PNG Ports Corporation Limited

SUBMISSION TO THE INDEPENDENT CONSUMER AND COMPETITION COMMISSION’S “NOTICE OF INTENTION TO REVIEW NON REGULATED TARIFFS PROVIDED BY PNG PORTS CORPORATION LIMITED TO CONSIDER WHETHER THEY SHOULD BE DECLARED AS REGULATED SERVICES UNDER SECTION 33 OF THE INDEPENDENT CONSUMER AND COMPETITION ACT 2002”

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Contents

1.0 REGULATORY FRAMEWORK .................................................................................. 3
  1.1 Background ........................................................................................................ 3
  1.2 Regulatory framework and regulated services .................................................. 3
  1.3 Requirements for declaring services as regulated services ............................ 4
  1.4 Comment on the current process ...................................................................... 5
  1.5 Timeframes and the importance of consultation .............................................. 6
  1.6 This submission ................................................................................................. 7

2.0 PILOTAGE SERVICES .............................................................................................. 8
  2.1 Definition of the market .................................................................................... 8
  2.2 Pilotage services provided by PNG Ports .......................................................... 9
  2.3 Governance of pilotage arrangements in PNG .................................................. 9
  2.4 Competition from private operators .................................................................. 11
  2.5 Summary of competition analysis and degree of market power ..................... 12
  2.6 Consistency with the ICCC’s objectives ............................................................. 14

3.0 STORAGE SERVICES ............................................................................................. 15
  3.1 Definition of the market .................................................................................... 15
  3.2 Storage services provided by PNG Ports .......................................................... 15
  3.3 Competition from private operators .................................................................. 16
  3.4 Summary of competition analysis and degree of market power ..................... 19
  3.5 Consistency with the ICCC’s objectives ............................................................. 20

4.0 UTILITIES AND OTHER SERVICES .................................................................. 21
  4.1 Definition of the market .................................................................................... 21
  4.2 Utilities and other services provided by PNG Ports .......................................... 22
  4.3 Market commentary .......................................................................................... 23
  4.4 Consistency with the ICCC’s objectives ............................................................. 24
  4.5 Interpretation of the Ministerial Declaration .................................................... 24
1.0 Regulatory framework

1.1 Background

On 9 October 2014, the Independent Consumer and Competition Commission (ICCC) wrote to PNG Ports Corporation Limited (PNG Ports) to give notice that it is conducting a public review of the current non-regulated services provided by PNG Ports. The ICCC’s intention to conduct a review is also set out in its public notice of 9 October 2014, Notice of intention to review non regulated tariffs provided by PNG Ports Corporation Limited to consider whether they should be declared as regulated services under Section 33 of the Independent Consumer and Competition Act 2002.

The ICCC’s notice indicates that the unregulated services under review are described in PNG Ports’ 2014 Schedule of non-regulated services tariffs, and include:

- Pilotage Fees and Charges
- Storage of empty containers and of FCL (Full Container Load) and LCL (Less than Full Container Load) containers
- Break Bulk Storage
- Reefer (refrigerated containers) Power Charges
- Dangerous Goods Storage
- Utilities and other Services.

1.2 Regulatory framework and regulated services

PNG Ports is a declared regulated entity under Section 32 of the Independent Consumer and Competition Commission Act 2002 (the ICCC Act). PNG Ports is licensed under the Harbours Act 2002 (Harbours Act) to provide Essential Port Services and Stevedoring Access Services under a Regulatory Contract, the current version of which is dated 21 September 2010 (the 2010 Regulatory Contract).

Services that are currently regulated under the 2010 Regulatory Contract are those services declared by the Minister in 2002 under Section 32(2) of the ICCC Act, and include Berth Reservation Services, Berthing Services, Wharfage Services and Stevedoring Access, where:

Berth Reservation Services means –

a) a port service consisting of providing berth reservations for Vessels at a Declared Port; and

b) all services supplied in connection with the supply of such port services.

Berthing Service means –

a) a port service consisting of providing berths for Vessels at a Declared Port; and

b) all services supplied in connection with the supply of such port services.

Wharfage Services means –
a) a port service consisting of providing port facilities for loading or unloading Vessels at a Declared Port; and
b) all services supplied in connection with the supply of such port services,

but does not include the provision of such services to pleasure craft less than 10 metres in length, vessels of primitive build or warships.

Stevedoring Access means the right of stevedores to enter upon the port and associated facilities operated by PNG Harbours Limited for the purpose of loading and unloading ships and other vessels, but does not include the right to move cargo between ships and other vessels and stacking areas, or to sort, stack or deliver cargo within the transit sheds and open stacking areas within the boundaries of a Declared Port.¹

1.3 Requirements for declaring services as regulated services

The process and requirements for the ICCC to declare goods or services supplied (or capable of being supplied) by PNG Ports is set out in Section 33 of the ICCC Act. Under Section 33(1)(b) of the ICCC Act, the ICCC may, by notice in the National Gazette, declare —

b) any goods or services supplied or capable of being supplied by a regulated entity to be regulated goods or services, as the case may be,

with effect from the later of the date of publication of the notice in the National Gazette and the commencement date specified in the notice.

Section 33(2)(b) specifies that the ICCC shall not make a declaration under Section 33(1)(b) unless it is satisfied that —

(i) the goods and services concerned are supplied or are capable of being supplied by the regulated entity in a market in which the regulated entity concerned has a substantial degree of power in a market; and

(ii) the declaration is appropriate having regard to the Commission’s objectives set out in Section 5.

Therefore, the two primary questions that must be addressed by the ICCC in seeking to declare any services provided by PNG Ports are whether PNG Ports has a substantial degree of power in the relevant market, and whether declaration of the service would be consistent with the ICCC’s objectives under the ICCC Act.

For the purpose of Section 33, a ‘market’ is defined under Section 33(8) as:

...a market in the whole or any part of Papua New Guinea for goods and services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them, including imports.

The primary objectives of the ICCC under Section 5(1) of the ICCC Act are:

¹ M. Morauta, Prime Minister and Minister for the Treasury (2002), "Declaration of Regulated Entity – 11 July 2002", in the National Gazette, No. G114, Port Moresby, Tuesday, 16th July
a) to enhance the welfare of the people of Papua New Guinea through the promotion of competition, fair trading and the protection of consumers' interests; and
b) to promote economic efficiency in industry structure, investment and conduct; and
c) to protect the long term interests of the people of Papua New Guinea with regard to the price, quality and reliability of significant goods and services.

Section 5(2) also contains facilitating objectives that the ICCC must have regard to:

a) to promote and protect the bona fide interests of consumers with regard to the price, quality and reliability of goods and services;
b) to ensure that users and consumers (including low-income or vulnerable consumers) benefit from competition and efficiency;
c) to facilitate effective competition and promote competitive market conduct;
d) to prevent the misuse of market power;
e) to promote and encourage the efficient operation of industries and efficient investment in industries;
f) to ensure that regulatory decision making has regard to any applicable health, safety, environmental and social legislation;
g) to promote and encourage fair trading practices and a fair market.

There are also a number of procedural requirements that the ICCC must abide by in seeking to declare goods or services, which are discussed in further detail in the following section.

1.4 Comment on the current process

In its letter to PNG Ports, the ICCC indicated that its “notice” is in accordance with Section 33(6) of the ICC Act. Section 33(6) of the ICC Act provides that:

The Commission shall not make a declaration under Subsection (1) or revoke a declaration under Subsection (4) unless –

a) it has given notice of its intention to make or revoke the declaration no later than four weeks prior to doing so to –
i) the Minister;
ii) the relevant entity; and
iii) any other person that the Commission considers appropriate; and

b) it has given each of those persons a reasonable opportunity to make submissions in relation to that matter and has considered any submissions made.

PNG Ports notes that the ICCC’s notice 9 October 2014 does not meet the requirements of Section 33(6), in that the ICCC has not provided notice of its intent to make a declaration under Section 33(1). Rather, the ICCC has only notified PNG Ports (and presumably, other stakeholders) that it intends to review the current non-regulated services provided by PNG Ports to decide whether these services should be declared as regulated services. This is quite different from a notice of intent to declare any goods or services supplied or capable of being supplied by PNG Ports to be regulated good or regulated services under Section 33(1)(b), which would require at a minimum:
• An explicit notice that the ICCC intends to declare certain goods or services
• Specification of the goods or services supplied or capable of being supplied by PNG Ports that the
  ICCC considers should be regulated
• Other relevant details of the services, such as the location in which they are supplied and purpose
  for which they are supplied.

In the event that the ICCC decides that it should give notice of its intention to make a declaration under
Section 33(1), and gives the Minister, PNG Ports and any other relevant stakeholders a notice to that effect,
PNG Ports expects that all relevant stakeholders will be given a ‘reasonable opportunity to make
submissions’ to the ICCC in relation to the matter following the notice as provided for under Section 33(6)(b).

PNG Ports is of the view that a ‘reasonable opportunity to make submissions’ to the ICCC on the matter would
require first and foremost, an indication from the ICCC which (if any) services it intends to declare and the
relevant market(s) in which they are supplied. In addition, the ICCC should provide its reasons for deciding to
declare the services, explicitly setting out how it considers that the requirements of Section 33(2)(b) of the
ICCC Act have been met, including details of the consultations and analysis undertaken by the ICCC in coming
to a view that:

• The goods or services concerned are supplied or are capable of being supplied in a market in which
  PNG Ports has a substantial degree of market power
• The declaration is appropriate having regard to the Commission’s objectives set out in Section 5 of
  the ICCC Act.

Without this information from the ICCC, the Minister, PNG Ports and any other relevant stakeholders cannot
be considered to have had a reasonable opportunity to make submissions on the matter.

1.5 Timeframes and the importance of consultation

A ‘reasonable opportunity’ also requires that stakeholders are given sufficient time to consider any notice of
intention to declare services by the ICCC, and for the ICCC to undertake a thorough consultation with the
industry to ensure that any declaration is consistent with the ICCC’s objectives under the Section 5 of the
ICCC Act.

The timeframes set out in the ICCC Act are clear – the ICCC must provide the Minister, PNG Ports and any
other relevant stakeholders with a notice of its intention to declare any goods or services supplied or capable
of being supplied by PNG Ports to be regulated good or regulated services under Section 33(1)(b) no later
than four weeks before it makes the declaration.

In its submission to the ICCC Issues Paper on the draft regulatory contract, the Association of Licensed
Stevedoring Contractors raised significant concerns about the lack of proper consultation with the industry
to-date concerning the regulation of additional services:
The proposal by the ICCC to include certain goods and services as contestable and/or regulated services has been done without proper consultation with the industry or any commercial or practical justification as to why they should be included in the draft determination.²

PNG Ports expects that the ICCC will address this deficiency in processes to-date by undertaking a full and comprehensive consultation with the industry before coming to a decision on whether or not it should issue a notice of intention to regulate any goods or services provided by PNG Ports.

1.6 This submission

This submission represents PNG Ports' first written submission to the ICCC concerning its notice of intention to conduct a public review of the current unregulated services provided by PNG Ports. This submission provides PNG Ports' initial views on the nature of the market in relation to a number of its services that are currently unregulated. Given the broad nature of the ICCC’s investigation, certain aspects of this submission are also necessarily broad in nature.

Should the ICCC give notice of its intention to declare any service that is currently unregulated, PNG Ports expects that both itself and the wider industry will be given a reasonable opportunity to make submissions in relation to the matter, and for the ICCC to take those submissions into account before making a decision on whether or not it should declare any services provided by PNG Ports.

This submission is structured as follows:

- Section 2.0 Pilotage services
- Section 3.0 Storage services
- Section 4.0 Utilities and other services.

2.0 **Pilotage Services**

2.1 **Definition of the market**

The definition of market is critical to the assessment of competition under the ICC Act. The ICCC's notice of intention to conduct a review of unregulated services does not contain any statements concerning the market or markets that are the subject of its investigation. Therefore, the information provided in this section is general in nature and outlines some key issues concerning the current market for pilotage services in PNG.

In the event that the ICCC identifies the market or markets that are the subject of its investigation, or decides that it should declare any unregulated services provided by PNG Ports, PNG Ports expects that it will be provided with a reasonable opportunity to make submissions on the matter, as is its right under Section 33(6) of the ICCC Act. This includes where the ICCC may agree with PNG Ports' initial views on the nature of the market in relation to a number of its services that are currently unregulated in this PNG Ports' first written submission to the ICCC concerning its notice of intention to conduct a public review of the current unregulated services provided by PNG Ports.

Under Section 196 of the Merchant Shipping Act, the National Maritime Safety Authority (NMSA) may declare a port or place to be a pilotage area. In addition, under Section 200 of the Merchant Shipping Act, a pilotage authority may declare that, in respect of the whole or a part of a particular pilotage area, pilotage is compulsory. Declared pilotage areas and whether compulsory pilotage is required in each area is set out below:

**TABLE 1: DECLARED PILOTAGE AREAS IN PNG**

<table>
<thead>
<tr>
<th>Declared pilotage areas</th>
<th>Compulsory pilotage?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port Moresby</td>
<td>Yes</td>
</tr>
<tr>
<td>Lae</td>
<td>Yes</td>
</tr>
<tr>
<td>Madang</td>
<td>Yes</td>
</tr>
<tr>
<td>Aitape</td>
<td>Yes</td>
</tr>
<tr>
<td>Rabaul</td>
<td>Yes</td>
</tr>
<tr>
<td>Kimbe</td>
<td>Yes</td>
</tr>
<tr>
<td>Attape</td>
<td>No</td>
</tr>
<tr>
<td>Daru</td>
<td>No</td>
</tr>
<tr>
<td>Lorengau</td>
<td>No</td>
</tr>
<tr>
<td>Samarai</td>
<td>No</td>
</tr>
<tr>
<td>Vanimo</td>
<td>No</td>
</tr>
<tr>
<td>Wewak</td>
<td>No</td>
</tr>
<tr>
<td>Oro Bay</td>
<td>No</td>
</tr>
<tr>
<td>Kieta</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The master of a ship entering a compulsory pilotage area is required to take licensed pilots on board. PNG Ports is required to provide pilotage services in areas where pilotage is not compulsory under Section 17(2)(ca) of the Harbours Act 2002.
PNG Ports considers that the market for pilotage services should be defined as those pilotage areas that have been declared as such by the NMSA. Given that providers of pilotage services are readily able to substitute into any of the other declared pilotage areas (for example, Niugini Pilots’ 3 pilots provide services in 10 different ports), PNG Ports considers that the market for pilotage services should be considered as a whole, rather than as individual ports when considering the geographic dimension of market definition.

2.2 Pilotage services provided by PNG Ports

PNG Ports provides pilotage services in all 16 declared ports (as required under the Harbours Act) and also provides pilotage services to other ports upon request. Pilotage services are provided at Port Moresby and Lae 24 hours a day, seven days a week. There are a total of 17 pilots employed by PNG Ports, stationed at 6 ports as follows:

**TABLE 2: PNG PORTS PILOTS**

<table>
<thead>
<tr>
<th>Port</th>
<th>Number of PNG Ports pilots</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port Moresby/Cautain Bay</td>
<td>5</td>
</tr>
<tr>
<td>Lae</td>
<td>5</td>
</tr>
<tr>
<td>Rabaul</td>
<td>3</td>
</tr>
<tr>
<td>Madang</td>
<td>2</td>
</tr>
<tr>
<td>Aitutau</td>
<td>1</td>
</tr>
<tr>
<td>Kimbe</td>
<td>1</td>
</tr>
</tbody>
</table>

As part of PNG Ports' sustainable development objectives and the wider community service obligations, PNG Ports has made a commitment to sponsor school leavers originating from various Maritime Provinces to undergo training at the PNG Maritime College in Madang through the cadetship program for seafaring careers and potentially the supply of new pilots in the longer term.

2.3 Governance of pilotage arrangements in PNG

The ICCC has previously raised concerns about the competitive impacts of PNG Ports' role in relation to licencing of pilots and representation on the NMSA Board.

**Pilotage Authority and licencing arrangements**

Under Section 17(2)(ca) of the Harbours Act 2002, the functions of PNG Ports include, within a declared port, acting as a pilotage authority for the purposes of Part VIII of the Merchant Shipping Act where appointed as such under that Act, and to provide pilotage services in areas where pilotage is not compulsory.

Pursuant to Section 197 of the Merchant Shipping Act, the NMSA may appoint a person to be a pilotage authority in respect of a particular pilotage area. Under Section 206 of the Merchant Shipping Act, a pilotage authority may issue a pilotage licence or a pilotage exemption certificate to a person, and renew a pilotage licence or a pilotage exemption certificate; and suspend or cancel a pilotage exemption certificate.

The NMSA had previously appointed, by virtue of Section 197 of the Merchant Shipping Act, PNG Ports as the pilotage authority for all declared pilotage areas. This delegation means that PNG Ports was able to issue
pilotage licences collect licence fees for pilotage, enforce Part VIII of the Merchant Shipping Act and claim fines for offences under Part VIII of the Merchant Shipping Act.

In March 2012, the NMSA revoked the delegation of PNG Ports as a pilotage authority, and resumed the functions of the pilotage authority under Part VIII of the Merchant Shipping Act, including licensing of pilots. Persons wishing to provide pilotage services are therefore required to apply directly to the NMSA, not PNG Ports, to obtain a licence. It is important to note that this revocation was not intended to affect PNG Ports' provision of pilotage services in declared pilotage areas.

In addition to re-instating itself as the pilotage authority, the NMSA also announced a new set of standards for pilots in PNG, known as the PNG Marine Pilot Standards, which can be accessed from the NMSA website.

To the extent that there are any outstanding concerns about the ability of the NMSA to undertake its licensing function, PNG Ports has indicated on a number of occasions that it would be pleased to work with the NMSA to assist in capacity building. For example, PNG Ports currently has a Memorandum of Understanding in place with the NMSA (made in 2006) which provides for PNG Ports to provide its technical expertise and knowledge to assist the NMSA fulfill its functions and responsibilities under the Merchant Shipping Act.

**PNG Ports' representation on NMSA Board**

In its 2013 Issues Paper – Separation of PNG Ports Corporation’s Regulated and Unregulated Businesses (“Separation Issues Paper”), the ICCC observed that PNG Ports has a representative on the NMSA board, which may facilitate anti-competitive outcomes due to concerns regarding NMSA’s governance standards.

Section 7(1)(h) of the National Maritime Safety Authority Act 2003 requires that the NMSA Board include one person appointed by the Papua New Guinea Harbours Ltd, the predecessor organisation to PNG Ports. Accordingly, PNG Ports’ membership on the board is a legislative requirement, put in place to ensure appropriately qualified persons and their industry experience, is available to the Board, and they are able to contribute to key decisions affecting the organisation and the industry.

Further to this point, the membership of the Board is well represented by different stakeholders including a representative from the Ship Owners Association – a peak shipping industry body which is currently occupied by a representative from Steamships Shipping – as well as a representative from the PNG Chamber of Commerce and Industry. PNG Ports therefore believes that the ICCC’s concerns regarding the NMSA Board’s governance standards are unfounded, and that one vote amongst many does not support the allegation that the presence of a PNG Ports representative may facilitate anti-competitive outcomes, and requests that the ICCC provide evidence supporting its concerns.

Regardless, to alleviate the ICCC’s concerns on this matter PNG Ports would be happy to commit to a formal conflict of interest policy relating to its participation on the NMSA Board. This would involve some simple rules about allowing the PNG Ports representative to provide their views on the pilotage matter under discussion, then withdrawing from the Board meeting. This would also occur where another NMSA Board member had interest in a pilotage matter, for example where a particular shipping company had representation on the NMSA Board, and was actively providing pilotage services within PNG waters. So where a conflict of interest may exist on a pilotage matter, that NMSA Board representative would not be present when the matters relating to pilotage licensing are being finally debated and would not vote on
matters relating to pilotage licencing. PNG Ports considers that this is a proportionate response to the alleged problem in comparison to increased regulation, which comes at considerable additional cost, which eventually flows through to the prices seen by the end users of ports services.

2.4 Competition from private operators

In addition to PNG Ports, Niugini Pilots also provides pilotage services in a number of declared, compulsory pilotage, and other ports in PNG. Niugini Pilots currently has three pilots that primarily operate in Kimbe, but also provide services to or in other ports including:

- Lae
- Oro Bay
- Kavieng
- Basamuk
- Bialla
- Buluma
- Wewak
- Lakurumau
- Alotau

PNG Ports does not have access to data on the full extent of Niugini Pilots' operations or market share. However, based on PNG Ports' observations, PNG Ports estimates that Niugini Pilots has captured around 30-40% of the market in Kimbe, and 10% of the market in Lae.

The presence of Niugini Pilots clearly signals that competitive forces are at play in the market for pilotage services.

PNG Ports also understands that a number of other companies have applied for licence to operate and are awaiting approval from the NMSA. They include:

- Bismark Shipping
- Consort Express Lines
- Rabaul Shipping
- Lihir Pilots
- Kumul Platform Pilots.

This demonstrates that additional market entry to the sector is imminent, further enhancing competition. The threat of competitive entry acts as a constraint on the possible exercise of market power by the incumbents (PNG Ports and Niugini Pilots).

The number of licence applications, combined with the fact that Niugini Pilots has been able to carve out significant market share in Kimbe port and approximately 10 per cent of the market in Lae port, demonstrates that the barriers to entry are low and that PNG Ports is not able to foreclose or prohibit entry of new service providers into ports throughout PNG, and therefore does not have substantial market power in the market for pilotage services.
2.5 Summary of competition analysis and degree of market power

As noted in section 1.3, the first requirement under clause 33(2)(b) of the ICCC Act for declaration of a good or services is that the ICCC must be satisfied that:

(i) the goods or services concerned are supplied or are capable of being supplied by the regulated entity in a market in which the regulated entity concerned has a substantial degree of power in a market.

This section sets out our summary assessment of the extent of market power held by PNG Ports in relation to pilotage services, drawing on empirical evidence and a framework based on the work of the ICCC and other regulators in similar competition assessments.

Demand-side substitution

Demand-side substitution relates to the likelihood of switching behaviour from consumers in response to an increase in price or reduction in quality. The availability of substitutes is a key determinant of the price elasticity of demand for pilotage services and therefore, the exploitation of market power of pilotage providers. The more competitively priced and easier to access the available substitutes, the higher the price elasticity is likely to be in the market. When this is the case, an increase in prices by the service provider with perceived market power would likely lead to consumers switching consumption to a substitute good or service. Accordingly, the existence of substitutes acts as a constraint on excessive pricing and exploitation of monopoly rents, should it be considered market power exists. This is particularly so when there is evidence that substitute service providers have and are seeking to enter the market, as is the case in the provision of pilotage services\(^3\).

That Niugini Pilots has managed to capture market share in several ports in PNG is a clear indication that vessels requiring a pilot are able to switch provider from PNG Ports to an alternative operator. From the perspective of the vessel master, there are very low barriers to actually choosing to use an alternative pilot service provider in most ports in PNG, and this will continue to be the case as newly qualified pilot service providers enter the market.

It is important to understand the process by which a pilot is engaged by a vessel master. The vessel master (typically via its agent) requests the pilotage service by contacting the pilot directly. The current pilot request process for PNG Ports is:

1. The ship’s agent (local) lodges a pilot request at the port office, at least 24 hours prior to the vessel’s arrival at the pilot station.
2. Port Control advises pilots of the vessel’s arrival, and berthing prospects.
3. The ship’s agent must make amendments to the vessel’s pilot request if, at least six to 12 hours prior to arrival, it becomes apparent that the vessel will not arrive within three hours after the specified time of arrival. The vessel must report to Port Control when at least 6 nautical miles prior to arrival at the pilot station.
4. The pilot boards the vessel at the pilot boarding ground.

\(^3\) Competitive pilotage service providers are actively seeking licences from the NMSA and are likely to enter the pilotage market in the short term.
A similar process may be used by Niugini Pilots', however the ICCC should consult directly with Niugini Pilots on this issue.

In addition, the number of licence applications to the NMSA indicates that the number of competitors in the pilotage services market will increase over coming years, providing further opportunities for demand-side substitution.

Pricing arrangements

In its Final Report on the Midterm Competition Review in 2012, the ICCC asserted that the extent of increases in pilotage charges clearly indicate the exercise of monopoly market power in the industry. The ICCC reported that in 2006 PNG Ports adjusted the charge for pilotage from a vessel length overall rate to a gross registered tonnage rate, therefore having the impact of increasing charges by up to 380%.4

PNG Ports notes that there is no evidence that PNG Ports is exercising its monopoly power through the setting of prices. Since 2006, which is eight years ago, there has only been one additional material change in prices or price structure; this involved a change in calculation of the charge from an hourly rate to a fee per ship. Apart from this change, price increases have been limited to adjust for changes in the 12 monthly PNG CPI Index only.

Supply-side substitution

Supply-side substitution involves the resources of a producer being reallocated to switch production from one good or service to another. The decision to substitute production to another good or service is often in response to price changes or growth in the market for a substitute. The ease with which supply-side substitution can take place depends largely on the height of the barriers to entry into the market for the good or service the producer is considering substituting to. If the barriers to entry are low, excess profits will induce other businesses to enter the market, thereby acting as a constraint on market power of the incumbents (regardless of whether such entry actually occurs).

As the capital requirements for providing pilotage services are relatively minor (e.g. boats suitable for transporting pilots to and from vessels requiring pilotage), the main barriers to entry to the pilotage services market relate to the acquisition of skills and expertise required to satisfy the licencing requirements set out in the Merchant Shipping (Pilotage) Regulations 2006 and the NMSA's PNG Marine Pilot standards.

There is clear evidence of alternative providers either entering the market for pilotage services or seeking to enter the market by making an application to the NMSA. PNG Ports considers that the barriers to entry are low, as demonstrated by Niugini Pilots' recent entry to the market. The fact that there are currently five licence applications currently with the NMSA also demonstrates that there are a number of potential pilot service providers with the requisite skills and infrastructure required to deliver a competing service. Regardless of the current number of suppliers in the market, the threat of competitive entry (as has occurred with Niugini Pilots) clearly acts as a constraint on the exercise and level of market power of the incumbents.

It should also be noted that PNG Ports plays an active role in contributing to the training of prospective pilots via its sponsorship of school leavers to undergo training at the PNG Maritime College in Madang – recipients of sponsorship from PNG Ports are in no way obliged to take up future roles with PNG Ports.

2.6 Consistency with the ICCC’s objectives

The objectives ICCC’s objectives under Chapter 5 of the ICCC Act require it, among other things, to facilitate effective competition and promote competitive market conduct; to prevent the misuse of market power, to promote and encourage the efficient operation of industries and efficient investment in industries.

Efficiency in the market is best achieved through increasing competition for pilotage services, not price regulation. Indeed, price regulation could have the effect of deterring new entrants to the market and inhibiting competition if the current market-based prices are replaced by benchmarks arbitrarily set by a regulator.

The existing legislative and regulatory framework provides a robust foundation for increasing private sector participation in the pilotage services sector in PNG. Given the evidence of increasing competition in the market under the current regulatory settings, there is demonstrated to be no failure in the current market structure or its performance, and therefore it is incumbent on the ICCC to undertake comprehensive industry consultation (including all businesses that are either currently providing pilotage services or intend to do so in the future), gather further evidence of market failure, and to undertake careful analysis to determine whether or not declaration of pilotage services would promote the ICCC’s objectives under Chapter 5 of the ICCC Act.
3.0 Storage services

3.1 Definition of the market

The definition of market is critical to the assessment of competition under the ICC Act. The ICCC's notice of intention to conduct a review of unregulated services does not contain any statements concerning the market or markets that are the subject of its investigation. Therefore, the information provided in this section is general in nature and outlines some key issues concerning the current market for storage services in PNG. In the event that the ICCC identifies the market or markets that are the subject of its investigation, or decides that it should declare any unregulated services provided by PNG Ports, PNG Ports expects that it will be provided with a reasonable opportunity to make submissions on the matter, as is its right under Section 33(6) of the ICC Act. This includes where the ICCC may agree with PNG Ports' initial views on the nature of the market in relation to a number of its services that are currently unregulated in this PNG Ports' first written submission to the ICCC concerning its notice of intention to conduct a public review of the current unregulated services provided by PNG Ports.

The ICCC's notice of intent to review unregulated services provided by PNG Ports identifies the following storage services provided by PNG Ports as being the subject of its review:

- Storage of empty containers and of FCL (Full Container Load) and LCL (Less than Full Container Load) containers
- Break Bulk Storage
- Reefer (refrigerated containers) Power Charges
- Dangerous Goods Storage.

Given that a provider of general storage services (e.g. containerised or break bulk storage) would readily be able to substitute into one or all of the services described in the ICCC's notice, the information in this section considers the market for storage services as a whole, is the relevant market within which PNG Ports is one of many players.

3.2 Storage services provide by PNG Ports

The storage services offered by PNG Ports, which comprise both open and undercover storage, are intended for transit purposes only. That is, while PNG Ports provides short-term storage for containers on route to and from the port, this service is not intended to be utilised for the long-term storage of cargo. Once the free period for in-transit storage has expired, cargo owners have effectively opted for a long-term storage solution, for which there are many private sector providers.

PNG Ports provides a number of free days of storage for containerised and bulk cargo, after which it applies an escalating scale of rates with increases applied as the duration of storage increases.

PNG Ports generally allows five free consecutive days of storage for international and coastal cargo, either from the date of discharge of the vessel (for inbound cargo) or the date of shipment (for outbound cargo). The following general conditions apply to storage services provided by PNG Ports:
• Export cargo will receive 5 free days storage in the Port prior to declared ship estimated time of arrival (ETA)
• Import cargo will receive 5 free days storage in the Port from ship departure day and an additional three (3) free days is given to the consignee after the issuance of the gate pass
• Transhipment cargo will receive 5 free storage days at the Port of Transhipment for the first (inbound) carrier
• Transhipment cargo will receive 5 free storage days at the Port of Transhipment for the second (outbound) carrier
• There is no long term storage available for empty international containers at the ports of Port Moresby, Lae and Kimbe. Containers left in these ports past the allowed 5 free days discharge or back-loading will attract a penalty fee.

In its 2010 Final Report on the review of the PNG Harbours Regulatory Contract, the ICCC raised concerns that PNG Ports’ storage tariffs were below the level that would otherwise be set in the open market. Following the release of the ICCC’s 2010 Final Report, PNG Ports made a number of changes to its approach to charging for storage to drive efficiency in the use of storage facilities, improve revenue outcomes and align with international best practice. These changes have been effective in clearing empty containers from the wharf, reducing dwell times and therefore improving port efficiency. The structure of storage tariffs is underpinned by the limited storage capacity at Port Moresby and Lae and the imperative to drive greater efficiency.

PNG Ports strongly encourages port users to remove their cargo from the port within the free storage period, incurring no charges and improving port efficiency.

Only when port users fail to remove their cargo from the port precinct within the free storage period do storage charges commence – it is at this point that the in-transit (free) storage services provided by PNG Ports convert to a charging regime, which is designed to discourage cargo owners from contributing to port congestion.

Once the free in-transit storage period has expired, this cargo has entered the broader market for storage services, for which there are a number of alternative suppliers. These alternative suppliers use locations which are outside the port precincts and hence do not contribute to port congestion.

3.3 Competition from private operators

Private providers of storage services play a critical role in the overall market for storage services. Private operators may provide storage services in a number of ways:

• By establishing bonded yards outside the port precinct – these yards enable international cargo to be removed from the port immediately, without the need for customs clearance, addressing potential delays in customs clearances. PNG Ports has no control over the efficiency of the customs clearance process, which is reliant on the actions of Customs and shippers/consignees (or their agents). Customs has advised that the process for establishing a bonded facility is not costly or onerous and therefore the barriers to entry for storage providers to provide this service are low.

• By establishing their own long-term storage facilities outside the port precinct – this is the appropriate approach to long-term storage of cargo, rather than leaving cargo on the wharf. A number of transport companies, importers and exporters have significant storage yards, which provide the capacity to minimise the need for dwell time at the wharf. Shippers and consignees therefore have a choice between using their own facilities for storage and warehousing, or accessing the services provided by one of the many third party operators.

A number of alternative storage providers now operate at both Port Moresby and Lae, offering bonded storage facilities that can be utilised by customers prior to receiving Customs clearance, thereby providing a similar, substitutable service to that provided by PNG Ports for international cargo. Consignees may also arrange for their cargo to be directly delivered to a vessel once loading starts, or collected directly once the vessel has berthed within the 5 days window period or 48 hours before the vessel departs, thereby avoiding any usage of PNG Ports' storage facilities.

Table 3 below sets out information on storage operators at Port Moresby, Lae, Kimbe and Madang. While this represents PNG Ports' current understanding of the storage market, it is important that the ICCC conduct its own full investigation into other storage service providers. In addition to the individual market participants, a key source of this information is Customs, as they administer the bond process and will be able to advise the ICCC on both current bonded facilities, the process for establishing a bonded yard and the number of applications currently under consideration.

### TABLE 3: STORAGE SERVICES OPERATORS (NOTE ON "TBC": SOME ITEMS TO BE UPDATED ON RECEIPT OF INFORMATION FROM CUSTOMS AND INDUSTRY STAKEHOLDERS)

<table>
<thead>
<tr>
<th>Port locality</th>
<th>Operator</th>
<th>Facility type</th>
<th>Bonded?</th>
<th>Retail points?</th>
<th>Dangerous goods?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port Moresby</td>
<td>Motukena</td>
<td>Containerised</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and break bulk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Consort</td>
<td>Containerised</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and break bulk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bismarck</td>
<td></td>
<td>Containerised</td>
<td>No</td>
<td>No</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and break bulk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Steamships</td>
<td></td>
<td>Containerised</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and break bulk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AES</td>
<td></td>
<td>Containerised</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and break bulk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Express Freight Management</td>
<td>Containerised storage</td>
<td>Yes</td>
<td>No</td>
<td>Yes (except Class 1&amp;7)</td>
<td></td>
</tr>
<tr>
<td>East West Transport</td>
<td>Containerised storage</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Hi-Lift</td>
<td></td>
<td>Containerised</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and break bulk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>World Link Logistics</td>
<td>Containerised storage</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
<td></td>
</tr>
<tr>
<td>Inchcape</td>
<td></td>
<td>Containerised</td>
<td>TBC</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and break bulk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GFS</td>
<td></td>
<td>Warehouse/break bulk storage</td>
<td>TBC</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td>SP Brewery</td>
<td></td>
<td>Warehouse/break bulk storage</td>
<td>TBC</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td>Boroke Motors and Carpenters Motors (Same bond)</td>
<td>Warehouse/break bulk storage</td>
<td>Yes</td>
<td>No</td>
<td>TBC</td>
<td></td>
</tr>
<tr>
<td>Port locality</td>
<td>Operator</td>
<td>Facility type</td>
<td>Bonded?</td>
<td>Reefer points?</td>
<td>Dangerous goods?</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------</td>
<td>--------------------------------------------</td>
<td>---------</td>
<td>----------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Lae</td>
<td>PNG Motors</td>
<td>Warehouse/Break bulk storage</td>
<td>Yes</td>
<td>No</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Ela Motors</td>
<td>Warehouse/Break bulk storage</td>
<td>Yes</td>
<td>No</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Nu Ford</td>
<td>Warehouse/Break bulk storage</td>
<td>Yes</td>
<td>No</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Keynote Music</td>
<td>Warehouse/Break bulk storage</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Air Niugini Catering</td>
<td>Warehouse/Break bulk storage</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Services</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Carpenters Shipping Agencies</td>
<td>Containerised and break bulk storage</td>
<td>No</td>
<td>Yes (coastal cargo only)</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Express Freight Management</td>
<td>Container depot and LCL depot</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Agility</td>
<td>Container depot and LCL depot</td>
<td>TBC</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Mainland Holdings</td>
<td>Container depot</td>
<td>TBC</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Seeto Kui</td>
<td>Container depot</td>
<td>TBC</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Riback Stevedores</td>
<td>Containerised and break bulk storage</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Consort Express Lines</td>
<td>Containerised and break bulk storage</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Trukai</td>
<td>Container depot and warehouse</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Ela Motors</td>
<td>Warehouse/Break bulk storage</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Boroko Motors</td>
<td>Warehouse/Break bulk storage</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Ela Motors</td>
<td>Warehouse/Break bulk storage</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>PNG Motors</td>
<td>Warehouse/Break bulk storage</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Trans-Wonderland Ltd</td>
<td>Storage</td>
<td>Yes</td>
<td>No</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Goodman Fielder</td>
<td>Warehouse</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>International</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coca Cola</td>
<td>Warehouse</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td></td>
<td>Riback</td>
<td>Container Depot</td>
<td>Yes</td>
<td>Yes (30 points) TBC</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bismarck Maritime</td>
<td>Terminal</td>
<td>TBC</td>
<td>Yes</td>
<td>TBC</td>
</tr>
<tr>
<td>Kimbe</td>
<td>Kimbe depot</td>
<td>Container depot</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
<tr>
<td>Madang</td>
<td>Luship depot</td>
<td>Container depot</td>
<td>Yes</td>
<td>TBC</td>
<td>TBC</td>
</tr>
</tbody>
</table>

The number of private sector operators providing both bonded and un-bonded storage facilities in Port Moresby and Lae has increased significantly over the last few years, from around a dozen in mid-2012 to around 35 today, demonstrating a dynamic and growing market. Furthermore, PNG Ports understands that a number of providers of storage services currently have applications before Customs to establish bonded facilities, however the ICCC should consult with Customs directly to confirm that this is the case. On the other hand, PNG Ports’ revenue from the provision of storage facilities has declined significantly over the same period.6

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6 Information on PNG Ports’ revenue from unregulated services is commercial in confidence, but has been provided to the ICCC as part of its review of the Regulatory Contract.
3.4 Summary of competition analysis and degree of market power

As noted in section 1.3, the first requirement under Section 33(2)(b) of the ICCC Act for declaration of a good or services is that the ICCC must be satisfied that:

(i) the goods or services concerned are supplied or are capable of being supplied by the regulated entity in a market in which the regulated entity concerned has a substantial degree of power in a market.

This section of this submission sets out our assessment of the extent of market power held by PNG Ports in relation to storage services, drawing on empirical evidence and a framework based on the work of the ICCC and other regulators in similar competition assessments. In particular, PNG Ports has considered the extent of demand and supply-side substation, and countervailing market power.

Demand-side substitution

Demand-side substitution relates to the likelihood of switching behaviour from consumers in response to an increase in price or reduction in quality. The availability of substitutes is a key determinant of the price elasticity of demand for storage services and therefore, the exploitation of market power by storage providers. The more competitively priced and easier to access these substitutes, the higher the price elasticity is likely to be in the market. When this is the case, an increase in prices by the service provider with perceived market power would likely lead to consumers switching consumption to a substitute good or service. Accordingly, the existence of substitutes acts as a constraint on the exploitation of monopoly rents. This is particularly so when there is no capacity constraints for the substitute service providers, as is the case in the provision of storage services.

Users of PNG Ports' storage services have a number of options available to substitute away from using PNG Ports' facilities as a storage area, such as by utilising alternative services providers described in Table 3, or by rescheduling the delivery or pick up of cargoes to reduce storage time required within the port precinct with a caveat that all necessary customs and quarantine clearance must be in order and completed 48 hours prior to vessel berths. In many cases, forward planning or the use of direct delivery can completely avoid storage charges.

The change in approach to charging for storage has already been effective in clearing empty containers from the ports and reducing congestion within the port areas. The reduction in storage revenue collected by PNG Ports since the implementation of its best practice charging regime is a clear indicator of the presence of demand-side substitution in the market. As additional storage options emerge and customers adjust their supply chains to improve their own efficiency, PNG Ports expects that further port efficiencies will be achieved and further demand side substitution will be observed in the market.

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7 The competitive storage service providers have absorbed the majority of the storage demand as is evidenced by the reduction in revenues now seen by PNG Ports.

8 Information on PNG Ports' revenue from unregulated services is commercial in confidence, but has been provided to the ICCC as part of its review of the Regulatory Contract.
Supply-side substitution

Supply-side substitution involves the resources of a producer being reallocated to switch production from one good or service to another. The decision to substitute production to another good or service is often in response to price changes or growth in the market for a substitute. The ease with which supply-side substitution can take place depends largely on the height of the barriers to entry into the market for the good or service the producer is considering substituting to. If the barriers to entry are low, excess profits will induce other businesses to enter the market, thereby acting as a constraint on the exercise and level of market power (regardless of whether such entry actually occurs).

The following general barriers to entry apply to the provision of storage services in PNG:

- Availability and cost of land – including any investment required to make the area suitable for storing containers, e.g. level surface, drainage, strong and stable pavement
- Security costs including fencing and personnel
- Lighting required for night operations
- Requirement for customs presence – that is, to have a bonded yard (only applicable for international cargo storage services).

These barriers apply broadly to the provision of storage services for containerised and break bulk cargo. Additional barriers to entry for the specific services identified by the ICCC, being reefer points and dangerous good storage, are minor – any party capable of providing general storage services is able to substitute into reefer or dangerous goods storage without difficulty. Consultations with industry stakeholders have confirmed PNG Ports' views that other than availability and cost of land, the other barriers outlined above are relatively minor. PNG Ports is by no means the only party with access to land in close proximity to the ports, and given that there is a competitive, market-driven approach to the sale and purchase of land, this is not considered to provide any justification for regulation. Strong and increasing competition is evident in the supply of new storage areas.

Countervailing buyer power

Countervailing buyer power exists when customers of a good or service have special characteristics that provide them with negotiating power against a supplier exercising market power, such as size or commercial significance to the supplier, or the ability to by-pass the supplier through entering the market themselves.

There is clear evidence of shippers, shipping companies and transport operators entering the market by developing private storage facilities in Lae and Port Moresby. PNG Ports considers that bypass of its facilities by a private operator is generally consistent with countervailing buyer power. In particular, the vertically integrated nature of coastal shipping operations suggests that they possess at least some countervailing power (and this can clearly be seen in the development of storage services by Consort).

3.5 Consistency with the ICCC's objectives

The second requirement under Section 33(2) of the ICCC Act for declaration of a good or services is that the ICCC must be satisfied that:
(ii) the declaration is appropriate having regard to the Commission's objectives set out in Section 5.

Among other things, the ICCC's objectives include the promotion of competition and efficiency.

The existence of the other storage operators described in Table 3 demonstrates that private operators have not been precluded from entering the storage market due to either barriers to entry, differential treatment within the port area, or a perception of being priced out of the market by PNG Ports. Rather, the market appears to be growing with robust competition between a number of new entrants.

PNG Ports recognises the efficiency benefits of new entry into the market for storage services, and welcomes increased competition in the market. The provision of storage services by alternative providers allows PNG Ports to focus on providing Essential Port Services (its primary focus), and has freed up space on the wharves to facilitate more efficient processing of cargo by the stevedores. This improvement in the efficiency of operations at the large ports would not have occurred without the introduction of a best practice charging regime for storage services by PNG Ports.

These facts demonstrate that not only is regulatory intervention in this market by the ICCC entirely unwarranted, if anything it would be more likely to constrain competition and deter market entry, in direct contravention of the ICCC's objectives under Section 5 of the ICCC Act.

This view has been supported by the PNG Chamber of Commerce and Industry (PNGCCI) submission to the review of the Regulatory Contract, where it noted that inclusion of unregulated services in PNG "could in effect act as a way of discouraging or even blocking competition in the unregulated services area, which by definition is the competitive part of the market where other service providers can readily operate (pilotage and storage)."9

The evidence of strong competition in the relevant market, and the rapid emergence of additional service providers within a few years, demonstrates that there is no failure in the current market structure or its performance, and therefore there is no justification for increased regulation in relation to storage services.

4.0 Utilities and other services

4.1 Definition of the market

The definition of market is critical to the assessment of competition under the ICCC Act. The ICCC's notice of intent to review unregulated services provided by PNG Ports does not indicate which, if any, of PNG Ports' utilities and other services are to be the focus of its review. Accordingly, PNG Ports does not believe that a full submission analysing the market for each and every one of its 16 utilities and other services is warranted at this time. Rather, this submission contains general information on the provision of utilities and other services to assist the ICCC in its review. In the event that the ICCC identifies the market or markets that are the subject of its investigation, or decides that it should declare any unregulated services provided by PNG

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9 PNG Chamber of Commerce and Industry (2014), Submission to Independent Consumer and Competition Commission, p.3.
Ports, PNG Ports expects that it will be provided with a reasonable opportunity to make submissions on the matter, as is its right under Section 33(6) of the ICC Act.

### 4.2 Utilities and other services provided by PNG Ports

In addition to the main contestable services of pilotage and storage, PNG Ports also provides a small number of additional services to port users on an ad hoc basis, as set out in Table 4.

**TABLE 4: UTILITIES AND OTHER SERVICES**

<table>
<thead>
<tr>
<th>Service</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water (Ports other than Port Moresby)</td>
<td>Per Litre Tonne</td>
</tr>
<tr>
<td>Water (Port Moresby)</td>
<td>Per Litre Tonne</td>
</tr>
<tr>
<td>Electricity (Other than easy - pay)</td>
<td>Per Kilowatt hour</td>
</tr>
<tr>
<td>Commercial Vehicle Passes - New or Renewal</td>
<td>Per Year</td>
</tr>
<tr>
<td>Commercial Vehicle Passes - Tourist Buses Only</td>
<td>Per Occasion</td>
</tr>
<tr>
<td>Stevedoring Tonnage Fee (all ports)</td>
<td>Per Revenue Tonne</td>
</tr>
<tr>
<td>Security Passes - New or Renewal</td>
<td>Per Year</td>
</tr>
<tr>
<td>Equipment Passes - Forklift and Crane Equipment - New or Renewal</td>
<td>Per Year</td>
</tr>
<tr>
<td>Surcharge - Generator (Port Moresby, Lae, Kimbe, Madang, Aitau, Oro Bay)</td>
<td>Per Revenue Tonne</td>
</tr>
<tr>
<td>Surcharge - Yard Maintenance (Port Moresby)</td>
<td>Per Revenue Tonne</td>
</tr>
<tr>
<td>Surcharge - Casual Labour Pool Maintenance (Port Moresby)</td>
<td>Per Revenue Tonne</td>
</tr>
<tr>
<td>Surcharge - Ash levy (Rabaul)</td>
<td>Per Revenue Tonne</td>
</tr>
<tr>
<td>Gangway Hire</td>
<td>Per Hour</td>
</tr>
<tr>
<td>Cleaning of Wharf (Compulsory after wheat and rice cargo operation)</td>
<td>Per Ship Visit</td>
</tr>
<tr>
<td>Fumigation Fee</td>
<td>Per Revenue Tonne</td>
</tr>
<tr>
<td>Mooring Gang - Accepting or casting mooring lines</td>
<td>Per Occasion</td>
</tr>
</tbody>
</table>
4.3 Market commentary

Market depth and pricing considerations

Utilities and other services make up only a minor component of PNG Ports' services and revenue – 2.9% of PNG Ports' total revenue in 2012. Most of the services are seldom utilised, are made available for the convenience of customers using the port, and are designed simply to ensure that the costs imposed on PNG Ports by port users for ad hoc services are reasonably reflected in prices. This ensures that customers only access these additional services when required, promoting economic efficiency. By comparison, the approach proposed by the ICCC in its draft Regulatory Contract of bundling all but a few charges into a single price would mean customers faced no price signals concerning their use of ad hoc services, and some customers would be paying for some ad hoc services they do not require, which would clearly run counter to principles of economic efficiency.

While charges are broadly designed to recover costs, PNG Ports has not undertaken detailed cost modelling for provision of each of the services, on the basis that the benefits of a small increase in cost reflectivity would be unlikely to outweigh the costs of the modelling exercise.

It is also notable that the utilities and other services charges levied by PNG Ports (and the revenue recovered via these charges) are minor in comparison to similar categories of charges levied at other ports. Benchmarking analysis undertaken by Deloitte found that 'other charges' (i.e. charges in addition to berth reservations, berthing services, wharfage services, pilotage and storage) levied at comparator ports in the region on average around 2 to 3 times greater than PNG Ports' charges. This is due to PNG Ports generally levying fewer ad hoc charges than other ports and those that are levied are generally lower priced.

Obligation to provide services

Given PNG Ports' obligation to provide Essential Port Services in all declared ports across PNG, it is incumbent upon it to ensure that certain ad hoc services that may be desired by customers on the port are available to ensure smooth operations at the ports.

While some of these services are provided by third parties or may be provided by port users themselves (such as mooring gang and gangway hire services and casual labour), in many ports there is simply not sufficient demand to support ongoing operations. PNG Ports' charges for utilities and other services are essentially the same across all ports, meaning that in most cases (i.e. outside the few large and consistently profitable ports), these services are provided PNG Ports as a Community Service Obligation (CSO) and are likely to be below cost.
4.4 Consistency with the ICCC’s objectives

In having regard to its objectives under Section 5 of the ICCC Act, the ICCC is obliged to consider the costs and benefits of proposed regulatory interventions.

The process for declaration and then subsequent requirements for regulatory oversight and price setting of many small and relatively insignificant services would be administratively intensive and costly. On the other hand, the benefits of regulatory intervention would likely be negligible:

- There is very limited scope to promote or enhance competition in the provision of the various utilities and other services, largely on the basis of the small and disparate market(s) for such services. As noted above, PNG Ports applies a uniform pricing policy for these services to ensure that customers in regional areas are able to afford access to these services.

- Given the minor contribution to PNG Ports’ revenue, and the fact that PNG Ports largely provides utilities and other services on a cost-recovery basis, there would be little, if any impact on PNG Ports’ overall regulated revenue requirement (or prices for customers) through including these in the regulated bundle of services. Therefore, neither the fees for the utilities and other services, or those services that are currently regulated, would be expected to materially change under a scenario where additional regulatory oversight was pursued.

As such, it is PNG Ports’ view that the benefits of, and justification for, declaration of any of the utilities and other ad hoc services provided by PNG Ports is far from clear, and would appear to be inconsistent with the ICCC’s objectives.

4.5 Interpretation of the Ministerial Declaration

Regulated services are those that have been declared by the Minister in 2002 under Section 32(2) of the ICCC Act, and it is those services, and those services only, which can be the subject of the Regulatory Contract. These regulated services are already defined or described in the Ministerial Declaration, and the emergence of competition in a number of services outside that declaration, is a strong indication that market forces are working and there is no market failure, and so no further expansion of regulated services need be made in the Regulatory Contract.

As noted above, PNG Ports is of the view that declaration of utilities and other ad hoc services would be inconsistent with the requirements of the ICCC Act, in particular the objectives of the ICCC under Section 5. However, PNG Ports recognises that there may be a case to suggest that some of the utilities and other ad hoc services it provides could be reasonably considered to fall within the definitions of regulated services as specified in the 2002 Ministerial Declaration. For example, there may be a case to suggest that:

- Some of the charges levied upon stevedores (e.g. the Stevedoring Tonnage Fee and Equipment Access Fees) could be considered to fall within the definition of Stevedoring Access. However, we also note that the definition of Stevedoring Access excludes “the right to move cargo between ships and other vessels and stacking areas, or to sort, stack or deliver cargo within the transit sheds and open stacking areas within the boundaries of a Declared Port”, and therefore were clearly intended to be excluded from within this definition.
• Some of the surcharges could be considered to fall within the definition of Wharfage Services. However, the ad hoc nature of issues driving the surcharges generally requires a port-by-port approach to their application as the demand for and approach by PNG Ports to deliver these services differs on a port-by-port basis, in which case it might be difficult to bundle these services and costs up within a general wharfage charge.

PNG Ports has indicated its willingness to work with the ICCC during the course of the review of the Regulatory Contract and assist it in its analysis of which, if any, of the utilities and other ad hoc services could reasonably be considered to fall within the definition of the services that are explicitly regulated in accordance with the 2002 Ministerial Declaration.

In the event that further analysis by the ICCC identifies any of the utilities and other ad hoc services as needing to be covered by the 2002 Ministerial Declaration, it is important that any regulatory oversight of the services and charges is appropriate and in accordance with best practice principles of regulation. For example:

• The costs of any regulatory oversight to be applied should be weighed against the benefits. As noted above, PNG Ports revenue from utilities and other ad hoc services is minor, with many of these services seldom being used, and hence the charges are not applied regularly

• Where revenue from currently unregulated services is to be included in the calculation of the regulated revenue, the additional costs associated with providing the services must also be taken into account when setting the regulatory price cap

• Setting price caps for the relatively minor and ad hoc services under utilities and other ad hoc services is likely to be administratively difficult and time consuming, so where the ICCC can demonstrate a failure in the market for these services, a better approach would be to specify a set of transparent pricing principles to be applied by PNG Ports in setting the relevant charges.