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Introduction

The purpose of the Compliance Program is to provide guidance to government agencies and state owned enterprises, business and other stakeholders as to the broad scope of Papua New Guinea’s (PNG) competition and consumer law and how the Independent Consumer and Competition Commission (“Commission”) will go about seeking compliance with those laws.

1. Background

1.1 The Commission was established in 2002. It consists of a (full time) Commissioner and two Associate Commissioners, one of whom is a non-resident of PNG.

1.2 It is responsible for administering the *Independent Consumer and Competition Commission Act 2002* ("ICCC Act") and other legislations.

1.3 The ICCC Act is designed to enhance the welfare of the people of PNG by encouraging competition, fair trading and efficiency in business and preventing anti-competitive behaviour.

1.4 Very briefly the legislation covers a number of broad areas:

- consumer protection — unsafe goods, unfair statements in commercial advertising,
- price regulation of a number of essential consumer goods and services such as electricity, postal services, rice, selected public transport fares,
- anti-competitive arrangements such as price fixing between competitors, forcing retailers to sell goods or services to the public at no less than specified prices and other arrangements between competitors that substantially lessen competition,
- mergers and acquisitions that substantially lessen competition, and
- misuse of market power for the purpose of restricting entry, preventing or deterring competitive behaviour or eliminating a person from the market.

1.5 The ICCC Act does, however, allow for exemption in respect of certain anti-competitive arrangements if those engaging in the conduct can demonstrate offsetting benefits to the public – this is discussed in more detail below. This is a common practice in jurisdictions with similar laws to the ICCC Act.

1.6 The ICCC Act promotes competition in markets and protects the interest of consumers and promotes the effective and efficient development of industry and commerce.

1.7 The law particularly impacts on business enterprises and public enterprises and those bodies must be aware of their obligations. The ICCC Act provides for substantial penalties for contravention (fines up to K10 million and imprisonment for up to two years).

1.8 The Court may also make other orders. There are also implications for small business and the community generally and the Commission will be developing specific programs to assist all in understanding their rights and obligations as well as the options for recourse that the law provides.
1.9 A short summary of the laws, administered by the Commission, is attached to this paper. A more comprehensive summary of the laws is available on the Commission’s website or for purchase from the Commission.

2. **What is compliance?**

2.1 In broad terms compliance is the process of seeking to ensure that business carries out its activities in a manner consistent with the letter and hopefully the spirit of the law.

2.2 A compliance system is an important element in corporate governance and assists a business to become a good corporate citizen.

2.3 Compliance with the law is good from a customer and community relations perspective too. Consumers are more inclined to deal with businesses who have not contravened the law.

2.4 Contravention of the law can be costly to business. Not only is there a risk of having a conviction recorded against the business and individuals in that business but there may also be substantial penalties. Dealing with instances of breaches can be expensive to the business not only in management time but also in the costs of seeking legal advice. We therefore encourage businesses to put in place processes including training of staff to ensure or at least reduce the likelihood of contraventions in the future. This is in the interests of those businesses and the people of Papua New Guinea.

3. **How will the Commission achieve compliance?**

3.1 It will achieve compliance through:

- consultation,
- education,
- monitoring commercial activities (of both public and state owned enterprises), and
- taking action to achieve compliance with the law.

3.2 Specific resources will be devoted to consultation, dissemination of information and education of business, government, community and other stakeholders.

3.3 The Commission will develop a program of capacity building for business (and their professional advisors) and others. As part of this, it will consult with and provide guidance to business and other stakeholders such as professional groups, government and consumers. It will educate stakeholders as to their rights and obligations. There are various means of doing this such as:

- preparing brochures, newsletters and articles and general publications on specific activities, particularly where there is a high risk of contravention,

- holding or attending industry meetings or seminars in which the competition and consumer laws are discussed – whether organised by the Commission or the industry this is an important and effective way of ensuring stakeholders understand their obligations under the law. An advantage of this method is that it allows businesses
and others to have access to the Commission and its staff who are able to explain the Commission’s activities and the law,

- responding to enquiries from government, business or business associations and consumers in a timely manner,

- providing information to business, industry associations and government departments and agencies (responsible for certain industries) and assisting them in developing compliance programs and industry codes of conduct, and

- seeking publicity and liaising with the press – we regard this as an important tool in advising the community of the outcome of the activities of the Commission.

3.4 Capacity building for Government, the bureaucracy and state owned enterprises. In parallel with developing the capacity of business and the community, there is a need to build an appreciation of the implications of competition and consumer protection laws in Government and the public sector. This guidance would be a continuing process and will involve Ministers, members of Parliament and senior managers as well as middle managers in the public service and state owned enterprises.

3.5 Monitoring and enforcement - The Commission will be proactive in enforcing the law. We will closely monitor the market place, and pursue a vigorous and effective enforcement program particularly in areas which we have identified as priority areas – these are discussed below.

3.6 This does not mean, of course, that the Commission will only be focused on instituting proceedings and pursuing matters before the Courts. Some matters may need to be dealt with that way, but we expect that the majority by far will be settled by the business concerned providing undertakings that it will not continue with the conduct in question. In some circumstances, we may require the business to develop a compliance program that reduces the likelihood of the business contravening the law in the future. It may be that if the conduct is widespread, that a guideline could be developed in consultation with the businesses or even an industry standard developed in conjunction with industry.

3.7 The Commission does not have the power to determine if businesses have contravened the law. That is the role of the Courts and the Commission is required to satisfy the Courts that the law has been contravened if it wishes to challenge the conduct and seek penalties under the ICCC Act.

3.8 Most businesses, when they are aware of their obligations, will comply with the law but unfortunately some will not.

3.9 Where the Commission considers a business may have contravened the law, it will firstly contact that business to seek information and, if necessary, to come to an administrative settlement or where that is not appropriate it will, through the Courts, seek to:

- stop the unlawful conduct,
• undo the effects of the contravention,
• deter the unlawful conduct being repeated in the future, and
• punish the wrong doer – in this regard there is a range of options open to the Commission. It may take action under the ICCC Act in the Court seeking penalty or injunction. In determining penalties the Court will have regard to the following:

➢ the nature and extent of the act or omission,
➢ the nature and extent of any consequential loss or damage suffered,
➢ the circumstances in which any act or omission took place; and
➢ if the person or business has previously been convicted of similar conduct.

3.10 The Commission will consult with the community and business in establishing priorities. In setting those priorities, it will monitor the market place and have regard to emerging issues in PNG and other countries, particularly those in our region. Broadly, the factors that the Commission will take into account in deciding whether to take Court action include:

• was there blatant, systematic disregard for the law,
• was there significant public detriment,
• is there potential for educative or deterrent effect, or
• whether it would assist in clarifying the law..

4. What to do if a firm finds it has breached the law

4.1 If a business considers that it has or may have contravened the law, or it may contravene the law through conduct it proposes to engage in, then we encourage it to come to the Commission and disclose details of its conduct or proposed conduct. In coming before the Commission, business must be fully co-operative and provide full disclosure of the contravention (or possible contravention) or proposed conduct and the surrounding circumstances.

4.2 Assessment of conduct and possible leniency -

Where a business is unsure whether its proposed conduct is likely to contravene the ICCC Act, it can seek a view from the Commission. The Commission will assess that conduct in terms of the law and give its view on the basis of the information before it.

Where conduct is being, or has been engaged in, businesses can still approach the Commission to seek its view and, in all but the most severe breaches of the law, the Commission will be prepared to consider leniency. Leniency will only be considered if the business comes forward and provides full disclosure, before the Commission institutes Court proceedings or is well advanced in its investigations. Conduct such as agreed pricing arrangements or agreements involving resale price maintenance are examples of serious breaches of the law where the Commission is unlikely to consider leniency.

The Commission will shortly be preparing a draft Leniency Policy and will be releasing it for discussion.
4.3 If the business chooses to continue with conduct that the Commission has indicated it is likely to oppose, it may be at risk of contravening the law and of proceedings before the Courts.

4.4 In the case of conduct that the Commission regards as likely to be a breach of the law it will generally seek:

- an immediate end to the conduct,
- the business to take steps to ensure it does not happen again,
- compensation for those adversely affected and
- disclosure of the full circumstances of the breach.

4.5 **Authorisation or Clearance (exemption from the law)**

Authorisation is available for certain conduct where such conduct may contravene the law but there is some overriding benefit to the community from the conduct. For instance, if the Commission concludes that certain conduct is likely to be illegal, business may choose to abandon the conduct, or amend its practices so that they do not contravene the law or if it is conduct for which authorisation may be granted and there is net benefit to the public, they may seek authorisation.

4.6 Authorization is not given lightly because the effect is that it allows business to continue to engage in conduct that would otherwise contravene the law.

4.7 Authorisation is a formal and transparent process whereby the applicant lodges an application with a supporting submission that sets out specifically why the conduct results in a benefit to the public. The Commission provides a copy of the application to all parties who may have an interest in the application and gives them the opportunity for comment.

4.8 Once submissions are received, the Commission considers the application and issues a draft decision. It is sent to the applicant and all interested parties. Parties may have a conference with the Commission if they are dissatisfied with the draft decision. After considering any further submissions and matters raised at the conference the Commission issues a final decision.

4.9 If the Commission is satisfied that the benefit to the community outweighs any detriments including any anti-competitive effects, the Commission grants authorization and the applicant may engage in the conduct.

4.10 Clearance is also available for business acquisitions, and it is granted where the Commission concludes that the proposed does not substantially lessen competition. It is also a public process but no draft decision is issued and a strict time limit for consideration applies.
Contact details

For further information in relation to this statement please contact Thaddeus Tiriman on phone (+675) 325 2144, facsimile (+675) 325 3980 or e-mail: ttiriman@iccc.gov.pg

Attachments

Short Summary of relevant provisions of the law