NATIONAL COMPETITION POLICY

of the

Government of Papua New Guinea

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FOREWORD BY THE TREASURER

This *National Competition Policy* states the pro-competitive policies of the Government of Papua New Guinea.

Papua New Guinea has for many years had in place legislation for consumer protection, regulation of monopolies and protection of the competitive market process. The Independent Consumer and Competition Commission (ICCC) has been in operation since January 2003. However, Papua New Guinea has no express statement of its policy on competition and consumer protection to guide decision making and reform, until now (this *National Competition Policy*).

In 2014 the Government through my Ministry, initiated the Consumer and Competition Framework Review, which delivered its Final Report in March 2018. One recommendation of that Review was that "*A National Competition Policy for PNG should be formulated and introduced, following public consultation on a draft version.*" The policy set out herein fulfils that recommendation.

This *National Competition Policy* is designed to respond to the current and foreseeable future needs of PNG's businesses and consumers. It has been formulated having regard to the need identified in the *PNG Development Strategic Plan 2010-2030*, for microeconomic reform to improve economic productivity and efficiency "...through facilitating competition, enhancing the operation of markets, improving the effectiveness of government services relied upon by the private sector and removing impediments." This *National Competition Policy* also responds to the National Goals and Directive Principles under *PNG Vision 2050*: "*Guiding Principle No. 6 – Papua New Guinea is Progressive and Globally Competitive.*"

Department of Treasury has led the development and consultation of the *National Competition Policy*. The Government appreciates the support provided in this by the Pacific Private Sector Development Initiative, a technical assistance project of the Asian Development Bank with financial support from New Zealand and the Commonwealth of Australia.

My Department (Treasury) has consulted widely in developing this *National Competition Policy*, including by holding public meetings in various cities and towns across our country. I thank all who participated in those consultations for sharing their time and views. The comments of many PNG organizations and individuals have provided a sound base for the policies set out in the following pages.

HON. IAN LING-STUCKEY, CMG. MP
Minister for Treasury

BACKGROUND TO THE NATIONAL COMPETITION POLICY

Papua New Guinea has had a competition law (the *Independent Consumer and Competition Commission Act*) and an independent agency to administer and enforce it since 2002. Various laws for consumer protection have been in force since the 1950s. The framework for consumer protection, competition and regulation – including the relevant legislation and enforcement bodies – was recently the subject of a broad review.[1] The Consumer and Competition Framework Review was initiated by the Department of Treasury and supported by the Pacific Private Sector Development Initiative (an Asian Development Bank program supported by funding from the Australian and New Zealand governments).

The Final Report of the Consumer and Competition Framework Review[2] was submitted for consideration by the National Executive Council which, in March 2018, approved to accept the Final Report as submitted and approved the implementation of the recommendations of the Final Report in their entirety.[3] The recommendations set out in the Final Report included:

> **Recommendation 68: A National Competition Policy for PNG should be formulated and introduced, following public consultation on a draft version.**

Until the present time, the law on competition and consumer protection has developed in PNG without the Government having stated an explicit competition policy. The proposed *National Competition Policy* is intended to help to set political and social expectations and to guide ongoing review and improvement of competition policy and law in all sectors of the economy.

The Department of Treasury has (with the further support of the Asian Development Bank's Pacific Private Sector Development Initiative) consulted widely on draft competition policy proposals. The *National Competition Policy* proposed in the following pages has been developed having regard to relevant comments received in the course of consultations.

The importance of effective protection of consumers' rights and the development of competitive markets for goods and services has been recognised as an aspect of previous Government policies:

- *PNG Vision 2050* adds a sixth guiding principle to the five National Goals and Directive Principles enshrined in the Constitution: "*Guiding Principle No. 6 – Papua New Guinea is Progressive and Globally Competitive.*" Under the "Wealth Creation" pillar Vision 2050 proposes that: "Vision 2050 will ensure that Papua New Guinea has a strong, dynamic and competitive economy by 2050."[4]

- The *PNG Development Strategic Plan 2010-2030* identifies a need for fundamental microeconomic reform to improve economic productivity and efficiency. This would be undertaken "...through facilitating competition, enhancing the operation of markets, improving the effectiveness of government services relied upon by the private sector and removing impediments."[5] The Plan aims to facilitate competition, in particular, in markets for housing

1 See, www.CCFReview.info.
2 Available online at: www.CCFReview.info.
3 National Executive Council decision no. 91/2018, at Special Meeting No. 05/2018.
4 PNG National Strategic Plan Taskforce *Papua New Guinea Vision 2050* (2014) Para 12.1.
5 Government of PNG *Papua New Guinea Development Strategic Plan 2010-2030* (2010) p 30.

finance, transport, new telecommunications services, tenders for public services, airline services and the manufacturing sector.[6]

- The *National Strategy for Responsible Sustainable Development for Papua New Guinea* stated: "[c]onsumer protection is another important aspect of competition policy" and set as a strategy that: "Competition needs to be promoted across the economy, including in key service sectors such as telecommunications, electricity and transport. This will require strengthening the role of the [ICCC] in investigating the competitiveness of markets and prosecuting anti-competitive behaviour."[7]

While the development and maintenance of competition is recognized as an important objective of Government policy, it is not the sole or paramount objective and may at time be in tension with other policy objectives. In such cases the proposed National Competition Policy would require the application of an economic "public interest test." The public interest test involves:

a) estimating the detriment to the public in economic terms from the anti-competitive effects of the proposed policy, legislation, decision or conduct;
b) estimating the benefit to the public in economic terms from the proposed policy, legislation, decision or conduct; and
c) weighing the economic benefits that are expected to result against the economic detriments that are likely to flow.

By this means, a determination may be made to proceed with proposed policies, legislation, decisions or conduct having economic benefits that exceed their economic detriments.

The proposed *National Competition Policy* includes a requirement (clause 54) that Department of Treasury develop a timetable for its implementation and report annually on progress made in implementation of the Policy (clause 55). A Draft Timetable is set out in the Annex following the *National Competition Policy*.

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6 Idem, pp 74, 85, 73, 101, 142.

7 Department of National Planning and Monitoring National Strategy for Responsible Sustainable Development for Papua New Guinea (2nd edn, 2014) p 37.

A. Policy on competition in PNG

(1) The Government adopts this *National Competition Policy* to inform and guide all branches of Government, regulatory agencies, state-owned enterprises, private sector businesses and consumers in PNG and will update it as required.

B. Competition Policy Objectives

(2) The objectives of this *National Competition Policy* are to improve economic efficiency, promote sustainable and inclusive economic growth, increase consumer welfare, and enhance total welfare by promoting and maintaining fair and effective competition in all markets in PNG's economy.

(3) Competition is important but is not an absolute goal, so public decision-making must also take due account of other economic and social policy objectives.

C. Competition Principles

(4) The Government will be guided by the following Competition Principles in making policies, legislation and decisions that promote competition and the long-term interests of consumers:

(a) Competition policies, laws, institutions and practices should promote the long-term interests of consumers.

(b) Policies, legislation and regulation binding the public or private sectors should not restrict competition unless the restriction is justified on the ground of compelling public interest.

(c) Government should promote freedom of choice when funding, procuring or providing goods and services and enable informed choices by consumers and others who seek to acquire those goods and services.

(d) Arrangements for public procurement of goods and services should separate the interests of policy (including funding), regulation and service provision, and enable participation by a diversity of providers.

(e) Government should separate public monopolies from competitive service elements, and also separate contestable elements into smaller independent business activities, where it is feasible to do so.

(f) Government business activities that compete with private providers, whether for-profit or non-profit, must comply with competitive neutrality principles, to ensure they do not enjoy a net competitive advantage simply as a result of government ownership.

(g) A right to third-party access to significant bottleneck infrastructure may be legislated for in particular cases where doing so would promote competition in dependent markets and enhance the public interest.

(h) Where prices for natural monopoly infrastructure providers are set, administered or overseen, the responsible authority must be independent of the government and private sector.

(5) The Competition Principles are to be applied consistently and are subject to a public interest test, which requires:

(a) estimating the economic benefits that are likely to result within PNG from proceeding with the proposed policy, legislation, regulation or decision;

(b) estimating the economic detriments that are likely to result within PNG from proceeding with the proposed policy, legislation, regulation or decision; and

(c) weighing the estimated economic detriments against the economic benefits of the proposed policy, legislation, regulation or decision,

in order that a decision can be made that is well-informed regarding the likely economic impact within PNG of such proposed policy, legislation, regulation or decision.

D. Coordination of Initiatives

(6) All Ministries are required to have regard to the possible effects on competition of all policies, legislation, regulation or decisions that are under consideration by them and, if in doubt, to refer such matters to Treasury.

(7) Treasury may request the ICCC's expert advice regarding the possible effects on competition of any proposed policy, legislation, regulation or decision.

(8) The ICCC may raise with Treasury and the relevant Ministry any concern the ICCC has regarding the competition implications of any proposed policy, legislation, regulation or decision.

(9) If any policy, legislation, regulation or decision would have anti-competitive effects, then those effects should be explicitly identified and weighed by the relevant Ministry against the public benefits likely to result from the policy, legislation, regulation or decision, in accordance with clause (5), before the Ministry determines whether to proceed with it or not.

E. Reviewing and Rectifying Statutory Impediments to Competition

(10) Statutory barriers to market entry or the expansion of business activity will be identified and progressively removed (except where justified) and avoided in new legislation or regulations.

(11) The Government will amend the Independent Consumer and Competition Commission Act 2002 (ICCC Act) to expand the advisory role of the ICCC to allow the ICCC:

- to provide advice to other Ministers and departments, in addition to Treasury, when its resources permit;
- to provide advice to Treasury on the ICCC's own initiative; and
- to make proposals to the Treasurer for desirable legislation.

F. Application to Government Business Activities

(12) The competition and consumer protection provisions of the ICCC Act (or legislation updating it) will continue to apply fully to SOEs.

(13) The ICCC and Kumul Consolidated Holdings are required to negotiate and agree Competitive Neutrality Principles setting out the obligations of all SOEs to:

- Achieve a commercial rate of return on assets;
- Be tax neutral – i.e. pay all relevant taxes and duties;

- Be regulation neutral – i.e. comply with all relevant laws and regulations; and
- Be debt neutral – i.e. borrow at commercial rates or include charges to account for implicit or explicit government guarantees.

(14) The ICCC will have the function of receiving, investigating and reporting to Treasury on complaints of infringement of the Competitive Neutrality Principles by SOEs or Government.

(15) On receiving a report from the ICCC regarding a complaint involving the Competitive Neutrality Principles, Treasury shall provide to Parliament: (a) the ICCC's report; and (b) Treasury's recommendations for appropriate action in response to the complaint.

(16) The Government will ensure that its Community Service Obligation Policy is progressively applied to each of the regulated SOEs.

(17) The Government will make provision for fully-funding the SOEs' community service obligations.

(18) The Government will establish a National Working Group (or equivalent body), to be chaired by the Treasurer (or his or her nominee) and with administrative support from the Department of Treasury, with the mandate to identify, in collaboration with the private sector, impediments to businesses entering, investing or expanding in markets in PNG and means of reducing or eliminating those impediments.

(19) The responsibilities of the National Working Group shall include raising with Treasury and the ICCC any case in which the Group considers that a policy, statute or decision may conflict with the Government's competition policy objectives.

(20) The Government will implement the recommendations of the National Land Development Programme and will support further work to improve land laws, titles, transfers, planning and zoning, in the interests of promoting entry to, and competition in, PNG markets.

(21) The Government reaffirms its commitment to the elimination of corruption in public office in PNG.

G. Public Procurement

(22) The Government will support reform of public procurement procedures and processes, including by enacting a Public Procurement Act, in the interests of ensuring competition in the supply of goods and services to Government and ensuring the Government obtains good value for public money spent.

(23) The Government will undertake a review of its public procurement practices to ascertain whether any existing procurement rules unnecessarily exclude SMEs or unincorporated undertakings from participation or otherwise unduly limit opportunities for competitive supply.

(24) The Government will investigate whether tenders can be structured or advertised in ways that remove or reduce barriers to participation by women's businesses and SMEs.

(25) The procurement monitoring system will be enhanced to gather information on the participation, and success, of women's businesses and SMEs in public procurement processes.

(26) The Government will amend the ICCC Act to include a prohibition against bid-rigging and the powers of the ICCC to investigate bid-rigging will be improved.

H. Institutional Arrangements

(27) The Government will undertake a review of the National Institute of Standards and Industrial Technology Act and operations of NISIT, to ensure that NISIT is able to perform effectively the statutory responsibilities entrusted to it.

(28) The ICCC and NICTA must administer and enforce their respective legislation in as consistent manner as possible and must ensure they communicate and coordinate their efforts efficiently.

(29) The Government remains committed to the successful operation of the ICCC and will ensure that it receives funding that is sufficient to enable it to perform its statutory functions to the standard expected by the Government.

(30) The ICCC shall be empowered to recover the costs of its regulatory activities from regulated undertakings; and those costs shall be factored into the calculation of regulated undertakings' rates or tariffs.

(31) The ICCC will remain an independent statutory body.

(32) The ICCC must ensure that its approach to administration of the ICCC Act (or any equivalent law) is transparent to the public, including by publishing policies and guidelines that explain its approach to performing its functions and exercising its powers.

(33) The ICCC and other statutory bodies and departments of the PNG Government must communicate regularly and coordinate their efforts to act effectively in performance of the functions delegated to them.

I. Consumer Protection

(34) The Government will provide the ICCC with appropriate funding to ensure PNG's consumers and traders are aware of their rights and obligations and aware of sources of advice or assistance in relation to them.

(35) The Government will support low-cost access to justice through District Courts and Village Courts by enacting necessary legislation and providing training for magistrates, to promote resolution of consumers' disputes at the local level.

(36) The Government will revise legislation on product labelling, product information and conduct in trade to ensure that information is provided in at least one of the official languages of PNG, relevant laws are harmonized, and misleading or deceptive conduct is prohibited.

(37) Particular forms of conduct which are harmful to consumers' rights and interests will be prohibited under PNG's laws.

(38) The conditions and warranties implied into consumer contracts under existing law will be replaced by "consumer guarantees" and similar guarantees will apply also to services.

(39) The Government will revise and consolidate laws on weights and measures and packaging to harmonize them and bring them up-to-date.

(40) The Government will revise and consolidate laws on consumer protection to harmonize them, bring them up-to-date, and provide for effective means of enforcement and remedies.

J. Competition Legislation

(41) The Government will modernize PNG's competition law, including by simplifying its

language and structure as far as practicable and removing repetition wherever possible.

(42) In modernising the competition law and supplementing existing consumer protection laws, the ICCC Act will be substantially amended (or repealed and replaced) and the revised law will be entitled the "Consumer and Competition Act".

(43) The competitive conduct provisions of the ICCC Act will be revised to ensure the rules are clear, complete and consistent.

(44) The mergers and acquisitions provisions of the ICCC Act will be revised to provide for mandatory pre-notification of mergers or acquisitions that exceed certain thresholds to be set out in Regulations.

(45) The clearance, authorisation and exemption provisions of the ICCC Act will be revised to ensure they are clear, complete and consistent.

(46) The ICCC will have the powers to commence civil or criminal investigations or proceedings on its own initiative and the ICCC will have the full range of investigative powers available to its counterpart agencies.

(47) The sanctions and remedies provisions of the ICCC Act will be revised to ensure that courts have powers to order a broad range of remedies and to impose penalties at levels that are sufficient to ensure deterrence.

(48) The review and appeal provisions of the ICCC Act will be revised to ensure they are workable and appropriate.

K. Regulated Industries

(49) The Government will consider the costs and benefits of full and partial privatisation of the regulated SOEs, on a case-by-case basis.

(50) The procedural provisions governing regulatory contracts and appeals will be streamlined and the period for an Appeals Panel decision extended to 90 days to enable fully considered decisions to be made.

L. Price Monitoring and Control

(51) The Government will amend the *Prices Regulation Act* to require that economically-based thresholds be met as a condition for imposing price monitoring or price control, and to require the ICCC to report to the Minister on whether the relevant threshold has been met or not.

(52) Decisions of the ICCC regarding price monitoring and price control will be subject to review by the Appeals Panel.

M. International Trade

(53) The Government will take into consideration the implications for competition in markets in PNG of any bilateral or multilateral trade agreements into which it considers entering.

N. Timeframe and Resources

(54) Treasury must develop a timetable for the implementation of this *National Competition Policy* and must submit the timetable to Parliament.

(55) Treasury must report to Parliament not less than annually on the progress made in

implementing this *National Competition Policy*, and the costs incurred in the past year and costs projected to be incurred in the coming year.

O. **Progress Review**

(56) Progress in the implementation of this *National Competition Policy* and the impact it is having will be reviewed by an independent panel of experts, five years after this Policy comes into effect and again five years after the first review.

ANNEX
TIMETABLE FOR IMPLEMENTATION

The proposed *National Competition Policy* includes a requirement (clause 54) that Treasury develop a timetable for its implementation and report annually on progress made in implementation of the Policy (clause 55).

The following Draft Timetable sets out actions identified by Treasury as being necessary or desirable to implement the *National Competition Policy* in the first twelve months following its endorsement.

NCP Reference	Implementation milestone	Responsibility	Target date(s)
54	Submit implementation timetable to Parliament	Treasury	• Within 2 months of NCP endorsement.
18	Establish National Working Group to address impediments to market entry	Treasury	• Within 4 months of NCP endorsement.
36 37 38 39 40	Revise and update consumer protection laws	Treasury	• Commence within 4 months of NCP endorsement. • Aim to complete within 2 years.
41 – 48 50 51 52	Revise and update competition laws	Treasury	• Commence within 4 months of NCP endorsement. • Aim to complete within 2 years.
9	Advise all Ministries to identify and weigh anti-competitive effects of proposals for new policy, legislation or decisions.	Treasury	• Within 6 months of NCP endorsement.
32	Publication of policies and guidelines	ICCC	• First three within 6 months of NCP endorsement.
55	Report to Parliament on implementation costs and progress	Treasury	• Within 12 months of NCP endorsement.
13	Negotiate 'Competitive Neutrality Principles' to guide SOEs activities.	ICCC and KCH	• Commence within 4 months of NCP endorsement. • Aim to complete within 12 months.
28 33	ICCC coordination with NICTA, other statutory bodies	ICCC	• Within 12 months of NCP endorsement.