The Independent Consumer and Competition Commission (‘ICCC’ or ‘Commission’) by notice in the National Gazette under section 33(1) (b) of the Independent Consumer and Competition Act (‘ICCC Act’) may declare any services supplied or capable of being supplied by a regulated entity to be regulated services.

This Written Statement of Reasons is in accordance with section 33 (7) of the ICCC Act, which accompanies the ICCC’s Decision to Declare certain non-regulated services (listed below) by PNG Ports and mooring services which PNG Ports limited does not offer to be regulated services under the ICCC Act.

ICCC’s Assessment
The Commission based on its own findings and together with the submission received, reviewed all the non-regulated services, currently provided by PNG Ports including mooring services which is not provided by PNG Ports limited, and has made a decision regarding the above services it intends to regulate.

It should be noted that a decision to regulate a service will not necessarily mean that the price will change. However it will mean that the revenue and costs associated with that service will be built into the building block model and considered jointly with all other services offered by PNG Ports. The net result may mean that the prices of other regulated services rise or fall due to the differing contribution or losses which arise as a result of including the previously non-regulated service in the building block calculation.

Alternatively the Commission may consider that it necessary to lower or raise individual prices. It should be noted that the ICCC have also considered mooring services which are currently provided by companies other than PNG Ports.

The following hereunder outlines the ICCC’s written statement of reasons for making such a declaration:

Test Questions
The Commission has come up with four test questions that can be used to assess whether a service should be regulated or is part of the ‘regulated service’.

Four Tests

<table>
<thead>
<tr>
<th>Test 1 – Can a regulated product be used without using this product?</th>
<th>If a regulated product cannot be used without using this service, then in practice this service is part of the regulated service.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Test 2 – Is the product contestable?</td>
<td>A product is contestable if there an option to purchase it from other service providers or if there is a potential for other service providers to enter the market. If a product is contestable, then a customer in theory can choose alternative service providers. If a service is contestable, then there is a possibility that it could also be competitive and therefore would not need to be regulated.</td>
</tr>
<tr>
<td>Test 3 – If contestable, then is it competitive?</td>
<td>A product can be contestable but not competitive. In this situation there are not sufficient service providers to allow effective competition. The level of competition or the market power of individual market participants should determine whether or not the service is regulated.</td>
</tr>
<tr>
<td>Test 4 – Are the assets required to provide this service essentially shared with a regulated service?</td>
<td>If the assets are shared with regulated products, then the returns on those assets will be the sum of the returns from both the regulated and unregulated services. It is not possible to estimate prices that provide reasonable returns for regulated services without also taking into account the returns received from unregulated products. To all extensive purposes the price of the regulated service must be linked to the price of the unregulated service. This has the effect of regulating the unregulated service.</td>
</tr>
</tbody>
</table>
In the following table, the ICCC has applied these test questions to the list of non-regulated services. Based upon the answers to each question we have made a judgement about the need to regulate each service. It should be noted that the answers to these questions are not always black and white. However the ICCC have made judgements after considering the rationale for or against each answer.

<table>
<thead>
<tr>
<th>PRODUCT</th>
<th>TEST 1 Can a regulated product be used without using this product?</th>
<th>TEST 2 Is the product contestable?</th>
<th>TEST 3 If contestable, then is it competitive?</th>
<th>TEST 4 Are the assets required to provide this service essentially shared with a regulated service?</th>
<th>IMPLICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storage Services</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>(there are alternative storage services outside the wharf area in four ports. However all containers must use the wharf storage for at least part of the time before being cleared by customs. There are also transport cost barriers to moving containers to alternative storage. This is especially true for transit cargo that must then be moved back to the port for on-shipment)</td>
<td>Regulate</td>
</tr>
<tr>
<td>Pilotage Services</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>(3 out of the 17 pilots in PNG are with a competitor but are based in only one port. Currently they are estimated to have 10% market share in Lae 40% in Kimbe and none in Port Moresby)</td>
<td>Monitor to see if competition develops</td>
</tr>
<tr>
<td>Gate pass</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td></td>
<td>Regulate</td>
</tr>
<tr>
<td>Anchorages</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td></td>
<td>Regulate</td>
</tr>
<tr>
<td>MHCs/RTGs</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td>Regulate</td>
</tr>
<tr>
<td>Mooring Gang</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>(We understand that there can be alternative providers but at present there is only one). (There is currently only one company who offers mooring services. This is not offered by PNG Ports)</td>
<td>Regulate</td>
</tr>
</tbody>
</table>

Implication is do not regulate, but see comments later in this paper.
### Gangway Hire
- **No**
- **Yes (Ships can provide their own gangways)**
- **No**
- **No**
- **No need to regulate**

### Cleaning of wharf
- **No**
- **No**
- **No**
- **Regulate**

### Fumigation
- **No**
- **No**
- **Yes**
- **Regulate**

### Provision of water services
- **No**
- **No**
- **Yes** (using wharf infrastructure and people to meter and bill usage)
- **Regulate**

### Provision of electricity services for ships
- **Yes** (Ships can generate their own power)
- **No**
- **Yes** (using wharf infrastructure and people to meter and bill usage)
- **Regulate** (part of the shared infrastructure of the wharf)

### Reefer charges and electricity for containers
- **No** (refrigerated containers must use the reefer service)
- **No**
- **Yes** (using wharf infrastructure and people to meter and bill usage)
- **Regulate**

### Generator as backup to Reefer.
- **No** (This is part of the reefer service and refrigerated containers must use the reefer service)
- **No**
- **Yes** (using wharf infrastructure and people to meter and bill usage)
- **Regulate** (should be part of reefer charge)

### Yard maintenance
- **No**
- **No**
- **Yes**
- **Regulate**

### Ash levy removal
- **No**
- **No**
- **Yes**
- **Regulate**

### Casual labour Surcharge for maintenance
- **No** (This relates to maintenance. It is charged on a per tonne basis. It is part of the cost of maintaining the wharf)
- **No**
- **No**
- **Regulate** (it is part of the wharf maintenance)

### Commercial Vehicle Pass
- **No**
- **No**
- **No**
- **Regulate**

### Tourist Bus Pass
- **No**
- **No**
- **No**
- **Regulate**

### Stevedoring Tonnage Fee
- **No**
- **No**
- **No**
- **Regulate**

### Security Passes
- **No**
- **No**
- **No**
- **Regulate**

### Equipment Passes
- **No**
- **No**
- **No**
- **Regulate**

### Building rentals and leases on wharf land
- **No**
- **No**
- **No**
- **Regulate**

### Storage
The following table provides arguments for and against regulating storage.

<table>
<thead>
<tr>
<th>Argument to Regulate</th>
<th>Argument to not regulate</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Customers of regulated services cannot avoid using storage.</td>
<td>- Customers do not have to pay for storage.</td>
</tr>
<tr>
<td>- Storage is predominantly used by containers which do not pay for storage (70%).</td>
<td>- They get the first 5 days free</td>
</tr>
<tr>
<td>- It therefore makes sense to include the storage assets as a regulatory cost.</td>
<td>- They can choose to move goods which have not been cleared into competing bonded storage facilities.</td>
</tr>
<tr>
<td>- Customer’s trade-off the cost of using PNG Ports Storage facilities with the cost of moving containers out to other areas. Often for transfers from International to coastal it is cheaper to leave the container in the wharf. They get 5 free days for the inbound trip and 5 free days for the outbound trip for transfers. However they often take longer than this because have to wait longer for the outbound ship.</td>
<td>- Therefore paid storage is contestable</td>
</tr>
<tr>
<td>- Competing services are cheaper than PNG Ports service by design. PNG Ports storage pricing is designed as a penalty to discourage customers from using it. Competitors provide cheaper alternatives as an incentive for customers to move their cargos. The commission has confirmed that this is true</td>
<td>- The main storage asset is essentially just land. The storage areas can be divided off so that in effect it is not a</td>
</tr>
</tbody>
</table>
• So some of PNG ports storage revenue is a flow-over effect of the regulated service.
• Even if storage land could be separated from wharf land, the value of the storage land is affected by the value of the wharf land and its proximity to the wharf land.
• Storage pricing is a penalty designed to discourage use. It is not intended to be a business in its own right.
• Because storage is using a regulatory asset, the revenues from storage should be used to off-set regulated costs.
• PNG Ports is able to earn revenue from storage as a direct consequence of their monopoly position.

On balance the storage services should be regulated because the assets are predominantly used to provide a regulated service and are strongly linked with a regulated service.

Recommendation: Regulate Storage. Include the revenues and the costs of storage in the building block model to provide an offset against wharfage charges.

Pilotage Services

The following table outlines the arguments for and against regulating pilotage.

<table>
<thead>
<tr>
<th>Argument to regulate</th>
<th>Argument not to regulate</th>
</tr>
</thead>
<tbody>
<tr>
<td>PNG Ports hold a dominant position in the market. The commission does not have access to market share information but we expect that as Niugini pilots are new, PNG Ports will still hold most of the market share.</td>
<td>Niugini Pilots offer a competitive service in most ports.</td>
</tr>
<tr>
<td>While Niugini Pilots do offer a competing service, customers must fly their pilots to any port they use other than Kimbe. This is a barrier to using Niugini Pilots when a PNG Ports pilot is resident.</td>
<td>o Niugini Pilots have 3 pilots.</td>
</tr>
<tr>
<td>New regulations introduced last year, resulted in most existing pilots losing their pilots licences. This means that captains of coastal vessels who may have been piloting vessels for the last 30 years are no longer allowed to do so. Instead the ship must wait for a registered pilot. The new regulations are driven by LNG port requirements, even though most ports do not have an LNG facilities present.</td>
<td>o PNG Ports estimate Niugini Pilots currently have 30 to 40% market share in Kimbe and 10% in Lae.</td>
</tr>
<tr>
<td>The result of existing pilots losing their licence may mean a restriction in supply which will drive up prices.</td>
<td>Shipping companies can also fly in a pilot to a particular port if there is not one immediately available.</td>
</tr>
<tr>
<td>While there are five applicants for pilots licenses, many of them appear to be shipping companies who will use them for their own use rather than competing in the market.</td>
<td>Regulating the industry might make it harder for Niugini Pilots to compete.</td>
</tr>
<tr>
<td>Prices are extremely high when compared to other countries in a benchmark study.</td>
<td>There are currently 5 applications for new pilots. The applicants are</td>
</tr>
<tr>
<td></td>
<td>o Bismark Shipping</td>
</tr>
<tr>
<td></td>
<td>o Consort Express Lines</td>
</tr>
<tr>
<td></td>
<td>o Rabaul Shipping</td>
</tr>
<tr>
<td></td>
<td>o Lihir Pilots</td>
</tr>
<tr>
<td></td>
<td>o Kumul Platform Pilots</td>
</tr>
<tr>
<td></td>
<td>The result of new entrants should be lower prices</td>
</tr>
</tbody>
</table>

The following chart is taken from a price benchmarking carried out by Deloittes for PNG Ports. It shows that PNG Ports prices are the most expensive of all the ports surveyed. In fact the costs were twice as high as the next closest which was Port of Brisbane.
We think that the high prices charged for pilotage compared to other ports indicates that there is a problem. We also think that the arrival of Niugini Pilots into the market should help to bring prices down. However it may take some time for this to happen. However care should be taken to ensure that competition is fair.

The Commission has two options to regulate pilotage.
1. Set pilotage prices
2. Begin monitoring prices.

**Recommendation:** The Commission has decided to conduct a further review into the pilotage market under the Price Regulation Act (Chapter 320) to determine the appropriate regulatory option.

**Other Products**
The following table contains brief explanations of the Commission’s assessment of the need to regulate each service.

<table>
<thead>
<tr>
<th>PRODUCT</th>
<th>REGULATE</th>
<th>RATIONALE FOR REGULATING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gate Passes</td>
<td>YES</td>
<td>- All inbound and outbound cargoes require gate passes.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- No customers can use wharfage services without also using gate passes and gate passes are not contestable.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Any charges for gate passes can only be made by PNG Ports because of their dominant position</td>
</tr>
<tr>
<td>Anchorage</td>
<td>YES</td>
<td>- Anchorage is not normally charged for.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- If PNG Ports did choose to charge for anchorage then the service would not be contestable.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- PNG ports would be able to extract the anchorage charge because of their dominant position</td>
</tr>
<tr>
<td>MHCs/RTGs</td>
<td>Yes</td>
<td>- Stevedores can choose to provide their own equipment. There is no requirement to use PNG Ports MHC’s or RTG’s. So the service is completely contestable.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- However, we think that there are potential efficiency gains available from the use of such equipment. And if not regulated then there would be the potential for PNG Ports not to share the economic surplus from these efficiency gains with customers. So to ensure any future gains are recognised, the commission is proposing to regulate charges for this type of equipment.</td>
</tr>
<tr>
<td>Gangway Hire</td>
<td>No</td>
<td>- Gangway is required to move cargo and people to and from the ship</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Normally a ship will carry its own gang way. So there is not normally any need to rent one from PNG ports.</td>
</tr>
<tr>
<td>Cleaning of Wharf</td>
<td>Yes</td>
<td>- PNG Ports currently charge this for all ships regardless of size or the condition of the wharf.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- The commission regards this as part of maintaining the wharf. Therefore it is in effect part of the wharfage charge. Wharfage is already a regulated product.</td>
</tr>
<tr>
<td>Fumigation</td>
<td>Yes</td>
<td>- Most fumigation services occur for international cargo or any cargo that requires NAQIA inspections</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- This charge is for using the wharf while doing a fumigation. It does not cover</td>
</tr>
</tbody>
</table>
It is a non-contestable service and is in effect a wharfage charge.

<table>
<thead>
<tr>
<th>Provision of Water Services</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Domestic vessels’ will only ever visit ports managed by PNG Ports and therefore they must purchase all their water from PNG Ports. Therefore the service is not contestable for domestic vessels.</td>
<td></td>
</tr>
<tr>
<td>- For international vessels, water supply is contestable, because they choose to purchase their water in other countries.</td>
<td></td>
</tr>
<tr>
<td>- However, the Commission thinks it is likely that most ships will top up at most ports.</td>
<td></td>
</tr>
<tr>
<td>- We don’t think it is practical to regulate just domestic use, so we are proposing to regulate both international and domestic use.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Provision of Electricity Services</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Ships have their own source of electricity and therefore do not need to purchase electricity from PNG Ports. Electricity is therefore broadly contestable.</td>
<td></td>
</tr>
<tr>
<td>- Especially for refrigerated cargo, ships may choose a local power supply because it may be cheaper than thermal generation on board</td>
<td></td>
</tr>
<tr>
<td>- The Commission thinks that PNG Ports are able to charge for Electricity and Water because of their position as port owner. Any margins gained here should be offset against wharfage costs and included in the building block calculation.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reefer charges and electricity for containers</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- The Commission understands that this charge is the cost of plugging refrigerated containers into electric circuits and providing backup gensets etc.</td>
<td></td>
</tr>
<tr>
<td>- Because customers cannot avoid using storage at the wharf at least initially then customers with refrigerated containers cannot avoid this charge. It is not contestable and therefore should be regulated.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Generator backup as part of reefer usage</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- We are assuming that this refers to the gensets used to back up the reefers.</td>
<td></td>
</tr>
<tr>
<td>- Since we think that Reefer charges should be regulated so to should any charge for backup generators.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Yard Maintenance</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Yard maintenance will fall into two categories. Fair wear and tear and one off damage due to negligence.</td>
<td></td>
</tr>
<tr>
<td>- The former should simply be part of wharfage or storage charges.</td>
<td></td>
</tr>
<tr>
<td>- The later should be an additional charge when it occurs.</td>
<td></td>
</tr>
<tr>
<td>- Because the cost of negligent damage cannot be planned for these costs will not be in the building block model. So this would be a one off additional charge. The only purpose in regulating it is to ensure that PNG Ports do not add a margin to any such charge, but that it is only a direct cost recovery.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ash Levy Removal</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Ash removal occurs at Rabaul when the volcano there erupts.</td>
<td></td>
</tr>
<tr>
<td>- We believe this is a wharfage charge as it is part of the cost of maintaining the wharf.</td>
<td></td>
</tr>
<tr>
<td>- It may be difficult to budget for this because it is unpredictable. However in the normal course of business some expenses which a business plans for do not occur and some expenses which a business does not plan for do occur. We believe this is just a business risk to manage.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Casual Labour surcharge for Maintenance</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- The Commission understands that this to be a surcharge which is charged on per tonne basis to cover additional maintenance costs. On the understanding that these maintenance costs relate to wharf maintenance, there should not be any additional surcharge for this activity.</td>
<td></td>
</tr>
<tr>
<td>- Wharfage is already a regulated service and this needs to be regulated also.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Commercial vehicle and Tourist Bus passes</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- We understand that there are permit charges which allow these vehicles to enter the wharf area.</td>
<td></td>
</tr>
<tr>
<td>- The charges are not contestable and therefore should be regulated.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Stevedoring tonnage fee</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- We understand that this is a fee received by ports from Stevedores. It is the equivalent to a license fee.</td>
<td></td>
</tr>
<tr>
<td>- It is received by PNG ports as the landlord and is not contestable. It should therefore be regulated and included in the building block calculations.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Building leases and rentals on wharf land</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- PNG Ports as landlord provide various buildings and other facilities for the various parties who operate on the wharves. This includes customs, stevedores and other parties.</td>
<td></td>
</tr>
<tr>
<td>- These buildings are on wharf land and share wharf access. The value of the land is related to its proximity to the wharf.</td>
<td></td>
</tr>
<tr>
<td>- This is not a contestable service and therefore should be regulated.</td>
<td></td>
</tr>
</tbody>
</table>

It should be noted that the only service above that will not be regulated is Gangway hire. The costs and revenues associated with this service is not likely to be material to the operating costs of PNG Ports. Therefore, it be essentially ignored for the purposes of setting regulatory prices.
**ICCC Declaration of Non-regulated Services by PNG Ports to Regulated Services**

In forming our decision to regulate which services, the ICCC not only took into consideration its own independent assessment but also from the submission received.

The ICCC, having reviewed the submission from PNG Ports (dated 5th November 2014) and also from our own independent assessment as discussed in detail above, has determined that the services listed hereunder will be subject to regulation and shall be regulated under the PNG Ports Regulatory Contract (2015-2019) to be issued under section 35(1) of the same Act.

1) Storage services
2) Gate Pass,
3) Anchorage,
4) Mobile Harbour Cranes,
5) Rubber Tyred Gantry,
6) Cleaning of Wharf,
7) Fumigation,
8) Provision of Water Services,
9) Provision of Electricity Services,
10) Reefer charges and electricity for containers,
11) Generator backup as part of reefer usage,
12) Yard Maintenance,
13) Ash Levy Removal,
14) Casual Labour surcharge for maintenance,
15) Commercial Vehicle and Tourist Bus passes,
16) Stevedoring Tonnage fee,
17) Building Leases and Rentals on Wharf land,

In declaring of the PNG Ports certain non-regulated services to regulated services, the ICCC was satisfied that:

a) **PNG Ports has a substantial degree of power in the market within its Ports; and**
b) **A declaration of these services to be regulated services is appropriate, taking into account the ICCC’s objectives set out in section 5 of the Act.**

Therefore, pursuant to section 33(1) (b) of the Act, the ICCC will declare as regulated services, by Notice in the National Gazette, the services listed above and that these services shall be regulated under the PNG Ports Regulatory Contract (2015-2019) to be issued under section 35(1) of the same Act.