



**INDEPENDENT CONSUMER &
COMPETITION COMMISSION**

Papua New Guinea's
Consumer &
Competition
Watchdog

DETERMINATION & REASON

on

Clearance Application

by

SIME DARBY OILS (PNG) LIMITED

in respect of the

Proposed Acquisition of

**DOWNSTREAM BUSINESS OPERATIONS OF NEW BRITAIN PALM OIL
LIMITED**

Commissioners:

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

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About the ICCC

The Independent Consumer and Competition Commission (**"ICCC"**) is the statutory body established and empowered under the *Independent Consumer and Competition Commission Act 2002 ("ICCC Act")*. It is Papua New Guinea's consumer protection and competition authority. Its main functions are to promote competition; regulate prices of certain declared goods and services and service standards of regulated entities; protect consumers' interests.

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1. INTRODUCTION

1. This Determination relates to the Clearance Application (“**Application**”) submitted by Sime Darby Oils (PNG) Limited (“**SDO PNG**” or the “**Applicant**”) to the Independent Consumer and Competition Commission (“**ICCC**”) for the proposed acquisition of the downstream business operations and related assets of New Britain Palm Oil Limited (“**NBPOL**”)(“**Proposed Acquisition**”).
2. Both SDO PNG and NBPOL are wholly owned subsidiaries of Sime Darby Plantation Berhad (“**SDPB**”).
3. SDO PNG and NBPOL have entered into a Sale and Purchase Agreement for the former to acquire the latter’s downstream business operations, which includes the related fixed assets, stock and consumable inventories, employee related liabilities and offer of new employment to employees of NBPOL's downstream business.
4. On 21st March, 2024, the ICCC received the Application from Ashurst PNG on behalf of SDO PNG. The ICCC registered the Application on 25th March, 2024 and commenced the Clearance process 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 that a proposed merger or acquisition that meets either of the mandatory notification thresholds must be notified to the ICCC for a Clearance. 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, or 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.
6. 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 (which was subject of a Clearance application) needs to go through the Authorization process. The ICCC would give a Direction Letter to the Clearance applicant stating its reasons as to why the proposed transaction should go through the Authorization process.
7. Where an Authorization application is lodged, the ICCC carries out both the competition and public benefit assessments. In an Authorization application, the applicant must satisfy the ICCC that; (1) as stated above, the proposed transaction would not, or would not be likely to, have the effect of substantially lessening competition in any identified market(s); and (2) the net likely public benefits as a result of the proposed transaction would be more than any associated public detriments. If the ICCC is satisfied that the proposed transaction is not likely to substantially lessening competition in any market, it would proceed to give a Clearance (under the Authorization application). If the proposed transaction fails the competition assessment, the ICCC would make its decision on whether or not to authorize the proposed transaction based on public benefit grounds considerations.

8. The Proposed Acquisition meets the transaction value threshold, hence SDO PNG submitted the Application for the ICCC's assessment.
9. If the ICCC gives Clearance, it protects the transaction from being legally challenged for potential breach of the ICCC Act after it is consummated.
10. 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) in PNG.
11. 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 consummated without the knowledge of the ICCC (or during the time the ICCC was reviewing it), a Clearance given by the ICCC would be considered invalid. The ICCC, therefore, could challenge the transaction if it believes that the acquisition has, or is likely to have, the effect of substantially lessening competition in a market.
12. The ICCC is required by the ICCC Act to give a decision on a Clearance Application within twenty (20) days¹ 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).
13. The ICCC assesses Clearance applications in a public and transparent manner. As such the ICCC announced the receipt of the Application and invited relevant stakeholders and the public to provide their views and comments 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.
14. The public consultation process also enables the ICCC to test publicly the Applicant's claims regarding the actual and potential competition impacts the proposed acquisition would have, or would likely to have, in a relevant market in PNG.
15. For stakeholders who wish to access documents related to this Application and Determination, public copies are placed on the ICCC's Public Register on its website; www.iccc.gov.pg. Hard copies are also available at the ICCC's Port Moresby Office.

¹ The counting of the 20 days includes public holidays and weekends.

2. BACKGROUND

2.1 The Parties

2.1.1 Applicant – Sime Darby Oils (PNG) Limited (“SDO PNG”)

16. SDO PNG (Company registration number 1-124836255) is a newly incorporated company in Papua New Guinea, created to operate (as a separate legal entity) the downstream business operations of NBPOL.² SDO PNG is wholly owned by SDPB through its Singapore registered subsidiary Sime Darby Oils International Limited (“SDOL”).
17. The downstream business operations of NBPOL (which is subject of this proposed transaction) include buying and refining of crude palm oil products purchased from NBPOL and selling the refined oils in the domestic and export markets.³
18. Post-acquisition, SDO PNG would be just replacing NBPOL in the downstream oil palm business activities of the Sime Darby Group in PNG.

2.1.2 The Target – New Britain Palm Oil Limited (“NBPOL”)

19. NBPOL (Company Registration Number 1-1874) is the largest oil palm plantation and milling operator in PNG. It is wholly owned by SDPB. NBPOL’s Corporate Office is in West New Britain (WNB), PNG, and operates six sites – five in PNG and one in Solomon Islands⁴.
20. Its current core activity is the cultivation and processing of oil palm into crude palm oil, palm kernel oil and palm kernel expeller for sales to both domestic and foreign markets. NBPOL has nearly 85,000 mature hectares of estate-managed oil palms and sources fruit from a further 39,000 mature hectares of independent oil palm growers. NBPOL operates over 50 estates, 13 palm oil mills and seven kernel crushing mills⁵.
21. Apart from Palm Oil, NBPOL also owns sugar cane plantations comprising over 5,600 hectares, and its cattle pastures over 9,500 hectares. NBPOL also operate a sugar refining ethanol factory and two abattoirs to produce beef for the local markets.⁶
22. The subsidiaries of NBPOL in PNG include, Ramu Agri- Industries Limited, Kula Palm Oil Limited, Poliamba Limited, Markham Farming Company Limited, Guadalcanal Plains Palm Oil Limited, New Britain Plantation Services Pte Limited, and Ultra Oleum Pte Ltd.

2.2 The Proposed Acquisition

² Applicant’s Clearance Application

³ Ibid

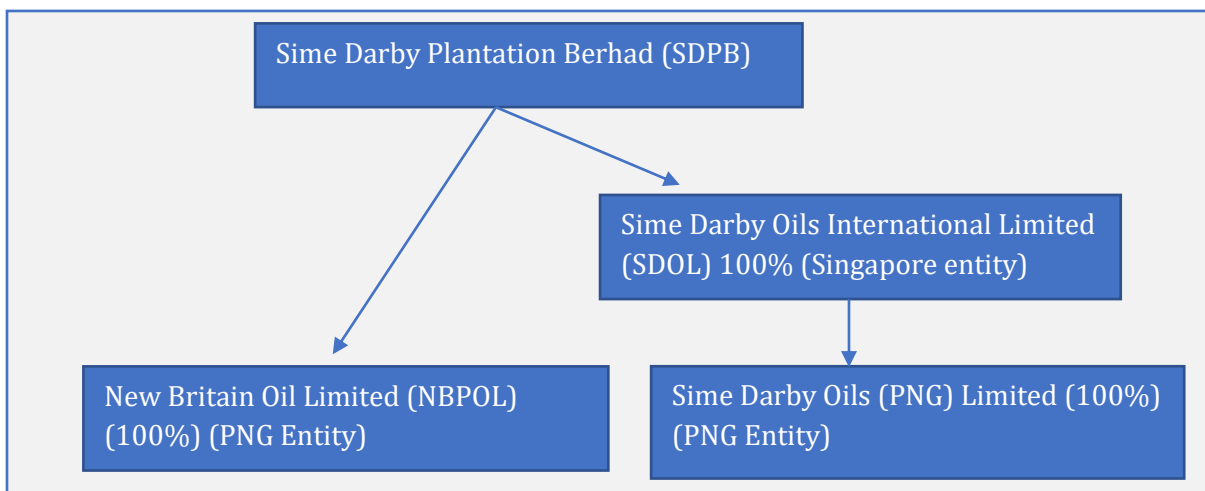
⁴ <https://www.nbpol.com/operations.html>

⁵ Ibid

⁶ Ibid

23. On 05th March, 2024, SDO PNG and NBPOL signed a sale and purchase agreement (SPA) for the purchase of the latter's downstream business operations, which includes the related assets, stock and consumable inventories, receivables from debtors, employee related liabilities and offer of new employees of NBPOL's Downstream business located in Kimbe, West New Britain Province.
24. SDO PNG and NBPOL would also sign a sublease agreement for the use of the land parcels in Kumbango, West New Britain Province (WNBP), where the refinery and employee housing compound are situated, after the proposed acquisition. These plots of land are a part of Portion 1629 Talasea WNBP State Lease Volume 57 Folio 230, which will eventually be transferred to SDO PNG by way of a subdivision application. The application procedure will be finished in a few years.
25. As mentioned earlier, the Applicant and the Target are related companies with the same ultimate parent company, SDPB. The current Corporate Structure of SDPB clearly shows this in the diagram below.

Diagram 1: Corporate Structure of Sime Darby Plantation Berhad



Source: Applicant's Submission

3. RATIONALE FOR THE PROPOSED ACQUISITION

26. The Applicant submitted that the Proposed Acquisition would not have significant potential impact to the market aspect given that, in essence, the transaction would only be a takeover of the downstream businesses of NBPOL. The new management would continue with the normal operations of the downstream businesses. This takeover is consistent with the direction coming from SDPB (the ultimate parent company of SDO PNG and NBPOL) to separate the upstream and downstream operations of all its subsidiaries globally. The Sime Darby Group rebranded its global downstream business under a new identity, Sime Darby Oils (SDO) to realise its full potential as a trusted brand for sustainability and superior product qualities.

27. According to the Application, SDO PNG would continue to form strategic partnerships with local and global distributors to further grow its customer base and market reach. This would strengthen and enhance benefits to consumers in PNG.
28. The Applicant also submitted that there is no expectation of overlap in operations as the acquisition is a complete takeover of a business operations by a newly created entity.

4. VIEWS FROM INDUSTRY PARTICIPANTS AND OTHERS

29. The ICCC invited relevant stakeholders and the public to provide their views on the likely competition effects the Proposed Acquisition may have on any markets in PNG. Below is the summary of comments and submissions from interested stakeholders. The full submissions can be accessed on the ICCC's website: www.iccc.gov.pg.

4.1 Investment Promotion Authority ("IPA")

30. IPA stated in their submission that their views provided are essentially from an investment promotion and facilitation perspective. With regard to the Proposed Acquisition, IPA noted the following:
 - 1) Sime Darby Oils (PNG) Limited ("SDO PNG") is a subsidiary of Sime Darby Plantation Berhad ("SDPB");
 - 2) New Britain Palm Oil Limited ("NBPOL") is 100% owned by SDPB; and
 - 3) SDO PNG is proposing to acquire the downstream business of its "sister" company NBPOL including its related assets.
31. IPA also noted that, despite other interested parties' more technical views on the subject matter, the acquisition is a strategic business decision by Sime Darby Group to diversify, realign and restructure its business functions to suit the operating environment.
32. IPA further submitted that the application could be an administrative and operational re-arrangement and may not adversely affect competition in the industry but could, in fact, improve efficiency thus may reduce operational costs and hopefully result in reduced prices.
33. However, the IPA is mindful that the decision by the Sime Darby Group, which happens to be a dominant player in the oil palm industry, may result in crowding-out and/or lessening of competition in the downstream processing of palm oil products in PNG. As such, IPA is concerned specifically in relation to the potential for domestic SME's not being able to participate in the downstream processing and value adding due to crowding-out by a dominant player.
34. Therefore, IPA is of the view that should approval be granted, careful consideration/assessment must be given so that the acquisition also complements the Government's agenda in promoting downstream processing and value adding as well as contributing to employment creation, and not otherwise.

4.2 Credit Corporation PNG Limited (“Credit Corp”)

35. Credit Corp submitted that NBPOL was amongst the first companies in the world to achieve RSPO certification for their palm oil production. According to Credit Corp, RSPO Certification assures individuals that RSPO Members who produce or physically handle RSPO Certified Sustainable Palm Oil (CSPO) have obtained RSPO Certification.
36. Credit Corp also submitted that NBPOL’s upstream palm oil operations are fully integrated with a state-of-the-art refinery in Kimbe, WNB, and is managed by Sime Darby Plantation’s downstream entity – Sime Darby Oils. This ensures delivery of fully segregated, traceable and certified sustainable palm oil to customers worldwide.
37. With the above comments, Credit Corp has no objection to the Proposed Acquisition.

4.3 Brian Bell Group (“Brian Bell”)

38. Brian Bell stated that the Proposed Acquisition appears to be primarily a company restructure with minimal impact to the market or competition. As such Brian Bell does not have further comments or concerns regarding the Proposed Acquisition.

4.4 Hargy Oil Palms Limited (“HOPL”)

39. HOPL stated that they do not see any significant impacts the proposal will make to the industry and the economy of Papua New Guinea. Therefore, HOPL does not have any objection to the Proposed Acquisition.

4.5 National Superannuation Fund Limited (“Nasfund”)

40. Nasfund in its submission understands that NBPOL and SDO PNG are both wholly owned subsidiaries of Sime Darby Plantation Berhad. Nasfund also stated that it is common for a company to restructure its production units just before a planned diversification of its business.
41. Accordingly, Nasfund made the following observation:
 - (a) The proposed acquisition of NBPOL’s production business by SDO PNG will create a separation between the plantation business (upstream) and the palm oil business (downstream);
 - (b) The Proposed acquisition is likely to create competition among companies who produce vegetable oil;
 - (c) The proposed acquisition may create an opportunity for SDO PNG to expand its production base to include coconut oil and other vegetable-based oil products; and

(d) Although SDO PNG may become the largest palm oil producer, the benefits of this proposed acquisition seem to outweigh any potential risks associated with market dominance by SDO PNG in future.

42. Therefore, Nasfund concluded by stating that they see potential benefits in the proposed acquisition, and does not have immediate objections to the proposed acquisition at this time. The proposed acquisition is a change in assets to redefine the purpose of the deployment of capital investments from an internal perspective.

4.6 Others

43. iPi Group, PNG Chamber of Commerce and Industry Inc and Nestle PNG have stated that they have no objection to, and do not have any reason to raise concerns with, this Proposed Acquisition.

5. ICCC'S EVALUATION

5.1 Competition Assessment

5.1.1 Definition of Relevant Market

44. Defining the relevant market(s) in the competition effects assessment of any business acquisition is necessary and often the first step. 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.

45. 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 decides on the application.

46. 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."

47. In terms of market and the likely effects of the Proposed Acquisition on competition, the Applicant submitted that the proposed transaction would not result in transfer of NBPOL's downstream business to an entity or a third party outside of Sime Darby Group; it would be a transfer within the Sime Darby Group. Furthermore, SDO PNG is a new entrant to the

market and will essentially only replace NBPOL in that market such that the transaction could not have any effect on competition in any market.

48. The Applicant also submitted that the downstream processing and supply of refined palm oil is the industry in which the acquisition is relevant.
49. Based on the information submitted by the Applicant, the ICCC notes that the Proposed Acquisition of the downstream business operations of NBPOL by SDO PNG is an internal restructure within the Sime Darby Group as part of SDPB's direction to separate the Upstream and Downstream operations of all its subsidiaries globally. It also understands that SDPB rebranded its global downstream business under a new identity, Sime Darby Oils.
50. The ICCC appreciates that the proposed transaction would involve business activities relating to procuring and refining of crude palm oil; and the supply of refined palm oil. Whilst the business activities involved here can be considered for purposes of market definition, the ICCC must define the *relevant* market(s), which is the markets competition is likely to be harmed as a result of the acquisition in question. In consideration of this, and given that there are no market overlaps of business activities being identified as the acquirer is a related company of NBPOL; and was incorporated to assume NBPOL's downstream business operations, the ICCC has considered that there would be no serious competition impact the Proposed Acquisition would have on any relevant market that may be identified.
51. It is therefore not necessary to define a relevant market for the purposes of likely substantial lessening of competition effects assessment.

5.1.2 Other Considerations

52. Given the reasoning above that defining a relevant market is not necessary, a detailed likely competition effects assessment is also not necessary.
53. The ICCC, however, notes from information submitted by the Applicant and those available to it that the Proposed Acquisition:
 - would only result in the separation of the business segments (upstream and downstream) within NBPOL. Whilst SDPB is a vertically integrated company, the Proposed Acquisition would not affect the current state of competition in the market for palm oil or edible oils;
 - is only an internal restructure, hence, the current structure of the market and the level of competition would remain the same post-acquisition; and
 - would not enhance the market position of SDO PNG, in terms of control, in any relevant market(s) in PNG. The ICCC considers that the Proposed Acquisition will involve direct inheritance of the property, assets and activities that the target currently engages in the downstream palm oil processing in PNG.

54. Whilst the ICCC notes concerns raised by IPA about NBPOL's market control and the need for protection of SME to ensure no 'crowding out effect', the ICCC considers that the acquisition is not external. Since it is internal restructure to transfer downstream business and assets, the acquisition is not likely to enhance the said dominance.
55. With the above considerations, the ICCC concludes that the Proposed Acquisition would not, or would not be likely to, have the effect of substantial lessening of competition in any market in PNG.

6. DETERMINATION

56. In view of all the above discussions and considerations based on available information, the ICCC is satisfied that the Proposed Acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in any market(s) in PNG.
57. The ICCC hereby gives this Clearance pursuant to section 81(3)(a) of the ICCC Act for SDO PNG to proceed with the Proposed Acquisition.
58. Pursuant to section 81(6) of the ICCC Act, this Clearance expires after twelve (12) months after the date of release. The transaction should be completed within this period.



MR. PAULUS AIN
(Commissioner)



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

Dated: 17th April 2024