on behalf of its JV partners (KPHL and Santos included). The ICCC considers these arrangements including the operatorship of the PNG LNG Project are unlikely to change post-acquisition;

- The Proposed Acquisition would increase KPHL's interest in the PNG LNG Project to 21.8% thereby increasing PNG's interests in the PNG LNG Project and increased financial returns for KPHL. This would achieve the objective of ensuring the people of PNG benefit more, through greater equity interest, in the development of their natural resources;

- KPHL, as PNG's national oil and gas company, has the right to acquire up to a 22.5% interest in any operational petroleum projects, therefore the 5% additional interest in the PNG LNG Project would generate capital for KPHL to further acquire interests in the upcoming major LNG projects (P'nyang and Papua LNG) which would mean additional revenue for the PNG government and its people;

- Whilst the 5% additional interest acquired by KPHL is a positive investment in the PNG LNG Project, the ICCC considers that it does not give additional control or influence over the operations of PNG LNG Project and the markets identified above and does not affect competition in any market;

- The Proposed Transaction will not affect competition or change the competitive dynamics or market structure in any related market in PNG, as the Parties' operations in these markets are not affected by the Proposed Transaction; and

- Accordingly, the Proposed Transaction does not impact any area where there is any competition in the operations of KPHL and Santos. As stated elsewhere, it is a mere transfer of a Project Interest in the PNG LNG Project between two existing owners with non-operatorship interests that will not impact on competition locally or globally in any way.

66. The ICCC therefore considers that the Proposed Acquisition will not have, or, will not be likely to have, the effect of substantially lessening competition in any market(s) in PNG, including the markets defined here.

5. DETERMINATION

67. In view of all the above discussions and considerations based on available information, the ICCC is satisfied that the Proposed Acquisition of up to a 5% additional interest in the PNG LNG Project from Santos by KPHL would not have, or would not be likely to have, the effect of substantially lessening competition in any market(s) in PNG.

68. The ICCC hereby gives this Clearance pursuant to section 81(3)(a) of the ICCC Act for the Proposed Acquisition to proceed.

69. This Clearance will expire twelve (12) months after the date of release as stipulated under section 81(6) of the ICCC Act. The parties must complete the transaction within this period.

MR. PAULUS AIN	**MR. EDWARD WILLETT**
(Commissioner)	(Associate Commissioner, Non-Resident)

Dated: 05th December, 2023