



## **Background Paper:**

# **Consumer and Competition Framework Review**

**NOVEMBER 2014**

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## EXECUTIVE SUMMARY

The Department of Treasury has initiated a review of Papua New Guinea's framework for consumer protection and promotion of competition, with technical assistance from an international panel of experts and funding support from the Asian Development Bank.

The *Consumer and Competition Framework Review* (“**Review**”) is tasked with reviewing the policy, legislation and institutions that comprise the framework for consumer protection and promotion of competition in PNG and making recommendations for their improvement.

A panel of experts in competition law, economics and enforcement has been engaged to carry out the review and will be consulting with organizations and individuals in PNG to obtain information and views on the current consumer and competition framework, peoples' needs and expectations regarding competition and consumer protection, and possible improvements to the framework.

### 1. REASONS FOR THE REVIEW AND OBJECTIVES OF GOVERNMENT

Twelve years have passed since the Independent Consumer and Competition Commission Act 2002 (**ICCC Act**) was passed by Parliament and the ICCC established. PNG's economy and business environment have undergone significant growth and development in that time.

The Government considers that it is desirable and timely to conduct a comprehensive review of the framework for consumer protection and promotion of competition, in order to ensure the framework is appropriate to meet the current and emerging needs of the public and businesses.

In the *2013 National Budget*, the Government stated it was “...looking at reviewing the ICCC Act in 2013 as one of its core focus to improve legislation that governs competition.”<sup>1</sup>

In the *2014 National Budget*, the Government reaffirmed its commitment to pursue “a comprehensive national reform agenda to support greater private sector activity in 2014”.<sup>2</sup> Also in the *2014 National Budget*, the Government stated its commitment to undertake the present Review:

The Government has also committed to undertaking a comprehensive review of the competition policy framework, including the ICCC Act. Consumer protection goes hand in hand with competition - unethical traders who mislead and deceive consumers and reap profits should not erode the market position of ethical traders who provide good value for money. This area will form part of the review of the ICCC Act and while work on this review has commenced during 2013, implementation of any of the findings is likely to form the basis of a substantive reform agenda during 2014. The primary focus will be on ensuring PNG has an efficient and effective competition regulatory and policy regime.<sup>3</sup>

The Government attaches importance to effective consumer protection, promotion of competition and regulation of state owned enterprises. A competitive and dynamic private sector will drive PNG's economic growth. Choices by well-informed consumers drive the process of rivalry

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<sup>1</sup> PNG *National Budget* (2013), p 97.

<sup>2</sup> PNG *National Budget* (2014), p 90.

<sup>3</sup> PNG *National Budget* (2014), p 94.

between businesses. State-owned business activities and service providers should operate efficiently and serve the public interest. Private sector activity is to be fostered.

In the *Terms of Reference* for the Review, the Department of Treasury has set out the Objectives, Scope and Process for the Consumer and Competition Framework Review.

## 2. TREASURY TERMS OF REFERENCE

The Department of Treasury recently issued *Terms of Reference* for a review of PNG's consumer and competition framework. A copy of the *Terms of Reference* is available at the Treasury website ([www.treasury.gov.pg](http://www.treasury.gov.pg)).

Treasury has now engaged an international panel of experts in the law and economics of competition, consumer protection and regulation to carry out the review in accordance with the *Terms of Reference*.

The *Terms of Reference* describe the objective of the Review as:

[F]or a Review Team to assist the Department of Treasury by reviewing the current consumer protection and competition framework, including its institutions, regulatory settings and processes, and related legislation, and reporting its findings to the Department of Treasury, including recommendations for any changes the Review Team considers necessary or desirable in existing policies, laws, institutions or practices.<sup>4</sup>

The principal requirements of the Review are to: (i) review the effectiveness of the existing consumer protection and competition provisions and institutions; (ii) review the effectiveness of the current regime of economic regulation and regulatory administration; (iii) examine whether government business activities and services providers serve public interests and promote competition and productivity; and (iv) advise on appropriate changes to legislation, institutional arrangements and other measures.<sup>5</sup>

## 3. PNG'S CONSUMER AND COMPETITION FRAMEWORK TODAY

The legal framework for protecting consumers and upholding competition in markets in PNG currently is established several Acts of the PNG Parliament, including:

- the *Independent Consumer and Competition Commission Act 2002*;
- the *Commercial Advertisement (Protection of the Public) Act 1976*;
- the *Prices Regulation Act 1949*;
- the *Trade Measurement Act 1973*; and
- various sector-specific Acts, including the *Telecommunications Act 1996*.

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<sup>4</sup> Department of Treasury *Terms of Reference: Consumer and Competition Framework Review* (2014) para 5.

<sup>5</sup> *Ibid.*, paras 7 to 14.

The ICCC Act provides for the establishment of the Independent Consumer and Competition Commission (“**Commission**”). The Commission has functions under the ICCC Act, as well as under other legislation.

The ICCC Act gives the Commission functions including “...the promotion of competition and fair trading, the regulation of prices for certain goods and services, and the protection of consumers’ interest...”.<sup>6</sup>

In relation to the promotion of competition, the Commission is responsible for enforcing a range of rules (under Part 6 of the ICCC Act) that forbid anti-competitive kinds of behaviour in business, including:

- agreements and arrangements that substantially lessen competition (e.g. price-fixing);
- resale price maintenance (i.e. setting a ‘minimum price’ at which a trader may re-sell goods or services);
- agreements and arrangements that contain ‘exclusionary provisions’ which substantially lessen competition (e.g. agreements between business rivals that prevent others from entering the market);
- misuse of market power to damage or eliminate competitors; and
- mergers which are likely to substantially lessen competition.

In relation to price regulation, the Commission administers the *Prices Regulation Act 1949*, which includes monitoring changes in the prices at which declared goods and declared services are offered for sale. The Commission also conducts productivity inquiries under Part 8 of the ICCC Act, which examine whether particular goods or services should be (or continue to be) declared and subject to price control.

In relation to consumer protection, the Commission has functions under:

- Part 7 of the ICCC Act (enforcing product safety standards and product recalls);
- the *Trade Measurement Act* (inspecting and confirming the accuracy of weighing and measuring instruments, e.g. scales, used by traders);
- the *Commercial Advertisement (Protection of the Public) Act* (e.g. forbidding ‘unfair statements’ in advertising);
- the *Bread Act* (e.g. minimum sizes of loaves of bread); and
- the *Packaging Act* (e.g. packed goods labeled accurately).

For businesses that have been declared by the Minister to be “regulated entities,” the ICCC is responsible for determining the terms of a “regulatory contract” (which controls pricing and service standards for supply of goods or services by those entities) and enforces entities’ compliance with regulatory contracts. At present, the regulated entities are PNG Power Ltd, PNG Ports Corporation Ltd, Post PNG Ltd, and Motor Vehicle Insurance Ltd.

Other agencies and some enterprises also have functions similar to those of the Commission. For example, NICTA is the principal regulatory of telecommunications operators in PNG and some state-owned enterprises determine technical regulations for the industries in which they operate.

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<sup>6</sup> Preamble to ICCC Act.

#### **4. NEXT STEPS**

The Review Team will seek to meet with interested stakeholders, to gather information and views from the widest possible range of groups and individuals.

The Review Team will publish issues papers and hold public hearings to gather the reviews from all interested parties. Subsequently, the Team will issue a draft report for consultation and a final report to the Government, setting out its recommendations on ways to enhance the framework for consumer protection and promotion of competition in PNG.

#### **5. YOUR COMMENTS ARE WELCOME**

The ability of the Review to make recommendations that bring positive impacts for PNG will depend to a significant degree on the quality of the information that is made available to it. Accordingly, the Review Team welcomes comments, experiences, observations and ideas from organizations and individuals in PNG (or who do business in PNG) during the Review process.

Comments will particularly be sought at the following opportunities:

- The Review Team will request meetings with representatives of a wide range of interested groups, to discuss their issues and experiences in relation to consumer issues, competition issues, and regulated industries.
- An *Issues Paper* will be published for comments, in early 2015, with a period allocated for written submissions in response.
- One or more Public Workshops will be held by the Review Team shortly after publication of the *Issues Paper*, to explain its preliminary analysis of the issues and to discuss them with stakeholders.

The Review Team may be contacted as follows:

- Email: [comment@CCFReview.info](mailto:comment@CCFReview.info)
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