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## Global Forum on Competition

### COMPETITION AND POVERTY REDUCTION

#### Contribution from Papua New Guinea

-- Session I --

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## COMPETITION AND POVERTY REDUCTION

-- Papua New Guinea\* --

### **The Role of the ICCC in Achieving Micro-Economic Reform; a Competition and Dynamic Private Sector; Effective Utility Regulation; and Consumer Protection – Necessary Ingredients for Poverty Alleviation**

#### **Abstract**

This paper focuses on specific actions by the competition authority of Papua New Guinea which alleviate poverty. While general administration of competition law has the effect of improving allocative efficiency throughout the economy, contributors were invited to present case experience of actions which specifically affected the poor, and examples of interventions that affected poverty specifically. However, significant economy-wide interventions which raise living standards, particularly those which disproportionately benefit the poor, are also mentioned, showing linkages.

#### **Introduction**

1. The Independent Consumer and Competition Commission of Papua New Guinea is not only the competition authority, but also regulates utilities, calibrates taxi-meters and trade weighing equipment; conducts sectoral inquiries for Government; and is responsible for product safety and price regulation of goods and services declared by the Treasurer . As part of its competition responsibilities, the ICCC adjudicates on clearance applications for mergers based on a competition test; and on authorisation applications for other potentially anti-competitive conduct based on the preponderance of public benefit over lessening of competition.
2. *Macro-economic policy* and *micro-economic reform* are the obverse and reverse sides of the same coin – maximisation of economic growth to achieve the nation's development objectives and, thereby, alleviate poverty.
3. Social priorities such as health, education, and infrastructure provision for poverty reduction can only be financed by a nation if the economy is competitive and efficient, as it is its economic development that generates financial resources that can be used for those social purposes - relying solely on the State and donors to provide such social services, without broad-based economic development, is futile as their available resources are very limited.
4. The ability of citizens to 'self-fund' services for themselves, such as health and education depend on their employment prospects and income-earning opportunities, all of which depend on the economy

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being freed from anti-competitive constraints which ‘chain’ the nation to sub-optimal productivity and economic performance – which, in turn, perpetuates poverty, rather than relieving it.

5. A ‘rising tide’ of economic progress will ‘float all boats’ and the role of micro-economic reform in securing enhanced economic development should not be underestimated. The Independent Consumer and Competition Commission (ICCC), which is the Government’s ‘front line’ agency on micro-economic regulation and reform, has achieved, and can continue to spur, changes to private and public sector industry structure, conduct and performance to improve national economic performance that is most effective in alleviating poverty.

6. *A competitive environment*, without anti-competitive regulation or business conduct encourages private sector growth to meet needs which the State, with its limited resources, cannot possibly do. The private sector, however, needs to compete rather than collude or engage in acquisitions which damage competition.

7. State Owned Enterprises (SOEs) which operate ‘enabler’ infrastructure sectors of the economy need to be made to supply their services efficiently and reliably to greater segments of the population at affordable prices.

8. While the above may be argued to generate 'economy-wide' benefits, they make macro-economic management easier by freeing up Government financial resources which are available to be spent on health and education, two well-known drivers of poverty-alleviation.

9. With improving economic conditions and living standards, citizens will have greater disposable incomes to spend and they need to obtain ‘value for money’ for their expenditure. Consumer surplus generated by more effective expenditure expand the economy and enhance poverty-alleviation approaches, either by greater consumption or greater savings, which translate into investment and job creation.

10. Competition law, therefore, needs to be supplemented by comprehensive *consumer protection* laws to ensure that the gains made through the application of competition law are not lost by unfair trading. The ethical trader should not be disadvantaged by unethical traders engaging in conduct that is designed to mislead or deceive consumers. Also, the products that consumers buy should not pose a risk to life and limb, especially for little children, so *product safety* is significant, not least for the economic costs of accidental death or injury.

11. In a growth environment, suppliers need to compete on a level advertising playing field which does not allow claims that are misleading or deceptive; and products and services need to perform to general expectations of quality and functionality.

12. The ICCC has been, and continues to be, active in all the above areas, but to maximise its impact, assured continuity of expert advisory assistance for a significant period is essential.

## 1. Competition and poverty alleviation

13. One of the ICCC’s key roles is to *protect and promote competition* and a substantial proportion of ICCC resources is devoted to competition across the economy. One may well ask ‘what does this do for poverty alleviation?’ Misallocation of resources is a key contributor to poverty. To the extent competition can be encouraged, resources are more efficiently allocated – put simply, surpluses are created in the hands of consumers, who spend more, thereby creating more jobs and the ‘knock on’ effect is to alleviate poverty.

14. In the case of PNG, the poor suffer most from a rising currency, brought on by the resources boom, by reduced income for rural agricultural products and reduced employment opportunities resulting from cheaper imports. Where anti-competitive conduct reduces their purchasing power, they are hit by a 'double whammy' of reduced income and higher prices.

15. The Commission actively monitors the market place for anti-competitive behaviour and takes action to prevent this.

16. The Commission initiated legal proceedings against *Steamships Trading Company Limited* and some subsidiaries for acquiring a tranche of shares in Consort Express Lines Limited, which gave the former control over the latter, alleging breach of Section 69 of the ICCA Act, which prohibits business acquisitions which substantially lessen competition.

17. As an archipelagic nation, shipping and the port sector are crucial to economic performance – almost all goods are carried on ships and cross wharves. Economic growth, of course, alleviates poverty.

18. The private sector, however, does not constitute the only area of concern. In 2012, the ICCA investigated a potential breach of Section 58 of the ICCA Act which prohibits taking advantage of market power, by PNG Ports Corporation Limited in respect of licensing of marine pilots and marine pilotage providers, the latter being beyond the power of delegation by National Maritime Safety Authority, which has now resumed the power by withdrawing the delegation. The ICCA can still take legal action in respect of the marine pilotage matter.

19. The ICCA's work is exposing the extent of *anti-competitive regulation* throughout the economy. PNG Ports; international aviation; taxi and PMV regulation in NCD and some provinces; supply of school books; are all characterised by serious regulatory defects which either directly, or through their implementation, involve anti-competitive restrictions on entry, which is key to competition. They also affect either goods and services which particularly disadvantage the poor, for whom such expenditure forms a disproportionately high portion of their disposable income, or reduce their income-earning opportunities, as will be seen in the effect of anti-competitive code-share arrangements for tourism.

## **2. Specific interventions which reduce poverty**

20. *A transformative initiative, the introduction of mobile competition*, jointly sponsored by the Treasury and the ICCA, has 'rebalanced' bargaining power in rural areas. Growers of fruit and vegetables in rural and remote areas, usually women, previously exploited by middlemen at markets where they they were compelled to sell their produce or risk it perishing, can now negotiate by phone before becoming 'captive' by transporting their produce to market and selling for a pittance. Bargaining power for rural agriculturalists and horticulturalists is a key poverty-reduction requirement. Even fishermen, bringing in their catch, are known to negotiate prices by mobile telephones, thus increasing their income vis-a-vis without mobile telephone.

21. Mobile telephony has also assisted in preventing domestic violence, with women communicating with women's support groups in times of crisis. Domestic violence is known to be a contributor to poverty. As a law-enforcement aid, it now allows relatively free travel with less risk of hold-ups, thus enhancing scope for income-earning opportunities.

22. This reform has removed a long-standing impediment to business and reduced costs, increased efficiency and spurred economic growth, especially in the small business sector, one acknowledged to offer the greatest scope for independent income-earning opportunities for small entrepreneurs, employment, innovation and broad-based contribution to economic growth, to alleviate poverty. The new, dynamic ICT sector is an example, but broad-based efficiency improvements in the existing small-business

sector is of greater relevance in quantitative terms in generating employment and small entrepreneur opportunities.

23. Rural banking has been revolutionised by mobile telephony through 'mobile banking' – use of cell phones for banking. This has removed a key impediment to small entrepreneurship in rural areas.

24. Even in the urban areas, street-vendors of recharge cards gain income which hitherto was not available.

25. All these pro-poor benefits could only have been realised through mobile competition, as the previous Government business enterprises was moribund, inefficient and high-priced.

26. Considerable resources have been devoted to airline code-share matters, the complexity and information requirements of which are demonstrated in the 62 page determination on the application by *Air Niugini for a code-share with Qantas on the POM/Brisbane and POM/Sydney routes*.

27. *Air Niugini Limited (ANL) Code Share Arrangement* - The ICCC has released its final decision and has granted authorization for ANL to extend its code share arrangement with Qantas Airways Limited for the Port Moresby – Brisbane and the Port Moresby – Sydney routes for a period of three (3) years commencing from 1<sup>st</sup> October 2012 to 1<sup>st</sup> October 2015. The authorisation subject to certain conditions which ANL need to comply with.

28. Why are code-share assessments important? An efficient aviation sector delivers lowest prices and services tailored to best meet market needs. Tourism depends on efficient and low cost aviation. Tourism offers scope for poverty reduction on a sustainable basis. Annexure A includes a more detailed discussion of code-share authorisations, one of which has been rejected (POM/Cairns) while another, POM/Manila, was withdrawn after the release of the draft determination, which highlighted significant competition concerns.

29. Tourism is a 'grass-roots' sector, with a significant rural component; creating small entrepreneur opportunities for rural people. The supply of accommodation, food, beverages is a basic necessity for tourism. Handicrafts, provision of specialist services such as scuba diving, trekking etc rely exclusively on local expertise and the social structure of clans, which characterise developing economies, are well-placed to capitalise on such opportunities. In PNG, the Kokoda Track; scuba-diving; unique flora and fauna tours and spectacular waterfalls generate substantial and increasing tourism based income-earning opportunities for rural, usually poor, people.

30. ***Agricultural development*** is a key component of long term development plans such as Vision 2050. If the nation is to avoid the dreaded 'Dutch disease', then diversification into sustainable economic activities, such as agriculture, is a must. However, the imbalance in bargaining power between 'dedicated' growers and the processors they supply needs to be addressed to ensure 'competitive and economic' prices are paid to growers. This will attract resources into the sector, providing a base for expansion of sustainable agriculture throughout the country and income – earning opportunities for rural people – which reduces poverty where it matters most, at the rural level, thus reducing 'urban drift', a scourge of cities in developing, poverty-ridden countries.

31. The adjudication of an authorisation application for grower-processor negotiations for oil palm fresh fruit bunches is described in Annexure A. Such 'rebalancing' of bargaining power in favour of growers transfers economic resources to those most in need and attracts resources into agriculture, a key strategy to alleviate poverty. Other cash crops such as coffee, coconuts; vanilla and cocoa may well require examination, but, again, technical capability has limited work in those areas.

32. **Consumer protection** - the ICCC has some specific, but limited, responsibilities for consumer protection, nevertheless, it aims to increase and expand its enforcement and compliance activities to empower consumers across the entire country. This will include efforts to take on businesses that market unsafe goods or engage in misleading or deceptive promotions. In 2012, the ICCC embarked on improving the **product safety** and it will, in coming months, use its powers to impose interim bans on products that are hazardous or unsafe to consumers.

33. Increasing incomes is not the only dimension of poverty reduction. Ensuring ‘best value for money’ means that available income is spent on goods and services that meet expectations, thus obviating ‘wasted’ expenditure, a contributor to poverty. That includes acquiring goods that are safe; perform in the way advertised or usually expected and, thereby, avoids wasteful expenditure. Wasteful expenditure contributes to poverty and avoiding such expenditure alleviates poverty.

34. ‘Consumers’ are generally seen as ‘middle class’ but even the poor are consumers – for the essentials of life. Furthermore, the ‘surpluses’ generated from consumer protection by the middle class and the poor are spent and ‘ripple’ or multiplier effects spread the benefits throughout the economy, generating growth and alleviating poverty.

35. As part of its **price-regulation function**, the Commission monitors the prices of staple foods which form a significantly higher proportion of disposable income of the poor. The sector is highly concentrated, as is usual in small economies.

36. A recent inquiry into the price of rice led to an average 18% reduction in prices.

37. Similar surveillance helps keep the prices of other staples such as flour and sugar at reasonable levels.

### 3. Improved Economic Regulation of State-owned Essential Services Providers

38. As part of its role in regulating prices under the *ICCC Act* and the *Prices Regulation Act (PRA)*, the ICCC regularly undertakes **Pricing Reviews** for services offered by State Owned Enterprises (SoEs) such as **electricity, water, postal and ports prices, and for specific regulated products and services such as rice, sugar, flour and stevedoring and handling**. Stevedoring and handling relates to shipping, identified as a key input into almost all costs and prices; while sugar, rice and flour are staple foods, of direct relevance to the poor. Annexure B contains further details.

39. State-owned enterprises are responsible for delivering ‘essential’ services, such as electricity, ports, postal services etc, which are key ‘enabling’ services for ‘downstream’ industries as well as for public well-being.

40. The efficiency with which such services are provided influence economic growth as well as public amenity, all of which have ‘knock on’ effects on alleviating poverty, as the poor are disproportionately affected by the prices of goods and services, into which the costs and efficiency of essential service providers feed.

41. Of particular significance is the coverage of services provided by utilities. The availability of electricity influences school performance by students; amenity of life in villages and enables small-industry development, all of particular benefit to the rural poor.

42. In the case of water and sanitation, 'communal' based provision in 'settlements' makes living easier for the urban poor. These initiatives are being implemented by utilities in PNG.

#### **4. Anti-corruption aspects of pro-competitive regulation**

43. It is well-known that in developing countries, organisations, whether privately owned or publicly-owned, that have substantial market power, are in a position where, in their inter-actions with the public, their staff can become vulnerable to inducements offered by the public to secure preferential treatment, or even their entitlements. Examples are the securing of a fixed line telephone, particularly before the advent of mobile telephony; a railway ticket on congested trains; a place in a public housing queue; a licence for a factory; supply of a scarce product such as a car; etc.

44. Without suggesting that the staff of any particular organisation has engaged in such conduct, it is the case that effective regulation obviates such conduct.

45. Corruption of various kinds are well-known as significant impediments to poverty-reduction and competition authorities can play a key role in limiting or reducing such conduct.

46. Annexure C outlines the work of the ICCC in these infrastructure industries.

## ANNEXURE A: COMPETITION-FOCUSED WORK

### 1. Enforcement

1. The Steamships case is the first substantive litigation initiated by the ICCC in its eight-year history. Litigation is not to be lightly undertaken, but a regulator reluctant to enforce the law is seen as a 'toothless tiger'. Litigation is not cheap and a range of factors such as the impact of the alleged conduct on the national economy; living standards of citizens; and inculcating a culture of compliance with economic regulation by the business community; forms part of the decision. Expert assistance in investigation, economic/legal analysis, born of long practical experience, is essential to mount such cases.

2. As will have been seen earlier in this paper, legal action against PNG Ports is possible for a range of matters arising from its powers over regulated entities.

3. The ICCC has an *education and consultation program for business and the community*. It takes the view that most organisations will not consciously contravene the law but it is important for them to know what their obligations under the law are. The ICCC therefore plans to expand its education and consultation program during 2013. However, its capacity to do that is limited by resource constraints.

4. As a consequence of its educative work, the ICCC is preparing, in 2013, for an increase in complaints regarding unfair and anti competitive practices and it expects further requests for exemptions on public benefit grounds flowing from continued strong economic activity.

5. A community that is informed and educated about the competition and fair trading provisions of the ICCC Act acts as a 'self-enforcing' element. Traders know that contraventions carry significant penalties and consumers can come to the ICCC for redress.

6. In *monitoring the market place* the ICCC looks to key indications of potential anti-competitive conduct and, of its own volition, initiated legal proceedings against Steamships Trading Company Limited and some subsidiaries for acquiring a tranche of shares in Consort Express Lines Limited, which gave the former control over the latter, alleging breach of Section 69 of the ICCC Act, which prohibits business acquisitions which substantially lessen competition.

7. *A range of other investigations are in train*, which form a 'pipeline' of work which will require resources in 2013. As the economy grows, so, too, will the private sector, as it should, requiring closer monitoring and enforcement of the law. A regulator must not be seen to be a 'toothless tiger' and a combination of high level of skills in economics, financial analysis and basic legal principles go to make up an enforcement capability.

### 2. Adjudication

8. The authorisation process is a transparent process. In assessing ANL's authorisation application, the ICCC conducted public consultation with the relevant stakeholders including ANL and collated all submissions into a draft Determination. The draft Determination was then released to the relevant stakeholders and a conference was held to discuss and finalise the Determination.

9. *Oil palm growers - application for exemption* -The ICCC is preparing a final determination on this application. It is an application by growers of oil palm in the Hoskins area for collective negotiations of oil palm fresh fruit bunch prices and other terms and conditions with New Britain Palm Oil Limited and Hargy Oil Palm Limited (the two processors of the crop). The final determination is expected to be published by the end of this year and it is expected to lead to similar work for other agricultural commodities such as oil palm (in other geographic locations), cocoa, coffee, copra and vanilla. The main objectives of the application is to ensure that:

- growers can collectively bargain to get a reasonable price for supply of these commodities to processors;
- the prices reflect the sharing of risks between the growers, millers and exporters in relation to the international prices available for refined and unrefined products; and
- such pricing arrangements comply with the provisions of the ICCC Act.

## **ANNEXURE B: SECTORAL ECONOMIC REVIEWS**

1. Sectoral reviews are conducted transparently, as is the Commission's work generally, and seek comments from the public throughout the review process. They are time-consuming and resource-intensive, requiring wide-ranging skills in economics and econometrics.

### **1. Sugar Prices Review**

2. The prior price control arrangements for sugar products were defined in the Sundry Declared Goods Pricing Review dated 16 August 2007. One outcome of this review was the monitoring of factory gate prices for Ramu sugar. The price monitoring arrangement for the prices of Ramu sugar will end on 31 December 2012. As such, the ICCC started the review process with public consultations in 2012 to determine whether there is a continuing need to regulate the price of sugar. During 2011, there was a shortage of sugar provided to the local market. In response, the Government announced several corrective measures, including agreement to reduce the import tariff on sugar products to 25 per cent. This was to allow the pressure of import competition to work in the sector, to reduce the cost of living to PNG families. The appreciation of the Kina over 2011 was also an important variable that contributed to the appropriate pricing of sugar and other products. The Government will continue monitoring whether the benefits of the nearly 20 per cent Kina appreciation (which should lower prices significantly) are passed onto PNG businesses and families.

3. The review was completed in 2012 and the determinations by ICCC of the next pricing arrangement will be implemented starting in 2013 and over the next pricing period.

### **2. Water & Sewerage Services: Mid-Term Capital Expenditure Review**

4. The ICCC undertook a review into the pricing arrangement of water and sewerage services and released a Final Report in 2009. The principal determination in that Report is that the ICCC will set the maximum charges for water and sewerage services provided by Eda Ranu and Water PNG (water companies) for a period of five (5) years commencing 1<sup>st</sup> January 2010 and ending 31<sup>st</sup> December 2014.

5. One of the other determinations is the mid-term review of the capital expenditure of the two water entities. This review allows for the ICCC to examine whether the water companies have undertaken the capital expenditure as forecasted and captured in their pricing formula. The water companies are required to submit the actual capital expenditure undertaken over the period from January 2010 to December 2012. So far the ICCC has only received Eda Ranu's submission. If the assessment by the ICCC reveals that the water companies have not incurred the capital expenditure as captured in their pricing formula, the ICCC will amend their current pricing formula. Such review is important so that the ICCC can protect consumers from paying unnecessarily high prices for capital expenditure not incurred on projects identified by the water companies.

### **3. Rice**

6. Another staple product for low-income citizens, who form the overwhelming majority of the population, namely rice, was the subject of the ICCC's interest. Following detailed investigations, and while the matter was being assessed for possible breach of the ICCC Act, Trukai reduced its prices by an

average of some 18%. This exemplifies the nature of the ICCC's work in grass-roots areas, affecting the vast majority of citizens.

7. Investigations are continuing to examine supply-chain issues extending to the import level, shipping arrangements and any agreements that may be in place which could impede competition.

**4. Flour**

8. The flour sector has also been reviewed by the ICCC and is the subject of ongoing monitoring.

9. Staple foods are a high priority area of work and a first-order issue for the ICCC.

**5. Stevedoring and Handling**

10. Related to the shipping and port sector discussed in the main paper, stevedoring and handling, a key part of the sea transport logistical chain, crucial to the nation's development, is the subject of price monitoring by the Commission

## **ANNEXURE C: REGULATION OF ESSENTIAL SERVICES PROVIDED BY STATE-OWNED ENTERPRISES**

### **1. Electricity Industry Policy (EIP)**

1. Improving the production and supply of electricity to most areas of the country is important in minimising costs for businesses and households that depend on it to sustain their operations and livelihood. *Expansion of electricity supply is accepted throughout the world as a key tool to alleviate poverty.* The Government through the Electricity Industry Policy (EIP), expects to make electricity services more accessible, reliable and affordable in PNG through greater private sector participation in electricity generation; incentives to enhance electricity services to rural areas; and improved regulatory arrangements.

2. The EIP aims to increase the affordability, accessibility and reliability of electricity services by increasing the scope for greater private sector participation in the electricity industry and strengthening the position of PNG Power as a commercially-oriented business. It will also ensure that there is strong Government oversight of the long-term development of the electricity industry through establishing an Electricity Management Committee (EMC).

3. An Electrification Trust Fund will be established to expand services in both urban and rural areas of the country. This Trust Fund will expand electricity services through a transparent, competitive tender process to ensure value-for-money. Furthermore, the EIP recommends that the ICCC's price regulation for electricity prices should move towards "cost-reflective pricing", as has already been applied to PNG Ports. The ICCC has been invited to develop a "third-party access" code to encourage greater private sector participation in power generation and it is currently in dialogue with the World Bank to provide technical assistance to develop this code.. Finally, the EIP requires the ICCC to transfer the technical regulatory roles and functions currently delegated to PNG Power to be transferred to the Department of Petroleum and Energy (DPE), provided that DPE can demonstrate to the ICCC that it has the capability to take on this new role. That has to occur within two years.

### **2. Electricity Regulatory Contract Review**

4. The ICCC regulates the service standards for power supply and the prices that PNG Power Ltd (PNG Power) may charge for the Supply and Sale of electricity, the Scheduled Services and the Excluded Services under an Electricity Regulatory Contract (ERC) which is akin to a general tariff order formerly established under the provision of the ICCC Act 2002 and took effect from July 2002. The ERC will expire in December 2012 and therefore ICCC is undertaking a review, with a view to having in place a new ERC which will set the new price path for PNG Power for the next five (5) year regulatory period commencing 1<sup>st</sup> January 2013 and ending on the 31<sup>st</sup> December 2017. The ICCC's review focuses on how PNG Power will utilise its capital spending plan to improve on network reliability, efficiency and service standards performance.

5. New features being incorporated into the contract review process, not hitherto required, extends to inclusion of adequate reliability standards; transparency of network investment and prioritisation thereof; other 'basic' standards of service regulation; proper demand forecasting, in contrast to previous

‘predicted supply capability = demand forecasts’; possible cost-effective peak load demand management approaches; ongoing reporting systems; and effective supervision to secure affordable, reliable and accessible services to citizens, in so far as is practicable.

6. Such expanded regulation requires additional resources.

### **3. Electricity Network Engineering Review**

7. The ICCC as part of the ERC review undertook a review of PNG Power’s Electricity Network performance for the two main networks for Ramu and Port Moresby Grids. The PNG Power network currently provides performance levels which do not satisfy business and residential customer needs. Whilst PNG Power is actively seeking to improve its performance through operating initiatives and capital expenditure plans, the ICCC has conducted a review (in February 2012) of the capital expenditure proposals and operations in the Ramu and Port Moresby Systems. The PNG Power Capital Investments and Operations report reviews the operational issues and capital investment plans and provides recommendations which are summarised at the end section of the report. This report is available and can be obtained from the ICCC office.

### **4. Postal Services Regulatory Contract Review**

8. The ICCC regulates prices for the domestic and international standard 50grams or less mail stamps and rental of postal boxes by Post PNG Ltd, and is covered through the Postal Services Regulatory Contract. This is the third review of the regulatory contract and it’s been undertaken in 2012 to review and determine Post PNG’s price path, capital expenditure requirements and the minimum service standards, amongst other things for its regulated services, It is envisaged that the review will be completed and issued by 31 December 2012 so that the term of the next regulatory period will commence on (and from) 01<sup>st</sup> January 2013.

### **5. CTP Motor Vehicles Insurance Regulatory Contract Review**

9. The premiums that MVIL charges vehicle owners are regulated by the ICCC through the CTP Motor Vehicles Insurance Regulatory Contract. The second review is currently being undertaken in 2012 for a new regulatory contract to commence on 1<sup>st</sup> January 2013. The review is intended to determine MVIL’s price path, capital expenditure requirements and the minimum service standards, amongst other things, for its regulated service for the forthcoming regulatory period. It is envisaged that the review will be completed and issued by 31<sup>st</sup> December 2012.

### **6. Mid-Term Review of Competition and Tariffs for PNG Ports**

10. The ICCC has undertaken a Mid-Term Review of Competition for PNG Ports Corporation Limited. This review was done in accordance with clause 4.3 of the PNG Ports Regulatory Contract The request for review of competition was accompanied by a request to vary the regulated tariff to permit preferential discount pricing to certain large customers or classes of customers and products in the ports of Port Moresby and Lae.

11. Apart from rejecting the claim that competition in Fairfax Harbour effectively constrains PNG Ports from exercising market power; and that discrimination in prices or service quality should not be allowed in Port Moresby and Lae, the report explored a range of other matters and brief findings are listed below:

1. Pilotage should be regulated as it is an ‘effective monopoly’. Currently the Department of Transport or the Minister for Transport sets charges and the process is not transparent. This

requires reform either by declaration under the ICCA Act or the Prices Regulation Act. PNG Ports submissions were contradictory and self-serving, indicating a poor attitude to compliance with the law.

2. The monopoly structure of the towage sector may be connected with the marine pilotage monopoly and requires investigation;
3. Storage services are likely to be an effective monopoly and, if that is confirmed by further enquiry, the revenue should form part of the revenue cap which converts into the regulated tariff.
4. Stevedoring licensing needs reform to ensure landowner-connected firms do not, in effect, restrict entry;
5. Regulation of stevedoring licensing fees should be transparent and the Department of Transport needs to liaise with the Commission to achieve that;
6. Port pricing structures are archaic, inefficient in themselves and a likely contributor to inefficiency in stevedoring, storage and land transport;
7. Perverse incentives govern the issue of gate-passes, which may account for increases in storage charges;
8. Customs and NAQIA processes are in dire need of fundamental reform;
9. PNG Ports has scant regard for its regulatory obligations which are exemplified by:
  - a. Reneging on a common law contractual agreement to re-open the regulatory contract in respect of certain matters, consequent upon its failure to meet its regulatory obligations to furnish its proposed tariff by a date nominated in the regulated contract and the Commission's forbearance from exercising its right to refrain from approving them. The issues identified for re-opening the regulatory contract for review were
    - i. pricing structure;
    - ii. cost allocation methodology;
    - iii. operating expenditure;
    - iv. definitions of regulated and unregulated services; and
    - v. early commencement of work on the mid-term capital expenditure progress review.
  - b. Failure to lodge its Capital Expenditure Progress Report with certification by a registered company auditor 'as being not false or misleading'. This goes to the very heart of the regulatory system. The contract envisages the regulator making decisions on the basis of such audited information and if that is not forthcoming, the regulator needs to forensically examine investment to form an opinion, which PNG Ports has obstructed. The Commission has issued a Provisional Order under Section 38 but PNG Ports has indicated it is unlikely to be able to comply by correcting the deficiency. Hence, while litigation is an option, another remedy needs to be found within a reasonable period of time to overcome the problem.

10. The waterfront sector, with its proliferation of Government regulatory agencies and variety of industry players, each with its own agenda, merits a comprehensive inquiry, which the Commission has recommended.

#### **7. Mid-Term Review of PNG Ports' Capital Expenditure Program**

12. The ICCC is in the process of undertaking a Mid-Term Capex Review of PNG Ports Corporation Limited

#### **8. Significance of Port efficiency**

13. As an archipelagic nation, PNG depends almost entirely on its ports for the flow of goods from and to other countries and around the nation. The dependence is substantially increased due to the poor state of key roads connecting population centres and the cost limitations of air transport as an alternative mode of carriage for goods.

14. The port sector, therefore, is a key enabler of national economic development and, if not operated efficiently, could strangle the water-borne commerce of the nation, which influences economic growth and bears down on poverty.

15. The rural poor depend significantly on water-borne commerce and for passenger transport. Efficiency in that sector will disproportionately benefit them.

#### **9. General**

16. The Commission is now emphasising objective KPIs; closer monitoring of capital expenditure effectiveness; 'ring-fencing' of regulated and unregulated businesses; and increasing transparency of investment in its regulation of utilities, which, while State-owned, lack commercial incentives.