

INDEPENDENT STATE OF PAPUA NEW GUINEA
Independent Consumer and Competition Commission Act

Act, Sec 81

Form 2

NOTICE OF APPLICATION FOR CLEARANCE FOR A BUSINESS ACQUISITION

- 1. FORM AND CONTENT:** In addition to providing a detailed submission in support of the application, the applicant/s is required to complete the application form in full. The Independent Consumer and Competition Commission (ICCC) may reject any applications that have not been filled out fully and properly in accordance with section 76 (4) (c) of the *Independent Consumer and Competition Commission Act, 2002*, (the Act)
- 2. WHERE TO APPLY:** Applications for Clearance for Business Acquisitions should be lodged at the ICCC's office at Level 2 Garden City Building, Boroko, National Capital District or mailed to P.O. Box 6394, Boroko, National Capital District, Papua New Guinea. Ensure to supply one (1) hard copy and (1) soft copy of your application.
- 3. WHEN TO APPLY.** It is a legal requirement to apply for clearance under section 81 of the Act if the proposed transaction would fall within the notification thresholds before proceeding to completion.
- 4. PENALTIES:** Failure to apply and proceeding to complete a merger or an acquisition (which falls within either of the notification thresholds) will result in pecuniary penalty of K750 000.00. Transactions that were not authorised or cleared and it has raised competition concerns under section 69; and successfully prosecuted by the ICCC, the penalties (1) are up to K500, 000 for an individual, (2) K10, 000 000 for a body corporate under section 95 (3) of the Act, (3) divestiture of assets or shares under section 98 of the ICCC Act.
- 5. FEE:** The fee for processing of a business acquisition clearance application is K20, 000. This must be paid by a cheque made out to the ICCC before any work is done on the application.
- 6. COLLECTION OF DETERMINATION:** It is the ICCC's duty to inform an applicant of its determination, in writing, in accordance with section 81 (3). The ICCC must determine the application within 20 days after the date of registration of the notice or for such period as mutually agreed by the ICCC and the Applicant.
- 7. LEGAL ADVICE:** Although it is not a requirement under the Act, the ICCC encourages applicants to seek independent legal advice before applying to the ICCC for clearance.
- 8. CONFIDENTIALITY:** The consideration of applications for clearance is a public process. All documents provided to the ICCC that were intended to form part of the application, will be placed on public record on the ICCC's Public Register. The ICCC may reject any claim for confidentiality if it considers that disclosure is in the best interest of the public. If the ICCC decides to disclose any information claimed to be confidential, the applicant will be provided with an opportunity to withdraw the information. If confidential information has been withdrawn, they will not be considered in the assessment and determination of the application. Where the applicant would like to apply for confidentiality, the applicant must complete an Application for Confidentiality Form (*ICCC Form-4*). The ICCC will consider, make a decision and inform the applicant accordingly.

PLEASE FOLLOW DIRECTIONS ON THE BACK TO COMPLETE THIS FORM

A Notice is hereby submitted under *Section 81 of the Independent Consumer & Competition Commission Act of 2002 (ICCC Act)* for Clearance for a Business Acquisition under *Section 69*, to acquire assets or shares in a business. All references made to provisions are to those provisions contained in the ICCA Act of 2002.

1. Applicant (the Acquirer)

(a) Name of Applicant and registered office, including the IPA registration number:
(Refer to direction 1)

Hevehe Petroleum Ltd, Level 12, MRDC Haus, Port Moresby, IPA #123734637

(b) Address in PNG for service of documents:

- (i) Physical address: *Level 12, MRDC Haus, Port Moresby, PNG*
- (ii) Postal address: *P O Box 1076, Port Moresby*
- (iii) Phone and email address: *3296628; raupae@mrdc.com.pg*

(c) Provide details of the business carried on by the Applicant including the goods and services the Applicant supplies:

(Refer to direction 2)

Oil and Gas production

(d) Detailed description of all related business/es or company/ies of the Applicant including the goods and services that each of them provide including the IPA registration number:

(Refer to direction 3)

None.

(e) Name, address and phone number of any person/s (if any) for whose benefit or behalf the shares or assets acquired will be held:

Hevehe Petroleum Ltd and its shareholding entities owned by landowners and affected provincial governments.

2. The Target Company

a. In the case of a registered business or company whose shares or assets are to be acquired:

(i) Name of the business or company including the IPA registration number

Twinza Oil (PNG) Ltd, 4-64333 (BVI).

(ii) Registered office of the business or company

Level 1, Harbourside West Building Stanley Esplanade, Port Moresby, Papua New Guinea

(iii) Brief description of the business/es carried on by the business or company including the goods and services supplied

Oil and gas production.

(iv) Number and types of shares or description of assets to be acquired

No shares are being acquired. A 50% direct interest in Pasca project proposed to be acquired.

b. Where it is a company whose shares are to be acquired, provide details of:

(i) The issued capital of the company: Not Applicable.

(ii) The holders of issued capital

Not applicable

c. Provide details of all related business/es or company/ies of the business or company whose shares or assets are to be acquired by the applicant.

(Refer to direction 4)

100% licence interest in Pasca Project. Currently in a monopoly situation.

d. Where it is a person whose assets are to be acquired

(i) Name and address of that person

Twinza Oil PNG is a company registered in British Virgin Islands (a BVI company).

(ii) Detailed description of the business/es carried on by the person including the goods and services that person supplies

Oil, gas and LPG.

(iii) Describe the assets to be acquired

50% interest in the Pasca project located offshore of the Gulf province.

3. The Acquisition

(a) Outline the details of the offer contract, arrangement, understanding or proposal for the acquisition and, where possible also provide a copy of that document.

(Refer to direction 5)

Please see attached a copy of the Sales and Purchase Agreement. Total purchase price is US\$160 million.

(b) Explain the commercial argument for the proposed acquisition and provide copies of all documents prepared specifically to assess the proposed acquisition with respect to the market/s affected and the nature of those effects.

Commercial argument: future cashflows and returns. No market impact studies carried out.

(c) Indicate whether the acquisition involves any additional commercial arrangements and describe those arrangements.

Yes, Joint Venture Operating Agreement and Cooperation Deed (to mutually share future acquisitions).

(d) Provide a copy of the draft Sale or Purchase agreement.

Please see attached all three documents. SPA, JOA and Cooperation Deed.

4. Threshold

(a) What is the purchase price of the proposed transaction in terms of PNG Kina?

US\$160 million (approx. K650 million at the exchange rate of USD= 0.25 Kina).

(b) What are the market shares of the parties involved in the proposed transaction?

100% licence interest- pre-acquisition. 50:50 post-acquisition.

5. Background Information

(a) Describe the industry sector/s in which the acquisition relates.

(Refer to direction 6)

Oil and Gas Industry

(b) Describe the area/s where there is an overlap in the operations of the Applicant and the Target and any related businesses of the merger parties

(Refer to direction 7)

Both are in oil and gas business.

(c) Provide details of any other acquisitions that may have been made by the Applicant or the Target Company and any other acquisitions made in the industry sector/s in the last five years

None.

(d) Provide details (if any) of existing vertical or horizontal relationship between the Applicant and the Target Company

None.

(e) Describe (if any) other cooperative agreements that the Applicant or Target Company may be a party to

*All future projects to be done jointly and shared with each other. **Please see attached Cooperation Deed.***

6. Market definition

Describe the relevant market/s the acquisition is most likely to have a competition effect on – this should include the market/s for the supply of goods and services and markets for the acquisition of goods and services.

(Refer to direction 8)

LPG supplies in PNG. This project will be the sole producer of LPGs in PNG for domestic sale.

7. Suppliers

(a) Describe the inputs into the production of goods or services by both the Applicant and the Target Company in the relevant market/s and indicate the value of those inputs as a proportion of total production. Where alternative inputs are available, provide a list of substitutes.

Natural gas produced from the field is used to produce LPGs (c3 and c4).

- (b) Provide the names and contact details of a representative selection of suppliers of inputs to both the Applicant and the Target Company in the relevant market/s
(Refer to direction 9)

Not applicable.

- (c) Describe any purchasing arrangements in place with each of the suppliers identified above and outline whether it is expected or anticipated that these arrangements will continue or be varied in anyway post acquisition.

All goods and services will be purchased by Twinza as the operator 100%.

8. Competitors

- (a) Provide details of alternative suppliers of products now or shortly to be competitive with, or otherwise substitutable for, goods or services produced by the Applicant and Target company in the relevant market/s
(Refer to direction 10)

LPGs being supplied by Origin Energy and Puma Energy. These are being imported currently.

- (b) If the suppliers identified above do not produce goods or services which are substantially the same as those goods and services produced by the merger parties in the relevant market/s, explain why it is considered that these goods or services are viable alternatives.

Same products. LPGs.

9. Customers

- (a) Provide the names and contact details of a representative selection of the customers of each of the merger parties in the relevant market/s
(Refer to direction 11)

Joint marketing arrangements under which Twinza as the Operator will market the LPGs domestically and export oil and gas overseas.

- (b) Describe the distribution channels available to the merger parties in supplying goods and services to customers and identify the relevant distribution channels in respect of each of the customers identified above.

To use existing third party distribution network.

- (c) Describe the existing supply arrangements that the Applicant and Target Company have in place with the customers identified above and whether it is expected or anticipated that these arrangements will continue or be varied in anyway post-acquisition
(Refer to direction 12)

None.

10. Market concentration

Provide estimates of or actual current and post-acquisition market shares for the merger parties and market shares of the existing alternative suppliers or purchasers in the relevant market/s identified above.
(Refer to direction 13)

Unknown at this stage. LPGs produced from this project can completely replace all current imports and supplies of LPGs.

11. Countervailing Power

(a) Describe the relative strength of bargaining power possessed by customers of the products in the identified markets;

Unknown.

(b) Describe to what extent it is possible for customers to bypass the merger parties by either importing or producing the product or service themselves, vertically integrating, or utilizing an alternative supplier; and

Imports are possible.

(c) Describe the ability of suppliers to identify and switch to alternative customers.

Unknown.

(Refer to direction 14)

12. Imports

(a) Provide estimates of the actual and potential level of import competition in the relevant market/s and details of the importers;

(Refer to direction 15)

Origin Energy, Puma

(b) Provide historical importation figures;

Unknown.

(c) List which products are imported into the relevant market/s, and who undertakes the importation and their relative share of the market;

Unknown.

(d) Show the relationship (if any) between domestic prices and import product prices; and

Unknown.

(e) Provide details of the extent to which imports provide a constraint on domestic suppliers including the merger parties in the relevant market/s post acquisition

(Refer to direction 16)

Unknown.

13. Substitutes

Provide information concerning the extent to which substitutes are available in the relevant market/s or are likely to be available in the market

(Refer to direction 17)

LPGs are used for various purposes including household cooking.

14. Barriers to entry

(a) Provide details of any barriers to entry and expansion in the relevant market/s
(Refer to direction 18)

None.

(b) Provide details of the ability of any firm not currently producing goods or services in the relevant market/s but which could enter the relevant market quickly and provide an effective competitive constraint

Needs to be the owner of a gasfield with rich c3/c4 content.

(c) Provide details of any firms which have recently tried and failed to enter the relevant market/s, including the reasons (if known) for their failure

Unknown.

15. Dynamic characteristics

Provide details of the dynamic characteristics of the relevant market/s, including growth, innovation and product and/or service differentiation.

(Refer to direction 19)

Unknown. Being a gas producer itself, it gives a competitive advantage to the joint venture for LPG marketing and distribution.

16. Vigorous and effective competitor

Indicate whether the merger parties in the relevant market/s would separately be considered as a vigorous and effective competitor?

(Refer to direction 20)

The joint venture will be an effective competitor for existing suppliers.

17. Vertical integration

(a) Describe whether the proposed acquisition would, or would be likely to, result in vertical integration between firms involved at different functional levels in the relevant market/s

(Refer to direction 21)

Gas production and LPG extraction.

(b) Describe the extent to which vertical integration currently exists, where either merger party currently operates as a customer or supplier to competitors in the relevant market/s: and

None.

(c) Describe whether the proposed acquisition is likely to increase the risk of coordinated behavior.

Unknown.

18. Prices and profit margins

- (a) Provide details of recent and current levels of pricing in the relevant market/s including the use of rebates and discounts

Unknown.

- (b) Provide details of supply costs of goods and services supplied by the merger parties including manufacturing, marketing and distribution costs in the relevant market/s

Unknown.

- (c) Describe the competitive constraints, if any, which would, or would be likely to, prevent the merger parties from being able to significantly and sustainably increase, the prices paid by their customers, or lower the prices paid to their suppliers, post-acquisition in the relevant market/s

Import substitution will be an effective price control mechanism. The existing supplier also control the distribution network.

- (d) Describe the impact of the acquisition on the potential for coordinated conduct between remaining competitors in the relevant market/s post-acquisition

(Refer to direction 22)

Unknown.

- (e) Describe the likely impact of the acquisition on the profit margins of the merger parties post-acquisition and the expected cause of any change

The acquisition does not lessen the competition. From 100% ownership from Twinza alone, the acquisition makes it 50:50.

19. Related markets

- (a) Describe the extent of complementarity between products supplied by the merger parties
(Refer to direction 23)

It is a joint venture and both parties share the production. Hevehe Petroleum on its own doesn't produce any. So, the matter of being complementary products does not arise.

- (b) Describe the extent to which the products identified above are, or could be, offered to customers as a product range through bundling or tying

(Refer to direction 24)

None.

- (c) Describe the competitive constraints that would, or would be likely to, prevent such bundling or tying from significantly foreclosing the ability of the merged entity's competitors to compete, including foreclosure of access to distribution by the merged entity's competitors.

Not applicable.

20. Other grounds for grant of clearance

Outline any grounds for the granting by the Commission of the clearance not already addressed above.

The proposed acquisition leads to a 50:50 joint venture instead of a 100% ownership by Twinza in the current pre-acquisition scenario. It is a first such major acquisition by a PNG entity and is a significant step forward towards this level of national content in any oil and gas project. This is good for the domestic market and for the country. Clearance is highly recommended.

21. The counterfactual

Describe the likely state of the relevant market/s in the future if the proposed acquisition does not take place, giving reasons

Not applicable.

22. International

(a) Does the acquisition involve:

(i) A company operating in PNG that has a foreign parent?

Yes. Twinza Oil is a BVI company, registered as a subsidiary of a foreign parent in PNG. However, the acquirer, Hevehe is 100% PNG-owned.

(ii) PNG businesses or consumers affected by the occurring overseas?

Not affected.

(iii) Foreign consumers affected by the conduct occurring in PNG

Not affected.

(b) Provide details of competition authorities in jurisdictions other than PNG to which the proposed acquisition has been, or is intended to be, notified and the timing of such notifications.

Not applicable.

23. Further information

Name, postal address, telephone, facsimile and email contact details of the person authorized by the applicant to provide additional information in relation to this application.

Mr Richard Aupae, General Counsel and Company Secretary, MRDC Group of Companies, 12th Floor, MRDC Haus, Port Moresby. Phone 3029600. Email raupae@mrdc.com.pg.

24. Information provided in relation to the target

Where the target has been consulted during the preparation of information provided in response to the questions contained in this form relating to the target, an authorized representative of the target must indicate here that information relating to the target is complete and accurate.

Not applicable.

25. Declaration

The undersigned declare that, to the best of their knowledge and belief, the information given in response to the questions in this form is true and correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

The undersigned are aware of section 128(4)(b) of the ICCCA Act, in that it is an offence to give information or provide an answer that is false in any particular



Signature of authorized person

MANAGING DIRECTOR & CEO

Office held

AUGUSTINE S. MANO

(Print) Name of authorized person

This 13 day of AUGUST 20 24

DIRECTIONS

1. If you are an individual making this application on behalf of a company please state the name of the company. Note that the application must only be signed by a person authorized in writing by the company to do so and relevant correspondence confirming that the individual has been authorized to sign on behalf of the company must also be attached.

If the space on this form is insufficient to provide all the information required, the information must be provided on separate sheets of paper, numbered consecutively and signed by or on behalf of the applicant.

The Commission welcomes any other additional information that the applicant deems relevant in support of the application.

2. The response should detail the ownership structure, a list of the shareholders (where applicable) and the applicant's latest annual report (if any).
3. The response should disclose details of a holding company (if any) or subsidiary/ies (if any) as defined under *Section 5 of the Companies Act of 1997*.
4. The response must disclose details of a holding company (if any) or subsidiary/ies (if any) as defined under *Section 5 of the Companies Act of 1997*.
5. The response should disclose:
 - (a) the date the contract, arrangement, understanding or proposal was or is intended to be made,

- (b) the date the public bid was advertised,
- (c) the intended date the contract, arrangement, understanding or proposal was or is intended to be concluded,
- (d) the intended date of consummation of the acquisition,
- (e) the consideration proposed to be exchanged for the acquisition.

Also provide where possible, a copy of the contract, arrangement, understanding or proposal between the Applicant and the Target.

6. The response should include background information on the industry sector/s relating to the acquisition and the role of the Applicant and Target Company in the industry sector/s related to the acquisition. The information should also include a description of goods and services supplied both locally and internationally.
7. The response should detail all the goods and services produced and/or supplied and identify areas where there is an overlap (same or similar goods and services produced and/or supplied or same area of business conducted by the applicant and target) in the production and/or supply of goods and services by the Applicant and the Target.
8. In determining whether an acquisition breaches *Section 69* of the Act, an assessment of the relevant market/s must be made. The response must detail the product, functional, geographical and time dimensions of the market/s.
 - (a) The product dimension of the market must include the identification of goods and services supplied by the Applicant and the Target Company. The next step is to identify the goods or services that may be considered substitutable or interchangeable with goods and services supplied by the applicant and target by customers – Demand side substitutability. Also identify possibilities of customers to switch to alternative suppliers given a permanent price increase and other suppliers start producing the goods and services in question or produce a substitute product – Supply side substitutability.
 - (b) The functional dimension of the market must describe the vertical stages of productions and distribution that comprises the relevant arena of competition. Consider whether products produced or sold at several levels by vertically integrated firms, or by firms at another level of distribution than the merging firms, should be included in the relevant market because the exercise of market power at one stage of distribution can be constrained by firms at an adjacent level of distribution.
 - (c) The geographic dimension of the market must identify the areas over which the Applicant and the Target Company and their competitors currently supply, the relevant products and to which the customers could practically turn. Also identifies other areas where customers could purchase these products given the merged firms raise prices.
 - (d) The time dimension of the market must address the period over which substitution possibilities must be considered.
9. The response should provide details of at least 5 suppliers and should be an even representation of suppliers ranging from small, to medium and then to large suppliers. The response should also include a description of the goods and services supplied by each of the suppliers and an estimated value of the goods and services supplied.
10. The response should include the location of each of the suppliers identified and the areas to which each of the identified entities supplies goods or services.
11. The response should provide details of at least 5 customers (if there are less, list all of them) and should be an even representation of the customers ranging from small, to medium and then to large customers and must include a description of the goods or services and the value of the goods and services purchased by these customers.
12. The response should provide details of any contracts, exclusivity rebates and discounts and identify any customers who have contracts which are about to expire within the next two years and indicate the supply volumes associated with such contracts.

13. The response should describe the market share of the suppliers or purchasers identified earlier, the market share of the Applicant and the market share of the Target Company in the relevant market/s over the last 5 years, including the total size of the domestic market. The documents relied upon to estimate the total market share sizes must be provided. The response should also include the number of buyers and sellers in the market.

Also outline the extent to which the Acquirer would be constrained in its actions by existing competitors in the relevant markets

14. The response should detail:

- (a) the ability of competitors in the relevant market/s to increase supply,
- (b) the ease with which customers could change suppliers including any switching costs that they would incur
- (c) whether goods and services produced in the relevant market/s should be considered homogeneous or whether there are variations in price or quality and whether the relevant market/s are characterized by brand loyalty.

15. The response should detail whether it is viable for customers to import substitutes. Also indicate the origin of imports and address issues including but not limited to:

- options for the transportation of imports (e.g. by air, sea or land);
- transportation costs;
- whether the product is a high or low value product;
- whether the product is of high or low density; and
- whether the product is durable for transportation without damage or deterioration in quality.

The response should also cover any barriers to importation in the relevant market/s including whether significant investment in facilities or in distribution arrangements is needed to facilitate importation.

16. The response should provide details of the price of actual or potential imports (including, additional costs such as freight and customs duties), whether existing import suppliers can accommodate a significant expansion in capacity without the need for significant investment and whether import competition would provide a constraint on companies post acquisition in the downstream market. The response should also include details of existing importers and their customers.

17. The response should cover relative capacities, cost structures and the cost of expansion in the market.

18. The response should detail –

- (a) the market conditions that may affect the ability to entry and the ability of existing firms to expand;
- (b) the nature and height of barriers to entry and expansion;
- (c) details of exit;
- (d) entry and expansion in the relevant market/s in the last 5 years;
- (e) any incentives or disincentives for new entry; and
- (f) effective competitor.

Barriers which must be addressed include, but are not limited to, the following:

- (a) Sunk costs in production capacity;
- (b) Accessing shelf space;
- (c) Advertising and promotion;
- (d) Legal and Regulatory restrictions such as licensing requirements, industry standards and capital requirements;

- (e) Requirement for scarce inputs;
- (f) the extent of Brand loyalty in the relevant market/s;
- (g) Minimum efficient scales of operation;
- (h) Goodwill;
- (i) Access to scarce resources such as intellectual property; and
- (j) Threat of retaliatory action by incumbents to new entry.

19. The response should have information including but not limited to the following –
- (a) Growth (whether the relevant market/s is/are growing or declining;
 - (b) Levels of innovation;
 - (c) Technological change (information on new technology used in production); and
 - (d) Product and/or service differentiation in the relevant market/s.
20. The response should include information of merger parties' respective historical and current pricing, quality, after sales service and purchasing behavior. The response should also include merger parties' record of innovation, its growth relative to the growth of the relevant market/s, and its history of independent behavior.
21. The response should detail -
- (a) whether the Acquirer has market power in any market which could be leveraged into a vertically related market;
 - (b) whether the target firm would have been a likely entrant to a vertically related market;
 - (c) whether the merged firm will control access to an essential input;
22. The response should detail factors conducive to coordination in a market including, but not limited to, the following –
- (a) The number of participants in the relevant market/s
 - (b) Transparency
 - (c) Homogeneity of product
 - (d) Homogeneity of firms
 - (e) The size and frequency of purchases
 - (f) The presence of the same firms in more than one market
23. The response should address the complementarity that occurs where there is significant commonality of customers' products and whether the strength of demand for one product is positively correlated with the strength of demand for another, either because the products form part of a range that distributors need to carry because they must be consumed together for technical reasons.
24. The response should detail the circumstances where two or more products are, or could be, supplied only as a bundle (pure bundling) or, if supplied individually, are also offered as a bundle as a price that is lower than the price charged if sold individually (mixed bundling). The response must also address circumstances where customers seeking to acquire one product are required also to purchase a second product or carry amounts of the second product (tying).