

7 April 2025

**By email**

Mr Paulus Ain  
Commissioner and Chief Executive Officer  
Independent Consumer & Competition Commission  
2nd Floor, Post Office Building, Nita Street,  
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National Capital District

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**Attention:** Barzillai Dominic

Manager – Mergers and Adjudication  
Competition Law Enforcement Division

Dear Sir,

## **Clearance Application - Porgera (Jersey) Limited on the Proposed Acquisition of Barrick Niugini Limited**

- 1 We act for Porgera (Jersey) Limited (**PJL**) in relation to the Form 2 Application for Clearance dated 11 March 2025 (**Form 2 Application**) with respect to the proposed acquisition by PJL of 100% of the issued shares in Barrick (Niugini) Limited (**BNL**) from its current shareholders, Barrick (PD) Australia Pty Limited (**Barrick PD**) and Gold Mountains (H.K.) International Mining Company Limited (**Gold Mountains**) (**Proposed Acquisition**).
- 2 We refer to your email of 2 April 2025 and the letter dated 31 March 2025 by the Investment Promotion Authority (**IPA**) to the Independent Consumer and Competition Commission (**ICCC**) regarding the IPA's views in relation to the Proposed Acquisition.
- 3 We note that the IPA states that "there would not be many anti-competitive effects on the PNG market." It then makes, however, a range of comments for consideration by the ICCC.
- 4 As set out in the Form 2 Application, and as the ICCC notes in its recent public notice, the Proposed Acquisition only gives effect to an *internal* share transfer and would not result in any change in the ultimate shareholding of BNL or the operatorship arrangements of the Porgera gold mine. Thus, in our view, the Proposed Acquisition would not - and indeed *could* not - have any anti-competitive effect on any market in Papua New Guinea.
- 5 The IPA's letter raises issues that, in our view, are not compelling or are irrelevant to a competition assessment and the assessment of the Form 2 Application. Our response to each of these issues follow.

***The IPA asserts that PJL should be registered and certified before State agencies deliberate on the Proposed Acquisition***

- 6 The IPA appears to suggest that PJL ought to be:
  - (a) registered as an overseas company under the *Companies Act 1997*; and

(b) certified to carry on business as a foreign enterprise under the *Investment Promotion Act 1992*,

in Papua New Guinea before the ICCC considers the Form 2 Application.

7 In our view, the registration status of PJL in Papua New Guinea is irrelevant to competition issues and the assessment of the Form 2 Application.

8 In any event, PJL does not carry-on business in Papua New Guinea within the meaning of the *Companies Act* and *Investment Promotion Act*. Holding or acquiring shares in a company in Papua New Guinea does not, in itself, constitute carrying on a business under the *Companies Act* or the *Investment Promotion Act*. Indeed, the statutes in question expressly state that a company "**shall not be regarded as carrying on business [in the country] by reason only that it...invests any of its funds or holds any real or personal property.**"<sup>1</sup>

9 Accordingly, PJL is *not* obliged to procure company registration or foreign enterprise certification under the statutes. The Proposed Acquisition would result merely in PJL holding 100% of the issued shares in BNL. In addition, PJL already holds a 49% shareholding interest in New Porgera Ltd, the owner of the Porgera gold mine, as reflected in various agreements with the State. Given that the ownership of shares alone does not constitute carrying on business in Papua New Guinea under the *Companies Act* or the *Investment Promotion Act*, PJL is not required to become registered or obtain foreign enterprise certification.

***The IPA claims that the Proposed Acquisition could reduce competition within the mining sector, leading to fewer choices for buyers and suppliers, potentially resulting in driving up costs and limiting market diversity***

10 In our view, the IPA's comments regarding potential reduction in competition within the mining sector and the potential impact on buyers, suppliers and market diversity, lack any basis or merit.

11 We refer to the Form 2 Application and the corporate structure diagram (in Attachment 1) and our response to section 3 therein.

12 BNL, the operator of the Porgera gold mine, is owned by indirect subsidiaries of Barrick Gold Corporation (**Barrick**) and Zijin Mining Group Co. Ltd (**Zijin**).

13 PJL, the applicant and shareholder of New Porgera Limited, is also owned by Barrick and (a subsidiary of) Zijin. The overall effect of the sale is that BNL will become a wholly owned subsidiary of PJL, while continuing to be indirectly owned by Barrick and (a subsidiary of) Zijin. The Proposed Acquisition only gives effect to an internal share transfer (with Barrick and Zijin being the ultimate 50/50 owners of BNL both before and after the transfer).

14 The Proposed Acquisition will not result in any change to:

- the ultimate ownership of BNL;
- the shareholding of New Porgera Limited (the owner of the Porgera gold mine); or
- the operatorship arrangements between New Porgera Limited and BNL.

15 Therefore, for the reasons outlined above and in the Form 2 Application, we submit that the Proposed Acquisition will not have any effect on buyers or suppliers of goods or services with respect to the Porgera gold mine, nor on the

<sup>1</sup> Companies Act, section 382; Investment Promotion Act, section 3.

cost of those goods or services or market diversity in a market in Papua New Guinea.

16 We submit that the IPA does not offer any compelling arguments to the contrary, and, thus, the statements ought to be rejected by the ICCC.

***The IPA claims that the Proposed Acquisition might affect market power, reducing competition in the sector and new and small players may face challenges entering the market***

17 In our view, for the reasons set out in paragraphs 11 to 15 above, the IPA's comments lack any basis or merit.

18 The Proposed Acquisition only gives effect to an *internal* share transfer and would not affect competition in a market in Papua New Guinea or result in any concentration event. Therefore, the Proposed Acquisition would not have any effect on market power, nor barriers of entry, by other players in the mining industry generally.

19 Accordingly, we submit that the IPA's comments ought to be rejected by the ICCC.

***The IPA claims that the ultimate shareholding (status-quo) for both Barrick and Zijin from the Proposed Acquisition may have anti-competitive market effects in the mining sector, especially in Porgera.***

20 In our view, for the reasons set out in paragraphs 11 to 15 above, the IPA's comments lack any basis or merit.

21 The Proposed Acquisition only gives effect to an internal share transfer and would not affect competition in a market in Papua New Guinea. There is not aggregation of market power as result of the Proposed Acquisition.

22 Accordingly, we submit that the IPA's comments ought to be rejected by the ICCC.

***The IPA claims that the Proposed Acquisition may raise regulatory scrutiny relating to the existing concerns about social and environmental impacts relating to mining operations.***

23 In our view, the comments by the IPA regarding the social and environmental impacts of the Porgera gold mine are irrelevant to competition issues relevant to a clearance application which, unlike the test for authorisation, does not involve any public interest considerations.

24 We therefore submit that the IPA's comments ought to be rejected by the ICCC.

25 In any event, our client and its affiliates, including BNL and New Porgera Limited, are committed to complying with applicable laws with respect to the operation of the Porgera gold mine. More relevantly, the Proposed Acquisition is, again, beside the point, as it changes nothing in terms of the application and scope of any such obligations or the identity of the entities that are obligated to comply with them.

***The Government's commitment to address ongoing legacy and law and order issues including landowner interests.***

26 In our view, the comments by the IPA as regards legacy and law and order issues are irrelevant to competition issues and the assessment of the Form 2 Application.

27 Therefore, we submit that the IPA's comments ought to be rejected by the ICCC.

28 Again, for completeness, our client and its affiliates, including BNL and New Porgera Limited, are committed to complying with applicable law with respect to the operation of the Porgera gold mine.

***Potential adverse effects of transfer pricing***

29 In our view, for the reasons set out in paragraphs 11 to 15 above, the IPA's comments about transfer pricing lack any basis or merit.

30 Given that the Proposed Acquisition only gives effect to an internal share transfer, it would not have any impact on transfer pricing in the relevant market. Further, the acquisition of the shares in BNL was funded outside of PNG between PJL and Barrick and Zijin affiliates, so there are no PNG transfer pricing considerations.

31 Therefore, we submit that the IPA's comments ought to be rejected by the ICCC.

***The Proposed Acquisition is deemed as an internal corporate restructuring whereby there will be a shift in ownership of BNL from Australian incorporated entity Barrick PD and Gold Mountains to a vague ownership structure with PJL, which is a foreign company incorporated in Jersey.***

32 In our view, the IPA's comments that the corporate structure to be effected by the Proposed Acquisition would be "vague" - the meaning of which is unclear - is incorrect and are irrelevant to competition issues and the assessment of the Form 2 Application.

33 We refer to section 1(c) and Attachment 1 of the Form 2 Application. As clearly shown in the corporate structure diagrams provided to the ICCC, the Proposed Acquisition only gives effect to an internal share transfer, such that Barrick and Zijin will continue to be the ultimate 50/50 owners of BNL after the Proposed Acquisition.

34 In any event, both Barrick PD and Gold Mountains are themselves foreign entities, and PJL—which is duly incorporated in Jersey, a British Crown Dependency—is a direct shareholder in the Porgera Gold Mine (as reflected in the project's foundational agreements). It is therefore unclear what concern the IPA is seeking to raise in relation to PJL's foreign status or the transparency of the proposed structure.

35 Therefore, we submit that the IPA's comments ought to be rejected by the ICCC.

***Papua New Guinea does not have an international investment treaty with France, there may be potential market competition repercussions in the future relating to the obligations under the PNG's existing treaties concerning: (i) fair and equitable treatment; (ii) non-discrimination (national treatment); (iii) expropriation; (iv) transfer of funds; (v) dispute settlement, etc.***

36 In our view, the IPA's comments are irrelevant to competition issues and the assessment of the Form 2 Application.

37 It is difficult to see how bilateral arrangements between Papua New Guinea and France - or any other country - give rise to competition issues in this context or otherwise. Neither BNL, a Papua New Guinea company, nor PJL, a company incorporated in Jersey, has any connection whatsoever to France or any treaty entered into by France and the Independent State of Papua New Guinea. For the avoidance of doubt, Jersey is not part of France.

38 Therefore, we submit that the IPA's comments ought to be rejected by the ICCC.

Yours faithfully

**Corrs Chambers Westgarth**

A handwritten signature in black ink, appearing to read "Corrs Chambers Westgarth".