



INDEPENDENT CONSUMER &
COMPETITION COMMISSION

Papua New Guinea's
Consumer &
Competition
Watchdog

DISCUSSION PAPER NO: 02

**PROPOSED AMENDMENT TO THE
*INDEPENDENT CONSUMER AND COMPETITION COMMISSION (FEES)
REGULATION 2003***

1. INTRODUCTION

The Independent Consumer and Competition Commission (“**ICCC**”) is proposing to increase the filing fees for Clearance and Authorization applications. The ICCC is therefore releasing this Discussion Paper to seek views and comments from the business community, Government agencies, interested stakeholders and the general public on its proposal to amend the relevant regulation from which it obtains its legal mandate to impose certain fees for the adjudication work it performs (“**Proposed Amendment**”).

As some may note, this is a revised Discussion Paper from an earlier consultation on the same matter. This is because the ICCC did not receive sufficient comments on the initial consultation. The ICCC initiated the discussions in April, 2021; and sought comments from sixty-three (63) stakeholders, including the general public; but it only received seven (7) written submissions, mostly from State agencies. At that time, in-person consultation with stakeholders was not possible due to the Covid-19 restrictions.

Since then, the ICCC has reconsidered its earlier proposal and made some key changes. One such change made is that the ICCC is not including Fees for Variation Request in this Discussion Paper. This was as a result of the feedback from the Office of State Solicitor (on the earlier Discussion Paper) that the Fees collection should be supported by law under the *Independent Consumer and Competition Commission Act 2002* (“**ICCC Act**”). Another key change is the revision to propose a value higher than what was proposed in the earlier Discussion Paper. This new proposal also includes a fees model which include **flat and tiered model**. The reasons for these changes have been explained in the latter parts of this Discussion Paper

Because of the above key changes which the ICCC is considering adopting, the ICCC is undertaking this second round of public consultation with the aim to receive sufficient feedback from the relevant stakeholders, especially from the private sector, and the general public.

It is important to note at the outset that the intention of this Discussion Paper is to gather stakeholder views in order to provide advice to the Minister about whether the Proposed Amendment should proceed; and if so, how the relevant regulation should be changed.

2. ADJUDICATION

As part of its competition mandate, the ICCC is required to adjudicate on potentially anti-competitive business conduct that is subject of an application and make a ruling (to approve or disapprove). This mandate is provided under sections 70, 81 and 82. If approved, the applicant can engage in the potentially anti-competitive conduct. The relevant adjudication process is initiated through an application from a business entity who may propose to engage in that otherwise anti-competitive conduct. The adjudication process only applies to potentially anti-competitive agreements.

Sections 50, 51, 52, 59, 60 and 69, under the ICCC Act prohibit certain business agreements that are considered harmful to competitive markets; and ultimately detrimental to consumers and other businesses. The provisions here relate to any form of anti-competitive agreements, anti-competitive covenants, exclusive provision (or primary boycott), resale price maintenance, and business mergers and acquisitions. However, these prohibitions are not absolute. As noted earlier above, through the relevant adjudication processes provided under sections 70, 81 and 82, businesses can seek immunity.

Section 70 of the ICCC Act allows for businesses to seek approval for anti-competitive agreements that are not relating to business mergers and acquisitions. This is referred to as

Authorization for Agreements. Sections 81 and 82 provide for businesses seeking immunity to complete a business merger or acquisition that may otherwise raise competition concerns and or meets either of the mandatory notification thresholds. Section 81 provides for Clearance while Section 82 stipulates the Authorization process.

2.1. Adjudication processes and work involved

As you may note above, there are two adjudication processes under the ICCC Act – Clearance and Authorization. Clearance applies only to business mergers and acquisitions while Authorization is for both anti-competitive agreements and business mergers/acquisitions.

The ICCC Act also requires that applications for Clearance and Authorization be conducted in a transparent and consultative manner. Regardless of the types of application (whether it be Clearance or Authorization), the ICCC takes the following steps in processing an application.

- (i) **Application receipt, screening and registration** – staff ensure the application has been filed using the correct form, all necessary parts of the form have been correctly filled, and the application fee has been paid.
- (ii) **Seeking initial stakeholders' comments through public consultation** – here the ICCC writes to relevant key stakeholders inviting views, comments and submissions. It also publishes public notices in the daily newspapers calling for comments and submission.
- (iii) **Staff assessment of the application based on all available information** (as submitted by the applicant and stakeholders) – staff and consultant analyze all relevant information and assess the competition and public benefit issues. For complex cases, economic analysis is always extensive to ensure issues are thoroughly dealt with to have sound reasoning for the decision. Furthermore, since the merger applications are required to be determined within a statutory timeline (which Clearance application is 20 days; and Authorization application is 72 days), the staff of the ICCC usually work extra hours to deliver the determination.
- (iv) **Issuing of draft determination for further comments on the ICCC's consideration of issues through second public consultation** – this gives the opportunity to the applicant and stakeholders to review the ICCC's assessment of the issues raised in the application and initial consultation. This is optional for application for Clearance or Authorization for business mergers/acquisitions. The ICCC seeks the applicant's views if they would like to go through this process.
- (v) **A pre-decision conference to give opportunity for oral submissions/comments** – this is part of the above step. The applicant is invited to defend its application in front of the ICCC and other stakeholders. Other stakeholders are also given opportunity to express their views and comment on the ICCC's draft decision.
- (vi) **All comments are assessed and considered to decide on the application** – here staff and consultant take into consideration all comments and draft a final determination for Commissioners to review and make a decision. More economic analysis may be required here based on additional information made available during the public consultation on the draft determination.

- (vii) **Decision released to the applicant and announced to public** – the determination is released to the applicant while other stakeholders are advised of the outcome of the application. The decision is also announced publicly to keep the market informed.

3. LEGAL BASIS FOR COLLECTION OF FEES

The ICCC Act provides for the applicants to pay application fees before the ICCC proceeds to assess their applications. This is provided under Section 76(1)(c) of the ICCC Act; and its states as follows -

“If a form has been prescribed for this purpose, an application for an authorization under Section 70 shall—

- (a) be made in the prescribed form; and*
- (b) contain such particulars as may be specified in the form; and*
- (c) be accompanied by the **prescribed** application fee, if any.”*

For applications for Clearance and Authorization under Sections 81 and 82, the ICCC Act provides that it should follow the above process, which include the payment of fees:

Section 81(2) *“Section 76(1), Subsection (2)(a) and (b), Subsections (4) and (5) apply in respect of every notice given under Subsection (1) as if the notice were an application under Section 70.”*

Section 82(2) *“Section 76(1), Subsection (2)(a) and (b), Subsections (4) and (5) apply in respect of every notice given under Subsection (1) as if the notice were an application under Section 70.”*

The amount of fees to be collected for respective applications are “prescribed” in the Statutory Instrument No. 4 of 2003 – the *Independent Consumer and Competition Commission (Fees) Regulation 2003* (“**ICCC Fees Regulation**”). A screen-print extract of the current fees schedule of the ICCC Fees Regulation is reproduced as Table 1 below.

Table 1: Current Schedule of Fees under the ICCC Fees Regulation

SCHEDULE. – FEES.	
Column 1	Column 2
The fee for an application under Section 70 for authorisation of restrictive trade practices under Section 50, 51, 52, 53, 59 or 60 are:- (a) where the applicant is a registered company or statutory authority (b) where the applicant is a natural person or a partnership	K5,000.00 K1,000.00
The fee for an application under Section 81 for a clearance of an acquisition of a business	K20,000.00
The fee for an application under Section 82 of the Act for the Authorisation of a business acquisition under Section 69	K35,000.00
Miscellaneous fees for – (a) the supply of a photocopy of any material from the ICCC registry in – (i) hard copy (ii) Email. (b) for post by mail of documents by ICCC at the request of the addressee of the document	K2.00 per page K10.00 per document K5.00 per item

As shown in Table 1, the application fee for a Section 70 Authorization application (for anti-competitive agreements) is currently set at K5,000.00. For a Clearance application under Section 81 of the ICCC Act, the application fee is K20,000.00; and K35,000.00 for Section 82 Authorization application (for business mergers/acquisitions).

As per the above table, besides the application fees, there is a provision for 'Miscellaneous' fees. The ICCC Fees Regulation also gives power to the ICCC to waive fees under certain circumstances.

4. REASONS FOR IMPOSING APPLICATION FEES

The ICCC appreciates that mergers and acquisitions, and some anti-competitive agreements, can result in driving efficiencies and more beneficial to certain segment of the society and the economy. However, there are huge cost involve in processing such matters when they are brought to the ICCC through the respective application processes.

The ICCC also understands that any fee increase is a direct increase in cost to the applicant. However, such fees are imposed for various genuine reasons. Below are some reasons accepted by the ICCC (and so by similar agencies like the ICCC in other jurisdictions):

- (i) **Cost recovery** – Reviewing applications under the respective adjudication process require significant resources as extensive analysis is involved; and in complex matters, economic and legal experts are involved to ensure thorough assessments are carried out without so much burden on public resources.
- (ii) **Deterrent against frivolous applications** – Such fees also act as deterrent to prevent businesses from unnecessarily lodging speculative applications, where in such cases, the ICCC's efforts and resources would be wasted, if parties decide not to give effect to the agreement that is the subject of the application. Imposing fees ensures that only serious proposals submit their applications. There have been several applications that the ICCC processed and approved but were not effected while there were few others withdrawn along the way.
- (iii) **Accountability** – By requiring fees, it makes sure businesses only bring forward the matters with potential efficiency and public benefits. It also ensures businesses calculate their competitive implications (as if there is less change of being approved, one should not take the risk of incurring unnecessary costs in applying).
- (iv) **Fairness** – Overtime the parties to the application, especially the applicants, benefit from the process (when approvals are given) rather than a larger portion of the society. Therefore, the costs of assessing an application should be directly borne by the parties/applicants rather than being directly funded by taxpayers.

1. What do you think about the reasons for imposing the application fees?

2. What could be some other reasons besides the above?

5. HIGH COST FOR PROCESSING AN APPLICATION

Whilst the ICCC understands that any fee increase is a direct increase in cost to the concerned business, the ICCC has considered that the increase should be mainly targeted to recover the costs that it incurs in processing Clearance and Authorization applications. As mentioned above,

the parties to the application benefit directly from an approved application; and not the tax payers. It is therefore, logical that the applicants meet the cost of processing an application.

The current fees have been in existence for more than 20 years; and costs of processing an application has increased since. As shown in Table 1 to Table 4 of **Annexure B**, the costs incurred for processing an Authorization application by the ICCC have significantly increased over time. Similarly, Table 2 to Table 4 of **Annexure D** show that average costs incurred for processing Clearance applications are more than the current application fee of K20,000.00.

Furthermore, as you will note under Table 5 of **Annexure D**, consultants or advisors are occasionally engaged to assist the ICCC staff, especially when the issues raised in an application regarding markets, competition and public benefits, are complex and technical in nature. Besides, due to strict statutory deadlines, especially for business mergers and acquisition applications, the ICCC staff work extra time to expedite the assessments so that the ICCC meets its statutory deadlines. Therefore, relevant eligible staff are compensated for overtime work and supported for refreshments and transportation for working late.

Another significant cost item is public consultation. Since the adjudication process is a public process, significant costs are incurred for publication of public notices in the daily newspapers; and hosting Pre-decision Conference on a draft determination. This is important to get feedback from public and relevant key stakeholders who may have an interest in the application.

It is arguable that the ICCC receives Government's appropriation annually. However, the funding under "Goods and Services" is spread across all areas of the ICCC's work. Besides, as explained above, the applicant benefits from the approval of an application (and not a greater portion of the society); hence the application fees should be solely borne by the applicant.

For similar adjudication work that the Australian Competition and Consumer Commission ("ACCC") and New Zealand Commerce Commission ("NZCC") do, their fees are equivalent to more than K50,000.00. Respectively, the merger authorization application fees are AUD 25,000.00 (equivalent to more than K68,00.00) and NZD 36,800.00 (equivalent to more than K92,000.00)¹. The ACCC is currently reviewing its fees to substantially increase them to between AUD50,000.00 to AUD1.9 million, depending on the complexity of the transaction in question². The Competition Bureau of Canada has a mandatory notification regime and its current filing fees is C\$88,690.45 (equivalent to K266,018.14) which is adjusted annually to take into consideration of Consumer Price Index ("CPI").

3. *What is your view on the suggestion for the application fees to be borne by the applicant?*

4. *Do you have any views on the reasons provided above?*

6. THE PROPOSED FEES INCREASE

As discussed under Section 4, the proposed fees increase here are to recover the costs of processing an application, to deter frivolous applications, to ensure accountability and fairness, and it takes into consideration the ever-increasing costs of processing an application. The fees

¹ <https://www.accc.gov.au/business/mergers/merger-authorisations>; and <https://comcom.govt.nz/business/merging-or-acquiring-a-company/authorising-anti-competitive-transactions-that-will-likely-benefit-new-zealand>

² [Private Equity in Australia: Upcoming Mandatory Merger Laws and Foreign Investment Changes | HUB | K&L Gates](#)

proposed here also takes into consideration any miscellaneous costs involved and any future cost increases after this (proposed) amendment.

It is also important to discuss here that, with the change of merger notification regimes coming into effect in 2019, the volume of application has significantly increased. There have been more notifications of proposed acquisitions to the ICCC compared to when it was voluntary (prior to 2019). When it was voluntary from 2002 to 2018 (which was a 15-year period), the ICCC received and assessed about 20 Clearance and 6 Authorisation applications. In contrast, when the ICCC Act was amended to mandatory notification in 2019 (which is 7 years in existence), the ICCC so far received and assessed a total of 46 applications. This is 36 Clearance and 10 Authorisation applications. This clearly indicates significant increase in workload for staff in the area of adjudication now than it was during the voluntary regime period. On top of this, the ICCC is required by law to give a decision on a Clearance application within 20 days from the date of registration of the application.

6.1. Proposed Authorization Application Fee for Agreements under Section 70

As per the discussions and tables under **Annexures A and B**, the current fees for processing Section 70 Authorization applications is K5,000.00 which is quite low compared to the current total cost of processing one. Based on the costs outlined under Table 4 of **Annexure B**, the average cost of processing an authorisation application is over K36,000.00. While the average cost is K36,000.00, one of the three applications costed the ICCC over K39,000.00; and the other costed over K38,000.00. These applications were processed few years back. Costs of doing business has increased and will continue to do so under the current circumstances. It should also be appreciated that the ICCC undertakes both likely substantial lessening of competition assessments and Public Benefit Claims assessments. There are two rounds of intense public consultation required for this process – when initiating the Authorization process and when issuing the draft determination. Pre-decision conference may also be called on the draft determination. **Therefore, the ICCC proposes a new Fee of K150,000.00 for authorisation application for anti-competitive agreements.** Such fees would deter any unnecessary and unscrupulous anti-competitive agreements while also ensuring the ICCC fully recovers its costs and issues are properly assessed before decisions are made.

For individuals and partnerships, while the current fee is K1,000.00, the ICCC proposes that this be left to the ICCC to use its discretion based on circumstances of the applicant. This is because the above proposed fee for corporations is much higher than the current fee; and that the ICCC rarely deals with applications of such nature.

5. What are your views on the above proposals for new fees for authorization application?

6.2. Proposed Fees Increase for Business Mergers and Acquisitions

The Fees Model proposed in the table below to be applied for applications for Clearance and Authorization under sections 81 and 82. The ICCC notes that it deals with simple matters to more complex ones. They are categorised into different phases as indicated in the table below. Phase 1 transactions are any transactions that do not raise any competition concerns or do not go through the Authorisation phase. More complex applications that fall under Phases 2 and 3 would mostly require expert analysis into various likely competition effect and public benefit claims made by the applicants. The ICCC therefore proposes to split fees under Phase 2 into tiers based on transaction value. The ICCC believes the proposal here is fair on all parties as it is mainly driven by complexity of the matter and transaction values.

Table 2: Proposed application fees for Clearance and Authorization applications

Phase	Transaction Value	Fees
Phase 1: Simple transaction that do not need competition impact assessment.	Above K50 million	K50,000.00. <i>(Fixed regardless of transaction value.)</i>
Phase 2: Complex transactions needing adverse competition effects assessment	Below K100 million	K100,000.00
	K100 million =< K500 million:	K150,000.00
	Above K500 million:	K250,000.00
Phase 3: Complex transactions (Competition assessment and) Public benefits Consideration		K100,000.00 <i>(This will only be paid if the applicant requests public benefit assessment and consideration).</i>

The above model is what the ACCC is proposing to adopt³. The three phases above are supported under sections 81 and 82 of the ICCA Act. They are explained below.

6.2.1. Proposed Fees for Clearance Application

The Clearance process is provided for under section 81 of the ICCA Act. This is basically Phase 1. It is mandatory that any transactions with the purchase price of K50 million or more must notify the ICCA by applying for Clearance. As per the discussions and tables under **Annexures C and D**, the estimated cost of assessing an application under the full Clearance process is over K30,000.00 which is more than the current Clearance fee of K20,000.00 as currently prescribed in the ICCA Fees Regulation. **Given the current fee is more than 20 years old and the costs of processing an application has been increasing every year, the ICCA proposes to increase the current Clearance application fee. The ICCA proposes to adopt flat fee for applications processed under Phase 1. The ICCA therefore proposes K50,000.00.**

6.2.2. Proposed Authorization Application Fee for Business Acquisitions

This process is provided for under section 82 of the ICCA Act. This is only triggered after a Clearance application has been considered and a Direction notice has been issued to the applicant for filing of an Authorization application. Here, Phase 2 and 3 assessments take place. The ICCA may give a decision (to approve) in Phase 2; or proceed to Phase 3 for public benefit claims consideration. The ICCA gives Direction notice in Phase 1 if it reasonably believes the proposed acquisition needed to go through Phase 2. The reasons for giving Direction are mostly relating to likelihood of the acquisition having anti-competitive effects in a relevant market.

You will have noted that only Authorization (or Phase 2) assessment have been proposed for tiered fees based on transactions that fall within certain transaction value, as shown in the above table. This is because such transactions involve complex competition and public benefit arguments usually requires critical assessment and scrutiny. The transaction value determines the authorization fee an applicant supposed to pay as per Table 2 above. Fees for transactions with purchase price of above K500 million, the maximum fee is proposed to be capped at K250,000.00.

³ [Merger tariffs? The final filing fees and notification thresholds for the new merger regime](#)

6.2.3. Different Phases explained

Case 1: Newmont Corporation acquisition of Newcrest Mining Ltd (2023)

Newmont Corporation ("**Newmont**"), who had no mining operations or any related business interests in PNG (prior to this acquisition) applied to the ICCC for Clearance for its proposal to acquire Newcrest Mining Ltd ("**Newcrest**"). The value of the transaction was about K68 billion.

Since Newmont was only replacing Newcrest, the ICCC noted that the acquisition would not have any adverse competition effects in any markets in PNG. The decision was given in Phase 1.

In such cases, with this proposed amendment, regardless of transaction value, the applicant would pay only K50,000.00.

Case 2: Geogas Pacific acquisition of Origin Energy PNG Limited (2023)

Geogas Pacific, who was supplying LPG, to a PNG-based customer, was proposing to acquire PNG based LPG importer and supplier, Origin Energy PNG Ltd.

The ICCC went through all three phases for this matter. In Phase 1, the ICCC noted that the acquisition would create vertical integration concerns on the import and supply of LPG. The ICCC directed Geogas Pacific to apply for Authorization. Upon receipt of the Authorization application, the ICCC assessed both the likely adverse competition impact (Phase 2) and Public Benefit Claims (Phase 3).

In this proposed amendment, for such cases, the applicant would pay either K100,000.00, K150,000.00, or K250,000.00, depending on the transaction value. A further K100,000.00 would be paid for public benefit assessments.

All applications must pass through Phase 1. Therefore, depending on the value of the transaction, the maximum total fee an applicant can pay if the proposed acquisition goes through all three phases is $K50,000.00 + K250,000.00 + K100,000.00 = \mathbf{K400,000.00}$. From past experience, the ICCC only receives one or two applications that go through Phases 2 and 3 in a year; or not at all. Therefore, the ICCC strongly believes that not many applications would go through Phases 2 and 3. The ICCC also believes such fees structure would ensure only genuine transactions come through. It also protects markets from getting highly concentrated.

7. What are your views on the proposed filing fee system above?

8. What are your views on the proposal for the new fee for Clearance application?

9. What are your views on the proposal for the new fee for Authorization application?

6.3. Repeal of Miscellaneous Fees

The ICCC also has powers under the ICCC Fees Regulation to collect Miscellaneous Fees. However, the ICCC has never charged this fee since the ICCC Fees Regulation came into effect. This has been largely due to the ICCC also having the power to waive the fees under certain circumstances.

As part of the proposed amendment, the ICCC proposes to repeal the Miscellaneous Fees. This is because the new fees proposed would now cover the administration costs, including the list provided under "Miscellaneous Fees".

10. What are your views on the proposal to repeal the Miscellaneous Fees?

7. SUMMARY NOTES

1. All stakeholder views will be collated and advice will be provided to the Minister about whether the Proposed Amendment should proceed; and if so, how the regulation should be changed with respect to fees.
2. Current workload in adjudication has significantly increased with the introduction of mandatory merger notification.
3. The current fees are more than 20 years old (without any CPI adjustments).
4. It is proposed for a flat fee of K50,000.00 for Clearance application.
5. There are different fees for transactions going through Phases 2, depending on the value of transaction.
6. There is additional fee for consideration of Public Benefit Claims. This is Phase 3.
7. Section 70 Authorization application for agreements are set flat at K150,000.00 as it involves both likely competition effects assessment and public benefit claims assessment.
8. Fees are paid to cover the review; not the outcome. That is, application fees are not paid for approval.
9. Because substantial fees/costs involve in the application for Clearance and Authorization, parties are encouraged to have informal consultation with the ICCC before filing an application.
10. The ICCC anticipates only genuine proposals will be brought to its attention.
11. It is proposed that for withdrawn applications, 50% of the fees would be refunded; or 80% if withdrawn at the request of the ICCC (after some work has been progressed).
12. If you look closely, you would appreciate that only mergers and acquisitions to be processed under Authorization would attract a fee greater than K50,000.00.
13. It is proposed that Miscellaneous Fees be repealed.

8. REQUEST FOR STAKEHOLDERS' COMMENTS AND SUBMISSIONS

The ICCC is now releasing this revised Discussion Paper to seek further stakeholders' comments and submissions to the proposed increases to the application fees for Clearance and Authorization; and the repeal of Miscellaneous Fees, under the ICCC Fees Regulation.

All comments and submissions are due to the ICCC by **4:00 p.m., on Friday 29th August 2025.**

All written comments must be addressed to **Mr. Paulus Ain, Commissioner and Chief Executive Officer** on the address below.

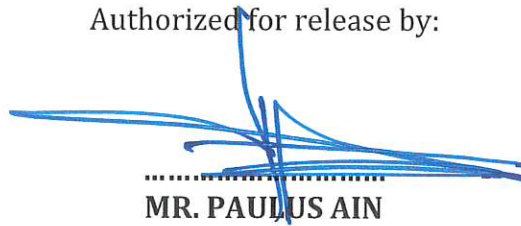
9. CONFIDENTIALITY

Please note that all submissions and comments received will be treated as public information, except where information is designated "confidential" by the person submitting. Where information is designated "confidential", the person claiming confidentiality must provide reason(s) as to why that particular information should not be disclosed to the public. If there is need for disclosure of the information on public interest grounds, the ICCC will assess the request for confidentiality pursuant to Section 131 of the ICCC Act by seeking consent from the concerned person(s).

10. CONTACT

All queries relating to this matter should be directed to **Mr. Steven Sugl**, Executive Manager for Competition Law Enforcement Division on telephone 312 4600 or e-mail: ssugl@iccc.gov.pg.

Authorized for release by:



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ANNEXURE A: COSTS INVOLVED IN PROCESSING AN AUTHORIZATION APPLICATION

As discussed under Section 2 of the Discussion Paper, an application for Authorization is provided for under Sections 70 and 82 of the ICCC Act. It is a statutory process for seeking immunity to engage in a business conduct that would otherwise raise serious competition concerns for the ICCC. The relevant potentially anti-competitive conduct that can be authorized are any form of agreements that may restrict competition, and business mergers or acquisition that may substantially lessen competition.

Table 1 to Table 3 of **Annexure B** are three (3) examples outlining the costs incurred in the assessment of recent applications for Authorization under Section 70. Whilst Table 1 of **Annexure D** was a Section 82 application (which the current fee is K35,000.00), the inclusion of this in the discussions here is to demonstrate how much it can cost to host a pre-decision conference⁴. Table 1 to Table 3 of **Annexure B** do not have cost indications for 'pre-decision conference' as one was not called for those applications. However, if we add K7,400.00 (from Table 1 of Annexure D) to each of those three (3) Section 70 applications (Table 1 to Table 3 of Annexure B), the likely total costs would be K39,460.20, K32,498.00 and K 38,135.00, respectively. On average, it would cost the ICCC over K36,000.00 to assess an application for authorisation under Section 70 (whilst the current application fee is only K5,000.00). All these costs' assessments are outlined in Table 4 of **Annexure B**.

It is important to note that, regardless of whether it is a Section 70 or 82 application, the same adjudication process is employed to assess each application; hence the processing costs are also around the same. However, for merger notifications, as transaction value increases and more complex competition issues arise and public benefit claims needed to be tested and analysed, more resources and specialized expertise are often needed. Hence a tiered fee system based on transaction value has been proposed; and is considered fair.

⁴ The process of calling and hosting a conference for both sections 70 and 82 authorization applications are similar.

ANNEXURE B: COSTS INVOLVED IN SECTION 70 AUTHORIZATION APPLICATION**Table 1: Cathay Pacific Airways and Air Niugini Codeshare Authorisation Application-2020**

Key activities	Major tasks	Cost item	Estimated cost
Public consultation	Publication of notice for 2-3 days in the two major dailies	Public notice advert costs	K14,060.20
	Pre-decision conference on the draft determination	<i>Not requested</i>	
Assessment of the application	Assistance from consultants/advisors	Consultancy cost	K13,000.00
Administration costs	Letters and attachments of copies of the application, or draft determination, or determination to stakeholders by post and hand delivery; assist staff transportation due to overtime work.	Printing, internet usage, logistics, etc.	K5,000.00
TOTAL			K32,060.20

Table 2: Philippines Airlines and Air Niugini Codeshare Authorisation Application-2019

Key activities	Major tasks	Cost item	Estimated cost
Public consultation	Publication of notice for 2-3 days in the two major dailies	Public notice advert costs	K7,098.00
	Pre-decision conference on the draft determination	<i>Not requested</i>	
Assessment of the application	Assistance from consultants/advisors	Consultancy cost	K13,000.00
Administration costs	Letters and attachments of copies of the application, or draft determination, or determination to stakeholders by post and hand delivery; assist staff transportation due to overtime work.	Printing, internet usage, logistics, etc.	K5,000.00
TOTAL			K25,098.00

Table 3: Puma Energy Authorization Application for Lease Agreement with National Airports Corporation -2016

Key activities	Major tasks	Cost item	Estimated cost
Public consultation	Publication of notice for 2-3 days in the two major dailies	Public notice advert costs	K10,000.00
	Pre-decision conference on the draft determination	Conference venue hire (including refreshments)	K5,735.00
Assessment of the application	Assistance from consultants/advisors	Consultancy cost	K10,000.00
Administration costs	Letters and attachments of copies of the application, or draft determination, or determination to stakeholders by post and hand delivery; assist staff transportation due to overtime work.	Printing, internet usage, logistics, etc.	K5,000.00
TOTAL			K30,735.00

Table 4: Summary of Total costs involved in processing Section 70 Authorisation Applications including the costs for a Pre-Decision Conference⁵

Details of Application	Sub-Total Costs	Cost for Pre-Decision Conference	Estimated Total Costs
Cathay Pacific Airways Ltd and Air Niugini Ltd Codeshare Authorisation Application-2020 ⁶	K32,060.20	K7,400.00	K39,460.20
Philippines Airlines and Air Niugini Ltd Codeshare Authorisation Application-2019 ⁷	K25,098.00	K7,400.00	K32,498.00
Puma Energy Ltd Authorization Application to Enter into an Agreement with National Airports Corporation to Lease a Portion of Land at Jacksons International Airport-2016 ⁸	K30,735.00	K7,400.00	K38,135.00
Average of Estimated Total Costs ((K39,460.20+K32,498.00+K38,135.00)/3)			K36,697.73

⁵ The costs are similar to the cost incurred in assessing a Section 82 Authorisation application

⁶ Extracted from Table 1 of Annexure B

⁷ Extracted from Table 2 of Annexure B

⁸ Extracted from Table 3 of Annexure B

ANNEXURE C: COSTS INVOLVED IN PROCESSING A CLEARANCE APPLICATION

Section 81 of the ICCC Act requires that a person who proposes to acquire assets of a business or shares shall seek Clearance from the ICCC if the proposed business merger or acquisition meets either of the mandatory notification thresholds⁹. The ICCC can approve or clear a notified proposed acquisition if it determines that a proposed acquisition would not, or would not be likely to result in the substantial lessening of competition in the market. A Clearance is however denied if the ICCC determines that a proposed acquisition would, or would be likely to substantially lessen competition in the market. Similar to the Authorisation process, Clearance is a statutory process and is conducted in a transparent and public manner where public consultations are always conducted. The consultation process is the same as outlined under the Authorisation process.

Since the enactment of the ICCC Act in 2002 until 2018, Clearance notification was voluntary where businesses who propose to acquire shares or assets of another business can decide whether or not to apply for Clearance to the ICCC. The notification regime was then changed to mandatory in 2018 where businesses that engage in a business acquisition that meets any of the notification thresholds are required to seek Clearance from the ICCC. The change of regimes from voluntary to mandatory is primarily to prevent bigger acquisitions that would have greater negative impact on competition from being completed without the scrutiny of the ICCC. From experience, when notification was voluntary, there were certain acquisitions that were consummated without being notified which had negative impacts on competition and the ICCC was unable to successfully investigate them for mitigation purposes due to resource constraints among other challenges. With the amendments to a mandatory regime, bigger and potential anti-competitive acquisitions are always been scrutinised by the ICCC through the Clearance and Authorisation processes.

The change of notification regimes has seen more proposed acquisitions being notified to the ICCC compared to when it was voluntary. When it was voluntary from 2002 to 2018 which was a 15-year period, the ICCC received and assessed about 20 Clearance and 6 Authorisation applications. In contrast, when the amendment to a mandatory notification regime came to effect in 2019 which is a 7-year period to this year, 2025, the ICCC received and assessed about 36 Clearance and 10 Authorisation applications. Hence, generally in terms of applications received and assessed, in just 7 years after the law was changed for notifications to be mandatory, 46 applications were dealt with as opposed to 26 applications for 15-year voluntary regime period. This clearly indicates significant increase in workload for staff in the area of adjudication now than it was during the voluntary regime period. The cost calculations in Table 1 to Table 5 of **Annexure D** do not include the workload of staff.

The cost incurred in assessing applications in one year has also increased due to the increased number of cases dealt with in one single year. For example, in 2018, the ICCC assessed only two applications and in 2023, a total of 15 applications were assessed. The ICCC also noted that the average cost of assessing a Clearance application has generally increased. Table 1 to Table 5 of **Annexure D** show associated costs that certain transactions incur.

The complete Clearance process would include the following steps: i) Lodgment of clearance application by the acquirer; ii) the screening and registration of the application by the ICCC; iii) public consultation on the application; iv) competition assessment of the Clearance application;

⁹ Mandatory notification thresholds: a) the transaction value of the proposed acquisition exceeds the value of K50 million; or b) the proposed acquisition is likely or would likely to result in a market share increase of 50% or more of the the person who is acquiring.

v) release of a draft determination if a conference is called for; vi) public consultation on draft determination and holding of a conference; and vii) release of the final determination. Whilst these are steps for a Clearance application assessment, steps v and vi may not be required if a conference is not called for by the ICCC in certain applications.

Table 2 of **Annexure D** shows the cost of assessing a Clearance application when a conference is called which is over K35,000.00. Furthermore, Table 3 and Table 4 of **Annexure D** show the cost of assessing a Clearance application when a conference is not called and the cost is over K25,000 for each application. Considering the cost of the three applications outlined above, the average cost is over K28,000.00. It must also be noted that the possibility of holding a conference for all applications submitted is always there. Hence, the estimated cost of assessing an application with the full Clearance process is over K35,000.00 as shown in Table 7 of **Annexure D**. Given the current application fee is only K20,000.00, it is justifiable in terms of cost to propose an increase of the Clearance application fee to K30,000.00 to reflect the costs involved.

Whilst the ICCC is gradually moving away from using consultants in merger filing reviews, it still lacks skilled staff. Besides, mergers in different industries do require expert skills in the analytical work. Due to this, the ICCC engage experts as consultants on complex merger of business acquisition case. The number of days they are required to assist also depends on the complexity of the proposed transaction.

ANNEXURE D: COSTS INVOLVED IN SECTION 81 CLEARANCE APPLICATION**Table 1: China Navigation Co. Proposed Acquisition of New Pacific Line-2018**

Key activities	Major tasks	Cost item	Estimated cost
Public consultation	Publication of notice for 2-3 days in the two major dailies	Public notice advert costs	K7,859.30
	Pre-decision conference on the draft determination	Conference venue hire (including refreshments)	K7,405.00
Assessment of the application	Assistance from consultants/advisors	Consultancy cost	K12,552.12
Administration costs	Letters and attachments of copies of the application, or draft determination, or determination to stakeholders by post and hand delivery; assist staff transportation due to overtime work	Printing, internet usage, logistics, etc.	K5,000.00
TOTAL			K33,816.40

Table 2: The proposed acquisition of Digicel PNG Limited by Telstra Corporation Limited - Clearance Application 2021

Key activities	Major tasks	Cost item	Estimated cost
Public consultation	Publication of notice for 2-3 days in the two major dailies	Public notice advert costs	K7,540.00
	Pre-decision conference on the draft determination	Conference venue hire (including refreshments)	K9,540.00
Assessment of the application	Assistance from consultants/advisors	Associate Commissioner's fee	K9,798.80
		Consultant fees	<i>Not engaged</i>
Administration costs	Letters and attachments of copies of the application and supporting submissions, or draft determination, or determination to stakeholders by post and hand delivery; assist staff transportation due to overtime work	Printing, internet usage, logistics, etc.	K5,000.00
Man hours paid ¹⁰	Relevant officers work after hours to get tasks in the clearance process done due to the limited time required to complete the process	Over time claim by non-contract officers and other related costs	K3,480.00
TOTAL			K35,358.80

¹⁰ On average for each application, the three non-contract staff can work after hour for 10 days at 40 hours each with the overtime rate of around PGK28 per hour

Table 3: JX Nippon Proposed Acquisition of stake in Papua LNG 2023 – Clearance

Key activities	Major tasks	Cost item	Estimated cost
Public consultation	Publication of notice for 2-3 days in the two major dailies	Public notice advert costs	K7,487.00
	Pre-decision conference on the draft determination	<i>Not Requested</i>	
Assessment of the application	Assistance from consultants/advisors	Associate Commissioner's fee	K9,798.80
		Consultant fees	<i>Not engaged</i>
Administration costs	Letters and attachments of copies of the application and supporting submissions, or draft determination, or determination to stakeholders by post and hand delivery; assist staff transportation due to overtime work.	Printing, internet usage, logistics, etc.	K5,000.00
Man hours paid	Relevant officers work after hours to get tasks in the clearance process done due to the limited time required to complete the process	Over time claim by non-contract officers and other related costs	K3,480.00
TOTAL			K25,765.80

Table 4: SDO PNG Proposed Acquisition of NBPOL Downstream Business 2024 – Clearance

Key activities	Major tasks	Cost item	Estimated cost
Public consultation	Publication of notice for 2-3 days in the two major dailies	Public notice advert costs	K6,728.00
	Pre-decision conference on the draft determination	<i>Not Requested</i>	
Assessment of the application	Assistance from consultants/advisors	Associate Commissioner's fee	K9,798.80
		Consultant fees	<i>Not engaged</i>
Administration costs	Letters and attachments of copies of the application, or draft determination, or determination to stakeholders by post and hand delivery; assist staff transportation due to overtime work	Printing, internet usage, logistics, etc.	K5,000.00
Man hours paid	Relevant officers work after hours to get tasks in the clearance process done due to the limited time required to complete the process	Over time claim by non-contract officers and other related costs	K3,480.00
TOTAL			K25,006.80

Table 5: Kina Securities Proposed Acquisition of Shares in Westpac PNG Limited – Authorization Application 2021

Key activities	Major tasks	Cost item	Estimated cost
Public consultation	Publication of notice for 2-3 days in the two major dailies	Public notice advert costs	K3,561.14
	Pre-decision conference on the draft determination	Conference venue hire (including refreshments)	K18,340.00
Assessment of the application	Assistance from consultants/advisors	Associate Commissioners fee	K9,798.80
		Consultancy cost	K26,006.75 (7 Days engagement)
Administration costs	Letters and attachments of copies of the application, or draft determination, or determination to stakeholders by post and hand delivery; assist staff transportation due to overtime work	Printing, internet usage, logistics, etc.	K5,000.00
Manhours paid for overtime.	Relevant officers work after hours to get tasks in the clearance process done due to the limited time required to complete the process	Over time claim by non-contract officers and other related costs	K3,480.00
TOTAL			K66,186.69

Table 6: Geogas Pacific Proposed Acquisition of Shares in Origin Energy PNG Limited – Authorization Application 2023

Key activities	Major tasks	Cost item	Estimated cost
Public consultation	Publication of notice for 2-3 days in the two major dailies	Public notice advert costs	K4,330.48
	Pre-decision conference on the draft determination	Conference venue hire (including refreshments)	K21,030.00
Assessment of the application	Assistance from consultants/advisors	Associate Commissioners fee	K9,798.80
		Consultancy cost	<i>Not engaged.</i>
Administration costs	Letters and attachments of copies of the application, or draft determination, or determination to stakeholders by post and hand delivery; assist staff transportation due to overtime work	Printing, internet usage, logistics, etc.	K5,000.00
Manhours paid for overtime.	Relevant officers work after hours to get tasks in the clearance process done due to the limited time required to complete the process	Over time claim by non-contract officers and other related costs	K3,480.00
TOTAL			K43,639.28

Table 7: Summary of Total costs involved in processing Clearance Applications including the estimated costs for hosting a Pre-Decision Conference

Details of Application	Sub-Total Costs	Cost for Pre-Decision Conference	Estimated Total Costs
The proposed acquisition of Digicel PNG Limited by Telstra Corporation Limited – Clearance Application 2021 ¹¹	K35,358.80 ¹²		K35,358.80
JX Nippon Proposed Acquisition of stake in Papua LNG 2023 – Clearance ¹³	K 25,765.80	K9,540.00 ¹⁴	K35,296.80
SDO PNG Proposed Acquisition of NBPOL Downstream Business 2024 – Clearance ¹⁵	K 25,006.80	K9,540.00	K34,546.80
Average of Sub-Total Total Costs ((K35,358.80+K35,296.80+K34,546.80)/3)			K35,067.47

¹¹ Extracted from Table 2 of Annexure D

¹² Already includes cost for pre-decision conference

¹³ Extracted from

Table 3 of Annexure D

¹⁴ Pre-decision conference cost from Table 2 of Annexure D

¹⁵ Extracted from Table 4 of Annexure D