



Independent State of Papua New Guinea

TERMS OF REFERENCE

CONSUMER AND COMPETITION FRAMEWORK REVIEW

A. INTRODUCTION

1. Since its introduction in 2002, the competition policy of Papua New Guinea (PNG) has contributed significantly to the welfare of Papua New Guineans. The telecommunications industry is one example of a sector where an increase in competition resulted in price reductions, wide spread increases in access and significantly improved the environment for business. The introduction of similar reforms would result in increases in productivity and price changes that enables the general public or users of services greater access to the services needed.
2. Competition law has been in operation in PNG for the past eleven years and there is a great need for this review to take place. The fact that the PNG economy has grown and changed since the introduction of the Independent Consumer and Competition Commission Act 2002 (**ICCC Act**) makes it timely to assess whether existing consumer protection and competition laws continue to appropriately address the current and emerging developments in PNG's growing economy.
3. Competition policy and other similar microeconomic reforms contribute to long term market competitiveness, increase productivity, support real wage growth, promote investment and improve living standards for Papua New Guineans.
4. On that note, the Government in its 2014 Budget announced looking at a proactive microeconomic reform agenda that will enable private sector led growth in the economy; competition was given particular emphasis as an area of policy reform that would strengthen this agenda. The Government announced its intention to review the competition framework to ensure broadened public benefit through enhanced competition while at the same time ensuring consumer protection against hazardous and unsafe products or practices. The findings of the review will aim to foster economic prosperity, stimulate efficient business activities including small to medium enterprises and promote PNG as an attractive destination for investment.

B. OBJECTIVE

5. The objective of the technical assistance is for 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.

C. SCOPE

6. The Review Team will, in the interests of the PNG economy and the welfare of PNG's people, inquire into and make recommendations on appropriate reforms to improve the institutional and legislative frameworks that underpin PNG's competition policy. The aim of any recommendations for reform will be to promote competitive and productive markets throughout the economy, including by identifying and removing impediments to competition that are not in the long term public interest. The Review Team must have regard to the following principles:
 - no participant in the market should be able to engage in anti-competitive conduct within that market and its broader value chain;
 - productivity-boosting microeconomic reforms should be identified, centered on the realization of fair, transparent and open competition that drives productivity, stronger real wage growth and higher standards of living;
 - government should not be a substitute for the private sector where markets are or can function effectively or where contestability can be realized; and
 - the need to be mindful of removing or lessening, wherever possible, the regulatory burden on businesses when assessing the costs and benefits of regulation.
7. **The ICCC;** The Review Team should consider and make recommendations where appropriate, aimed at ensuring that PNG's consumer and competition regulatory settings and agencies, particularly the *ICCC Act* and the Independent Consumer and Competition Commission (**ICCC**), are effective in protecting and facilitating competition and consistent with international best practice.
8. The Review Team should consider how effective current legislation is in addressing access to essential market infrastructure.

9. The Review Team should assess the appropriateness, or otherwise, of existing consumer protection provisions in addressing information asymmetry and encouraging fair business practices.
10. The assessment as to whether existing laws appropriately protect consumers and the competitive process should include:
 - Examining whether current legislative provisions and institutional arrangements are functioning as intended in light of actual experience and precedents;
 - Considering whether areas that are currently uncertain or rarely used in PNG law could be framed and administered more effectively; and
 - Considering whether the framework for industry regulation provides adequate mechanisms to encourage reasonable business dealings across the economy – particularly in relation to small businesses.
11. **Business regulation;** The Review Team should consider whether the current regime of economic regulation and the agencies administering such regulation are operating effectively, having regard to increasing globalization, changing markets and social structures, technological changes and the need to minimize business compliance costs, including:
 - whether business regulation in PNG is responsive, effective and certain in its economic policy objectives;
 - whether the operations and processes of regulatory administration are appropriately transparent, efficient, subject to appropriate external scrutiny, provide reasonable regulatory certainty, and encourage/allow for international agency cooperation; and
 - whether business regulations, enforcement arrangements and appeal mechanisms are consistent with international best practice, given PNG's present level of development.
12. **Government business activities;** The Review Team should also examine whether government business activities and service providers serve the public interest and promote competition and productivity, including consideration of separating government funding of services from service provision, privatization, corporatization, price regulation that improves price signals in non-competitive segments, and competitive neutrality.
13. **Reforms;** The Review Team should inquire into and advise on appropriate changes to legislation, institutional arrangements and other measures in relation to the matters above, having regard to the impact on long term

consumer benefits in relation to value, innovation, choice and access to goods and services, and the capacity of PNG businesses to compete both domestically and internationally.

14. The Review Team should consider and make recommendations on the most appropriate ways to enhance competition, by removing regulation and by working with stakeholders to put in place economic measures that ensure a fair balance between regulatory expectations of the community and self-regulation, free markets and the promotion of competition.

D. PROCESS

15. The Review Team should consider overseas experience insofar as it may be useful for the review.
16. The Review Team may, where relevant and appropriate, draw on (but should not duplicate or re-visit) the work of other recent or current competition reviews, in PNG or overseas.
17. The Review Team is to ensure thorough engagement with all interested stakeholders. At a minimum level, the Review Team should publish an issues paper, hold public hearings and receive written submissions from all interested parties.
18. The Review Team should subsequently publish a draft report and hold further public consultations, before providing a final report to the Government within 9 months.