



The eastern half of the island of New Guinea – the second largest island in the world – was divided between Germany (North) and the UK (South) in 1885. The latter area was transferred to Australia in 1902, which occupied the northern portion during World War I and continued to administer the combined areas until its independence in 1975.

Economy

Papua New Guinea (PNG) has been undergoing years of economic decline and budget deficits. In 2003/2004, the economy was bolstered by a general rise in commodity prices and steps taken by the Government, to control spending. The commodity boom was temporary and the nation continues to have serious problems concerning corruption; lack of law and order; land tenure worries; stifling investment; political interference in businesses; and political reluctance to adapt necessary, sweeping reforms. Declines in mining output and oil production have been at the forefront of a general downfall in the output of the modern economy of PNG. However, some see long-term hope for renewed productivity, after recent regulatory reforms.

Competition Evolution and Institutions

PNG territories, which had been under Australian administration since 1906 and 1915, were granted independence, as a single nation, on September 16, 1975. Until a short time before independence, the territories' economy was wholly dependent on primary production. The majority of the population survived on subsistence farming of food crops.

PNG, like many other countries around the world, had been grappling with the task of how best to administer the regulatory bodies and the application of appropriate policies. In 1979, the Government requested IMF for aid. The IMF was asked to help PNG a review its policies concerning regulatory institutions and, in particular, to determine what pricing policies were appropriate.

PROFILE	
Population:	5.5 million***
GDP (Current US\$):	3.4 billion**
Per Capita Income: (Current US\$)	510 (Atlas method)*** 1,940 (at PPP.)**
Surface Area:	462.8 million sq. km
Life Expectancy:	60.8 years**
Literacy (%):	41.5 (of ages 15 and above)**
HDI Rank:	142***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

Prior to independence, the Australian Government set up a number of regulatory institutions such as the Electricity Commission (Elcom), the Housing Commission, Harbours Board, and so forth. Post independence, the new autonomous Government continued to create regulatory authorities like the Water Board, Eda Ranu, Provincial Development Corporations, as well as some specialised bodies for very specific tasks.

One of the main conditions imposed by the World Bank and IMF on PNG for extension of its loans was public sector reform. With the sale of PNG Shipping Line to Steamships, the mid 1980s saw the topic of privatisation enter the policy debate. In 1988, the Government started selling its shares in some of its enterprises, in order to encourage private sector representation on the boards, and in so doing, improve the management and performance of these bodies.

Efforts were also made to formulate a consumer protection policy for PNG. These included the PNG Law Reform Commission's (LRC) Report on Fairness of Transactions (1977), and subsequently the LRC's working paper on

* Paper done by Nupur M Anchlia of CUTS in September 2004. Revised in May 2005 & March 2006

Consumer Protection. Nevertheless, no plans had been made to formulate a national competition policy and law. It was only in the 1990s, when the PNG Government had begun to witness the international trend of corporatisation and privatisation, that issues pertaining to competition policy and law were entertained.

Varying degrees of protection and regulation were provided for by diverse and distinct legislation, some mainly focusing upon consumer protection, some on the regulation of certain unfair trading practices as well as the misuse of market power. The first of such laws was the *Goods Act*, which protected consumers against the purchase of defective goods, providing a legal base for redress.

The second piece of noteworthy legislation was the *Commercial Advertisement Act*, which regulates commercial advertising, with the purpose of prohibiting unfair and misleading statements. Thirdly, though a bit outdated, was the *Prices Regulations Act* passed in 1949, which prohibited market practices that unfairly impose prices, and cornering or restriction of the circulation of goods. The fourth item of legislation was the *Fairness of Transactions Act, 1993*. The final and the centrepiece was the *Consumer Affairs Council Act 1993*. This legislation oversees the conduct of traders and suppliers, in the provision of goods and services to consumers, in an attempt to protect consumers. A Council on Consumer Affairs was established to enforce this legislation.

It soon became obvious that the Consumer Affairs Council Act, 1993 only regulated the provision of goods and services to consumers, and protecting the interests of consumers in this regard. It did not regulate unfair trading practices, such as abuses of market power, price fixing arrangements, resale price maintenance, and such other anticompetitive behaviour, which harmed consumers. Work on a draft competition legislation commenced in 1995.

At the outset, the intention was to amend the Consumer Affairs Council Act 1993, to grant the Council an additional authority relating to the regulation of competition or trade practices. This proposed legislation was to be known as the *Consumer Affairs and Fair Trading Act 1996*. Its underlying principles, as set out in the preamble of the then draft legislation, are:

- to provide for the regulation of the supply of goods and services, and the protection of consumer interests;
- to preserve competition in trade and commerce to the extent required by the public interest;
- to establish the Consumer Affairs Council and other authorities, and making provision for their composition, function, and powers; and
- other purposes related or incidental to the above stated purposes.

Competition Law

A change in Government was brought about as a result of the 1997 general election. Much of the impetus for the proposed legislative reform died down, and the introduction of competition law and policy, in the 1996 draft legislation, was now placed on the back burner. Fortunately, before the momentum was completely dissipated, there was another change in Government, in mid-2000, and this opened the door to a much more aggressive privatisation programme under the new regime. Henceforth, the privatisation programme propelled a competition law and policy for PNG, which was finally unveiled in the Independent Consumer and Competition Bill 2002. In summary, this Bill would:

- establish an Independent Competition and Consumer Commission (ICCC);
- implement a new regulatory regime in certain industries, bodies, and goods and services; including the regulation of price and related service standards under regulatory contracts;
- allow the ICCC to make codes or rules relating to regulated industries or entities;
- provide for an appeals mechanism, which refers certain decisions of the ICCC to an independent appeals panel;
- state competition law policies and principles by enforcing laws, administered by the ICCC, which prohibit certain anticompetitive market practices; and
- abolish the Consumer Affairs Council and confer on the ICCC jurisdiction on all matters, which relate to consumer protection, including price control functions as well as added powers for the compulsory recall of unsafe products.

On February 27, 2002, the Parliament successfully passed the ICCC Act 2002. In so doing, the Consumer Affairs Council Act was repealed, and amendments made to the Prices Regulation Act. On April 29, 2002, the Act establishing the ICCC was legitimised.

This Act substantiates the main objectives of the ICCC as being:

- to enhance social welfare through the promotion of competition, fair trade, and consumer protection;
- to promote economic efficiency in industry infrastructure, investment and conduct; and
- to protect the long term interests of consumers with regard to price, quality and reliability of significant goods and services.

Anticompetitive Business Practices

The first, and perhaps the broadest, rule of the ICCC Act 2002 is the prohibition of contracts, arrangements or understandings, which have the purpose or effect, or likely effect, of substantially lessening competition in a market.

That prohibition applies both to making such contracts or arrangements, or reaching understandings, and also to those who would give effect to such a contract, arrangement or understanding, which has already been made or reached. A similar prohibition applies to covenants over land having the purpose or effect, or likely effect, of substantially lessening competition in a market.

The ICCC Act 2002 also provides for competitive market conduct rules, which apply to all individuals, businesses, and even the Government and its agencies, where they are involved in business, which include:

- Anticompetitive arrangements;
- Anticompetitive covenants;
- Exclusionary provisions;
- Price fixing;
- Taking advantage of market power;
- Resale price maintenance; and
- Business M&As.

The prohibitions of anticompetitive M&As are dealt with differently from the prohibition of other types of anticompetitive market behaviour and trade practices. The Commission can either give clearance or authorisation to firms wishing to merge or acquire other competitors, and the Commission also gives authorisation to companies wishing to engage in other trade practices.

In order to grant authorisation for a business acquisition, the ICCC must be satisfied that the acquisition would result in such a benefit to the public that it would outweigh the detrimental effect it would have on competition. The clearance process does not involve any assessment of public benefits. The clearance process is an application by the person or firm proposing a business acquisition, seeking the ICCC's view whether, in its opinion, the acquisition would have detrimental effects on competition and, thus, breach the ICCC Act.

For the authorisation of exclusionary practices, resale price maintenance, anticompetitive arrangements and anticompetitive covenants, the conditions are slightly different. In these cases, the ICCC may authorise the activity if it is satisfied that the conduct, to which the authorisation application relates, will, in any and all circumstances, result in sufficient benefits to the public (the ubiquitous public interest test).

Since the effect of authorisation is to enable someone to engage in a particular conduct that would otherwise be prohibited, on the grounds that there are benefits to the public, the assessment of the merits of an authorisation application is a public process that is conducted independently by the ICCC.

The ICCC Act also prohibits contracts, arrangements or understandings, which contain exclusionary provisions (or primary boycotts). Whilst such exclusionary provisions are prohibited, they can be defended if it can be established that a *refusal to deal* agreement *does not have* the purpose or effect, or likely effect, of substantially lessening competition in a market.

Sectoral Regulation

The ICCC Act introduces a new regime for the regulation of a number of Government-owned utilities. The new framework was introduced in conjunction with the corporatisation and possible privatisation of a number of those utilities.

Box 26.1: Faulty Grass Cutter and Warranty

A supplier of agriculture equipment and products was found to be selling some counterfeit products.

Officers of the ICCC visited Farmset (PNG) Limited situated at Malaita Street, Lae, in December 2004, after a dissatisfied consumer alleged that Farmset persistently sold faulty grass cutters with no replacement parts.

The complainant was dismayed to find that one of the two grass cutters he purchased from Farmset was faulty and unable to perform its task. He returned the faulty item to Farmset and paid for the item to be fixed. The company assured him that the item would be ready in a week's time. He returned to collect his item after a week, but the company said the parts had yet to arrive. He continuously checked on the item, every week, for a month. Thus, the complainant was very frustrated and called into the office, in person, to formally complain.

Investigations by ICCC revealed that Farmset did not have back-up service and spare parts readily available. The investigations also revealed that Farmset did not take into consideration warranty agreements, and charged the complainant to pay for the repair of the grass cutter.

A round-table meeting was held between the management of Farmset and the ICCC to address the issue. In the meeting, all issues in relation to *warranty-cover back-up service and spare parts, quality of the products* and the company's obligations under the ICCC Act, etc. were discussed. Recommendations were made for Farmset to service the grass cutter under the warranty agreement and refund, in full, the payment made by the complainant when the grass cutter was brought in for service. The company agreed with the recommendation and complied accordingly.

The *ICCC Act* provides for the Minister concerned to declare certain entities and goods and services to be regulated and monitored. The ICCC monitors and regulates the following:

- PNG Power (electricity services);
- PNG Telikom (telecommunications services);
- PNG Harbours Board (ports and harbours services);
- Post PNG (postal services);
- Motor Vehicle Insurance Limited 'MVIL' (compulsory third-party motor vehicle insurance);
- PNG Water Board & Eda Ranu (water);
- PNG land transport;
- Petroleum industry;
- Stevedoring (cargo handling services); and
- A range of consumer goods.

In each of the regulated entities (PNG Power, PNG Telikom, PNG Harbours Board, Post PNG Ltd and MVIL), the corporatised utility business are subject to a 'regulatory contract', which sets out, among other things, a future five to ten-year price path for the monopoly services provided by that utility, together with requirements regarding quality of service. The utilities' obligations under the regulatory contract are supervised by the ICCC, which is the other party to these contracts.

Under the regulatory contract and under the ICCC Act, there are a number of remedies available to the ICCC to enforce compliance with the price path, and service quality standards, as specified in the contract. If a regulated entity disagrees with decisions of the ICCC, the ICCC Act provides for an appeal process where an Appeals Panel, which should include at least one international arbitrator, can review those decisions.

In addition to regulatory contracts governing price and service standards, there is also industry-specific legislation in relation to each of the regulated industries. The ICCC has assumed or been given responsibility for issuing and enforcing licences with regards to the electricity, telecommunications and ports and harbours sectors. Papua New Guinea Radio Communications & Telecommunications Technical Authority (PANGTEL), which was previously responsible for all telecommunications regulation, is now confined to technical regulation only.

In addition to the arrangements set out in each of the regulatory contracts and licences, the ICCC may also make codes or rules relating to the conduct or operations of participants in a regulated industry.

Consumer Protection

The ICCC Act provides the ICCC to take over the former Consumer Affairs Council's responsibilities in relation to consumer affairs. The ICCC is now tasked with these responsibilities to carry out price monitoring and surveillance on price-controlled items; educating and

providing information to consumers on their rights and obligations; and conducting food and trade inspections, verifications and calibrations on instruments and measurements used for the purposes of trade. The Commission also investigates consumer complaints. The following are some abuses experienced by consumers:

- Continued sale of expired goods past the 'use by' and 'best before' dates;
- Non-display of prices by some shops;
- Bread sold without proper labels, by some bakeries, in violation of the Bread Act;
- Measurement system in imperial units (yards) in some shops;
- Lack of warranty on electronic goods resulting to unnecessary arguments;
- Misleading advertisements;
- Misleading promotional activities, where rewards offered cannot be redeemed because of usually shortened promotional timeframe;
- Use of unjust weights and measures for trade;
- Unjustifiable pricing;
- Poor quality, imported, fake products, at high prices, that lack durability; and
- Unregulated service industries like legal; medical; repair workshops; and real estate, charging unreasonably exorbitant fees.

The ICCC Act also introduced new provisions on product safety standards and unsafe goods, including compulsory product recall. These provisions are to be administered by the ICCC. The law does not contain prohibitions on misleading or deceptive or unconscionable conduct.

Concluding Observations and Future Scenario

As can be observed from the above discussion, a hybrid regulatory approach has been adopted by the Government of Papua New Guinea to promote competition in the country. The ICCC is the one agency that is promoting competitive market conduct, behaviour and trade practices. It has been established to promote competition and fair trading; the regulation of prices of certain goods and services; the protection of consumers' interests; to promote economic efficiency in industry structure, investment and conduct; and to promote the long-term interests of the people of Papua New Guinea with regard to price, quality, and reliability of significant goods and services.

Competitive Market Conduct Rules provided by ICCC Act apply to commercial dealings by individuals, businesses and even to the Government and its agencies where they are involved in business. The rules are designed to protect competition in the market place, to the benefit of consumers, through lower prices and access to more and better services, than would otherwise be available. The ICCC attempts to ensure that there is competition in the market, and all market behaviour or conduct must conform to competitive market conduct rules under the Act.

The lax economic regulation of SoEs, over recent years, has led to higher prices, as well as a lower quality of goods and services on offer. There has also been a visible lack of innovative solutions to difficulties, or problems, faced in supplying services throughout PNG. Alongside the new set of policies and provisions, there is an urgent and increasing need to effectively implement the policies that best suit the nation as a whole.

With the enforcement of the new ICCA Act, PNG has met its commitment to the international community – the WTO and APEC, to free up the market and improve impediments to competition and free trade. Even so, this process will require continuous, effective management and maintenance. Hopefully, PNG’s efforts will further strengthen its trade and industrial ties with the world, and region, with augmentation of its success in the future.

Suggested Readings

1. *Competition Law and Policy in Papua New Guinea*, Lawrence Kuna Kalinoe, 2002
2. *Privatisation in Papua New Guinea – Where at and Where to?* Article by Mike Manning, 2000
3. *Public Sector Reform in Papua New Guinea and the 1999 Budget*, Tim Curtin, 2000