9

Fiji[*]

– *Ruci Dakunimata*[†]

Fiji lies at the heart of the South Pacific, between longitudes 175 and 178 West and latitudes 15 and 22 South. This is almost directly North of New Zealand and Northeast of Sydney, Australia.

The country is made up of approximately 330 islands, which are distributed over 1.3 million square kilometres of ocean. Only a third of these islands are inhabited; the main ones being Viti Levu (which hosts the capital and the other main municipalities); Vanua Levu; Taveuni; and Kadavu.

83 percent of the land[1] is owned communally by indigenous Fijians, nine percent by the state and eight percent is freehold land. Only 16 percent of the country's land mass is suitable for intensive agriculture, and these areas are found mainly along coastal plains, river deltas and valleys.

Fiji is a sovereign, democratic state. A former British colony, it gained political independence in 1970. Fiji has a bicameral parliamentary system: an elected House of Representatives and a nominated upper house, the Senate. In 1987, the country became a republic after the military ousted a Government led by a party dominated by Indo-Fijians.

The country underwent another political crisis, in 2000, when some Fijians attempted a civilian takeover of the coalition Government led by a party dominated by Indo-Fijians. Democracy is now restored: a general election was held in 2002, an elected government is running the country, and all of the democratic institutions – an independent judiciary, a free media, freedom of religion, an active civil society, and so on – are functioning.

PROFILE	
Population:	835 thousand***
GDP (Current US$):	2.3 billion***
Per Capita Income: (Current US$)	2,360 (Atlas method)*** 5,440 (at PPP.)**
Surface Area:	18.27 thousand sq. km
Life Expectancy:	69.6 years**
Literacy (%):	92.9 (of ages 15 and above)**
HDI Rank:	81***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Economy

The economy is still agriculture-based with a considerable, albeit declining, reliance on one crop, sugar cane. A shift in economic policy in the 1980s from import substitution to export promotion resulted in a significant change in the structure of the economy. In essence, it involved the growth of the manufacturing sector and the decline of the primary sectors. The main contributors to growth, in the manufacturing sector, have been the sugar and garment industries.

From 1985 to 2001, Fiji's real GDP grew at an average rate of 2.5 percent per annum, whilst real GDP per capita grew by around 1.3 percent per annum. In 2001, real GDP per capita stood at F$4,106[2]. Such growth was thought as insufficient to deliver the jobs needed, or provide the social and economic infrastructure necessary for development. A contributory factor to this low growth is the low level of

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1 State land is divided into two categories: Schedule A (no traditional owners identified when native land was first registered by the colonial government) and Schedule B (land unclaimed by indigenous Fijians when the registration was undertaken). These are currently being reclassified as native land. According to the 20 Year Development Plan (2001-2020), when this process is completed, land owned by indigenous Fijians will increase to 93 percent.

2 Unless otherwise stated, the currency used in this document is the Fiji dollar.

investment, which hovered around 11 percent of GDP – well below the average of 20 percent for developing countries.

Competition Evolution and Environment

Prior to the introduction of the Government's export-led growth policy, the Government, through licences, quotas and price controls, managed the economy. The Government was heavily involved in the economy, resulting in public utilities and government owned companies being sheltered from competition. The export-led growth policy supported the removal of barriers to trade, and promoted competition, in order to stimulate economic efficiency and raise competitiveness.

From 1970 to 1987, the Government's economic policy was based on import substitution industrialisation (ISI) to generate national wealth, economic growth and development. The pursuit of ISI policy for industrialisation entailed the promotion of industries that produced goods, which replaced imports.

Import replacing industries were granted fiscal incentives (tax and customs duty) from the Government and were protected from competition through import licensing and high tariffs. The entry of new firms into the protected sector was highly restricted by the Government and allowed only if existing firms could not adequately supply the domestic market or, if they accepted stringent conditions such as exporting a substantial proportion of their production output.

In addition, all products that were placed under licence control were subject to the Price Justification Scheme, which required companies to justify, and obtain prior government approval for any increase in prices. The Government, therefore, substantially managed competition.

During the same period, the Fijian Government adopted a highly interventionist approach that saw Government directly involved in the production of goods and services, mainly in public goods, such as utilities, infrastructure and infrastructure support services.

The result was the development of commerce and industrial sectors consisting of a handful of large firms with dominant positions, characterised by excess capacity, high production costs, high prices, poor quality, and a limited range of products. The sheltered environment, consequently, resulted in production inefficiency, ineffective use of resources, and did not stimulate the lowering of prices, improvements in quality or expansions in the range of products.

In 1989, the Government launched a reform programme, of economic deregulation, to redirect the economy towards export orientation (EO), through trade liberalisation; and reforms in the labour market, capital market and public sector. This was the Government's attempt to stimulate competition, in order to promote operational efficiency and lower costs, both in the private and public sectors, and gain the international competitiveness needed to support exports.

With the gradual dismantling of import controls, a wide variety of imported goods entered the domestic market. To ensure fair levels of competition, three pieces of legislation were promulgated, alongside the deregulation programme. These were the National Trade & Measurement Decree 1989; the Packaging and Labelling Regulations; the Fair Trading Decree 1992; and the Trade Standards and Quality Control Decree 1992. The Counter Inflation Act was applied only in markets where there is limited competition. The Commerce Act was also put in place in 1998, besides the Fair Trading (Amendment) Act 1998.

Whilst these legislations provided the rules of competition, they were applied mainly to goods provided by the private sector, and excluded goods produced by the public sector services.

Competition Legislation and Overall Regulatory Framework

Recognising that rules on competition are required if dynamic, efficient, fair and competitive markets are to be developed on Fiji islands towards enhancing the Fijian people's welfare, Government has introduced several competition-related legislations, most notably are:

1) The Public Enterprise Act, (1996);
2) The Commerce Act, (1998); and
3) The Fair Trading Decree (1992) and the Fair Trading (Amendment) Act, (1998)

Institutions, Competencies and Anticompetitive Business Practices

The Ministry of Public Enterprise and Reform is responsible for the enforcement and effective implementation of the Public Enterprises Act; while the Commerce Commission, formed under the Department of Fair Trading and Consumer Affairs, Ministry for Commerce, Business Development and Investment, takes charge of competition-related matters.

Commerce Commission

The Commerce Commission is an independent statutory authority established under the Commerce Act. The Commission administers the Commerce Act, and part III of the Fair Trading Decree 1992 (dealing with a host of restrictive trade practices) and the Fair Trading (Amendment) Act 1998; register and arbitrate access agreements; and control prices in regulated industries.

Table 9.1: National Economic Legislation			
National Laws	**Ministry/Agency**	**Category**	**Objectives**
1) Commerce Act	Commerce Commission	Restrictive Trade Practices	To promote competition in markets
2) Public Enterprise Act	Public Enterprise & Reform	Reorganisation & corporatisation of public-sector enterprises	To provide for the reform of government commercial enterprises
3) National Trade & Measurement Decree	Trade Measurement & Standards Unit	Measurement/Packaging	To ensure that there is fair and equitable trading for both business and sellers in the market place in respect of trade transactions involving the measurement of physical quantity.
4) Fair Trading Decree	Fair Trading & Consumer Affairs Department	Consumer protection provisions	To promote consumer interest and the effective and efficient development of industry, trade or commerce through the encouragement of fair competition and prevent the unfair or undesirable trade practices and to provide for an equitable, competitive and informed and safe market place and provide for regulation, where necessary for supply for goods and services and for related purposes.
5) Trade Standards & Quality control Decree	Trade Measurement & Standards Unit	Standards/Quality/Information	To make provisions prescribing standards in regulating the safety and quality of goods/services and provide for standards and quality control authorities.
6) Consumer Credit Act	Fair Trading & Consumer Affairs Department	Credit/Hire Purchase	To provide a legal framework for the provision of consumer credit by credit providers
7) Counter Inflation Act	Prices and Incomes Board	Price Regulated Goods and Services	To establish the Prices and Incomes Board to afford powers of control over prices, charges, remuneration, dividends and rents, and for connected purposes.

The Commission, therefore, exists to promote competition in the market though the effective enforcement of the competition provisions (Part III) of the Fair Trading Decree (as amended in 1998) and the Commerce Act 1998.

More specifically, the Commission is guided by the following three objectives:

- to promote effective competition in the interests of consumers and producers;
- to facilitate and approximate balance between efficiency, and environmental and social considerations; and
- to ensure non-discriminatory access to monopoly and near-monopoly infrastructure and services.

Ministry of Public Enterprises and Public Sector Reform

The Ministry of Public Enterprises and Public Sector Reform administers the Public Enterprise Act. With the enactment of the Public Enterprise Act in December 1996, considerable progress has been made in the implementation of public enterprise reforms, and improving their operational efficiency through restructuring and introduction of competition, in areas where they operate.

The Government currently engages in commercial activities, either through government department operations or through the operations of public enterprises. Efficiency gains will come from both these operations. Reforms of public enterprises would ensure that: the Government achieves higher returns on investment; the regulatory framework is effective; privatisation focuses towards achieving economy-wide gains; public monopolies do not become private monopolies; and that ownership of wealth and the benefits of privatisation are spread equitably among the population. There are four key principles of public enterprise reform as follows:

- Principle 1 - Clarity of objectives;
- Principle 2 - Management autonomy and authority;
- Principle 3 - Strict accountability for performance; and
- Principle 4 - Level playing field.

In undertaking the reform processes, the Ministry, first of all, commercialises whichever government enterprise is undergoing reform. It is after this first stage that the Ministry would further consider the option of corporatisation or privatisation (wholly or partly). It will take the best option of reform, appropriate for the specific government enterprise, to avoid duplication of roles and wastage of resources.

Consumer Protection

The Department of Fair Trading and Consumer Affairs (DFTCA) was established in 1993. The DFTCA, formed by a merger of the Trade Measurement Division (formally known as weights and measures) and the Standards and Quality Control Division, has the role of enforcing the National and Trade Measurement Decree 1992, the Fair Trading Decree 1992, the Sale of Goods Act 1979 and the Dumping and Countervailing Duties Act 1998. The Department is also required to provide the necessary infrastructure for standardisation, quality assurance, research and reliability of Fiji – made products and prevent inferior, unsafe products from entering the domestic markets.

The Department for Fair Trading is comprised of five sub-divisions, some of which are noted below:

1 ***Fair Trading Unit:*** This unit is specifically responsible for investigating alleged breaches under the Fair Trading Decree, Dumping Countervailing Duties Act, and the Consumer Credit Act.

2 ***Standards Unit:*** This unit is solely responsible for the enforcement of the Trade Standards and Quality Control Decree. One of the major roles of the unit is to monitor the quality of the goods and services in the marketplace, and ensure that the standards comply with the Fiji Island specifications.

3 ***Trade Measurement and Standard Unit (Weights and Measures Division):*** This division is responsible for the administration of the National and Trade Measurement Decree, which ensures the accuracy of all weighing and measuring instruments used for trade purposes. The unit also monitors the markings on all packaged and pre-packed articles to ensure that they comply with the Packaging and Labelling requirements.

4 ***National Measurement Laboratory:*** This unit is responsible for the maintenance of Fiji's primary, secondary, and reference standards of measurement.

5 ***Commerce Commission:*** (as detailed above) exists to promote competition in the Fijian Islands market through effective enforcement of the competition provisions of the Fair Trading Decree (Part III as amended in 1998) and the Commerce Act (1998).

The Department of Fair Trading and Consumer Affairs is responsible for:

- conducting investigations into alleged fraudulent and deceptive practices, into matters that affect consumer interests;
- collecting, examining, and disseminating information with respect to matters affecting consumer interests;
- receiving and considering complaints lodged with the Department;
- advising and assisting persons seeking information on guidance on matters affecting consumer interest;
- educating members of the public on their rights and responsibilities under the various legislation administered by the Department;
- providing policy advice to the Minister of Commerce on issues relating to consumer interest, and technical support in the areas of fair trading, legal metrology, competition law, standards development, quality control, etc;
- carrying out research and reviewing commercial activities undertaken in the market place;
- providing for the examination and testing of products that are the subject of complaints; and
- representing the department in various national and international forums in the areas of consumer affairs, legal metrology, standards development, competition law, etc.

Box 9.1: A Merger of Two Photographic Companies Allowed

The Commission received an application in relation to two companies operating in the photography market. The Commission conducted a market inquiry. It revealed that there would be an increase in market shares for the merged parties, but only a minimal one. Apart form this factor, the inquiry found that barriers to entry were low and that there was little or no competition from imports.

Furthermore, the applicant demonstrated to the Commission that the aim of the merger was to bail out a player that was intending to close down due to inefficient running. After much consideration, the Commission decided that there was little likelihood of the merged parties obtaining a monopolistic or generally dominant position in the photography market, on entry. Therefore, the Commission allowed the merger to go ahead, on the grounds that it would not breach Section 49 of the Fair Trading Decree.

Public Utility Sectors and Essential Infrastructure

Until 1997, the Government owned a total of 32 enterprises in commercial activities. These included six fully owned companies, five majority-owned, four minority-owned, eight statutory authorities, and eight government departments.

The Ministry of Public Enterprise & Reform manages 16 of these enterprises, all fully owned by the Government, 11 of which are Government Commercial Entities, and five Commercial Statutory Authorities.

All public utilities (power, water), and essential services (telecommunications, ports and airport services) were owned by the Government.

The Public Enterprise Act provided the legal framework for the implementation of public enterprise reform through reorganisation and corporatisation. Public enterprises would be privatised in accordance with the Government's policy, to divest those functions best performed by the private sector. The objective of the public enterprise reform is to induce operational efficiency, transparency and improve accountability.

Since the enactment of the Public Enterprise Act, the following public sector enterprises have undergone reforms:

Reorganisation - Civil Aviation Authority of Fiji; Fiji Broadcasting Commission; Fiji Electricity Authority; Government Supplies Department; Maritime & Ports Authority of Fiji; Public Trustee Office; and Hardwood Corporation Ltd.

Corporatisation - Post Fiji Limited, Telecom Fiji Limited.

Privatisation - Air Pacific Limited; Amalgamated Telecom Holdings; Fiji Shipbuilding Ltd.

An integral part of inducing operational efficiency is to allow access for competition once public enterprises have been corporatised or privatised. Two critical issues need to be borne in mind when introducing competition in the public enterprise reform process.

First, is the separation of the Government's social/ regulatory role from the commercial function of the enterprise, before corporatisation or privatisation. The regulatory role is transferred back to the Government to prevent the unethical scenario where a player also becomes the regulator. Second, is to ensure that public monopolies do not become private monopolies.

Whilst new players should be encouraged into areas where public enterprises operate, given the difficulty of duplicating the infrastructure for provision of utilities and services in such a small market; the Government must provide for access into existing infrastructure.

Eventually, reformed enterprises should operate on a level playing field, with other operators in the industry, and become subject to the competition rules. The Government, as the regulator, will establish the ground rules in terms of technical standards and where there is a lack of competition to regulate prices and set performance standards.

Proposal for Competition Policy

Principles

The development and implementation of competition policy and law in Fiji should be guided by the following principles:

1. *Promoting market forces*: Competition in markets should be left to market forces, which will create competitive pressures. This will induce lower costs, and innovation for new products, resulting in the efficient use of resources.
2. *Promoting contestability*: Entry barriers must be eliminated, and agents must be free to enter and exit the market.
3. *Preventing economic market concentration*: Economic concentration contributes to restrictive trade practices and anticompetitive behaviour in two areas, i.e. conduct and structure. Market dominance by one firm, or concentration in the hands of a few firms, results in monopoly power arising.
4. *Promoting fair competition:* Firms have a strong tendency to engage in unfair trade practices, or conduct, that enable them to gain, or maintain, market shares as competition intensifies in competitive markets.

Table 9.2: Ministry of Public Enterprise & Reform Managed Enterprises

Government Commercial Companies	Commercial Statutory Authorities
1. Airports Fiji Limited	1. Fiji Electricity Authority
2. Fiji Broadcasting Corporation Limited	2. Civil Aviation Authority of Fiji
3. Fiji Hardwood Corporation Limited	3. Housing Authority of Fiji
4. Fiji Ships & Heavy Industries Limited (formerly Fiji Shipbuilding Corporation Limited)	4. Maritime and Ports Authority of Fiji
5. National Trading Corporation Limited	5. Public Rental Board
6. Post Fiji Limited	
7. Ports Terminal Limited	
8. Rewa Rice Limited	
9. Unit Trust of Fiji (Management) Limited	
10. Viti Corps Limited	
11. Yaqara Pastoral Company Limited	

5. *Reducing government intervention:* Competition should be left to the market with minimum government intervention as a general rule. The Government's intervention should be limited to setting and enforcing the ground rules and performance standards, and in cases of market failure.

Scope

The competition policy and law in Fiji should cover all goods and services. A few exemptions are applied, in relation to:

a) *The State:* This is consistent with Section 5 of the Fair Trading Amendment Act, which states that nothing in the decree renders the State liable to a pecuniary penalty, or to be prosecuted for an offence;
b) *Trade Unions:* With reference to Section 31 (6) of the Fair Trading Decree 1992, which states that anyone engaged in activities relating to remuneration, conditions of employment, hours of work, or termination of work does not contravene the Act; and
c) *Intellectual Property Rights (IPRs):* Consistent with Section 3(3) e of the Commerce Act, which covers provisions on the exclusion of IPRs under the definition of 'access regime'.

Concluding Observations and Future Scenario

The competition policy in Fiji is still in a progressive development stage, in relation to the Commerce and the Public Enterprise Act. There are a number of proposed competition policies and strategies, which include the following suggestions:

- The Government needs to consolidate monopoly regulation and investigation under the Commerce Commission;
- The Government should guarantee adherence to the Competition Decrees and Act, in addition to committing itself to maintaining strong competition and consumer legislation; and
- The Government should promote deregulation in the capital and labour markets, and public enterprise reforms, as well as addressing the need to remove current and new exclusive licences.

In the already planned moves, the Government is to review and strengthen the current competition rules. The Government is also to strengthen existing remedies for the abuse of market dominant position, including a continuous review of penalties; regulatory contestability in court; firm break up; and the Commerce Commission to be given powers to enforce court rulings. The Government is set to continue its reform process, to ensure that public enterprises operate in a fully commercial manner and provide better quality, through progressive corporatisation and eventual privatisation.

The Government's commitment to the above would ensure the success and effectiveness of the various competition policies in the country for the future.

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After completing her BA in Geography/Population Studies and Demography, in 1997, at the University of the South Pacific, Suva, Fiji, she went on to study for a Postgraduate Diploma in Development Studies at the same institution.

Prior to joining the Consumer Council of Fiji, Dakunimata was involved in various research assistant jobs with private consultants and lecturers at the University of the South Pacific. She also taught Geography as part of the pre-degree studies programme at the Fiji Centre, in 2002.

Dakunimata's research interests mainly lie in development issues and their potential impacts on consumers. She has conducted various research projects for the Council in issues, such as food and product labelling; and also represents the Consumer Council of Fiji, on both national and international fora.