

INVESTIGATIVE TECHNIQUES FOR ANTICOMPETITIVE PRACTICES

CASE STUDIES FROM THE INDEPENDENT
CONSUMER & COMPETITION COMMISSION OF
PAPUA NEW GUINEA



o Case 1: Investigation of Misuse of Market Power

The Independent Consumer & Competition Commission received a formal complaint that Steamships Trading Company deliberately engaged in certain behaviour to prevent Bismark Maritime Limited from carrying out its business

Background:

The investigation evolved from a complaint submitted by Bismark Maritime Limited to the Independent Consumer and Competition Commission (ICCC) alleging that Steamships Trading Company deliberately engaged in certain behaviour to prevent Bismark from carrying out its business.

- Bismark Maritime Limited (Bismark), the complainant is a locally owned domestic shipping company that has been operating shipping services (freight cargo only) in two regions in PNG since it commenced in 1990. Bismark has 14 vessels in operation and provides a wide range of services which includes: charter services, liner services, tug and barge, Landing craft and road transport.
- Steamships Trading Company (STC), is a conglomerate that has been operating in the shipping industry in PNG for the last 90 years. STC has significant holding interest in business spanning various industries such as manufacturing, property, hotels, transport and information technology.

Facts:

- STC owns 50% shares in Habourside Development Limited. Steamships is the registered proprietor of a special purpose lease dated 6th August 1971 being the whole land contained in State lease Volume 1 Folio 153.

- Steamships and Habourside development Limited entered into a land sale contract of the said land mentioned in point a above.
- Magellan Properties Limited, which is a wholly owned subsidiary of Bismark Maritime Limited is a registered proprietor of a business lease dated 15th September 1975 (special purpose lease). Magellan acquired the Business lease on 13th December 1994.
- Bismark owns and operates its shipping business on Magellan's Land.
- Steamship's Land is directly adjacent to and generally west of Magellan's Land.
- Bismark alleged that the preliminary construction activities undertaken by Steamships is affecting its business operations and likely to completely stop it from using the wharf to conduct its shipping business namely berthing, loading and unloading cargoes and moving them in and around its yard for its clients.

Issue:

➤ Whether the construction activities undertaken by steamships contravenes Section 58, of the Independent Consumer & Competition Act 2002 on Taking Advantage of Market Power.

Decision:

➤ After preliminary investigations were conducted the Commission declined to investigate the issue further

➤ Commission could not establish that STC had a substantial degree of market power in the relevant market [port land] and;

➤ Whether STC had an unlawful anti-competitive intent or purpose

Investigative Strategy

➤ Factors that guided ICCC with investigations on this matter:

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➤ Identifying the relevant provision of the law that proposed conduct may be likely to breach.

- In this example – Section 58 of the ICCC Act

Section 58 prohibits a person that has substantial degree of market power in a market from taking advantage of that power for the purpose of;

(a) restricting the entry of a person into that or any other market; or

(b) preventing or deterring a person from engaging in competitive conduct in that or any other market; or

(c) eliminating a person from that or any other market.

➤ Establish if there is a breach of Law.

- Determine if firm/person, the subject of the complaint:

○ Has substantial market power in a market

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- Takes advantage of that power
- Has an unlawful anticompetitive intent or purpose
- Interviewing interested parties
- Getting familiar with the shipping industry and the players in the market
- Receiving and analysing empirical data on market shares and market concentration

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- **Case 2: Investigation of an Acquisition**

**Acquisition of Credit Corporation Finance Limited by
Bank South Pacific Limited – Clearance Application**

Background:

The acquisition relates to a notice given under Section 81 of the “Independent Consumer and Competition Commission Act 2002 by Bank of South Pacific Limited seeking Clearance from ICCC for its proposed acquisition of Credit Corporation Finance Limited including its three subsidiaries, namely, Credit Corporation (Fiji) Limited, Credit Corporation (SI) Limited, and Credit Corporation (Vanuatu) Limited, operating respectively in Fiji, Solomon Islands and Vanuatu.

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○ **Facts:**

- BSP is a publicly listed company on the Port Moresby Stock Exchange.
- Largest commercial bank with 35 branches throughout PNG and has operations in four countries.
- BSP currently services over 650,000 business banking customers throughout the Pacific. As of 31st December 2011, its total assets were valued at K11.7 billion and it had a market capitalization of K3.6 billion.
- BSP has emerged as a bank with a sound governance structure that has been operating under the prudential oversight of an independent regulator.
- BSP owns and operates banks in Niue, Fiji and the Solomon Islands.

- BSP's banking products and services include ordinary check and business management accounts, international banking services, overdrafts, instalment loans, lease financing, business asset loans, bridging loans, merchant services, payroll services, and term deposits for small, medium, and big businesses.
- It also offers insurance products that cover term life, medical, travel, death, disability, and critical illness. In addition, the company offers treasury services, stock broking, funds management, and corporate services.
- Credit Corporation (PNG) Limited ("Credit Corp") is a registered company under the Companies Act 1997 and is incorporated and domiciled in PNG.
- Credit Corp commenced business in 1978 as a general finance company. It has grown successfully to become recognized as one of PNG's most progressive financial institutions
- Credit Corp specializes in Chattel Mortgage and Lease Finance

- **Issue:**

Whether the acquisition of Credit Corporation by BSP substantially lessens competition in a market or is likely to do so.

- **Decision:**

ICCC was satisfied that the acquisition of the Credit Corporation by BSP, will not have, and will not be likely to have, the effect of substantially lessening competition in the relevant market.

- **Investigative Strategy:**

- Factors that guided ICCC with investigations on this acquisition
- Identifying the relevant provision of the law that the proposed conduct is likely to breach
- Defining the relevant market
- Two relevant market in this case

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- Provision of leasing and finance services throughout PNG

- Provision of interest bearing deposits through out PNG

- Assessment of relevant merger factors

- Merger Factors:

- ❖ **Actual and potential level of import competition in the market**

- i. Easy for big multinational companies to source leasing finance and service off shore. "Surrogate" type of import competition where large corporate customers can easily by pass the local providers if the price increases or the incumbents service deteriorates

- ii. Parent companies facilitating lending needs where interest rates are low

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❖ **Nature and effect of barriers to enter in the market**

- i. Regulatory requirements
- ii. Ease of entry by existing players supplying peripheral products in broader market without too much difficulty

❖ **Number of buyers and sellers in the market**

- i. Market share movements show that generally, bigger players have been losing market share to small but vigorous players. broadly competitive, with non-trivial changes in market shares, although not of a volatile nature
- ii. Market concentration likely to increase

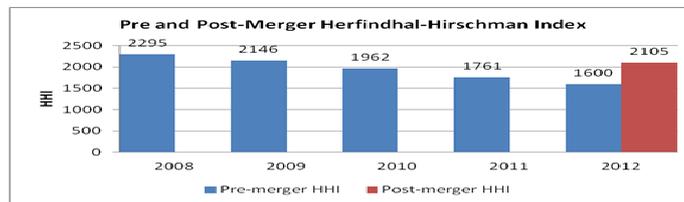
o **Market Share Movements**

Authorised Institutions (AIs)	Dec-08	Dec-09	Dec-10	Dec-11	Dec-12
BSP	17.84%	23.37%	17.99%	16.03%	18.29%
ANZ	37.43%	31.28%	28.53%	27.46%	24.42%
WPAC	7.09%	6.58%	7.77%	11.00%	12.18%
May Bank	0.00%	0.00%	0.00%	0.00%	0.00%
Finance Corporation	2.46%	3.12%	2.33%	5.43%	5.91%
First Investment Finance	16.60%	18.89%	22.33%	18.43%	15.51%
Credit Corporation Finance	15.36%	14.36%	15.63%	15.47%	13.82%
Kina Finance	2.84%	2.33%	3.35%	3.93%	7.01%
Resources Investment Finance	0.00%	0.00%	0.00%	0.00%	0.78%
Heduru Moni Finance	0.38%	0.07%	2.08%	2.25%	2.08%
PNG Home Finance Limited	0.00%	0.00%	0.00%	0.00%	0.00%
PNG Microfinance	0.00%	0.00%	0.00%	0.00%	0.00%
Nationwide Microfinance	0.00%	0.00%	0.00%	0.00%	0.00%
Kada Poroman Microfinance	0.00%	0.00%	0.00%	0.00%	0.00%
Peoples Microbank	0.00%	0.00%	0.00%	0.00%	0.00%

o2012 Market Concentration Estimates by firms-pre and post merger

Players	2012 Pre-merger			2012 Post-merger			
	Share	CR4	CR3	Share	CR4	CR3	
BSP	18.29%	72%	58%	BSP	32.11%	84%	72%
ANZ	24.42%			ANZ	24.42%		
First Investment Finance	15.51%			First Investment Finance	15.51%		
Credit Corporation Finance	13.82%			Westpac	12.18%		

oPre and post-merger Herfindal Hirschman Index (HHI) estimates



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❖ Degree of countervailing power

- i. No countervailing power except for very large customers who can source service overseas. The available power most buyers have is only 'negotiating power' which they exercise to negotiate with incumbent financiers for competitive prices and services to win business.

❖ Likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins

- i. May be some increase in borrowing rates in short term, but not significant.
- ii. Availability of substitutes from other players in the relevant market

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iii. Separate branding will not offset the concentration of business and management control

iv. Better deals by competing market players. With the availability of a number of existing competing players, who can expand their market share by competitive price inducements, consumers/customers can negotiate for new business effectively.

❖ **Extent to which substitutes are available**

i. Existence of supply side substitution and demand side substitution which keep incumbents competing effectively in terms of prices

❖ **Dynamic characteristics of a market, including growth, innovation and product differentiation**

i. Continued demand for financial products

ii. Growth of the leasing and finance market over the years and future growth likely

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❖ **Likelihood that the acquisition would result in the removal from the market of a sustainable, vigorous and effective competitor**

Whilst the market would see the exit of one such vigorous and effective player, there are other players that are still available and would likely constrain the ability of the merged firm to extract monopoly rents and reduce service standards.

❖ **Nature and extent of vertical integration in the market**

Acquisition will not substantially increase or reinforce any vertical integration in the market.

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