

# EFFECTIVE MERGER REMEDIES AND SETTLEMENT

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



- PNG has not dealt with a merger case in court before the Steamships acquisition of shares in a competitor which is a case brought by the Commission under Section 69 which prohibits acquisitions which have, or are likely to have the effect of substantially lessening competition in a market and is before the court. Because it is 'sub judice' we cannot discuss details.
- In competition assessment, little turns on whether a transaction is strictly speaking a merger or an acquisition.

## Case:

Acquisition of Consort Express Lines Limited by Steamships  
Trading Company Limited

- **Background:**
  - Commission heard about the acquisition through a media report
  - Cannot discuss in detail the issues



o Subject of Court Case

o Both parties to the acquisition are Coastal Shipping operators in the coastal Shipping Industry.

➤ **Facts:**

o Steamships acquired additional shares in Consort

o Steamships acquired controlling interest

o The parties have no legal obligation to notify the Commission either before or after the acquisition

o There is provision for clearance or authorization

o Did not avail of either options



➤ **Issue:**

o Whether the acquisition contravenes the law

o Section 69 (1), ICCA Act prohibits business or share acquisitions that have or are likely to have the effect of substantially lessening competition in a market

➤ **Elements of a Contravention:**

o In order for there to be a breach of section 69(1) of the ICCA Act 2002, the following elements of this provision have to be proven

o There was an acquisition of business or shares

o The acquisition resulted or was likely to result in a “substantial lessening” of competition (“SLC”) in any market



➤ **Relevant elements of alleged breach are:**

- (1) the acquisition;
- (2) identification of a market in which the alleged contravention occurred; and
- (3) Substantial Lessening of Competition.

➤ **Commission's view:**

-Acquisition was likely to have resulted in a breach of section 69 of the ICCA Act.

➤ **Current Status:**

-Commission instituted legal proceedings against the parties.



➤ **Remedies:**

- The remedies under the ICCA Act includes:
  - i. Pecuniary Penalties
    - For an individual – an amount not exceeding K500,000 or
    - For a of a body corporate – an amount not exceeding K10,000,000
  - ii. Injunctions
  - iii. Divestiture of assets or shares
- Court to impose remedies if it rules in favour of ICCA

