SOL/BNTCL Merger

The Players

SOL

- Comprises >100 corporate entities which supply fuel, lubricants and liquefied petroleum gas ("LPG") through a network of service stations across 23 countries in the Caribbean and Central and South America.
- Supplies petroleum based products to commercial customers in shipping, luxury boating, aviation, mining, trucking and fleet operations.
- Joint venture (two-thirds) operation with Rubis for the supply of Jet A1 fuel to airlines.
- Manages a portfolio of 480 service stations, 14 aviation facilities, 24 marinas and 32 import terminals.
- Owns and operates the SOL and ESSO brands.

Barbados National Terminal Company Ltd (BNTCL)

- A wholly owned subsidiary of Barbados National Oil Company Ltd (BNOCL).
- Manages the storage and distribution of gasoline, diesel and fuel oil, as well as the storage and exportation of crude oil for BNOCL.
- Stores JetA1 fuel and kerosene for the major oil companies, SOL and Rubis.

The Transaction

Acquisition of all of the shares of BNTCL by SOL

- SOL assumes direct control and ownership of the storage and distribution facilities for the supply of petroleum products from BNTCL

Sale price of US$100 Million

- Reflects the strategic direction of both Parties
  - GoB: To divest some of its assets as an economic stabilisation policy
  - SOL: To own and operate terminals in the markets in which it operates

Share Purchase Agreement ('SPA') outlines the obligations of Parties

Two main conditions precedent:

- Moratorium of 15 years on new entrants to storage terminal market
- 32% increase on throughput fees implemented by GoB

Likely future grant of fuel import licence to SOL

Relevant Markets

- Markets that are likely to be affected by the proposed transaction
  - The terminal storage of autofuels (Gasoline and Diesel);
  - The distribution of autofuels (Gasoline and Diesel);
  - The retail supply of autofuels (Gasoline and Diesel);
  - The terminal storage of Heavy Fuel Oil (HFO);
  - The distribution of HFO;
  - The terminal storage and distribution of JetA1 fuel; and
  - The distribution of JetA1 fuel to airlines.
- Geographic Market: Barbados
- Functional Market: Upstream, Mid-stream, Downstream

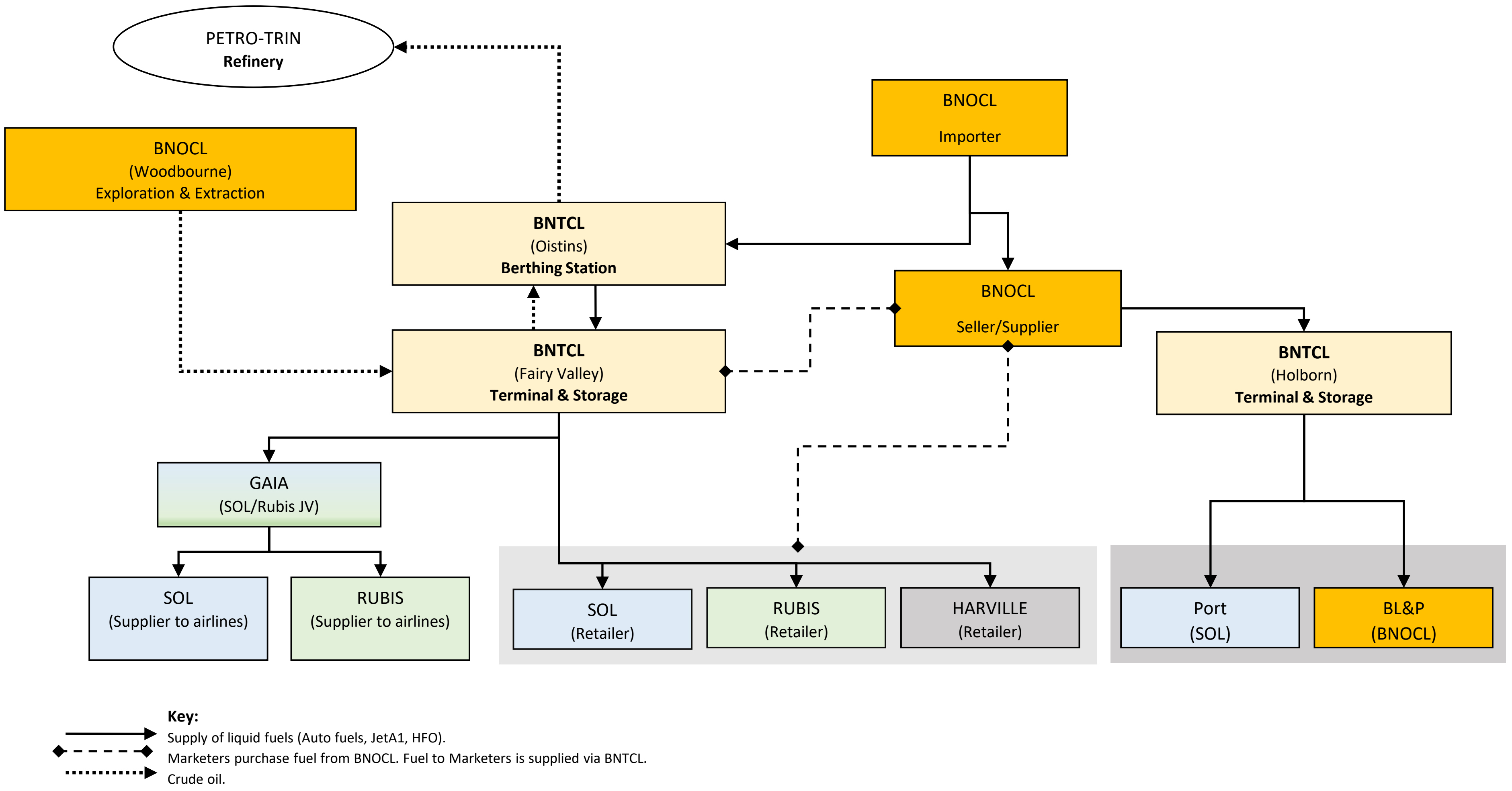
Findings: The Merger Review

Merger Investigation Findings

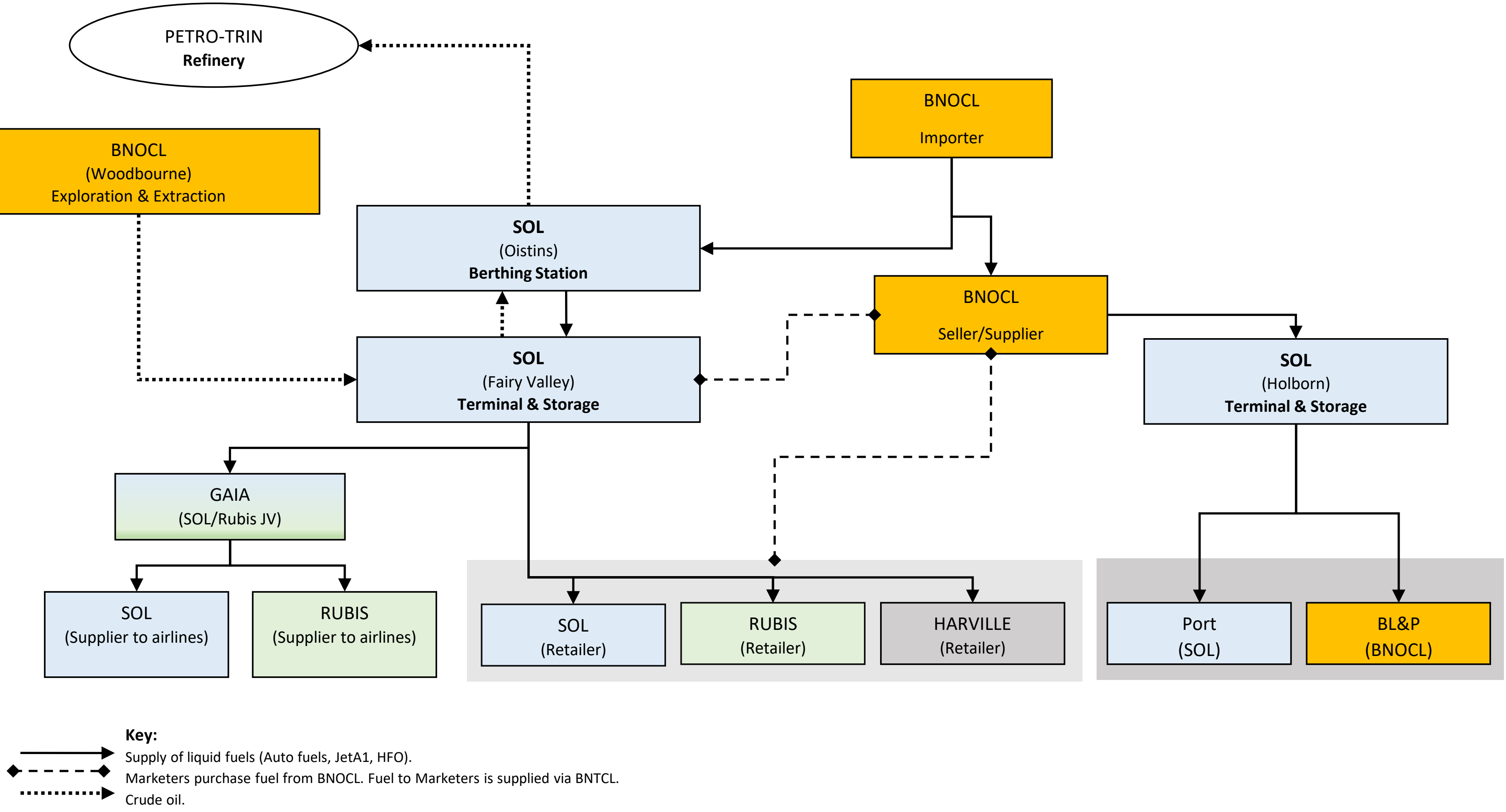
Substantive Issues:

- **Issue 1 – Vertical Alignment of Upstream and Downstream Markets**
- **Issue 2 – Increase in Throughput Fees**
- **Issue 3 – 15 Year Moratorium Clause**
- **Issue 4 – Absence of Real Efficiencies**

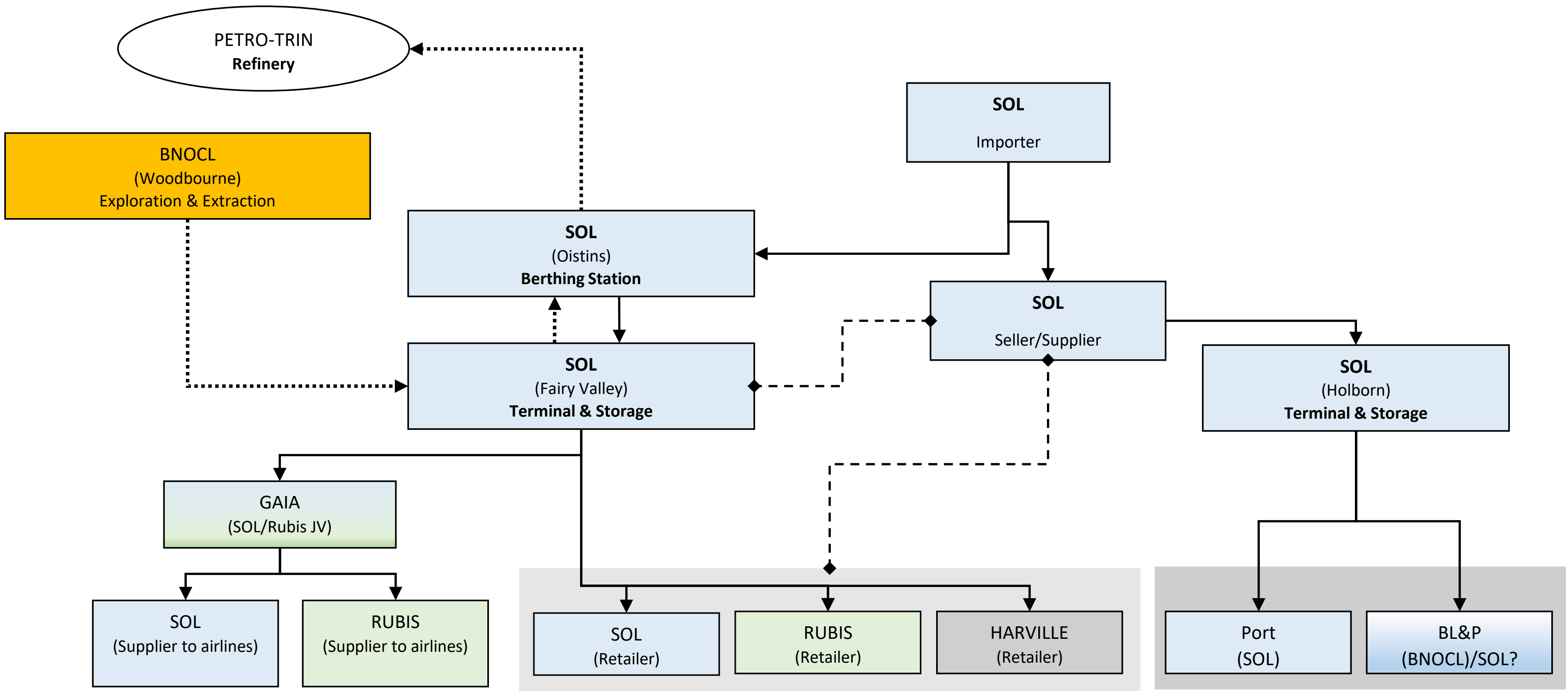
Market Integration: BNTCL/SOL (**Pre-Merger**)



Market Integration: BNTCL/SOL (**Post-Merger 1**)



Market Integration: BNTCL/SOL (**Post-Merger 2**)



Key:
Supply of liquid fuels (Auto fuels, JetA1, HFO).
Marketers purchase fuel from BNOCL. Fuel to Marketers is supplied via BNTCL.
Crude oil.

Competitive Concerns: The Transaction

- SOL now vertically integrated at every stage of the supply value chain
  - SOL maintains commercial interests in the marketing of petroleum products in downstream markets
- Provisions of the SPA a major concern → Inherently anticompetitive
  - Increase (32%) in throughput fees (Gasoline, Diesel, HFO, Jet A1 Fuel)
  - Moratorium (15 years) on the construction of any new facilities
  - Moratorium (15 years) on licenses for the storage of liquid fuels
  - Importation rights
- Provisions regarded by SOL as an ‘insurance policy’

The Transaction: Theories of Harm

- Moratorium + Importation rights = Exclusive agreements
  - Likely to reduce consumer welfare
  - Likelihood of market foreclosure
  - Present additional barriers to entry
  - Rivals placed at a strategic disadvantage
  - Possible exclusion of BNOCL from the market
- Short-, medium-, and long-term effects on competition

Competitive Concerns: Market Dynamics

- Pre-merger markets already concentrated
  - Upstream monopoly in terminal storage and distribution of liquid fuels (BNTCL)
  - Downstream markets have 2 major players (max.)
  - SOL a dominant player in all markets
- Post-merger SOL would be deeply integrated in the petroleum market
  - Dominant at each functional level of the supply chain
  - Sole supplier to downstream markets in which it also operates
  - Sole supplier of liquid fuels to its rivals
  - Position protected for <u>at least</u> 15 years

Market Dynamics: Theories of Harm

- Post-merger conditions unlikely to benefit competition/consumers
- Access to sensitive information of downstream competitors
- The proposed transaction failed the ‘Vertical Arithmetic Test’
  - SOL has the **<u>ability</u>** to implement a foreclosure strategy
  - SOL has an **<u>incentive</u>** to foreclose the markets in which it operates
  - Consumers **<u>will</u>** be harmed by the transaction

Efficiencies

Assessment of Proposed Efficiencies

- Efficiencies are producer-related (*i.e.* internal efficiencies)
  - Mainly pecuniary → Beneficial to SOL primarily
- No indication that efficiencies translate to consumer benefit(s)
  - No reduction in prices (prices set to increase!)
  - No improvements in delivery foreseen
  - No improvements in product foreseen
- BNTCL already operating efficiently!
  - No historical transfer of benefits
- Rather: Indications that transaction will increase prices, reduce competition, reduce competitive options; AND increase SOL's dominance downstream and influence upstream

Remedies

Assessment of Proposed Remedies

- Anticipate regulation of throughput fees
  - No regulation without legislation
- Remedies are vague (no details wrt operability, implementation)
- Remedies can be evaded
- Remedies are subject to interpretation
- Remedies unlikely to address competitive concerns

The Economy Argument

The US$100M and the Economy

- One-off injection does not nullify the long-term effects
  - Effects are pervasive, far-reaching
  - No ‘balancing act’: Negative effects overshadow any positive impacts
- The <u>*substance*</u> of the proposed sale is untenable and forms the basis for the competitive concerns!
  - Together these are likely to cause significant competitive harm
- A sale can still be pursued by the GoB
  - Competitively neutral / Benefits outweigh potential harm
  - No harms to consumer welfare

Conclusion & Decision

Conclusion

- The proposed transaction, if it were to be consummated, is likely to cause anticompetitive effects
  - It is probable that the Purchaser could utilise its vertical alignment in the supply chain to the detriment of competition in the relevant product markets.
  - The granting of exclusive importation rights to the Purchaser is likely to bolster their position in the market.
  - The moratorium clause and the increase in throughput fees, which are conditions precedent in the SPA, are inherently anticompetitive.
  - The Applicants have not made a showing of evidence that rebuts the presumption of anticompetitive effects. Neither have the Applicants demonstrated a willingness to address the offending clauses in the SPA.

Decision

The Board of the Commission, determined that the merger could not be approved.

THANK YOU