INDEPENDENT CONSUMER & COMPETITION COMMISSION

DRAFT DETERMINATION & REASONS

on

Authorization Application

by

Seabreeze Poultry Limited

in respect of

(a) its Proposed Acquisition of the poultry business of Mainland Holdings Limited; and

(b) the subsequent share subscription in Seabreeze Poultry Limited by Mainland Holdings Limited

Commissioners:

Mr. Roy Daggy – Commissioner and Chief Executive Officer
Mr. Jack Timi – Associate Commissioner (Resident)
Mr. Marcus Francis Bezzi – Associate Commissioner (Non-Resident)

Date of Registration : 06th July 2026
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About the ICCC

The Independent Consumer and Competition Commission **("ICCC")** is a 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 protect consumers' interests.

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EXECUTIVE SUMMARY

1. ***The Independent Consumer and Competition Commission ("ICCC") is proposing to Grant Conditional Authorization for the proposed acquisition of the poultry business of Mainland Holdings Limited ("MHL") by Seabreeze Poultry Limited ("SPL"); and the subsequent share subscriptions of 49% in SPL by MHL.***

2. The full assessment and analysis of available information; and the basis of the above proposed decision are discussed in this Draft Determination. The views expressed by the ICCC in this document are preliminary and subject to revision following consideration of further submissions and evidence.

3. Wilmar (through SPL) remains a capable potential entrant. The public benefit claims are not unique to this Proposed Transaction; and can be realized if SPL enters the market independently. While Wilmar stated that it has decided not to enter the poultry industry, this position could change. The facts before the ICCC show that Wilmar has previously attempted to enter the market independently. Wilmar is also a well-established poultry player in other jurisdictions.

4. Key questions before the ICCC include: –

   a. Assuming Wilmar finds the industry unattractive to enter, *CIC*?
   b. Does Wilmar's position not to enter the market independently make sense from a commercial perspective?
   c. Does Wilmar's proposal now to enter the market through the Proposed Acquisition mean the industry is attractive and Wilmar is confident that it could recoup its capital investments over time?

5. The entry of smaller players in various regions in PNG clearly indicates that the market remains attractive and the decision by Wilmar not to enter should be thoroughly tested before the ICCC can be satisfied that entry is, in the commercial circumstances, unattractive and unlikely in the short, medium or long term.

6. After consulting relevant key stakeholders, and based on available information, the ICCC considers that any lessening of competition associated with the Proposed Transaction should be considered within the bounds of the following relevant markets:

   - *The market for the production and supply of FFC in PNG;*
   - *The market for the production and supply of Eggs in PNG;*
   - *The market for the production and supply of boiler raising DOCs in PNG; and*
   - *The market for the production and supply of chicken stock feed in PNG.*

7. In its consideration of likely lessening of competition effects, the ICCC considers that the risks of lessening of competition are substantial. They arise from the potential loss of independent entry, the persistence of an already highly concentrated market structure, and the possibility that vertical relationships could weaken the ability of rival poultry producers to compete and expand. The claim that Seabreeze is not a likely entrant has not been substantiated by the Applicant.

8. *CIC.*

9. Whilst the ICCC acknowledges that the claimed public benefits are potentially significant and would improve the industry and economy, it must be substantiated that they are not achievable with the independent entry of SPL. The ICCC has not been satisfied well in this regard.

10. Given the competition concerns discussed in this Draft Determination, and subject to the parties' responses, the ICCC proposes to grant Authorization with Conditions if acceptable proposals which address the concerns outlined in this Draft Determination are offered by the joint venture parties.

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1. INTRODUCTION

1. This Draft Determination relates to the Authorization Application ("**Application**") submitted by Seabreeze Poultry Limited ("**SPL**" or the "**Applicant**") to the Independent Consumer and Competition Commission ("**ICCC**") for its proposal to acquire the poultry business and related assets of Mainland Holdings Limited ("**MHL**"); and to operate SPL as a joint venture between MHL and Associated Mills Limited ("**AML**") (the "**Proposed Transaction**").

2. According to the Application, post-transaction;

   (a) SPL would own and operate the poultry business and related assets; and

   (b) MHL would subsequently subscribe to 49% shares in SPL; and it becomes a joint venture ("JV").

3. The two related deals above are collectively referred to as Proposed Transaction in this Draft Determination.

4. SPL initially applied for Clearance for the Proposed Transaction on 27th February 2026. The ICCC deliberated on the Clearance application and identified issues of competition concern that should be properly dealt with under the Authorization process. The ICCC therefore issued a Direction pursuant to section 81(3)(c) of the *Independent Consumer and Competition Commission (Amendment) Act 2018* ("**ICCC Amendment Act**") to SPL to apply for Authorization. The direction was given on 14th May 2026. On 25th June 2026, SPL subsequently lodged this Application seeking Authorization; and it was registered on 06th July, 2026. The Authorization process was commenced thereafter.

5. Authorization for business acquisition is a statutory process under section 82 of the ICCC Amendment Act. The Authorization process starts when the ICCC directed the applicant of a Clearance application has been directed to apply for Authorization; and the relevant application is lodged with the ICCC.

6. Authorization is a *two-stage* statutory process. The ICCC first assesses whether the proposed acquisition or merger subject of the application would have, or be likely to have, the effect of substantially lessening competition in the relevant market(s). If not, the ICCC must give Clearance. Where the proposed transaction is likely to have substantial lessening of competition effects, the ICCC must proceed to assess whether it would result in public benefit (and outweigh any public detriments, including the likely substantial lessening of competition concerns) that it should be authorized. If the ICCC is NOT "satisfied" that the proposed acquisition would result in such a net public benefit, it must decline Authorizing the proposed transaction.

7. Authorization is an adjudication process. Therefore, the onus is on the applicant to satisfy the ICCC that the proposed acquisition (or merger) would not have the effect of substantially lessening competition (or pose any serious competition concerns); or that there would be overall net benefits to the public.

8. Authorization (and Clearance) applications are reviewed transparently through public consultative process. Following registration of this Application, the ICCC consulted relevant stakeholders through print public notices and direct stakeholder invite for their comments on the Proposed Transaction. The purpose of this was to gauge their views and opinions on the likely benefits/detriments that would result if the Proposed Transaction proceed. The consultation process also enables the ICCC to test publicly the Applicant's submission with regards to claimed public benefits and unlikely harm to competition put forth.

9. The public versions of the Application and this Draft Determination are placed on the Public Register created for this Application. All comments and submissions (apart from the confidential information and documents) have also been placed on the Public Register. Hard copies of all relevant public documents relating to this Application are available at the ICCC's Port Moresby Office.

10. All confidential parts of this Draft Determination are in red font and remain in the Confidential Version; but have been removed in the Non-Confidential Version; and replaced with ***CIC*** (for *Commercial-in-Confidence*).

11. It is the statutory requirement that the ICCC makes a decision on an Authorization application within twenty (72) days[1] after the date of registration. This timeframe can be extended through mutual agreement between the ICCC and the Applicant; and or the time taken by the Applicant to respond to further information requests by the ICCC. This Application takes longer to be processed as further information were sought from the Application; and consent was sought for extension of time to allow for issuance of this Draft Determination pursuant to section 86 of the ICCC Act.

12. All non-confidential documents relating to this Application, including stakeholder comments and submissions, are available on the ICCC's Public Register on its website: www.iccc.gov.pg. Hard copies of the same documents are also available at the ICCC's Headquarters, located on the second floor of the Boroko Post Office Building, Port Moresby.

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

2. BACKGROUND

2.1 The Parties

2.1.1 Seabreeze Poultry Limited

13. Seabreeze Poultry Limited ("**SPL**") is registered in Papua New Guinea ("**PNG**") (with IPA Company registration No.1-81821) for the purpose of undertaking poultry farming activities. At present, SPL is dormant and does not conduct any poultry business activities in any parts of PNG.

14. SPL is wholly owned by Associated Mills Limited ("**AML**") (IPA Company registration No.1-5461), a foreign-owned company incorporated in PNG. AML is, in turn, owned by Goodman Fielder Pte. Ltd ("**Goodman Fielder**"), which forms part of the Wilmar Group, a Singapore-based company. The corporate structure of Wilmar Group is shown in Figure 1 below.

Figure 1: Seabreeze Ownership Structure



Source: SPL's Clearance Application

15. The Wilmar Group is one of the Asia's leading business group. Wilmar is ranked amongst the largest listed companies by market capitalization on the Singapore Exchange. The Group's business activities include oil palm cultivation, oilseed

crushing, edible oil refining, flour and rice milling, sugar milling and refining, manufacturing of consumer products, ready-to-eat meals, central kitchen products, specialty fats, oleochemicals, biodiesel, and fertilizers, as well as food park operations[2].

16. In PNG, Wilmar Group, through AML, produces and supplies flour, commercial stock feed (for chickens and pigs), twisties, bread, pies, and other bakery products, and also supplies butter, cooking oil, rice, sugar, margarine, fruit juice, olive oil, and milk. These products are traded under the following brands: Flame, Skel Rice, Meadow Lea, Meadow Fresh, Arthurs Pies, Bakers Professional, Bilas, Mother's Choice, Olive Grove, and Twisties.

17. The Wilmar Group has over 1,000 manufacturing plants and an extensive distribution network covering China, India, and some 50 other countries and regions, including PNG. In PNG, Wilmar Group, through AML, has manufacturing plants in both Port Moresby and Lae. In Port Moresby, AML has a flour mill, a big commercial bakery, and a rice packing plant. In Lae, AML has a stock feed mill, flour mill, snacks plant, and rice packing plant.[3]

18. The ICCC notes that AML operates as a locally incorporated entity within the Wilmar Group. However, its branding, marketing, and certain commercial activities are conducted under the Goodman Fielder brand, which serves as the principal regional brand across Pacific markets, including Australia and New Zealand.

2.1.2 Mainland Holdings Limited

19. Mainland Holdings Limited ("**MHL**") is a diverse conglomerate agribusiness registered in PNG (with IPA Company Registration No.1-6068), and is based in Lae, Morobe Province. MHL produces poultry by supplying fresh and frozen chicken meat, as well as table eggs and day-old broiler chicks. MHL also produces flour and commercial stock feed for chicken, operates a crocodile farm, and has coffee export facilities. The products of MHL are traded under the following brand names: Tablebirds Chicken, 3 Roses Flour, Tablebirds Stockfeed, and Tablebirds Eggs.

20. The National Superannuation Fund Limited ("**Nasfund**") is the largest shareholder amongst other cooperative groups from Morobe Province.

21. MHL has a chicken meat processing plant in Lae, including hatcheries and poultry farms, which are situated in the Lower Markham Valley in the Morobe Province. MHL has no subsidiaries; and operates all agribusinesses under itself.

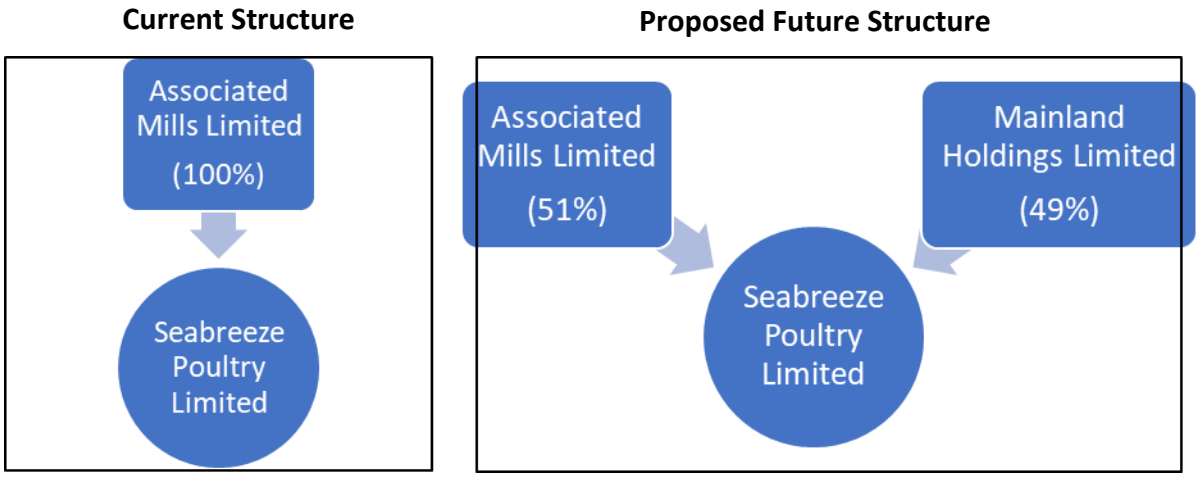
[2] Corporate Profile
[3] Papua New Guinea | Goodman Fielder

2.2 The Proposed Transaction

22. SPL, as the purchaser, along with AML and its sole shareholder, Goodman Fielder and MHL, as the seller, and its majority shareholder, Nasfund, executed a Sale and Purchase Agreement ("**SPA**") on 15th January 2026, for SPL to acquire the poultry business of MHL, including the relevant assets (leasehold properties, plant and equipment, biological assets, inventories, Intellectual Property rights, and all other assets associated with poultry business).

23. The Proposed Acquisition would result in SPL taking ownership and operating the poultry business to be acquired from MHL. Following the completion of the poultry business acquisition, MHL would subscribe into SPL for 49% stake; and Wilmar would hold 51%. SPL would be operated as a joint venture entity between MHL and AML. The JV arrangement in SPL is subject to the completion of the poultry business acquisition.

Diagram 1: Current and would be Ownership structure of SPL



24. The Proposed Transaction is conditional upon fulfilling conditions precedent outlined in the SPA, including seeking prior ICCC approval. Therefore, the Applicant has sought the relevant approval from the ICCC.

2.3 Rationale for the Proposed Transaction

25. *CIC.*

26. *CIC.*

27. *CIC.*

28. *CIC.*

2.4 Clearance Application

29. SPL initially applied for Clearance for the Proposed Transaction on 27th February 2026. The ICCC deliberated on the Clearance application and identified issues of competition effect concerns the Proposed Acquisition would likely have in the relevant markets defined. As alluded to earlier, the ICCC therefore issued a Direction Notice under section 81(3)(c) of the ICCC Amendment Act to SPL to apply for Authorization.

30. In its assessment of the Clearance Application, the ICCC noted certain competition concerns that needed to be carefully assessed. The issues of competition concerns which are outlined below gave the ICCC the Reason to Believe and the basis for the issuance of Direction Notice.

31. The ICCC noted that in the production and supply of eggs, fresh and frozen chicken ("**FFC**"), and day-old-chicks ("**DOC**"), the markets are highly concentrated with two dominant players (MHL and Zenag Chicken) having over 70%, 74% and 90% combined shares in the respective markets. The chicken stockfeed market is also highly concentrated with AML and MHL having a combined market share of over 50%.

32. According to the ICCC, the proposal was likely to foreclose a credible independent entrant in Wilmar Group, a well-resourced operator which has successful poultry operations in other jurisdictions. Absent the transaction, Wilmar could reasonably have entered the market independently via SPL, become a distinct competitive force, exerting competitive pressure on the incumbents.

33. Another concern raised was that the Proposed Transaction would introduce vertical integration by combining AML's upstream control over stockfeed supply with SPL's acquired downstream poultry operations. This structure would materially increase SPL's ability and incentive to potentially engage in foreclosure strategies. Especially, it could prioritize or exclusively channel stockfeed to its own downstream operations while leveraging long-term preferential supply contracts with key distributors and wholesalers. Such conduct risks raising rivals' costs, limiting their access to critical inputs and routes to market, and strengthening the SPL's position. Over time, this would create and heighten barriers to entry and expansion as new or smaller competitors would face both input constraints and reduced distribution opportunities, thereby diminishing effective competition in the market.

34. Furthermore, the ICCC considered that the Proposed Transaction would likely enable SPL and Wilmar to have the upper hand in adjusting pricing and supply terms, which might not be favourable as they would maintain their dominance in both the poultry and stockfeed markets.

35. In the post-transaction environment, the market structure was likely to become

more concentrated, potentially resembling a duopoly. This would make it significantly more difficult for smaller producers and new entrants to compete, as they would face stronger incumbents with greater control over inputs, distribution, and pricing dynamics.

36. The ICCC therefore directed SPL to apply for Authorization.

3. OVERVIEW OF THE POULTRY INDUSTRY IN PNG

37. The poultry industry in PNG remains one of the country's most important agribusiness sectors, supplying chicken meat, eggs, and supporting thousands of rural out-growers and SMEs. The industry has continued to expand through investments in production capacity, processing facilities, and local supply chains to reduce reliance on imports.

38. The industry has significantly expanded local production capacity, with major producers investing approximately K200 million over recent years to meet growing domestic demand and reduce chicken imports. Following temporary shortages in 2025 caused by global disease-related supply disruptions, poultry supply has improved as new production capacity has come online.

39. Rising population, urbanization, and changing consumer preferences continue to drive demand for affordable poultry products, creating opportunities for commercial producers and smallholder farmers. The industry continues to face high feed costs due to dependence on imported feed ingredients, transport and logistics constraints, biosecurity risks, and the need to strengthen domestic feed production.[4]

40. The Government continues to encourage greater domestic livestock production and import substitution, with poultry identified as a priority sector for improving food security and rural incomes.

41. Overall, the PNG poultry industry is experiencing steady growth and increased investment, but its long-term competitiveness will depend on reducing production costs, improving feed security, maintaining strong biosecurity measures, and expanding participation by local farmers.[5]

[4] https://poultryindustryassociation.com/
[5] https://cgspace.cgiar.org/server/api/core/bitstreams/cde1589b-dce1-4f6f-8681-cee2a13f8da4/content

4. COMMENTS FROM STAKEHOLDERS

4.1 Stakeholder comments on the Clearance Application

42. Given the ICCC will assess likely lessening of competition effects, all stakeholder comments on the Clearance application are summarized below.

4.1.1 Department of Agriculture and Livestock

43. The Department of Agriculture and Livestock ("DAL") submitted that the Proposed Transaction raises significant competition and structural concerns within PNG's poultry and stockfeed markets. It is of the view that AML already holds a dominant position in stockfeed; and the transaction could further increase market concentration, potentially reducing competition, creating barriers to entry, and leading to a dominant or duopolistic market structure.

44. According to DAL, the vertical integration of feed production and poultry operations introduces risks of input foreclosure, preferential pricing, and reduced cost transparency, giving AML a strong competitive advantage over independent producers.

45. DAL also stated that there are social and developmental concerns, particularly regarding the future of out-grower and smallholder participation, which has historically supported rural livelihoods. A shift toward centralized production could negatively affect inclusive economic development. In terms of food security, DAL considers that while short-term gains in production are possible, long-term risks include higher prices, dependence on a single supplier, and exposure to strategic business decisions that may not align with national interests.

46. Furthermore, DAL stated that the industry's concentration in Morobe Province presents logistical and supply chain vulnerabilities, highlighting the need for decentralization. Additionally, biosecurity and genetic risks remain a concern due to reliance on limited genetic stock and imported inputs.

47. DAL emphasized the need for broad consultation, maintaining competition, protecting community-based production models, and considering alternatives such as greenfield investment.

48. To address these risks, DAL recommended safeguards including:

- Ensuring fair access to stock feed;
- Protecting smallholder and out-grower participation;
- Enhancing pricing transparency;
- Monitoring market concentration;

- Promoting decentralization; and
- Requiring binding commitments on investment and operations.

49. Overall, DAL is of the view that, while the acquisition offers potential economic and efficiency benefits, it requires a cautious, consultative approach. Its success will depend on the effective design and enforcement of safeguards to balance investment gains with competition, inclusiveness, and long-term food security.

4.1.2 Highland Products Limited

50. Highland Products Limited (trading as **"Zenag"**) submitted that it does not have an issue with the Proposed Transaction. Zenag stated that it remains competitor of the Tablebirds brand.

51. Zenag also submitted that stockfeed is the single largest cost of poultry production. Stockfeed accounts for approximately 70% of the cost of producing table eggs and 55% of the cost of producing chicken meat. To drive competition and performance in its supply chain, Zenag currently sources stockfeed from the following three (3) producers: Inghams; Baiada; and GFI (Wilmar).

52. Zenag also stated that given the diversity in its stockfeed supply chain, the Proposed Transaction is not a material concern for its production. However, it does have concerns regarding supply of stockfeed to SMEs. Zenag is a major supplier of day-old chickens (DOCs), providing over 200,000 per week to small-scale poultry farmers from Lae and Port Moresby, with Tablebirds supplying slightly lower volumes. Additional regional small hatcheries operate in the Highlands, Sepik, and Islands regions.

53. According to Zenag, most of its SME customers rely on GFI for stockfeed. It stated that MHL and Farmset compete in stockfeed, with MHL leveraging bundled DOC and feed offerings to challenge GFI's scale. The potential loss of MHL's DOC supply following its acquisition by Wilmar could weaken its competitiveness in stockfeed, further strengthening GFI's market position. Although Trukai has shown interest in re-entering the stockfeed market, no entry has occurred yet, raising concerns that GFI could exploit its dominance to increase prices for SME farmers.

54. As the largest importer of stockfeed, Zenag further stated that, to help facilitate competition in PNG's stockfeed market (and poultry sector in general), it recommends the PNG government removes all tariffs on stockfeed imports. The zero-rating of stockfeed imports would help drive competition and reduce the largest input cost to PNG poultry production.

4.1.3 Private Citizen

55. A private citizen and former employee of Mainland Holdings Limited (MHL) supports the rationale for the proposed acquisition but raises concerns that it may substantially lessen competition, particularly in the stockfeed market. While increased scale may enhance short-term competition, there is a risk that a vertically integrated Associated Mills Limited (part of the Wilmar Group) could, over time, dominate the poultry sector, raise stockfeed prices, and create barriers to entry. This may adversely affect smaller poultry producers reliant on external feed supply, warranting ongoing oversight by the ICCC.

4.1.4 Others

56. BNG Trading and Kumul Consolidated Holdings Limited submitted that the Proposed Transaction does not give rise to any significant competition concerns in the poultry sector or related markets in PNG. Similarly, PNG Chamber of Commerce and Industry indicated that it has no objection to the Proposed Transaction.

57. The Poultry Industry Association of PNG also expressed strong support for SPL's Proposed Acquisition of MHL poultry business, describing the transaction as positive, necessary, and in the long-term interests of the poultry industry, consumers, and the national economy. The Association was of the view that the transaction was important for industry, competition, and food security; and notes recent improvements in domestic production and pricing as evidence of a strengthening sector.

4.2 Stakeholder Comments on the Authorization Application

58. Subject to confidentiality claims, all stakeholder views and submissions have been summarized below.

4.2.1 Farmset Limited

59. Farmset Limited ("**Farmset**") submitted that its overall position remains balanced with respect to the Proposed Transaction. Farmset recognizes that the Proposed Transaction has the potential to deliver significant public benefits through increased investment, improved production capacity, and enhanced food security for PNG. At the same time, it believes the transaction has the potential to materially alter the competitive landscape within several interconnected agricultural markets.

60. Farmset stated that it does not oppose investment in PNG's poultry industry. It believes the country requires additional investment, greater production capacity, and a more reliable supply of poultry products to meet increasing

demand. Recent shortages of day-old broiler chicks, table eggs, and chicken meat have demonstrated the importance of developing a stronger and more resilient domestic poultry industry.

61. Farmset further stated that if the Proposed Transaction results in increased production, improved operational efficiency and a more sustainable and reliable supply of poultry products, these outcomes would provide genuine public benefits to consumers, farmers and the broader economy.

62. Following completion of the transaction, the GFI/AML would have a substantial interest across multiple stages of the poultry value chain, including animal nutrition, stockfeed manufacture, hatchery operations, broiler production, poultry processing and distribution. Vertical integration can generate efficiencies and improve coordination throughout the supply chain. However, it also creates the commercial ability and incentive to leverage market strength from one market into another.

63. Farmset raised the following competition concerns:

- Preferential access to day-old broiler chicks for related or preferred customers;
- Commercial arrangements that encourage or require the purchase of associated stockfeed products;
- Reduced commercial opportunities for independent agricultural retailers; and
- Increasing dependence by independent businesses upon a limited number of suppliers.

64. Farmset further submitted that independent agricultural retailers perform an important role by providing farmers with a genuine choice in relation to day-old chicks, stockfeed, equipment, and technical advice. Hence, maintaining several independent distribution channels encourages competition, promotes innovation, and provides farmers with an alternative source of supply. These outcomes ultimately benefit consumers through competitive pricing, improved service and greater market resilience.

65. One issue which Farmset believes deserves particular consideration is the long-term resilience of PNG's poultry supply chain. As poultry production becomes increasingly concentrated within a smaller number of vertically integrated businesses, any significant disease event, production interruption, transport disruption, or commercial decision has the potential to affect a much larger proportion of the national market. A resilient industry is one which multiple suppliers, distributors and retailers remain commercially viable and capable of supplying farmers throughout the country.

66. Farmset also notes that recent shortages within the poultry sector have encouraged additional investment by independent producers entering the

markets for broiler production, eggs and day-old chicks. These developments have created new employment opportunities, expanded domestic production capacity, and increased business investment.

67. Farmset submits that strong competition should encourage all market participants to improve the reliability of supply, customer service, and operational performance. Maintaining competitive pressure benefits the entire industry and ultimately benefits consumers.

68. Accordingly, Farmset is of the view that if the ICCC decides to grant Authorization to SPL, it should be given with conditions designed to preserve effective competition. Such conditions could include the following:

- Requiring continued supply of day-old broiler chicks to independent retailers on fair, transparent and non-discriminatory commercial terms;
- Preventing exclusive commercial arrangements that effectively require customers purchasing day-old chicks to also purchase stockfeed from related businesses;
- Ensuring equitable commercial access to frozen poultry products for independent retailers;
- Requiring periodic reporting to the ICCC regarding day-old chick availability, pricing, and supply arrangements; and
- Undertaking a formal post-authorization review after an appropriate period to assess whether competition within the relevant markets has been adversely affected.

69. In conclusion, Farmset neither supports nor opposes the Proposed Transaction. Farmset acknowledges the potential public benefits that could arise from increased investment and improved poultry production capacity. Equally, the proposed transaction has the potential to significantly increase market concentration through vertical integration across feed manufacture, hatchery operations, poultry production, and distribution. Therefore, Farmset recommends that consideration be given to conditions that preserve competition, maintain fair market access for independent retailers and producers, and protect long-term consumer choice throughout PNG.

4.2.2 Highlands Products Limited

70. Highlands Products Limited (trading as "Zenag") submitted that it views the Proposed Acquisition as strengthening competition in PNG's poultry industry. Hence, it indicates no objection to the Proposed Acquisition. This view is contrary to its views on the Clearance application.

71. On the Clearance application, Zenag stated that the acquisition by Wilmar could weaken MHL's competitiveness in stockfeed, further strengthening GFI's market position raising concerns that GFI could exploit its dominance to increase prices for SME farmers.

72. Zenag Chicken, however, recommends that zero tariff ratings should apply to stockfeed and stockfeed inputs. It submits that stockfeed is the single largest cost in poultry production. Zero tariff rating on stockfeed and its inputs will help drive competition in PNG's stockfeed market. This would result in lower prices for poultry products, which is beneficial to consumers in PNG. Zero tariff rating would also address concerns about Wilmar's market capture of PNG's stockfeed sector.

4.2.3 RH Trading Limited

73. RH Trading Limited ("**RH Trading**") submits that the Proposed Transaction would not raise any serious competition concerns in the markets in which they operate or interact. It believes the transaction has the potential to improve operational efficiencies, strengthen industry capability, and support continued investment in PNG. Accordingly, it has no objections to the proposal.

4.2.4 Tininga Limited

74. Tininga Limited ("**Tininga**") describes itself as a customer purchasing poultry products in the domestic market; and shares its views from the customer perspective. Tininga's primary concern is that the competitive market conditions should continue to exist after the completion of the Proposed Transaction, so that pricing, supply reliability, and product quality remain subject to genuine competitive pressure rather than the pricing and supply decision of a single vertically integrated and dominant group.

75. Tininga notes the ICCC's preliminary consideration that the Proposed Transaction would raise serious competition concerns, including the potential loss of independent entry by the Wilmar Group, likelihood of increased vertical integration between stock feed supply and poultry production, and a resulting market structure that may resemble a duopoly. Tininga shared the following views:

    a) Wilmar's blocked entry into the market does not present a major concern as AML is a part of the Wilmar Group, and all strengths of Wilmar's successful poultry operations will presumably flow through to the operations of SPL. Tininga does not see this as a significant loss of a stronger competitor in the market.

b) The existence of two dominant suppliers in the domestic poultry and egg market has been the norm for 10-plus years. By replacing MHL for SPL, Tininga does not see this move as concerning; in fact, it welcomes it, as it will encourage stronger competition and result in better pricing, customer service and quality standards for retailers and consumers.

c) Tininga's view of the existing market is that currently the Nation's demand for poultry and egg products far outweighs the supply; therefore, Tininga is confident that smaller suppliers will have ample opportunities to sell into the market for the foreseeable future even if the Proposed Acquisition is approved.

76. Tininga appeals to the ICCC to test any claimed benefits (such as efficiency gains, investment, or improved production) rigorously, and satisfy itself that such benefits are likely to be genuinely and durably passed through to customers and consumers, rather than being retained by the merged entity as increased margin.

77. Accordingly, Tininga is of the view that if the ICCC decides to grant Authorization to SPL, it should be given with the conditions designed to protect customers and preserve the competitive market. The conditions may cover the following areas:

a) *Non-discriminatory access*: Requiring that stockfeed continue to be supplied to competing poultry producers on fair, reasonable and non-discriminatory terms, so that the merged entity cannot use its upstream position to disadvantage rival poultry suppliers.

b) *Price and supply monitoring*: Periodic reporting to the ICCC on pricing and supply terms offered to wholesale and retail customers, for a defined period following completion, to allow early identification of any anti-competitive conduct.

c) *Support for new entry*: Commitments that do not impede, and where possible facilitate, the entry or expansion of independent poultry producers and stockfeed suppliers in the PNG market.

d) *Review mechanism*: A defined review period after which the ICCC may reassess market conditions and the continuing need for, or adequacy of, any conditions imposed.

78. In conclusion, Tininga supports a competitive and well-supplied poultry market in PNG; but does not oppose consolidation where it delivers genuine efficiencies and public benefit. Tininga urges the ICCC to carefully balance the public benefits claimed by SPL against the significant competition concerns identified, and to ensure that any authorization is subject to appropriate conditions that protect fair pricing, reliable supply, market access and effective competition.

4.2.5 Highlands Farmers and Settlers Association INC

79. The Highlands Farmers and Settlers Association Inc ("**HFSA**") submitted that the poultry industry plays an important role in supporting nutrition and food security and has developed into a well-established domestic supply chain. The industry supplies day-old chicks for the production of live and fresh chicken and also provides income-generating opportunities for a wide range of farmers and businesses in the rural areas. HFSA further noted that MHL's presence in the DOC market has created opportunities and benefits for farmers and other industry participants.

80. The concerns HFSA has are as follows:

a) SPL is dormant and has no physical presence; and its acquisition of MHL poultry operations would only inherit the market already secured by MHL. After the acquisition and the extensive MHL production and marketing network with access to new investment and new management, it can reduce its cost; it may significantly increase the market share and take over Zenag.

b) MHL JV may utilise new investment, new management and cost efficiencies to expand operations in terms of production farms and sales outlets outside of current areas. However, HFSA is also concerned that SPL is owned by AML, which has a presence in terms of sales and marketing network; and with the acquisition, it may result in amalgamating the staffing and sales and operations team in most or all centres. Such action would definitely affect staffing and reduce business opportunities.

c) MHL's poultry would be operating in most provinces. It may need to consolidate the poultry business with the current AML sales and market outlets. New investment, new management, and use of existing feedstock and also marketing outlets and logistics may reduce the price of poultry products, which may force some of the existing business out of operation.

d) MHL may focus on its remaining business such as crocodile farm, stock feed production and flour production that may increase competition in stock feed and flour business. Likewise, SPL may utilise the AML stock feed, operations and marketing network and reduce its production and price margins that would affect our poultry business. Further, using the AML network may result in job losses.

e) The entry of SPL may see Zenag and others seizing the opportunity to expand their business quickly when MHL JV is learning on the business. SPL, through AML base and networks, can encourage more support through stockfeed and grains to chicken farmers, including buying GFI or AML flour, stockfeed, cooking oil, and rice, etc.

f) MHL is currently providing the same products and services as Zenag and others, but using the AML network will have wider coverage. If MHL operates the same services without any investment, it may lead to poor customer service and focusing price to go up.

g) It is unlikely that SPL will venture out apart from utilising the branding and network of AML. Its advantage is the different products of AML sold with SPL's products.

h) The consolidation of international and regional operations by MHL JV should enable it to improve services and reduce its prices and use its existing networks and capacity to move to other provinces or areas not covered by Zenag or others.

i) The economies of scale of SPL may result in lower costs and prices that may force out the stockfeed and flour business of MHL. This would make AML in total control of the flour and stockfeed business and cut off competition with small operators like Farmset and Rumion Farms.

j) The Nasfund should be asked to offload all its shares to local businesses, including Morobe Provincial Government.

81. In conclusion, HFSA states that the Proposed Transaction would not reduce the number of poultry businesses in the short term; but may see consolidation in operations that may affect staff. Also, the reduction in costs may see prices coming down and creating more competitiveness in the industry.

4.2.6 FMK Investment Limited

82. FMK Investment Limited ("FMK") stated the poultry industry is vital to food security, employment, and SME growth in PNG. FMK is of the view that the Proposed Transaction by the foreign company would raise serious concerns and have negative impacts on the following:

a) Displace Local Jobs: Foreign-owned business often bring in their own staff, reducing opportunities for PNG citizens.

b) Undermine Local SMEs: Large foreign operations can cause scale to undercut prices, forcing local farmers out of business.

c) Threaten Food Security: Profits will be repatriated overseas instead of being reinvested in our local economy.

83. Considering the above concerns, FMK opposes the Proposed Transaction, stating that priority be given to locals to own and grow this industry.

4.2.7 Kendfresh Liquor Limited

84. Kendfresh Liquor Limited ("Kendfresh") opposes the Proposed Transaction, stating that MHL has been supplying and supporting all SMEs while GFI has always supported big companies like Farmset, Dae Won wholesaler, Chemica, etc. If the poultry business of MHL is sold out, then local SMEs would struggle to survive and would go out of business because they would not deal with the small national business.

4.2.8 Private Citizen

85. A private citizen strongly opposes the Proposed Transaction stating that the poultry industry is a cornerstone of PNG's food security, rural livelihoods, and economic independence. Allowing foreign control over this sector risks undermining national interest by prioritizing corporate agendas over local needs.

86. The private citizen submitted the following public interest and competition concerns under relevant headings.

A. Public interest concerns

Food Security and National Sovereignty

87. Poultry is PNG's most affordable and accessible source of protein. Transferring control of this industry to a foreign entity exposes PNG's food supply to external corporate priorities rather than national needs. Allowing Wilmar to dominate poultry, risks exposing PNG's food supply decisions made offshore and far from the national interest rather than local stakeholders.

88. Poultry farm land owned by MHL in Morobe Province would be controlled by Wilmar and may limit local participation and miss out on spin-off benefits.

Impact on Rural Producers and Out-Grower Schemes

89. MHL has historically supported rural out-growers, integrating village farmers into the poultry value chain. The proposed transaction poses a very high risk that such partnerships and local participation in production might be discouraged.

90. A foreign-owned poultry entity may prioritize efficiency and imports over local engagement, marginalizing rural communities and eroding cash income opportunities. The loss of these linkages would reduce rural household incomes and widen inequality.

91. Currently, most raw materials, including limestone, soya beans, and butchery scraps that are inputs for poultry and feed production by MHL, are imported. The proposed transaction will further risk it if Willmar decides not to buy local ingredients in the future, which will jeopardize the opportunity for local production and an efficient alternative that can make chicken prices affordable.

Economic Independence and Local Industry Development

92. PNG's long-term economic strategy emphasizes import substitution and local production. Willmar's Proposed Acquisition could reverse any efforts in sourcing local inputs in favor of imported inputs from its global supply chains rather than nurturing PNG's agriculture base.

93. In times of disruption such as a pandemic or global supply shock, the country would have limited options to switch to alternative inputs from the domestic agriculture sector.

94. The Proposed Transaction poses systemic risk to the nation, in terms of:

- Foreign dominance-erosion of domestic policy control over food supply;
- Crowding out local investment-discourages PNG entrepreneurs and cooperatives from entering agribusiness; and
- Balance of Payment Pressure-reliance on imported feed and inputs increases foreign exchange outflows.

B. <u>Competition Concerns</u>

95. Wilmar already controls flour, rice, edible oils, and stockfeed markets in PNG. Acquiring the poultry business would create vertical integration across feed, processing, and retail, reducing competition in those markets.

96. There is a risk of market concentration in the poultry sector, with one multinational controlling feed inputs, poultry production, and retail distribution. This would weaken competition, raise consumer prices, and reduce bargaining power for smallholder farmers.

97. Existing competitors like Zenag would struggle to maintain operations because stockfeed distribution can give a significant advantage to Wilmar to drastically eliminate competition when imported feed prices increase and are unfavorable.

98. Therefore, in conclusion, the Private Citizen submits that the Proposed Transaction should be rejected. It states that PNG's poultry industry must remain locally owned and managed to protect food security, sustain rural livelihood, and advance national interest for economic independence.

4.2.9 Department of Treasury

99. The Department of Treasury ("**Treasury**") submitted that poultry constitutes a primary and affordable source of animal protein for a significant proportion of consumers in PNG. Accordingly, maintaining effective competition and competitive integrity throughout the poultry supply chain is a matter of national economic importance, with direct implications for household food security and affordability.

100. Treasury recognizes the potential benefits that may arise from the Proposed Transaction, including investment, access to technical expertise, operational efficiencies and the potential expansion of poultry production capacity through the participation of the Wilmar Group. However, Treasury raises the following concerns:

Vertical integration and stockfeed supply

101. The Proposed Transaction may increase the merged entity's ability and incentive to influence access to key inputs and supply chains. This may create challenges for independent poultry producers and future market entrants that rely on access to competitively priced stockfeed and other production inputs.

Market concentration

102. The Proposed Transaction would increase concentration within parts of the poultry value chain, including feed supply, poultry production and distribution.

103. Wilmar's entry may bring additional capital, expertise and operational improvements; however, the transaction would combine an existing major poultry business with a Wilmar-controlled entity rather than introducing an additional independent competitor into the market.

104. The resulting market structure may reduce competitive pressure on pricing, services quality and innovation, particularly where smaller competitors face challenges in accessing inputs, finance and distribution channels.

Implications for consumers and smallholder producers

105. Imports of poultry products are subject to tariff protection and strict biosecurity restrictions, which limit the extent to which imported products can exert competitive pressure on domestic suppliers. As a result, competition between domestic producers remains a key mechanism for promoting affordable prices, consumer choice and efficient market outcomes.

106. Many smallholder producers depend on access to day-old chicks, stockfeed and poultry distribution networks. Continued access to these inputs on fair and

reasonable commercial terms is important for supporting rural livelihoods and industry participation.

107. Treasury further acknowledges that Wilmar Group possesses significant technical expertise, financial resources and operational experience that may contribute positively to the development of PNG's poultry industry.

108. Treasury recommends that the competition concerns associated with the proposed acquisition can be appropriately addressed through conditions, safeguards or other regulatory measures, particularly in relation to maintaining fair and non-discriminatory access to stockfeed and other critical inputs for competing poultry producers.

109. In conclusion, Treasury states that the Proposed Transaction has the potential to generate investment and industry development benefits through the participation of Wilmar Group.

4.2.10 Department of International Trade and Investment

110. The Department of International Trade and Investment ("DITI") recognizes the importance of industrialization through downstream processing, employment creation, and competitive pricing for consumers. However, DITI states that both SPL and MHL are currently the only competitors in the stock feed market; and the proposal raises significant competition concerns. DITI states that the merger would effectively create a vertically structured monopoly, resulting in:

- Single-price control leading to unfair pricing;
- Potential reduction in employment; and
- Reduction in incentives for innovation and quality improvement.

111. DITI submits that it opposes the Proposed Transaction; and recommends MHL consider partnering with state-owned entities such as Kumul Consolidated Holdings Limited (KCHL) through Kumul Agriculture, or other suitable firms, to maintain a duopolistic market structure, safeguard employment, and preserve competitive pricing.

112. DITI further states that the government is actively promoting industrialization in agriculture through Public-Private Partnership Special Economic Zones (PPP SEZs). These Zones provide tax incentives on imported inputs, thereby reducing production costs and encouraging broader participation in stock feed and livestock production. DITI recommends that ICCC advise MHL to apply for a private SEZ license to strengthen its operations and competitiveness in the chicken industry. This would help address current challenges related to high import costs and improve long-term sustainability.

113. The recommendation from DITI is that authorization be withheld until further discussions are undertaken to align with the Government's SEZ policy agenda and ensure that competition, employment, and consumer welfare are safeguarded.

4.2.11 Ministry of International Trade and Investment

114. Ministry of International Trade and Investment ("**MITI**"), in its submission, expressed strong support for the Proposed Transaction. It stated that it is important to bring Wilmar Group into the country, a company that as balance sheet and global experience. The Wilmar Group operates large-scale poultry and chicken-related businesses in China, Indonesia, Fiji and Malaysia.

115. MITI submitted that the Proposed Transaction represents a significant strategic investment in PNG's livestock sector and aligns directly with the National Government's economic agenda of attracting quality foreign direct investments, strengthening domestic manufacturing capability, improving national food security, creating sustainable employment, promoting downstream processing, and expanding private sector-led economic growth.

116. MITI further submitted that the Proposed Transaction would establish a stronger and more competitive poultry business by leveraging the long-established market presence, infrastructure and local knowledge of MHL together with the global poultry expertise, advanced production systems, capital investment and operational excellence that SPL has to bring to PNG.

117. MITI expects the Proposed Transaction to generate the following public benefits:

- Significant new foreign direct investment into PNG's agriculture sector;
- Expansion of domestic poultry production capacity to meet growing national demand in other provinces of PNG;
- Improved national food security through increased local production and reduced dependence on imported poultry products;
- Greater investments in modern farming systems, hatcheries, processing facilities and cold chain infrastructure;
- Introduction of world-class technology, innovation and internationally recognized best practices;
- Transfer of technical knowledge and skills to local employees;
- Creation of new direct and indirect employment opportunities through the poultry value chain;
- Increased opportunities for local farmers, SME's and rural communities supplying feed, transport, logistics and agricultural services;
- Greater operational efficiency resulting in improved affordability and accessibility of poultry products for PNG consumers; and
- Increased tax revenues and long-term economic activity generated through business expansion.

118. PNG's annual poultry imports are valued at PGK1.2 billion. The constraint on domestic producers is therefore not local competition alone but competition from imported products. The Government's trade and investment strategy is therefore focused on creating internationally competitive industries that can sustainably meet domestic demand while positioning PNG for future export opportunities.

119. MITI stated that the Proposed Transaction should not be viewed as detrimental to competition; but as the introduction of new investment, technology, expertise and production capacity into an existing PNG business. Wilmar Group's involvement brings capabilities not currently available in the domestic market. These capabilities will accelerate industry growth, improve productivity, and strengthen domestic food production.

120. The entry by Wilmar Group is very strategic in this industry because Zenag and MHL do not have the balance sheet to reinvest in a big way to replace all chicken imports.

4.2.12 Others

121. BNG Trading and PNG CCI have no objections to the Proposed Transaction. The Poultry Industry Association Inc also supported the proposal in the comments it provided on the Clearance Application.

4.2.13 ICCC's comments on stakeholder submissions

122. The ICCC acknowledges all the stakeholders that provided their comments and submissions on both the Clearance and Authorization applications for this Proposed Transaction. All views and comments have been considered; but the ICCC focusses on those comments relating to the issue of the likely lessening of competition effects and the Applicant's claims on public benefits have been carefully.

123. It is important to state that the assessment of applications for Authorization is not a quantitative process of counting the number of "yeses" and "nos" to arrive at a final decision. The objective of the assessment is to arrive at a holistic view of the likely anti-competitive effects of the Proposed Transaction; and if the Proposed Transaction was going to raise serious competition concerns, whether the ICCC should grant Authorization because it was likely to result in greater benefits to the public (despite the serious competition concerns). The ICCC, consistent with Section 82(3) of the ICCC Act, adopts this approach; and this Application is no exception.

124. Consistent with Section 82(3) of the ICCC Act, the main focus of the ICCC's

considerations for any proposed acquisition, will be on whether the acquisition will NOT have the effect of substantially lessening competition in any markets. The focus of competition impact assessment is on likely anti-competitive effects rather than pro-competitive effects. Section 82(3) of the ICCC Act is quoted below:

"(3) Subject to Subsection (6), within 72 days after the date of registration of the notice, or such longer period as the Commission and the person who gave the notice agree, the Commission shall –

*(a) if it is satisfied that the acquisition will **not** have, and will **not** be likely to have, the effect of substantially lessening competition in a market, by notice in writing to the person by or on whose behalf the notice was given, give a clearance for the acquisition; or*

(b) if it is satisfied that the acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted, by notice in writing to the person by or on whose behalf the notice was given, grant an authorization for the acquisition; or

*(c) if it is **not** satisfied as to the matters referred to in Paragraphs (a) and (b), by notice in writing to the person by or on whose behalf the notice was given, decline to give a clearance or grant an authorization for the acquisition.*

125. The main aim of merger control is to prevent mergers and acquisitions leading to the creation, or reinforcement, of market power and thus limiting competition benefits such as innovation, better products and prices, more choice, etc. Business acquisitions may impede effective competition by altering the market structure in such a way that companies in a relevant market are more likely to coordinate to control supply, raise their prices, or not innovative. The most important goal of merger policy is to avoid creating a market structure that significantly facilitate coordination of market behavior between different market players. Contrary to the *ex post* control of abusive market practices by undertakings with substantial degree of market power (under section 58 of the ICCC Act), merger control (under the ICCC Act) is designed to preclude companies from creating a strong market position which might in future enable them to abuse it to the detriment of consumers.

126. As per Section 82(3)(c) quoted above, it is also important to note that a proposed transaction that is likely to have the effect of substantial lessening of competition may be "authorized" to proceed if the ICCC is "*satisfied*" that it would result in more public benefits. The emphasis on the word "satisfied" means that the onus is on the applicant to convince the ICCC.

127. Given the above clarity, the competition assessment of the ICCC will focus on likely anti-competitive effects of the Proposed Acquisition; and then the assessment of the public benefit claims. All submissions and information provided will be considered according to these requirements.

128. Whilst most stakeholders generally supported the Proposed Transaction, the ICCC notes that Farmset, Treasury, DITI, FMK, Kendfresh, and a Private Citizen raised various concerns regarding likely harmful effects on competition and the broader public benefits.

129. Farmset's submission supports the ICCC's consideration of vertical integration, input or customer foreclosure, discriminatory supply, and increased dependence on vertically integrated suppliers. However, these concerns do not, without further evidence, establish any SLC and must be assessed against alternative suppliers, countervailing buyer power, imports, expansion by existing competitors, and potential entry. The competition assessment in the latter parts of the Draft Determination would address such concerns.

130. Treasury similarly recognizes the potential benefits of the Proposed Transaction, including increased investment, technical expertise, operational efficiencies and expanded poultry production capacity through Wilmar's participation. However, it raises concerns regarding vertical integration and increased concentration, particularly the potential for the merged entity to influence access to stockfeed and other critical inputs relied upon by independent producers and future entrants.

131. Treasury's submission reinforces the ICCC's identified concerns regarding vertical integration, access to critical inputs and market concentration, while also recognizing potential investment and industry-development benefits. The ICCC considers that these factors should be weighed in determining whether the Proposed Transaction is likely to have the effect of substantially lessening competition; and whether any conditions (per its suggestion) are necessary and proportionate to address the identified risks.

132. DITI raises similar concerns regarding market concentration, vertical integration, pricing and barriers to entry. The ICCC considers that these concerns warrant consideration of the merged entity's ability and incentive to restrict access to key inputs or weaken competitors. However, DITI's broader concerns regarding State partnerships and SEZ policy are primarily industrial and economic policy matters and are not determinative of the competition assessment.

133. The ICCC notes Kendfresh's concern that the Proposed Transaction may adversely affect SMEs, given its view that MHL has historically supported SMEs, while GFI has primarily supplied larger businesses. Kendfresh is concerned that SMEs may struggle to access poultry products if the MHL poultry business is acquired.

134. The ICCC considers that these concerns relate primarily to the availability and terms of supply to SMEs. However, the Proposed Transaction would not prevent SMEs from sourcing products from alternative suppliers, and the merged entity

would retain commercial incentives to maintain existing customer relationships and sales volumes.

135. FMK and the Private Citizen raised broader concerns regarding foreign ownership, local employment, SMEs, food security, rural livelihoods and local sourcing. The ICCC considers these matters primarily as public interest considerations, although the concerns regarding vertical integration and access to critical inputs are relevant to the competition assessment.

5. ICCC's EVALUATION

5.1 Competition Assessment

5.1.1 Definition of Relevant Market

136. Before assessing the likely competition effects of a proposed transaction, it is necessary to first define the *relevant market(s)*, as this sets the boundaries (or limits) within which competition between the parties involved is considered to exist or has the potential to exist. It is within these boundaries that the potential competition effects of a proposed acquisition (or merger) must be assessed and determined.

137. To identify the relevant market(s), the ICCC takes into consideration the area(s) of actual and likely overlap in the business activities and, where applicable, the 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 identify the relevant market(s) the proposed acquisition is likely to affect in terms of lessening of competition. The ICCC then proceeds to undertake a competition effects assessment of the proposed acquisition (or merger) and decides on the application.

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

"A reference in this Part to the term "market" is a reference to a market in the whole of Papua New Guinea for goods and services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them, including imports."

Applicant's definition of Relevant Market

139. The Applicant submitted that the Proposed Transaction relates to the poultry industry (comprising of markets for eggs, day-old chicks (**"DOC"**) and fresh and frozen chicken). PNG's poultry industry is made up of:

a) Commercial scale suppliers of eggs and chicken meat, consisting of:

   (i) Highlands Product Limited (trading as Zenag Chicken), MHL (trading as Tablebirds), Desh Besh, Sepik Fresh and Mt Fublian; and

   (ii) Imports, principally from Australia and New Zealand;

b) Smallholder broiler and layer farmers (approximately 50,000-60,000); and

c) Village level poultry farming (with various estimates of around 25% – 40% of domestic households in PNG keeping poultry).

140. According to the Applicant, MHL owns and operates broiler and egg laying poultry farms, and a meat processing division. It produces and supplies table eggs, day-old broiler chicks and fresh and frozen chicken meat. Broiler chickens are chickens bred for meat production.

141. SPL stated that it is currently a dormant entity. Neither it, AML nor any other members of the Wilmar Group have any market share in the markets for eggs, DOC and fresh and frozen chicken in PNG. Therefore, the Applicant submitted that there is no market overlap with respect to each of the markets it defined below:

- *Market for the production and wholesale supply of fresh and frozen poultry in PNG;*
- *Market for the production and supply of eggs in PNG; and*
- *Market for the production and supply of DOC in PNG.*

142. For completeness, the Applicant has also provided information on the market for supply of stockfeed in PNG. It stated that stockfeed business is not part of the Proposed Transaction; and the transaction would have no impact on competition in that market because AML and MHL would continue to compete vigorously. Therefore, the Applicant considered that this should not be considered for anti-competitive effects assessments.

143. The Applicant also submitted that the Proposed Transaction only involves a change in ownership of an existing business operating in the relevant markets in which the Applicant and its related entities do not currently operate; hence, it would not result in any increase in market concentration in these relevant markets.

ICCC's definition of Relevant Market

144. In defining the relevant market(s), the ICCC considers the product dimension, including the range of products and/or services supplied by the parties in the proposed transaction; and that of their respective related/parent companies, as well as the functional level(s) of the supply chain at which they operate. It also

takes into consideration the geographic dimension, having regard to the conditions of current and potential competition across the whole, or parts, of PNG. The demand and supply side substitution possibilities (which customers or suppliers could switch in response to price or non-price changes) also affect how markets are defined. In addition, the horizontal overlaps and/or vertical supply relationships between the parties influence the definition of a market.

145. As mentioned earlier, the ICCC understands that, although SPL was incorporated in 2012, it is currently dormant and does not conduct any business activities, including poultry. However, from available information, the ICCC notes that SPL was incorporated to enter the poultry industry in PNG. According to AML, this was not pursued further because it has investment hurdles which it considered that entry into poultry would not meet. Although SPL is not currently an active participant in poultry industry in PNG, the ICCC notes that its parent company, AML, is part of the Wilmar Group; and is a well-established poultry player outside of PNG.

146. The Wilmar group, of which AML and GFI are part of, operates major poultry businesses in Fiji, China, Malaysia, and other jurisdictions. It is understood Wilmar is the market leader in Fiji. In PNG, the only product AML supplies that has direct connection with poultry industry is stock feed. AML, a subsidiary of GFI and a member of the Wilmar Group, manufactures and supplies commercial stockfeed, including poultry feed, under the *Flame Stockfeed* brand to participants in the poultry industry. The ICCC has been told by chicken farmers that stock feed is *the* most important input in poultry production, particularly for commercial scale farming; and it represents a significant portion of production costs, making its supply competitively significant.

147. The ICCC understands that MHL is one of the two well-established poultry businesses in PNG. As noted elsewhere above, MHL is an active supplier of table eggs, DOCs, and chicken meat (which is categorized into fresh and frozen chicken or **"FFC"**). Besides raising birds for meat production from its own established processing plant, it also raises birds for table eggs. MHL does not supply DOC for raising layers for egg production. It imports egg-laying chickens to raise layers. Whilst all the supply of its poultry products come out of Lae, Morobe Province, MHL has established network of wholesalers and distributors across PNG, supporting a national geographic market, with limited scope for regional substitution.

148. Besides its poultry businesses, MHL also manufactures and supplies animal stock feeds, which include chicken stock feed. This makes MHL a vertically integrated poultry player in PNG. The table below provides summary of where MHL and SPL/Wilmar are at with respect to each of the relevant product.

Product	**SPL/Wilmar**	**MHL**
DOC	Potential entrant capability	Existing supplier
Chicken Meat	Potential entrant capability	Existing producer

Eggs	Potential entrant capability	Existing producer
Stock feed	Existing Wilmar/GFI presence	Existing MHL presence

149. Although SPL does not currently operate a poultry business in PNG, its affiliation with Wilmar is relevant to the assessment of potential competition. As noted, Wilmar has established poultry operations in other jurisdictions, including Fiji, China and Malaysia, demonstrating that the Wilmar group possesses the technical capability, experience and resources to participate in poultry production and related activities. Accordingly, the ICCC is of the view that the market definition should not be confined solely to existing overlaps between SPL and MHL; but also consider markets in which SPL/Wilmar could credibly enter or expand absent the Proposed Transaction.

150. Whilst it may be argued that SPL is not currently in the first three product markets, the ICCC considers that the absence of current supply should not limit the likely competitive impact analysis. The relevant question to be discussed and assessed is whether the Wilmar group represents a capable and credible potential competitive constraint that may be removed by the transaction.

151. For substitution possibilities, the ICCC considers that MHL could not easily switch to supply anyone, or combination, of the poultry products listed above if demand for any of them increases. There is no information suggesting that MHL can do that. Converting a broiler operation into an egg operation, or a hatchery into processing facility would require substantial time and investment, different technology, and different regulatory and technical capabilities. Therefore, the switching cost is considered to be high. On the demand side substitution, the ICCC considers that each of the products identified above are also not easily substitutable. A consumer who wants chicken meat cannot substitute it for eggs if chicken prices increase. Likewise, a poultry farmer needing DOCs would have no other alternate choices. The distributors and wholesalers would normally respond to the demand from the lower end of the value chain.

152. Whilst supply of the different poultry products respond to demands from the end users, it is noted that MHL does not sell FFC or eggs directly to end customers. It supplies them through established network of distributors and larger wholesalers, with a small amount of *ad-hoc* sales to smaller farmers.

153. Having considered the above discussions, the ICCC defines the relevant markets for the purposes of assessing the likely substantial lessening of competition effects of the Proposed Transaction to be:

- *The market for the production and supply of FFC in PNG;*
- *The market for the production and supply of Eggs in PNG;*
- *The market for the production and supply of boiler raising DOCs in PNG; and*
- *The market for the production and supply of chicken stock feed in PNG.*

154. Where relevant, 'poultry market' can be used to broadly include the above markets.

155. Besides stock feed, the ICCC understands that AML and MHL also compete in producing and supplying flour. However, the ICCC did not consider that this should be part of competition effects assessment because the flour business has no connection to poultry business (as opposed to stock feed). Post-transaction, MHL will continue to operate its non-poultry businesses, including flour and stock feed production. However, the Proposed Transaction is limited to the acquisition of MHL's poultry operations.

5.1.2 Substantial Lessening of Competition Considerations

156. The ICCC Act provides that the ICCC must be "satisfied" that the acquisition would not have, and would not be likely to have, the effect of substantially lessening competition in any relevant markets, to give a Clearance to proceed. This puts the responsibility of providing sufficient and credible information and evidence on the Applicant. The ICCC should be "satisfied" by the Applicant that the acquisition is not likely to have the effect of substantial lessening of competition in the markets. The ICCC's role is to assess and test the material provided, rather than assume responsibility for establishing the absence of competitive harm on behalf of the Applicant.

157. The consideration of substantial lessening of competition is guided by the non-exhaustive statutory factors set out in section 69(5) of the ICCC Act. Section 69(5) allows the ICCC to assess both actual and potential competitive effects of a proposed transaction, including its impact on market structure, rivalry, and barriers to entry and expansion.

158. Merger control is therefore inherently forward-looking and seeks to prevent acquisitions that create, enhance, or entrench market power so that possibility of abuse is prevented. A market with dominant firm may weaken competitive constraints, increase the likelihood of coordinated conduct, or reduce firms' incentives to compete. This can ultimately harm consumers through higher prices, reduced quality or choice, and hinder innovation and growth.

(a) Number of buyers and seller in the market;

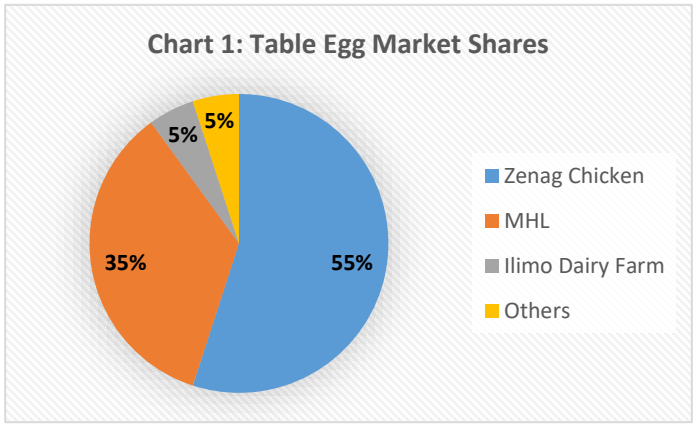
159. The ICCC notes the Applicant's submission that it is currently dormant and, together with its related entities, does not operate or supply relevant products in any of the markets it defined; therefore, it holds no market share in those markets. The Applicant, however, estimated that MHL (both pre and post-acquisition) holds market shares of approximately 35% in the eggs market, 30% in the FFC market and 30% in the DOC market.

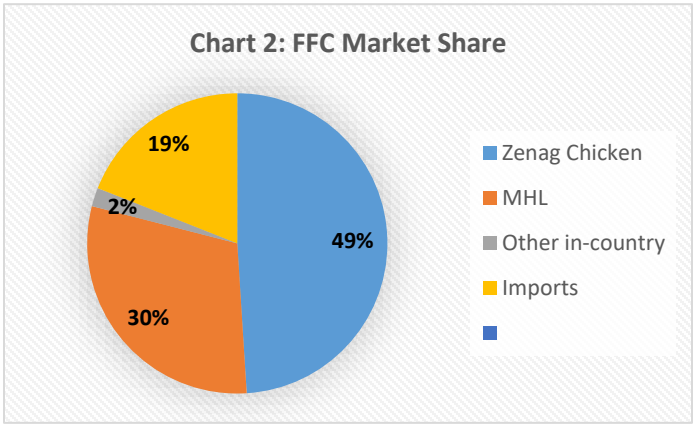
160. According to the Applicant, any change in market share in the longer term post-acquisition would result from organic expansion in production and enhanced

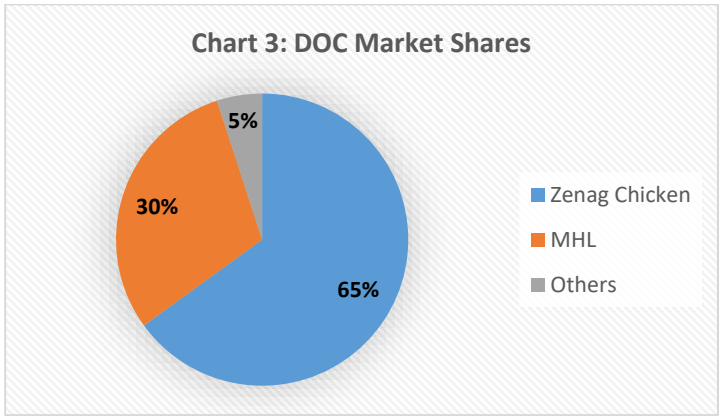
market presence across all relevant markets, achieved through competitive pricing or better product quality.

161. The ICCC notes that the principal suppliers in the markets for eggs and DOC include Zenag Chicken, MHL, Sepik Fresh, Mt Fublian, and various small-scale sellers. Sepik Fresh is a joint-venture between Innovative Agro Industry and Taylor Pacific and operates in East Sepik and Sandaun Provinces, while Mt Fublian, operated by Innovative Agro Industry, is based in the Western Province. The ICCC does not have any information suggesting that, apart from Zenag and MHL, the other small players have national supply network across different regions.

162. The market shares as provided by the Applicant is populated in the three respective charts below. For the FFC market, the main suppliers are: Zenag Chicken, MHL, Sepik Fresh, Mt Fublian, Desh Besh (POM), Imports, and Local small-scale sellers.







Source: Applicant's Authorization Application, Section 11

163. Whilst the ICCC notes that there are numerous suppliers in the production and supply of eggs, DOC, and FFC, each market remains highly concentrated as per the Herfindahl–Hirschman Index[6] (**"HHI"**) shown.

164. The calculations in Table 2 below confirm high concentration in all markets. The two largest suppliers collectively hold over 90% of the egg, 79% of the FFC markets and more than 95% of the DOC market, indicating their position as market leaders.

Table 2: Market Concertation - HHI Computations

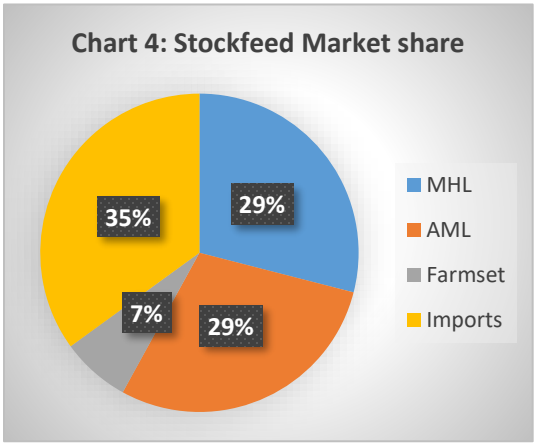
	FFC Market		**DOC Market**		**Egg Market**	
Suppliers	**%**	**HHI**	**%**	**HHI**	**%**	**HHI**
Zenag Chicken	49%	2401	65%	4225	55%	3025
MHL	30%	900	30%	900	35%	1225
Ilimo Dairy Farm					5%	25
Imports	19%	361				
Others			5%	25	5%	25
Other in-country	2%	4				
	100%	**3666**	**100%**	**5150**	**100%**	**4300**

Source: Applicant's Authorization Application

165. In terms of the stock feed market, the Applicant did not indicate who are the main importers. Since Zenag is the leading player in poultry and does not produce stockfeed (like MHL); and given that major distributors and wholesalers in PNG do not sell imported chicken feeds, the ICCC can safely assume that most, or if not all, of the import volume belongs to Zenag. Whilst imports from smaller players, if any, may provide some level of competitive constraint, the volume that is truly competing in the market are those from MHL, AML and Farmset. This market is also highly concentrated. This is shown below.

[6] https://www.justice.gov/atr/herfindahl-hirschman-index
HHI below 1,500 indicates a competitive market; while values between 1,500–2,500 indicates moderate concentration; and values above 2,500 indicates high concentration (less competition).

Figure 2: Market Share and HHI computations for the stock feed market



Stockfeed Market		
Manufacturer	**%**	**HHI**
MHL	29%	841
AML	29%	841
Farmset	7%	49
Imports	35%	1225
TOTAL	**100%**	**2956**

Source: Applicant's Authorization Application, Section 11

166. It is not clear to the ICCC how much of the 29% volume from MHL is consumed internally; and how much is supplied to compete in the open market (through distributors for on-selling them to other poultry farmers). Given MHL's poultry operations and size, the ICCC can safely assume that major chunk of its stock feed production goes to feed its own chickens and layers. If this, and the foregoing assumption that bulk of the import volume is consumed by Zenag, it is reasonable to believe that the current stock feed market leader is AML.

167. The ICCC does not expect the level of concentration in the stockfeed market to change as the Applicant states that AML and MHL would continue to remain independent suppliers post-acquisition. Given SPL does not have any market share in each of the markets, the ICCC notes that the measured concentration level will remain unchanged post-acquisition.

168. Although the Proposed Acquisition would not materially alter the existing levels of concentration, the ICCC considers that it would prevent the dilution of current concentration that could otherwise occur through SPL/Wilmar independent entry into the relevant markets.

169. The ICCC considers that it is important to consider the likely competitive conditions following the acquisition, including the parties' future incentives and capacity to compete, expand production, invest in their operations, and respond to emerging competitive pressures. Given Wilmar's expertise in the poultry industry and Zenag's bigger presence in PNG, the ICCC considers that post-transaction environment, the market structure is likely to become more concentrated, potentially resembling a duopoly. The acquisition could reinforce the existing level of concentration, remove a possible source of future independent competition, and make it harder for smaller poultry producers to achieve the scale and access to inputs needed to compete effectively, as discussed in latter parts of this Draft Determination. Given the scale and scope it would likely to have with the acquisition, and the scale and scope Zenag has, it more difficult for smaller players to expand and new entrants to enter the

market, as they would be likely to face stiff competition from more established stronger incumbents with greater control over inputs, distribution, and pricing dynamics.

170. The ICCC also note that there is no evidence of bigger players losing market share to each other, imports, and or smaller new entrants. If there are no indications of losing market shares, then there is no incentive to be aggressive in competing against themselves, even if SPL is strengthened through this Acquisition.

(b) Actual and potential level of import competition in the market;

171. The ICCC notes that egg imports are generally not feasible due to biosecurity restrictions, while DOCs can theoretically be imported with permits. Some small new entrants stated that due to unreliable domestic airline services, imports are in practice impossible as DOCs will die on their way or arrive very weak. Import competition in the FFC market is also limited to Australia and New Zealand, mainly as frozen portions and mechanically deboned meat (**"MDM"**) used in the production of sausages by local producers. Imports from Asian origins currently remain banned due to avian influenza.

172. According to the Applicant, imports of FFC account for about 19% in 2025 and continue to constrain domestic suppliers, as wholesalers and retailers source directly from overseas. If local producers cannot match import competition, they risk losing market share. Given continues depreciation in Kina and the challenge to secure foreign exchange for imports, the ICCC considers that imports would not put sufficient competitive pressure on the local production.

173. In the stockfeed market, from the market share data, the ICCC notes that imported stockfeed has maintained a reasonably strong position over time. Imported stockfeed provides a better alternative to domestic distributors and increases purchasing flexibility. However, there is no data showing the trend of recent imports in the mist of the forex and depreciation challenges which could give a better view of how strong is import competition. There is also no information showing who are the main importers.

174. Despite this lack of data, it seems unlikely that the Proposed Transaction would restrict import competition.

(c) Degree of countervailing power in the market;

175. The Applicant submitted that countervailing power among customers differs across the relevant poultry markets, with greater countervailing power held by customers of significant scale or located proximately to facilities of more than one supplier. In the commercial scale segments served by the Target Business, customers generally maintain some capacity to switch amongst suppliers in each relevant poultry market with low switching costs, affording them a good degree of bargaining leverage.

176. According to the Applicant, this transaction is not expected to affect the bargaining power of customers in the relevant poultry markets as it is a continuation of an existing business, albeit led by a new ownership structure. Accordingly, it claims that customers' ability to switch amongst suppliers would not be altered by the transaction. It may be possible for some type of customers to bypass the merger parties by either importing or utilizing alternative suppliers in the relevant poultry markets (or substitution for other animal protein sources).

177. The ICCC considers that large poultry wholesale and retail customers have significant countervailing power, allowing them to switch suppliers or source imports (especially for frozen chicken, despite the forex challenges). Some can even support new market entry due to their scale. For example, Taylor Pacific Limited entered the poultry industry in 2025 through partnerships to develop farms and supply poultry products. The ICCC also understands that Desh Besh Limited ("**Desh Besh**"), who is a wholesaler and retailer in Port Moresby has ventured into poultry (through Desh Besh Agro Limited) and started raising and selling live chicken and processed chicken meat in its retail outlets. They also have eggs sold in various shops in Port Moresby. The ICCC also notes a number of new players have entered the poultry markets, such as Bulolo Fresh by PNG Forest Products Limited; Godwit Pacific Limited, who is a major frozen meat wholesaler in Port Moresby, is setting up its poultry farm at Edai Town, outside Port Moresby; and in various parts of PNG. The ICCC also notes a new poultry farm set up along the Highlands Highway in Jiwaka Province to focus on egg production and supply. The entry of grocery wholesalers in the poultry markets demonstrate the power of customers to bypass or set up their own poultry farming (for meat, DOCs, and or eggs).

178. In the stockfeed market, the ICCC considers that commercial buyers of stockfeed in PNG generally have some degree of countervailing power, though it varies by size and integration. The large and vertically integrated poultry producers tend to have strong countervailing power. Generally, the bulk buyers can negotiate prices and terms; and in some cases, can switch suppliers or produce feed in-house (such as MHL, Desh Besh, etc), which constrains feed manufacturers.

179. Mid-sized commercial farms have moderate countervailing power. They can compare suppliers and switch where alternatives exist, but are still somewhat reliant on established producers for consistent quality and supply. Smallholders and SMEs typically have limited countervailing power due to low volumes, higher switching costs, and dependence on existing distribution channels.

180. Overall, the presence of large buyers especially those with scale or vertical integration provide a competitive constraint on stockfeed suppliers, helping to limit pricing power and any anti-competitive conduct in the market.

(d) Nature and effect of barriers to entry to the market;

181. The barriers to entry identified by the Applicant are in the tabulated below.

Table 3: Barriers to Entry Across Poultry Segments

Factor	Eggs	DOCs	FFC
Sunk Costs in Production Capacity	Moderate; layer sheds, cages, grading/packing equipment. Some repurposing possible.	High; breeder farms, hatcheries, climate control, biosecurity infrastructure.	High; broiler farms, processing plants, abattoirs, cold storage, transport. Highly specific assets.
Access to Shelf Space / Customers	Moderate; supermarkets require consistency, but wet markets provide alternatives.	Moderate; relies on long-term relationships with smallholder farms.	High (commercial scale); limited supermarket and food service access, dominated by established players.
Advertising and Promotion	Low–Moderate; branding matters in urban areas, but price-driven.	Low; based on performance, price, and reliability rather than promotion.	Moderate–High; branding, food safety, and promotion influence demand.
Legal & Regulatory Restrictions	Moderate; licensing, food safety, animal welfare, biosecurity manageable.	High; strict biosecurity, breeding standards, import controls.	Moderate–High; food safety, environmental approvals, and biosecurity compliance required.
Requirement for Scarce Inputs	Moderate; feed (often imported) and veterinary services.	High; breeding stock, skilled technicians, vaccines, stable utilities.	Moderate–High; feed, chicks, skilled labour, logistics, cold chain systems.
Extent of Brand Loyalty	Low; switching common based on price/availability.	Low; driven by performance and supply reliability.	Moderate; trust in quality and safety matters, though price sensitivity remains.
Minimum Efficient Scale (MES)	Low; small-scale regional production viable.	High; volume needed to justify hatchery operations.	High; significant investment in processing, logistics, and marketing.
Goodwill	Moderate; relationships help but can be developed over time.	Moderate–High; long-term relationships and reliability important.	Moderate–High; strong retailer and distributor relationships important.
Access to Scarce Resources (IP)	Nil; no meaningful proprietary barriers.	Moderate; access to high-quality breeding genetics may be restricted.	Low; competition based on scale and efficiency, not IP.
Threat of Retaliatory Action	Low; mainly price discounting or supply increases.	Low; incumbents rely on contracts and technical support.	Low; pricing, marketing, and retailer incentives used competitively.

182. The ICCC notes from the Applicant's submission that the barriers observed in the DOCs and FFC markets are higher; and it is driven by high capital intensity, regulatory requirements, minimum efficient scale, and access to key inputs. The eggs market presents relatively lower barriers, with more flexible scale requirements and alternative distribution channels. Overall, the most significant constraints relate to capital investment, regulatory compliance, and input access, while intellectual property barriers and incumbent retaliation are comparatively less significant. The significant barriers are structural (capital, scale, regulation, and inputs), while behavioural barriers (retaliation, branding) are generally limited.

183. The ICCC considers that, since the barriers to entry appears to be low in egg production, smaller-scale operators can viably enter and expand over time. Although SPL is likely to be a stronger player with the Proposed Transaction, it is not likely to cause any problem of increasing entry barrier. We have seen examples of new entrants in the discussions under "Countervailing power" above.

184. In the supply of DOCs and, more significantly, FFC, whilst appreciating that new entry at a commercially meaningful scale is likely to be difficult, time-consuming, and capital intensive, the ICCC notes the evidence of new entries. As noted earlier, a new entrant has set up in Jiwaka; but still struggles to receive the quantity of DOCs it requires for raising layers. The question to ask here is whether this acquisition would enhance the existing high barriers in any significant way that new entries would not be possible in the foreseeable future; or can likely limit the expansion of smaller ones.

185. In assessing the Proposed Transaction, the ICCC considers that, whilst the transaction may not materially alter the existing structural barriers to entry or expansion in the poultry markets, the market structure resulting from the transaction could itself reinforce and heighten those barriers. Specifically, the transaction would result in a market potentially dominated by two large players with greater scale, production capacity, access to key inputs and distribution networks. Such a structure may enable the major suppliers to secure or lock in customers and distribution channels, making it more difficult for smaller or emerging competitors, including Desh Besh and others, to expand their operations and gain market shares. It may also reduce the incentive for potential new entrants to enter the market if they perceive limited opportunities to achieve sufficient scale or effectively compete against the two established suppliers.

186. Notwithstanding these concerns, recent market developments indicate some emerging competitive pressure. As noted earlier, Taylor Pacific Limited has partnered with Central Province Business Investment Limited to develop three poultry farms in Central Province (potentially leveraging its existing Hugo Canning facilities). In addition, Innovative Agro Industry and Taylor Pacific have established a joint venture, Sepik Fresh, to supply poultry meat, eggs and day-old chicks in the Sepik region. Further, Desh Besh has commenced supplying fresh and frozen chicken in Port Moresby from its Central Province operations, with plans to expand into eggs and DOC. These developments demonstrate that entry and expansion are occurring in the relevant markets; and would provide some competitive constraint over time. However, their ability to develop into effective and sustained competitive alternatives may be constrained by the more concentrated market structure that may result from the Transaction. Accordingly, while these developments may incrementally enhance competitive dynamics, the ICCC considers that their effectiveness as a countervailing competitive constraint requires careful consideration, particularly given the potential for the two major suppliers to strengthen their customer relationships, distribution networks and overall market positions following the transaction.

187. For the stockfeed market in PNG, the ICCC considers that entry is constrained by heavy reliance on imported grains, requiring new firms to establish international supply chains, manage foreign exchange risks, and absorb high transport and import costs. A new entrant stated that it is challenging to import ingredients to produce stock feed as it has to source each of them from different countries. It also stated that sourcing technical expertise locally to operate machineries and treating bird sickness is limited and difficult; so, it has to bring in expatriates (at higher cost). The established players benefit from economies of scale and existing procurement networks, giving them a competitive advantage.[7] Additional barriers include exposure to global price volatility, shipping disruptions, and domestic infrastructure limitations such as port capacity, storage, and transport logistics which increase costs and operational risks. Together, these factors create a high-cost, high-risk environment that can still discourage new entry and expansion of smaller players who have entered the market.

188. The ICCC also understands that land is important for new entrants and expansion of new smaller players. From its dealing with other matters and market observation, securing land is usually a significant barrier to entry in PNG.

189. Whilst the Proposed Transaction is not likely to raise existing barriers, the creation of a second stronger player in a duopolistic market where existing bigger players have greater control over inputs and established relationship and distribution network, is likely to deter potential new entry. Despite this possibility, the ICCC acknowledges that if two stronger players truly remain competitive, the industry and market can benefit.

(e) Likelihood of significant and sustainable increase in prices or profit margins;

190. The Applicant submitted that the Transaction would not cause price increase to customers or lower prices to suppliers post-completion without losing market share in the relevant markets for eggs, DOCs and FFC. It claimed that, it is particularly constrained through:

(a) customers' and suppliers' ability to switch to Zenag Chicken (as the largest PNG poultry producer, which also competes in all relevant markets); and

(b) customers' ability to switch to imported FFC.

191. The Applicant further stated that there is also some level of constraint imposed by the ability to switch to other smaller local poultry producers and customers' ability to 'sponsor' new entry by supporting proposed new poultry

[7] https://www.aciar.gov.au/publication/books-and-manuals/local-feed-resources-pig-poultry-and-fish-production-papua-new-guinea

developments. The applicant argued that as the Proposed Transaction is simply a change of ownership of an existing business, it does not change the ability of the Target Business to sustainably increase prices paid by customers or decrease prices paid to suppliers.

192. Furthermore, the Applicant argued that the joint venture plans significant investments across the poultry value chain, including upgrading assets, introducing more efficient poultry houses, and expanding processing capacity to meet unmet local demand. These improvements are expected to enhance productivity and efficiency, enabling lower prices to consumers in PNG. Any margins gained would come from these efficiencies rather than price increases and are expected to remain constrained by ongoing competition.

193. The ICCC considers that the Proposed Transaction is unlikely to enable the acquirer to significantly or sustainably increase prices or profit margins in the eggs, DOC, and FFC markets. Strong competitive constraints especially from the leading firm, Zenag Chicken, and other suppliers would limit such conduct, as customers could readily switch in response to price increases. The recent entry and expansion by new poultry suppliers, who have already gained market share, further reinforces competitive pressure. Therefore, any attempts to raise prices would likely result in customer loss, maintaining effective price competition to the benefit of consumers.

Whilst the Applicant states that MHL and AML would remain strong competitors in the supply of stockfeed, the ICCC notes that future coordinated conduct is possible. The common ownership and commercial relationship created by the JV at poultry business could change the incentives and opportunities to coordinate in the stockfeed market. That fact that bulk of MHL's stockfeed production is consumed internally, the chances of limiting all of its supplies to internal consumption and leaving AML to be the only major producer and supplier of stockfeed. The ICCC has to be very cautious on this. Whilst the ICCC acknowledges the presence of a credible alternative stockfeed supplier in Farmset, in the short run, it may not have the capacity to supply the market resulting in supply shortages and price hikes for smallholder growers and SMEs. A smaller new entries Desh Besh is producing its own stock feed; and it has the potential to supply small growers; but it may not have the capacity to supply wider PNG. Import volumes represents 35% market share which indicates that imports can exert strong competitive pressure on AML and MHL. However, they largely meet Zenag's needs and have limited capacity to supply the open market in competition with AML and MHL for SMEs and small growers. The area of greatest concern is the SMEs and small family chicken meat growers, which Farmset also supplies. The parties will need to be very clear on how they would address this problem, if Authorization is to be granted.

194. The ICCC must ensure there is strong, effective and sustainable competition between MHL and AML in the stockfeed market post-acquisition, if Authorization is granted. The ICCC notes a 'structural solution' such as

divestment of one of the joint venture stock feed business may address this issue adequately.

(f) Extent to which substitutes are available, or are likely to become available, in the market;

195. In terms of substitutes, the Applicant submitted that there are no close substitutes for eggs and DOCs. Whilst it is possible to buy grown-out chickens as substitutes for DOCs, it would be materially more expensive.

196. According to the Applicant, the following forms of animal protein are likely substitutes for FFC to some degree:

- Fresh pork and fish are available from local producers;
- Pork and canned and preserved meat and fish are supplied by large supermarkets (and wholesale distributors);
- Canned meat is also available from local producers, such as Hugo Canning Company Limited and WR Carpenters Ltd); and
- Canned fish is available from local producers such as Frabelle (PNG) Ltd, R D Tuna Canners, International Food Corporation, Majestic Seafood Corporation Ltd and South Seas Tuna Corporation).

197. The ICCC maintains its considerations on substitution possibilities as discussed under market definition part of this Draft Determination. Whilst the Applicant's consideration here is referring to the lower end of the supply chain, the ICCC's competition impact discussions are focused on the production and supply segment of the value chain. The ICCC maintains that there are no close substitutes for each poultry products in the relevant markets.

(g) Dynamic characteristics of the market including growth, innovation, and product differentiation;

198. The Applicant submitted that PNG's poultry market is growing due to rising demand for affordable protein, driven by population growth and a growing population of middle-class citizens. It stated that the growth is also contributed by volume shortfall as imports are restricted to few countries due to avian influenza; hence increasing the need for more local production to bridge the gap.

199. The Applicant further submitted that the joint venture would combine local expertise with capital and technical know-how to expand capacity and improve efficiency, leading to higher output and lower production costs, which may place downward pressure on prices.

200. The ICCC considers that the relevant markets are generally dynamic, with recent entry by approximately three new players indicating continued interest and the industry's growth potential. However, the ICCC also recognizes that the highly concentrated market structure, particularly where two major players account for a significant proportion of supply, may influence the dynamics of competition in the markets. A more duopolistic market structure may reduce the intensity of competition and, over time, weaken incentives for market participants to expand capacity, invest, innovate or otherwise compete aggressively. This is particularly relevant in assessing the likely evolution of the markets following the Proposed Transaction.

201. Demand conditions may also provide an important competitive constraint. For example, demand for FFC may be relatively responsive to price increases given the availability of alternative sources of protein, which may limit the ability of suppliers to increase prices without losing sales. In addition, technological and production efficiencies remain important dimensions of competition in the poultry industry, including innovations in breeding, hatchery systems, feed conversion and production processes that may alter cost structures and the relative competitive positions of market participants.

202. Accordingly, while recent entry and potential expansion indicate opportunities for growth, the ICCC considers that the sustainability and effectiveness of these competitive constraints would depend on the ability and incentives of existing and emerging competitors to expand, invest and innovate in the face of a highly concentrated market structure.

203. The ICCC further notes that the combination of Wilmar's international poultry expertise and resources with MHL's established poultry operations may facilitate investment, economies of scale, improved production efficiency, enhanced biosecurity, technological improvements and greater domestic supply of chicken meat, eggs and DOCs. These developments could contribute to the growth and modernization of the poultry industry.

204. On the other hand, the Proposed Transaction would remove the prospect of independent entry by Wilmar through SPL. Such entry could have introduced an additional independent competitor, increased productive capacity and strengthened incentives for existing producers to innovate, improve product quality, differentiate their products and compete on price. The Transaction may therefore eliminate the future competitive pressures that would otherwise encourage industry growth and innovation.

205. The ICCC must also consider whether the Transaction could affect the ability of independent poultry producers to access essential inputs, particularly DOCs and stockfeed, on competitive terms. Any material weakening of independent producers could reduce their capacity to expand, innovate and offer differentiated products. In a meeting with Desh Besh, they have indicated that they were not supplied DOCs for their meat production; and this is concerning when the Proposed Transaction would strengthen another bigger player.

206. The ICCC considers that the assessment should weigh the Applicant's claims of additional investment, productivity improvements, innovation and consumer benefits against the potential loss of independent competitive entry and any resulting weakening of incentives to improve price, quality, product variety and production efficiency. The assessment should distinguish benefits arising specifically from the Transaction from benefits that could reasonably be achieved through independent entry.

207. The strong dynamic-competition question is not simply whether the Transaction would grow the poultry industry. It is whether the industry would grow, innovate and differentiate products more effectively with the Acquisition than it would under the counterfactual of MHL remaining independent and Wilmar potentially entering PNG on its own.

(h) Likelihood that the acquisition would result in the removal from the market of a sustainable, vigorous and effective competitor;

208. The ICCC agrees with the Applicant that the Proposed Transaction is a rearrangement of ownership of two existing businesses, where one is currently not an active market participant. Whilst this is acknowledged, the ICCC considers that the Proposed Transaction is likely to foreclose the prospect of independent entry by SPL/Wilmar. Given its established operations in other jurisdictions which demonstrates its technical expertise, management capability, production know-how, access to capital and other capabilities, the ICCC considers that, SPL appears capable of becoming a sustainable, vigorous and effective competitor in the relevant markets.

209. The ICCC notes SPL's comments in its responses to some stakeholders' comments, especially where it stated that there is no evidence to suggest that the Transaction would foreclose a likely independent entry by the Wilmar group. The comment went on to state that, for there to be any impact on competition, it must be a real, probable and credible prospect of new entry. It further states that it is not sufficient to establish a likely substantial lessening of competition merely by speculating that, because Wilmar is a large agribusiness with financial resources and poultry operations in other jurisdictions, it could theoretically have entered the PNG poultry market. Its submission states that the Wilmar group actively decided against organic independent entry in 2022/23.

210. The ICCC notes and appreciates the above submission. The Applicant is asking the ICCC to accept that proposition as part of the basis upon which it should be "satisfied" that the Transaction is not likely to substantially lessen competition. In the context of this Proposed Transaction and this Authorization application, it is important for the ICCC to appreciate the purpose of incorporating SPL, what was SPL's business plan, internal investment proposals, board papers and discussions regarding SPL's organic entry,

feasibility studies of setting up poultry business, and any documentary explanations of why independent entry was, or was not, commercially viable.

211. Given Wilmar expressed interest in entering PNG poultry and had discussed that interest with Government Minister (as confirmed in a meeting with the ICCC), and the incorporation of a dedicated vehicle in SPL, the evidence begins to form a sequence of conduct consistent with preparation to enter the market. A relevant question to be asked and put this consideration into perspective is – if the Proposed Transaction had not been available, what would SPL have done (given its incorporation in 2012)? SPL is a vehicle that could be used to build a business by a very experienced operator in the poultry sector. It is difficult to accept without further evidence that Wilmar could not change its mind and decide to enter the market, particularly if it perceived MHL to be in a weakened state.

(i) Nature and extent of vertical integration in the market;

212. The Applicant submitted that under the existing ownership, MHL is vertically integrated, producing and supplying stockfeed and using it as a key input to raise DOCs into poultry, which are then processed and sold as FFC.

213. The Applicant also submitted that both SPL and MHL do not supply stockfeed to Zenag Chicken (the other major poultry producer), which sources stockfeed mainly from third-party (including Australian) suppliers; hence the foreclosure risks are minimal. Post-transaction, AML and MHL will continue supplying smaller poultry producers, who remain commercially viable and can switch between suppliers. The transaction is also unlikely to enable coordination, as it does not integrate the parties' stockfeed operations, which will continue to compete independently.

214. The Applicant claims that GFI/AML would continue to have a clear ability to compete to sell stock feed utilizing all of the spare capacity and is strongly incentivized to continue competing for supply to third party poultry producers. GFI/AML has no ability to foreclose supply of stock feed to competing poultry producers as there is significant under-utilized capacity in the industry and import competition, such that any attempt to not supply third party poultry producers would just result in lost sales and the poultry producers continuing to compete just as effectively in poultry markets through acquiring stock feed from other suppliers.

215. The Applicant also considers that the transaction is not a consolidation of, or increase in, market concentration in the stock feed market. It stated that it would not produce stock feed, hence it would not be vertically integrated as a result of the Proposed Transaction. Whereas, without the Transaction, MHL would remain vertically integrated (as it currently is).

216. Post-acquisition, AML (as 51% owner of SPL) will supply stockfeed to SPL, replacing MHL's internal supply. Although SPL will not produce stockfeed itself,

the ICCC considers that the arrangement is vertically integrated due to AML's upstream (supply of stockfeed) – downstream (poultry production by SPL) presence, while MHL would continue to operate independently in stockfeed.

217. The ICCC considers that the transaction would introduce vertical integration by combining AML's upstream control over stockfeed supply with SPL's acquired downstream poultry operations. This structure would enhance the ability of MHL and Wilmar to potentially engage in foreclosure strategies as they would have the interest to first supply their joint poultry business before supplying other customers, especially when supplies are running lower and imports becoming harder for large commercial farmers. The ICCC also considers that the possibility of tying and bundling of feed with DOCs should not be discounted given their scale of production.

218. Whilst the Applicant stated that the existing ICCC's role of market monitoring and investigation is available should any anti-competitive conduct engaged in by Wilmar, MHL and SPL, the ICCC would like to clarify that the aim of such merger review and assessment is to ensure the merger is not likely to have such effects in the relevant markets. The merger consideration is always future-looking; and it is difficult to be certain of what is going to actually happen in the foreseeable future. Thus, the importance of taking preventive actions before it happens.

219. The ICCC also considers that vertical relationship may put the JV partners in a stronger position to engage in conduct that risks raising rivals' costs, limiting their access to critical inputs and routes to market, and strengthening the SPL's position. Over time, this would create and heighten barriers to entry and expansion as new or smaller competitors would face both input constraints and reduced distribution opportunities, thereby diminishing effective competition in the market.

5.1.2.1 Summary and conclusion on competition impact assessment

5.1.2.1.1 *Competition Effects Consideration Summary*

220. The summary of key competition effects considerations are as follows:

- Although the Proposed Transaction would not change the existing high concentration (as it would involve the acquisition of assets of an active player (MHL) by a non-active player (SPL) in poultry), overtime SPL's market position would be strengthened and likely increase its market shares. This would further increase the concentration levels as there is no evidence of new players eroding any market share. The intention of Wilmar group to enter independently is there; and if they do, the existing high market concentration level would be diluted. This possibility may be denied with the Acquisition.

- The market structure would remain duopolistic unless new entrants are not restricted to grow and expand. Such strong duopoly structure would make it more difficult for smaller producers and new entrants to compete, as they would face stronger incumbents with greater control over inputs, supply distribution network, and pricing dynamics.

- Import competition, particularly in FFC and stockfeed, continues to exert a material competitive constraint, which would not be affected by the Proposed Transaction.

- Large commercial buyers have significant countervailing and bargaining powers; and can switch suppliers, source imports or, in some cases, enter the markets. Few examples noted are Desh Besh, Taylor Pacific, Godwith, Bulolo Fresh, Awari Poultry and few others. Whilst this may limit the existing bigger suppliers' incentive to engage in exploitative conduct, there is no evidence showing that bigger players are losing market share. If there are no indications of them losing market shares, then there is no incentive to be aggressive in competing against themselves.

- Significant and sustainable price increases are unlikely because of existing competition from Zenag, imports, and recent entrants. However, vertical integration creates some concerns as MHL and AML have the ability and incentives to influence stockfeed pricing, supply terms and leveraging such position to DOC market.

- The markets are growing, with evidence of recent entry and expansion indicating that any serious player can enter the market. The Proposed Transaction would not materially enhance current levels barriers to entry or expansion. For potential new entries and existing smaller players to expand, a huge challenge would be securing enough land space. The ICCC also notes that higher concentration and stronger position of two bigger players may reduce incentives to expand, invest and innovate. Demand sensitivity and technological efficiencies provide additional competitive constraints.

- Proposed Transaction may remove the prospect of independent entry by Wilmar through SPL. Such entry could have introduced an additional independent competitor, increased productive capacity and strengthened incentives for existing producers to innovate, improve product quality, differentiate their products and compete on price. The Acquisition may therefore eliminate the future competitive pressures that would otherwise encourage industry growth and innovation.

- The vertical relationship in supply of stockfeed remains. With the Acquisition and support from Wilmar, SPL may be a stronger and bigger player. The ability of MHL and Wilmar to potentially engage in foreclosure strategies would be enhanced; and they would prefer to first supply their joint poultry

business first before supplying other customers, especially when supplies are running low and imports becoming harder for large commercial farmers. The ICCC also considers that the possibility of JV partners favouring SPL or foreclose rivals, including preferential stockfeed supply, and potentially raising rivals' costs and barriers to expansion should not be discounted.

5.1.2.1.2 Competition Assessment Conclusion

221. The ICCC reiterates that, although merger assessment on such applications uses current and historical data, the anti-competitive impact consideration is fundamentally forward-looking. The ICCC must not simply assess the structure of the industry today; it must evaluate how competition is *likely* to develop with the transaction compared with what would likely to happen without it. Therefore, the discussions on how the transaction is likely to affect future market entry, expansion, investment, innovation, pricing, product quality and the ability of existing and potential competitors to constrain the merged entity.

222. The ICCC's assessment indicates that the Proposed Transaction is unlikely to materially increase market concentration immediately, given that SPL is not currently an active player; and the transaction involves the acquisition of the poultry business of an existing market participant. Existing competitive constraints, including competition from Zenag, imports, recent market entry and expansion, demand sensitivity, and the bargaining power of large commercial buyers, are also likely to constrain the ability of major suppliers to impose significant and sustainable price increases in certain markets. The continued availability of alternative stockfeed suppliers and imports provides an additional source of competitive discipline.

223. However, the ICCC considers that an assessment confined to existing market shares and immediate changes in concentration would not adequately capture the potential longer-term effects of the Proposed Transaction. The intention of the Wilmar group to enter PNG's poultry markets independently raises a material question as to whether the Acquisition would eliminate a credible source of future competition. If independent entry would otherwise have been likely and timely, it would have been sufficient in scale to exert strong pressure on the incumbents. This possibility would be removed by the Proposed Transaction, eliminate the prospect of current high market concentration being reduced, and weaken the incentives of existing producers to compete through lower prices, increased production, improved quality, product differentiation and innovation.

224. Furthermore, the Proposed Transaction may further strengthen the Applicant's position across the relevant poultry markets and increase the extent of vertical integration between the relevant levels of the supply chain. The ICCC identifies potential vertical competition concerns arising from the relationship between the poultry JV and the stockfeed businesses associated with Wilmar and MHL. Although the stockfeed businesses are understood to remain legally separate,

the transaction may increase the ability or incentive of the parties to favour the joint venture in the allocation of stockfeed, particularly during periods of supply shortages or when imports are constrained. Such conduct could disadvantage competing poultry producers through less favourable supply terms, delayed or insufficient access to feed, or higher input costs. These risks warrant particular scrutiny given the significance of the parties in stockfeed supply and the importance of reliable feed access to poultry production and expansion. The ICCC should also be satisfied that the transaction would not create a channel to facilitate the exchange of competitively sensitive information in stockfeed market; or weaken incentives for the stockfeed businesses to compete independently. Although the Applicant does not currently possess market power, the acquisition of the Target Business would place SPL in a position comparable to the existing dominant players and could significantly alter the competitive dynamics of the markets.

225. The ICCC therefore considers that the Proposed Transaction may confer upon the Applicant the ability and incentive to exercise market power post-acquisition, particularly in circumstances where competitive constraints are not sufficiently strong to effectively constrain its conduct. While the evidence of market growth, recent entry and expansion suggests that entry is possible, the existence of entry opportunities does not, on its own, establish that entry would be timely, likely and sufficient to offset the loss of potential competition or any foreclosure effects. The available evidence does not provide sufficient assurance that existing or potential competitors, customers, imports or other market forces would impose sufficiently strong and timely constraints to mitigate these concerns. Access to suitable land, production capacity, reliable inputs, distribution networks and the ability to compete against established suppliers must also be considered. Similarly, the bargaining power of large commercial buyers may constrain suppliers in some transactions, but its effectiveness will depend on buyers' actual ability to switch, import or sponsor alternative supply and whether those alternatives would remain available to smaller producers.

226. The ICCC also note that there is lack of evidence of bigger players losing market share to imports; or smaller new entrants. If there are no indications of losing market share, then there is no incentive to be aggressive in competing against themselves, even if SPL is strengthened through this Acquisition. Another stronger and more established player in Wilmar has the ability to bring in stronger, sustainable and vigorous competition; and the industry could benefit from innovation in product and production process while consumers benefit from better quality and affordable options.

227. On balance, the ICCC considers that the principal competition risks are forward-looking and relate to the loss of potential independent entry, the persistence of an already concentrated market structure, and the possibility that vertical relationships could weaken the ability of rival poultry producers to compete and expand. These risks must be weighed against the existing

competitive constraints and any substantiated, transaction-specific efficiencies or other benefits arising from the Proposed Transaction.

228. The ICCC should not conclude that the Proposed Transaction is unlikely to substantially lessen competition solely because it does not immediately increase concentration; or because significant and sustainable price increases appear unlikely under current market conditions. The determination should depend on whether the evidence establishes that the potential loss of independent entry and the identified vertical risks are likely to materially weaken competition in one or more relevant markets, relative to the likely situation in the absence of the Proposed Transaction. The ICCC gives some weight to evidence of Wilmar's prior independent entry assessment, the commercial and governance arrangements governing the joint venture, and the parties' ability and incentives to restrict or disadvantage rival poultry producers through stockfeed supply arrangements.

229. As such, based on the information currently available, the ICCC is not satisfied that the Proposed Transaction will not have, the effect of substantially lessening competition in the relevant markets. The ICCC therefore must proceed, in such circumstances in the assessment of an Authorization application, to assess whether the proposed acquisition would give rise to more public benefits which would outweigh the potential significant anti-competitive effects.

5.2.1 CIC

230. *CIC.*

231. *CIC.*

232. *CIC.*

233. *CIC*

234. *CIC.*

235. *CIC.*

236. *CIC.*

237. *CIC.*

5.2 COUNTERFACTUAL ASSESSMENT

5.2.1 Applicant's Counterfactual Argument

238. *CIC*

239. *CIC*

240. *CIC.*

241. *CIC.*

242. According to the Applicant, Wilmar is not a potential competitor and was not likely to enter without the Proposed Acquisition. There would be no alternative entry into the PNG poultry industry in the counterfactual as:

- the Applicant has been dormant for a long period;
- there is no evidence to suggest that the Applicant or Wilmar Group was likely to enter the PNG markets without the acquisition in the near future;
- Wilmar made an active decision to stop considering entry in 2022/23 given challenges identified; and
- It is not sufficient to support a counterfactual assuming Wilmar's entry to the PNG markets by speculating what would occur based solely on the existence of Wilmar's international poultry businesses. The Wilmar Group has investment hurdles which it did not consider would be met by establishing a new PNG poultry business.

5.2.2 Considerations of Counterfactual Arguments

243. Few discussions on counterfactuals have been made above. The ICCC considers that the appropriate counterfactual is the likely competitive conditions that would prevail in the relevant markets should the Proposed Transaction not be authorized, or simply without the Acquisition. In considering the counterfactual, the ICCC has considered the Applicant's submission that, absent the Proposed Transaction, MHL would continue to operate under the status quo and that neither Wilmar nor the Applicant would enter the relevant PNG poultry markets independently.

244. The ICCC notes the Applicant's argument that there is currently no sufficient basis for the ICCC to assume that Wilmar or the Applicant could make independent greenfield entry into the PNG poultry markets. The Applicant stated that it has been dormant for a significant period (since 2012), that Wilmar previously ceased considering entry in 2022/23 following an assessment of the challenges associated with entering the PNG poultry industry, and that Wilmar's investment hurdles may not have been satisfied by a standalone entry strategy.

245. There is lack of evidence to support this argument. The ICCC, therefore, does not consider it appropriate to assume, without further supporting evidence, that

Wilmar or the Applicant would not independently enter the markets at the same scale and within the same timeframe as the Proposed Acquisition.

246. Whilst the ICCC notes from the submissions that MHL's poultry business is struggling to expand and become a stronger competitive force as Nasfund is not willing to inject any capital into the MHL business in poultry, the ICCC notes that without the Acquisition, MHL will continue to operate the poultry business. According to Nasfund, poultry accounts for 49% of MHL's earnings. The ICCC considers that MHL and Nasfund would not easily let the poultry business to die naturally. The markets are also currently attractive, with fewer players and no close substitutes of the relevant products.

247. The ICCC does not consider that these circumstances establish that the competitive conditions, absent the Proposed Transaction, would necessarily be limited to MHL continuing under its existing status quo. Specifically, MHL's current financial or operational difficulties do not, in themselves, establish that MHL would exit the relevant markets or that its poultry assets and productive capacity would cease to provide a competitive constraint. The ICCC considers it reasonably likely that MHL would continue to seek to operate, restructure, improve its efficiency, obtain investment or financing, or otherwise maintain its poultry operations. The Target Business may therefore continue to provide a competitive constraint on Zenag, even if MHL remains a weaker or less effective competitor than it has historically been.

248. The ICCC also considers the possibility that MHL could obtain alternative investment, ownership or commercial support from an independent third party. Given the value of MHL's existing productive assets, established operations, customer relationships, distribution infrastructure and position in the poultry markets, the possibility that those assets could remain in productive use under alternative ownership or investment partner apart from Wilmar should not be discounted in the counterfactual. Such an outcome could preserve MHL as an independent competitor without creating the same degree of concentration or vertical integration arising from the Proposed Transaction. The ICCC understands that there has been interest from other potential purchasers but MHL opted for Wilmar given its operational and technical expertise in the poultry business.

249. Furthermore, whilst the ICCC does not assume that Wilmar or the Applicant would necessarily enter independently, the absence of a firm commitment to entry does not prevent the possibility of independent expansion or entry by other existing or potential market participants. The relevant counterfactual should therefore allow for the possibility that market opportunities created by continued demand growth, supply constraints or the availability of productive assets could attract investment by other participants. This may occur through organic expansion, acquisition of existing assets, partnerships, financing arrangements or other forms of commercial investment. It may be more likely if MHL is seen as a weak and less effective competitor.

250. Accordingly, the ICCC considers that the appropriate counterfactual is not one in which MHL's current difficulties are assumed to persist indefinitely, nor one in which Wilmar or the Applicant is assumed to enter the market without sufficient evidence. Rather, the counterfactual is one in which:

- MHL remains in the relevant markets and continues to compete, although potentially as a weaker or less effective competitor than under more favourable circumstances;

- MHL may restructure, recapitalize, improve its operations or obtain additional investment or financing to maintain or improve its competitive position;

- MHL's assets and productive capacity may remain in the market under alternative ownership or investment, including through an alternative purchaser or investor partnership that does not give rise to the same competitive concerns as the Proposed Transaction;

- existing competitors may expand, including through investment in additional production, distribution or other capacity;

- other potential investors or market participants may enter or expand, particularly where market conditions provide sufficient commercial incentives to do so; and

- Wilmar or the Applicant may retain the option of future independent entry or expansion if market conditions, investment returns and identified entry barriers change sufficiently to make such investment commercially viable, although the ICCC does not rely on such entry as a necessary component of the counterfactual.

251. The ICCC therefore considers that the Applicant's claimed counterfactual, which effectively assumes that MHL continues to operate under the status quo while excluding any meaningful possibility of alternative investment, expansion or entry, may understate the competitive conditions that could reasonably prevail absent the Proposed Transaction.

252. Importantly, the ICCC does not consider that the mere existence of Wilmar's international poultry operations is sufficient, by itself, to establish that Wilmar would enter PNG. Rather, the relevant consideration is whether there is credible evidence of the ability and incentive of Wilmar or other market participants to enter or expand, taking into account the investment hurdles, expected returns, barriers to entry and expansion, and prevailing market conditions.

253. Wilmar did not provide evidence, such as any commercial feasibility studies or any issues that were identified as hurdles that have prevented Wilmar to enter

since the incorporation of SPL in 2012. The key question remained though is, assuming Wilmar finds the industry unattractive to enter, *CIC*? Does it make commercial common sense? Does that mean the industry is attractive and Willmar is certain that it could recoup its capital investments over time? The entry of smaller players in various regions clearly indicate that the market remains attractive and the purported decision by Wilmar not to enter should be substantiated to satisfy the ICCC that the entry was, in all commercial circumstance, unattractive and unlikely.

254. On balance, the ICCC considers that the appropriate counterfactual is therefore one in which MHL remains a viable, albeit potentially weaker, independent competitor and its assets remain available for continued productive use, while the possibility of alternative investment, expansion or entry by other market participants is retained where supported by the evidence. This provides a more appropriate basis against which to assess whether the Proposed Transaction would materially alter the competitive structure of the relevant markets and result in a substantial lessening of competition.

5.3 PUBLIC BENEFIT ASSESSMENT

255. At the outset, it is important to note that when assessing public benefit claims, the focus of the ICCC is on the potential benefits that would otherwise not result without the acquisition. Where potential benefits claimed can still be realized without the proposed acquisition in question, they do not carry much weight to convince the ICCC for an Authorization. The ICCC will give weight to any ***public*** benefits; and not private benefits – the benefits to the parties of the transaction in question.

256. Where the ICCC is "satisfied" that the proposed acquisition in question would result in net public benefits, it must grant authorization. In effect, this means that the ICCC must form the view that the public benefits attributable to, and likely to result from, the proposed acquisition, would outweigh or, would be likely to outweigh, the likely detriments to the public, including the likely substantial lessening of competition effects. As mentioned, this is the 'authorization test'. The onus is on the Applicant to provide necessary factual information; and where appropriate, provide evidence, to support its public benefit claims to the satisfaction of the ICCC.

257. If the ICCC considers that the public benefit claims are significant but they are vague, in the best interest of the concerned industry, the Proposed Transaction may be authorized with certain conditions to ensure the claimed public benefits are realized. Based on considerations above and the evidence provided, the ICCC is not currently prepared to engage in such an authorization with conditions.

258. The following is a non-exhaustive list of benefits which are generally considered as benefits to the public:

- economic development, such as encouragement of research and capital investment;
- fostering business efficiency, particularly where it results in improved international competitiveness;
- industrial rationalization, resulting in more efficient allocation of resources and in lower or contained unit production costs;
- expansion of employment or prevention of unemployment in efficient industries;
- employment growth in particular regions;
- industrial harmony;
- assistance to efficient small business, such as guidance on costing and pricing or marketing initiatives which promote competitiveness;
- improvement in the quality and safety of goods and services and expansion of consumer choice;
- supply of better information to consumers and businesses to permit informed choices in their dealings;
- promotion of equitable dealings in the market;
- promotion of industry cost savings resulting in contained or lower prices at all levels of the supply chain;
- development of import replacements;
- growth in export markets; and
- steps to protect the environment

5.3.1 Applicant's Public Benefit Claims

259. The Applicant considers that the Proposed Transaction would result in the following public benefits:

- facilitating significant investment from Nasfund/MHL and AML/Wilmar in a PNG poultry business that would not have occurred otherwise;

- preserving a significant PNG local business, together with the employment, related economic activities, taxes and other economic and community contributions it provides;

- delivering greater capacity for table eggs, day old chick supply and dressed chicken meat supply, and achieving greater productivity and production levels in the Target Business from newly installed capacity;

- returning the Target Business to being a more effective and viable competitor that can challenge and compete with the largest supplier, Zenag Chicken (assisting in mitigating the current high levels of market concentration with a single increasingly dominant supplier);

- increasing import substitution in the chicken market, as a more efficient and productive local producer would be anticipated to be lower cost than imports (after accounting for costs of transport and cold storage), and therefore displace frozen chicken imports (which would in turn improve PNG's balance of trade and foreign currency positions, reduce immediate and medium-term prospects of employment growth / skills development and continued concentration of market power with a single supplier;

- greater fresh protein availability at a lower price for PNG consumers, as a result of the more efficient and productive local producer that the Proposed Acquisition would result in; and

- improved community health outcomes through the higher volume and more affordable supply of protein in PNG.

260. The Applicant also claims that the Proposed Transaction would result in benefits that are consistent with government public policy stance on development of poultry industry as a strategic economic priority, import substitution through supporting new poultry processing facilities, national food security, and promoting investment in agriculture as an engine for socio-economic growth.

261. The ICCC also notes that similar public benefit arguments were put forward by Nasfund in support of this Proposed Transaction, as the major shareholder in MHL.

262. *CIC.*

5.3.2 ICCC Consideration on Public Benefit Claims

263. The ICCC acknowledges that the Applicant's claimed public benefits are potentially significant, particularly those relating to new investment in the

poultry industry, preservation of the Target Business and associated employment, increased production capacity, improved productivity, stronger competition against Zenag Chicken, import substitution preservation of limited forex for other essential imports, improved food security, and increased availability of affordable protein to PNG consumers. The ICCC understands that these benefits are relevant to the broader economic development of PNG consistent with government policy objectives relating to agriculture, domestic production and investment.

264. However, the ICCC considers that the claims of the existence of potential public benefits does not, in itself, satisfy the ICCC that the Proposed Transaction should be permitted. The extent to which these claimed benefits can be relied on is important; and whether they are transaction-specific, sufficiently certain and likely to be passed through to consumers and the broader PNG economy. In this regard, the ICCC considers that the claimed benefits must be supported by credible and verifiable evidence demonstrating their likely magnitude, timing, duration and additionality. Mere optimistic speculation is insufficient. The Applicant must substantiate and convince the ICCC on which benefits would arise specifically because of the Proposed Transaction, and which could reasonably be expected to arise in its absence, including through independent entry by Wilmar or alternative investment and restructuring of MHL's poultry business.

265. The ICCC also considers that these claimed benefits must be weighed against the potential competitive detriments identified earlier, which includes possible loss of a credible independent entrant, the persistence of high market concentration, the potential weakening of incentives to compete dynamically, and the risk that vertical relationships could disadvantage competing poultry producers through preferential stockfeed supply or less favourable input terms. The ICCC should examine whether the anticipated investment and production efficiencies would strengthen competition and deliver benefits to consumers, rather than simply increase the size and commercial strength of the JV.

266. The loss of benefits should Wilmar enters the market independently is also important to consider. The ICCC is of the view that most, or if not all, of the claimed benefits could still be realized if there was an organic entry by Wilmar.

267. Of particular significance is the Applicant's claim that the transaction would create a stronger competitor to Zenag. Whilst this may mitigate the current dominance of Zenag, it must be considered against the possibility that the transaction would block Wilmar as a credible independent potential entrant. The Transaction would also strengthen the position of the two remaining major suppliers and there is risk of tacit collusion. The relevant question is therefore whether the Proposed Transaction would generate greater competitive rivalry than the realistic counterfactual in which MHL remains an independent competitor and Wilmar/SPL enters or expand independently.

268. Having considered the likely public benefits and potential anti-competitive effects of the Proposed Transaction, the ICCC is not "satisfied" that Wilmar is incapable of potential entry. While Wilmar stated that it has decided not to enter the poultry industry, there is no reason to believe it could not change its position. The facts before the ICCC shows that Wilmar had incorporated a poultry company (in SPL); and it has attempted to talk to relevant government office about its interest to enter the market. Wilmar is also a well-established poultry player in other jurisdictions. The fact that it is now expressing interest in entering the market through this proposal in itself demonstrate the interest of Wilmar to enter the market. All this evidence indicates that Wilmar is a potential entrant. Given Wilmar's experience and expertise in other similar Countries in the poultry business, if it enters (independently or through this acquisition), it could make immediate positive impact.

269. In stockfeed, whilst the ICCC understands that GFI and MHL claim to remain independent in the production and supply, the Applicant must convince the ICCC that the combined market power of the joint venture parties in the stockfeed market should not be a concern; and what would be some safeguard against competitive detriment in the stockfeed market if the proposal were to proceed.

270. This Draft Determination gives the Applicant the opportunity to provide its response to the issues and concerns raised.

5.3.3 Conditional Authorization

271. The ICCC notes the parties' arguments and the claim that there is no basis for granting Authorization with Conditions because the Proposed Transaction would not have the effect of substantially lessening competition in any relevant markets.

272. Given the competition concerns discussed in this Draft Determination, and subject to the parties addressing them, the ICCC may grant Authorization with Conditions. The types of Conditions may be more structural than behavioral.

273. The ICCC looks forward to receiving feedback from both SPL and MHL to finalize any such Conditions to be imposed.

6. DRAFT DETERMINATION

274. Given all the considerations above based on available information and evidence, the ICCC is not satisfied that Wilmar/SPL is not a capable potential independent entrant in the poultry industry. Therefore, the ICCC is not satisfied

that the Proposed Transaction would not be likely to have, the effect of substantially lessening competition in the relevant markets.

275. The ICCC is also not satisfied that the claimed benefits are not likely with Wilmar's independent entry; or that they are uniquely associated with the Proposed Transaction. That is, whether the Proposed Transaction would result in such a net public benefit that would otherwise not result if Wilmar entered the market independently.

276. Given the above considerations, the ICCC proposes to grant Authorization with Conditions if appropriate acceptable Commitments which address the ICCC's concerns are offered by the parties.

MR. ROY DAGGY
Commissioner

MR. MARCUS BEZZI
Associate Commissioner
(Non-resident)

MR. JACK TIMI
Associate Commissioner
(Resident)

Dated: 16th November 2026