20th December 2013

Office of the Secretary
Department of Health
P O Box 807
WAIGANI
National Capital District

Dear Mr Kase,

SUBJECT: DRAFT TOBACCO LEGISLATION CONSULTATION

The Independent Consumer and Competition Commission ("Commission") brings to the Department of Health (DoH), its comments in relation to the proposed amendments to the Tobacco Products (Health Control) Act 1987 (Tobacco Act). The Commission takes this opportunity to thank the DoH for inviting the Commission to participate in this consultation process and now expresses its views based on independent assessment of competition issues and also taking into consideration consumer rights and responsibilities.

There were several irregularities which the Commission noted during the consultation conference on 19 November 2013. In particular:

1. The Commission was informed by DoH officials that none of the recommendations provided by ICCC, in its letter of 19 April 2013, were considered in the draft final version of the legislation that was presented before the conference.
2. DoH advised that the final version of the legislation was not distributed and it did not include comments from all agencies;
3. The Commission understands that its submission was circulated but not others.
4. The Commission was informed that submissions of other agencies would be provided later and discussions would be held with ICCC. To date we have not seen those submissions and no consultations have been sought.

With respect if meaningful consultations are to be conducted all parties attending such consultations need to be provided with all relevant information and in a timely manner and submissions provided should not simply be ignored without reason.

By way of context the Commission’s comments here are provided with a view to protecting the interests and rights of all Papua New Guineas and in creating opportunities for small to medium enterprises including small growers.
As indicated in our letter of 19 April 2013 the Commission is of the view that section 5 of the Final Draft is highly anti-competitive. Its effect is the complete prohibition of commercialization of tobacco-growing in PNG. This particular provision only serves to restrict the domestic market and local growers from growing tobacco while the importers enjoyed the benefits.

This issue was raised during discussions with staff of the DoH in 4 June 2013. At that time staff of the DoH said that there were a number of reasons related to health issues for such a clause and undertook to provide further information to the Commission on that. No such information was provided. Curiously, a representative of another organisation at the conference suggested that ‘supply restrictions’ were necessary to curb smoking. That may be the case but the clause appears to is anti-competitive and unfair and likely to be ineffective as it will only apply ‘supply restrictions’ to potential growers in PNG. The Commission suggests that there are likely to be more effective ways to curb smoking such as setting appropriate safeguards and processing, labelling and packaging requirements, to regulate/prevent the use of chemicals considered harmful in tobacco products.

Further, it seems to the Commission that only domestic supply (and an income-earning opportunity for rural dwellers) is being eliminated, while foreign employment is being promoted and foreign exchange lost.

The Final Draft also fails to provide for the issue and refusal of licenses, including the right of appeal for any aggrieved party who wishes to supply tobacco products in PNG.

It is the Commission’s view that the inclusion of section 36 as drafted only puts liability on the sellers and distributors who ultimately do not have any say on the packaging of the tobacco products that are imported into the country. The Commission suggests that section 36 be amended to include the manufacturer and importers of tobacco products to ensure that they comply with the packaging requirements.

Manufacturers and Importers are given licences and they should be the primary targets of packaging and labelling regulation, as they manufacture/import the goods. The regulation will not work without manufacturers and importers being made liable for packaging and labelling.

In conclusion, the Commission would be pleased to be provided with copies of all the submissions made by the relevant agencies on the proposed amendments to the Tobacco Act, and confirms it will be pleased to meet with staff of the DoH to discuss these matters further.

If you have any queries please contact our office on 325 2144 or email: infor@iccc.gov.pg

Yours sincerely

ELASTUS GERORO
Acting Chief Executive Officer

Cc: Ministry of Health & HIV, Office of the Minister

Sir Manasupe Zurenuoc, MBE Kt, Chief Secretory