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
  - 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

- Sale price of US$100 Million

- 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)

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

BNOCL
(Woodbourne)
Exploration & Extraction

BNTCL
(Oistins)
Berthing Station

BNTCL
(Fairy Valley)
Terminal & Storage

GAIA
(SOL/Rubis JV)

SOL
(Retailer)

RUBIS
(Retailer)

HARVILLE
(Retailer)

BNOCL
Importer

BNOCL
Seller/Supplier

BNTCL
(Holborn)
Terminal & Storage

SOL
(Retailer)

RUBIS
(Retailer)

BL&P
(BNOCL)

Port
(SOL)

PETRO-TRIN
Refinery

SOL
(Supplier to airlines)

RUBIS
(Supplier to airlines)

HARVILLE
(Retailer)

BL&P
(BNOCL)

Port
(SOL)

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

BNOCL
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SOL
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SOL
(Supplier to airlines)

RUBIS
(Supplier to airlines)

SOL
(Retailer)

RUBIS
(Retailer)

HARVILLE
(Retailer)

SOL
Importer

SOL
Seller/Supplier

SOL
(Seller/Supplier)

SOL
(Holborn)
Terminal & Storage

Port
(SOL)

BL&P
(BNOCL/SOL?)

PETRO-TRIN
Refinery

BL&P
(Retailer)
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 at least 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 ability to implement a foreclosure strategy
  • SOL has an incentive to foreclose the markets in which it operates
  • Consumers will 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 *substance* 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