16 January 2014

Mr. Chris Rupen
Chief Executive Officer
National Maritime Safety Authority
P O Box 668
PORT MORESBY
National Capital District

Dear Mr. Rupen

SUBJECT: ICCC’S COMMENTS ON DRAFT MERCHANT SHIPPING BILL 2013

The Independent Consumer and Competition Commission ("ICCC") would like to provide its comments and submission on several aspects of the draft Merchant Shipping Bill 2013 ("draft bill"). The submission is on parts of the draft bill which the ICCC considers may raise anti-competitive concerns in the shipping industry. Specifically Parts 9 and 12 of the draft bill are of competition concern to the ICCC as they may raise barriers to entry in the provision of pilotage services.

Part 9 Pilotage

Division 1 Marine pilots, pilotage areas and pilotage organizations

212 Appointment of pilotage organizations

(1) The Authority may, by notice in the National Gazette, appoint a person to be a pilotage organization for a pilotage region.

Comment: The ICCC considers that the term “person” referred to in the provision above should not be any person, including corporations and individuals, who have or may have an interest, whether directly or indirectly, in the provision of shipping and pilotage services, and any other business related to shipping and pilotage services. The ICCC does not want to see a repeat of the PNG Ports’ case. That “person” should be neutral in discharging its functions. It would be more appropriate if the relevant Provincial Governments are given the mandate, if NMSA wants to delegate its power.

(1) Pilotage regions

(1) The Authority may, by notice in the National Gazette, determine pilotage regions for the administration of pilot service providers by a pilotage organization.

Comment: There must be a tendering process to appoint a pilotage organization. There should also be certain criteria for which a service provider is appointed by.
(2) A pilotage organization must appoint a pilot service provider for each pilotage area for which it is responsible in accordance with Standards for Maritime Pilotage Organizations, published by the Authority.

Comment: ICCC considers that the appointing of "a pilot service provider" could be discriminatory in nature and anti-competitive. The ICCC is of the view that "a" as indicated in bold font above would limit the pilotage organization to appoint only one pilot service provider. It is in fact a regulatory barrier to entry; hence competition would not exist wherever this provision is applied.

The ICCC also considers that the new pilotage standards currently awaiting gazetted should have been done in consultation with public and relevant stakeholders. The Commission believes that this was not done.

Part 12 Coasting trade

281 Cancellation or variation of coasting trade licence

(1) The Authority may cancel, or vary a condition of, a coasting trade licence if it considers that it is in the public interest.

Comment: The ICCC is aware that the current composition of the Coasting Trading Committee ("CTC") is made up of ship owners or persons involved in the shipping business and interests. This could represent a cartel whereby the members have vested interest in the local shipping industry and so have the power to block the entry of new competitors. CTC should be abolished as it serves the interests of a minority who have no consideration for the costs passed on to consumers. A system that allows existing players in the market to veto recommendations on new entry is in effect a cartel. The ICCC is not aware of any other industry whereby competitors control entry than the shipping industry in the context of competitors being members of CTC. Conditions of flagging by coastal trade will not be affected by this recommendation. The ICCC welcomes the amendment to now revert the power back to NMSA.

The ICCC also considers that any cancellation or varying of a condition should be in the best interest of the industry and nothing else. The process of cancelation or revocation should be a public and transparent process.

282 Coasting trade permit

(1) The Authority may issue a coasting trade permit for a vessel to provide specified shipping services for a specified period if it considers that no vessel for which a coasting trade licence has been issued is available to provide the shipping service or to provide it adequately and at a reasonable cost.

Comment: The ICCC considers that persons involved in assessing and processing of licence applications should be neutral with no interests in shipping or related businesses. As mentioned above, a system that allows existing players in the market to veto recommendations on new entry is in effect a cartel.
The ICC’s main concern is that if the bill is not properly drafted, then the NMSA will continuously be facing criticism from public and businesses when carrying out its functions under its governing act thus preventing it from performing its role effectively.

The ICC anticipates that our comments will be taken into account when finalizing the draft bill.

Should you wish to discuss this further please contact Mr. Steven Sugl-Executive Manager or Mr. Emmanuel Auru-Legal Officer, both of Competitive Market and Fair Trade Division (CMFTD) on 325 2144 or on email: ssugl@iccc.gov.pg; eauru@iccc.gov.pg.

Yours sincerely,

Dr. Billy Manoka, PhD
Commissioner and Chief Executive Officer