



Independent Consumer & Competition Commission

STATEMENT OF REASONS FOR AMENDING THE PNG PORTS REGULATORY CONTRACT

1.0 INTRODUCTION

The essential port services industry in PNG is declared under section 25 A of the *PNG Harbours Act* ("Harbours Act") to be a regulated industry for the purposes of the ICCC Act.

In 2002, the Minister for Treasury declared under section 32 of the ICCC Act that:

- The supply of essential port services and Stevedoring Access to be regulated services and,
- PNG Ports Corporation Limited (then known as PNG Harbours Limited) to be a regulated entity.

As a result of the declarations made under the ICCC Act and the Harbours Act, the Commission is responsible for regulating the tariffs and service standards of PNG Ports in the supply of essential port services and stevedoring access at its declared ports throughout PNG through the PNG Ports Regulatory Contract (**Contract**).

2.0 FORMAT AND TIMETABLE OF THE AMENDMENT PROCESS

The Commission undertook the amendment of the Contract in an open and transparent manner and sought the views and comments of key stakeholders, interested individuals and members of the public. Key dates for amendment process are as follows:

Review Timetable

EVENTS	DATE
Commission Publishes Draft Regulatory-Consultation begins	24 th September 2010
Close of submissions on draft amended Contract	22 nd October 2010
Commission Finalises the Contract amendments-Amendments take effect	26 th October 2010
Final Regulatory Contract published	01 st November 2010

3.0 PURPOSE OF THE AMENDMENT

The Contract had to be amended due to the following reasons:

- It was found that certain clauses within the Contract were ambiguous thus had to be clarified;
- There were certain clauses in the Contract that erroneous therefore had to be corrected; and
- There were certain formulas in the Contract that were unintentionally omitted when the Contract was finalised towards the end of 2009.

4.0 THE AMENDMENTS TO THE CONTRACT

There were no submissions received by the Commission on the proposed amendments to the Contract.

There were Additional amendments that were noticed by Commission during the consultation period and included in the draft amended Contract as agreed between the Commission and PNG Ports. The Commission and PNG Ports exchanged Letters to this effect.

An overview of the proposed amendments to the draft amended Contract is as follows:

Existing Clause in the Contract	Proposed Amendment to the Contract
<p>CLAUSE 4.1 (a) (ii) (2)</p> <p>The WACC at 17.09 percent per annum; and</p>	<p>CLAUSE 4.1 (a) (ii) (2)</p> <p>The pre-tax real WACC at 17.09 percent per annum; and</p>
<p>SCHEDULE 1</p> <p>TRANSHIPMENTS</p> <p>The tariffs for transhipments (both Inward and Outward) will be charged at half (50%) of the respective approved wharfage tariffs in accordance with Schedule 1, Part A of this Contract.</p>	<p>SCHEDULE 1</p> <p>TRANSHIPMENTS</p> <p>The tariffs for transhipments (Inward and Outward charged separately) will be charged at, for Overseas - 50%, and for Coastal - 100%, of the respective approved wharfage tariffs in accordance with Schedule 1, Part A of this Contract, and payable at the port of transhipment.</p>
<p>SCHEDULE 2</p> <p>Part 1. Essential Services Price Control</p>	<p>SCHEDULE 2</p> <p>Part 2. Essential Services Price Control</p>
<p>SCHEDULE 2</p> <p>Part 2. Capital Efficiency Factor (CEF_t)</p>	<p>SCHEDULE 2</p> <p>Part 4. Capital Efficiency Factor (CEF_t)</p>
<p>SCHEDULE 2</p> <p>Part 3. Changes in calculation of CPI</p>	<p>SCHEDULE 2</p> <p>Part 5. Changes in calculation of CPI</p>

Existing Clause in the Contract	Proposed Amendment to the Contract
<p>The adjusted PNG CPI for the 12 months period ending on 30 June in Regulatory Year t-2 is calculated as follows:</p> $\text{PNGCPI}_{t-1} = \{\text{PNGCPI}_{(q3,t-3)} + \text{PNGCPI}_{(q4,t-3)} + \text{PNGCPI}_{(q1,t-2)} + \text{PNGCPI}_{(q2,t-2)}\}/4$	<p>The adjusted PNG CPI for the 12 months period ending on 30 June in Regulatory Year t-2 is calculated as follows:</p> $\text{PNGCPI}_{t-2} = \{\text{PNGCPI}_{(q3,t-3)} + \text{PNGCPI}_{(q4,t-3)} + \text{PNGCPI}_{(q1,t-2)} + \text{PNGCPI}_{(q2,t-2)}\}/4$
<p>SCHEDULE 6</p> <p>Regulated Ports</p> <p>The value of the WACC is determined to be equal to 17.09 per cent per annum.</p>	<p>SCHEDULE 6</p> <p>Regulated Ports</p> <p>The value of the pre-tax real WACC is determined to be equal to 17.09 per cent per annum.</p>
<p>SCHEDULE 6</p> <p>PNG Ports regulated business</p> <p>The value of the WACC is determined to be equal to 17.09 per cent per annum.</p>	<p>SCHEDULE 6</p> <p>PNG Ports regulated business</p> <p>The value of the pre-tax real WACC is determined to be equal to 17.09 per cent per annum.</p>
<p>SCHEDULE 7</p> <p>WACC</p> <p>The final WACC used in the determination of the price path for 2010 through to 2014 is equal to 17.09% per annum.</p>	<p>SCHEDULE 7</p> <p>WACC</p> <p>The final pre-tax real WACC used in the determination of the price path for 2010 through to 2014 is equal to 17.09% per annum.</p>

In addition to the proposed amendments, the Commission inserted the following formulas which were left out in the Contract unintentionally:

SCHEDULE 2-TARIFF FORMULA

Part 1. Average Revenue Change (No Port Closures)

The Change in forecast average revenue for Subsequent Regulatory Year t (AR_t) is calculated as follows:

$$\text{AR}_t = \frac{\sum_{i=1}^n p_t^i * q_{t-1}^i}{\sum_{i=1}^n p_{t-1}^i * q_{t-1}^i}$$

$$\text{where:}$$

there are n tariffs;

p_t^i is the rate for tariff i proposed to apply in Regulatory Year t in a statement given under clause 3.1;

p_{t-1}^i is the rate of tariff i that applied in Regulatory Year t-1; and

q_{t-1}^i is the actual chargeable quantity in relation to tariff i that was supplied by PNG Ports in the 12 months between 30 June of Regulatory Year t-1 and 30th June of Regulatory Year t-2.

SCHEDULE 2-TARIFF FORMULA

Part 3. Average Revenue Change (Approved Port Closures)

The Change in forecast average revenue for Subsequent Regulatory Year t [AR (APC)_t], adjusted to allow for one or more Approved Port Closures, is calculated as follows:

$$AR(APC)_t = \frac{\sum_{i=1}^n p_t^i * \{q_{t-1}^i - cpq_{t-1}^i\}}{\sum_{i=1}^n \{p_{t-1}^i * q_{t-1}^i\} - \{doc + ahoc\}}$$

where:

there are n tariffs;

p_t^i is the rate for tariff i proposed to apply in Regulatory Year t in a statement given under clause 3.1;

p_{t-1}^i is the rate of tariff that applied in Regulatory Year t-1;

q_{t-1}^i is the actual chargeable quantity in relation to tariff i that was supplied by PNG Ports in the 12 months between 30 June of Regulatory Year t-1 and 30 June in the Year t-2;

cpq_{t-1}^i is the actual chargeable quantity in relation to tariff i that was supplied by PNG Ports in respect of ports closed on the last day of Regulatory Year t-1, which quantity was supplied during the 12 months between 30 June of Regulatory Year t-1 and 30 June of Regulatory Year t-2;

doc is the total amount of direct operating and maintenance costs (expressed in kina) incurred by PNG Ports during the 12 months between 30 June of Regulatory Year t-2 and 30 June of Regulatory Year t-3 in respect of ports closed during Regulatory Year t-1; and

ahoc is the total amount [per annum] of avoidable head office costs incurred by PNG Ports [during the 12 months between 30 June of Regulatory Year t-2 and 30 June of Regulatory Year t-3] in respect of ports closed during Regulatory Year t-1 and likely not to be incurred by PNG Ports in Regulatory Year t as a result of the port closures.

The additional amendments that were included during the consultation period are as follows:

Existing Clause in the Contract	Proposed Amendment to the Contract
<p>Schedule 2</p> <p>Part 3. Changes in the Calculation of CPI</p> <p>PNGCPI_(q1, t-1) is the PNGCPI for the Quarter ending on 31 March in Regulatory Year t or calendar year t ;</p>	<p>Schedule 2</p> <p>Part 5. Changes in the Calculation of CPI</p> <p>PNGCPI_(q1, t-1) is the PNGCPI for the Quarter ending on 31 March in Regulatory Year t-1 or calendar year t-1;</p>
<p>PNGCPI_(q4, t-2) is the PNGCPI for the Quarter ending on 31 December in Regulatory Year t or calendar year t; and</p>	<p>PNGCPI_(q4, t-2) is the PNGCPI for the Quarter ending on 31 December in Regulatory Year t-2 or calendar year t-2; and</p>
<p>PNGCPI_(q4, t-2) is the PNGCPI for the Quarter ending on 30 September in Regulatory Year t or calendar year t.</p>	<p>PNGCPI_(q3, t-2) is the PNGCPI for the Quarter ending on 30 September in Regulatory Year t-2 or calendar year t-2.</p>

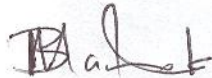
5.0 REASONS

1. The clauses regarding the WACC were ambiguous because these clauses did not specify that the WACC used in the Contract was the pre-tax real WACC, therefore it had to be amended to clarify the specific WACC used;
2. The Transshipment clause in the Contract was also ambiguous because it did not reflect the standard application of transshipment wharfage charges by the industry therefore it had to be amended to reflect the how transshipment charges are applied by PNG Ports;
3. The Average Revenue Formulas for port closures and no port closures had to be inserted because it was unintentionally omitted when the Contract was finalised in late 2009.
4. Parts 1, 2 and 3 had to be re-numbered because the Average Revenue formulas had to be inserted into the Contract.
5. The CPI formula had to be corrected because it was erroneous.
6. The FCL/LCL Container (10/9m3 & 4m3/D-Box) tariffs were also amended because the rates in the Contract were incorrect. The FCL/LCL -10/9m3 rate was supposed to be half (50%) of the FLC/LCL 20ft Container (TEU) rate and the FCL/LCL - 4m3/D-Box rate was supposed to be one-third of the FLC/LCL 20ft Container (TEU) rate.

Copies of this Statement of Reasons and the Regulatory Contract can be obtained from the Commission at the following address, or on its web site.

Independent Consumer & Competition Commission
1st Floor Garden City, Angau Drive Boroko
P.O. Box 6394
BOROKO
National Capital District

Any enquires on the Statement of Reasons or the Regulatory Contract should be directed to **Mr. Paulus Ain** the Executive Manager Prices, Regulatory Affairs and Special Projects Division, on telephone 325 2144 or by fax on 325 3980 and or via email on pain@iccc.gov.pg. Copies can also be obtained from the Commission's website on www.iccc.gov.pg.



Assoc. Prof. Billy Manoka, (PhD)
Commissioner & CEO

26th October 2010