

SPEECH BY THE MINISTER FOR FINANCE AND TREASURY, HON. BART PHILEMON, AT THE SEMINAR FOR JUDGES AND LAWYERS ON COMPETITION LAW AT THE HOLIDAY INN.

26TH FEBRUARY, 2005.

THE DEPUTY CHIEF JUSTICE, SALAMO INJIA,

JUSTICE ROBERT FRENCH, MEMBER OF THE FEDERAL COURT OF AUSTRALIA AND NON-RESIDENT MEMBER OF THE SUPREME COURT OF FIJI,

COMMISSIONER OF THE ICCC, THOMAS ABE, ASSOCIATE COMMISSIONERS OF THE ICCC, PAUL BAXTER AND CHRIS GIDEON,

JUDGES OF THE NATIONAL AND SUPREME COURTS OF PAPUA NEW GUINEA,

CHAIRMAN OF THE JUDICIARY EDUCATION COMMITTEE, JUSTICE SALIKA, CHAIRMAN OF THE LAW SOCIETY'S CONTINUING LEGAL EDUCATION COMMITTEE, LAWRENCE NEWELL, THE CHIEF MAGISTRATE, JOHN NUMAPO, AND LAWYERS,

HEADS OF UNDP, AUSAID AND OTHER DONOR AGENCIES,

DISTINGUISHED SPEAKERS AND MODERATORS, WHO HAVE SO KINDLY AGREED TO PARTICIPATE AT THIS SEMINAR,

LADIES AND GENTLEMEN,

IT GIVES ME GREAT PLEASURE THIS MORNING TO OFFICIATE AT THIS SEMINAR ON THE TOPIC *"PUTTING PAPUA NEW GUINEA'S COMPETITION LAW INTO PRACTICE - A PRACTICAL GUIDE FOR LEGAL PRACTITIONERS"*

I AM INDEED DELIGHTED TO BE OPENING THIS SEMINAR BECAUSE THIS IS A RARE OPPORTUNITY TO GET MOST OF THE COUNTRY'S MEMBERS OF THE BENCH AND TOP LEGAL PRACTITIONERS AND LEADERS OF BUSINESS TOGETHER TO BE INTRODUCED TO A NEW AREA OF THE LAW BY A GROUP OF EXPERTS IN THE FIELD.

I WOULD LIKE THEREFORE, TO THANK THE COMMISSIONER AND THE ASSOCIATE COMMISSIONERS OF THE ICCC AND THE PRESIDENT OF THE PNG LAW SOCIETY WITH THEIR STAFF FOR ORGANISING SUCH A WORKSHOP BLESSED WITH A PANEL OF INTERNATIONAL EXPERTS IN THIS SPECIALISED AREA OF COMMERCIAL LAW.

INTRODUCTION

COMPETITION LAW, AS WE ALL KNOW, IS A RECENT ADDITION TO THE PNG LAWS HAVING ONLY BEEN IN EFFECT SINCE MAY, 2003.

AS SUCH, A GREAT MANY OF THE PEOPLE OF THIS COUNTRY ARE NOT AWARE OF THE EXISTENCE OF COMPETITION LAW OR WHAT IT IS ABOUT. THE ICCC IS SEEKING TO RAISE THAT GENERAL LEVEL OF AWARENESS AND THIS SEMINAR IS PART OF THAT PROCESS.

BUT THIS SEMINAR WILL GO BEYOND THE MERE INTRODUCTION OF THE COMPETITION LAW AS SUCH, BY FOCUSING MORE ON SOME PERTINENT PRACTICAL ISSUES AND CONSIDERATIONS THAT WILL ARISE WHEN COMPETITION LAW IS APPLIED TO COMMERCIAL CONDUCT THROUGH LITIGATION IN THE COURTS.

ALL OF US HAVE AN IMPORTANT PART TO PLAY IN ENSURING THAT THE COMPETITION LAW IS SUCCESSFULLY IMPLEMENTED AND APPLIED CORRECTLY IN ORDER TO HAVE THE EFFECT OF IMPROVING COMPETITIVENESS IN THE ECONOMY, TO THE BENEFIT OF ALL PAPUA NEW GUINEANS.

HOWEVER, THIS IS VERY MUCH DEPENDENT ON HOW EFFICIENTLY AND EFFECTIVELY THE LAW IS ADMINISTERED, ENFORCED AND ADJUDICATED BY THE INDEPENDENT REGULATOR, THE ICCC, AND THROUGH THE COURTS.

AS AN ASIDE, I SHOULD PERHAPS TAKE THIS OPPORTUNITY TO RECORD MY PERSONAL THANKS FOR THE EXCELLENT WORK THAT THE ICCC HAS DONE OVER THE LAST 18 MONTHS IN TERMS OF THE ADMINISTRATION OF THE NEW COMPETITION LAW. I HAVE BEEN PARTICULARLY PLEASED WITH THE HIGH DEGREE OF PROFESSIONALISM AND INTEGRITY SHOWN BY THE COMMISSION, ITS STAFF AND COMMISSIONERS, IN THE SHORT PERIOD SINCE THE ESTABLISHMENT OF THIS IMPORTANT NATIONAL BODY.

RETURNING TO TODAY'S EVENT, THE JUDICIARY AND LEGAL PRACTITIONERS IN PARTICULAR ARE THE TARGET AUDIENCE AT

THIS SEMINAR. THIS IS A REFLECTION OF THE IMPORTANT ROLE THAT YOU (THE JUDGES AND LAWYERS) WILL PLAY IN ENSURING THAT COMPETITION LAW IS A GOOD LAW FOR THIS COUNTRY AND THAT IT IS RESPONSIVE TO THE NEEDS AND ASPIRATIONS OF BUSINESSES AND PEOPLE GENERALLY OF THIS COUNTRY.

THE NEW COMPETITION LAW, THE ICCA ACT, IS YET TO BE TESTED IN A COURT OF LAW TO ESTABLISH ITS EFFICACY AND SOUNDNESS AS A LEGAL INSTRUMENT FOR PROMOTING COMPETITIVE MARKETS AND A FAIR TRADING ECONOMIC ENVIRONMENT IN THIS COUNTRY. THUS LAWYERS AND JUDGES IN PAPUA NEW GUINEA HAVE NOT YET HAD THE OPPORTUNITY TO LEARN THROUGH EXPERIENCE HOW TO DEVELOP, MANAGE AND ADJUDICATE COMPETITION LAW CASES, UNLIKE LAWYERS IN SOME OTHER JURISDICTIONS WHERE COMPETITION LAW HAS BEEN IN PLACE FOR MANY YEARS.

THE OBJECTIVE OF THIS SEMINAR IS TO SHARE THE EXPERIENCE OF THE INTERNATIONAL COMPETITION LAW EXPERT PRACTITIONERS WHO WILL BE SPEAKING TODAY, AND TO PREPARE OUR JUDGES AND PRACTITIONERS FOR COMPETITION LAW LITIGATION WHEN IT HAPPENS. WITH THE MARKET CONDUCT RULES IN THE ICCA ACT HAVING BEEN IN FORCE FOR NEARLY TWO YEARS, WE SHOULD EXPECT THE FIRST CASES TO COME BEFORE THE COURTS IN THE NEAR FUTURE.

HOWEVER, IN ORDER FOR US TO ACHIEVE WHAT WE HAVE SET OUT TO ACHIEVE TODAY, I BELIEVE WE ALL MUST COME TO TERMS WITH CERTAIN FUNDAMENTAL CONSIDERATIONS.

THE FIRST AND FOREMOST IS TO APPRECIATE AND UNDERSTAND PRECISELY THE INTENTION OF THE LEGISLATURE IN PASSING THIS PIECE OF LEGISLATION AND; SECONDLY, TO KNOW THE LAW IN TERMS OF ITS APPLICATION, INTERPRETATION AND ADJUDICATION SO THAT THE LAW DOES IN FACT SERVE THE PURPOSES FOR WHICH IT WAS PASSED BY THE NATIONAL PARLIAMENT - NOT THAT YOU LEARNED JUDGES AND LAWYERS NEED MY REMINDING YOU OF THIS.

IT FOLLOWS THEREFORE THAT ALL OF US ADMINISTRATORS, PRACTITIONERS AND JUDGES ALIKE MUST FULLY APPRECIATE THE SOCIO-ECONOMIC SETTING GIVING RISE TO THE NEED FOR ENACTING THIS PIECE OF LEGISLATION.

SINCE INDEPENDENCE, THE MAIN THRUST OF PNG'S ECONOMIC POLICY HAS BEEN TO ENCOURAGE THE GROWTH OF EXPORTING AGRICULTURAL AND MINING ACTIVITIES, AND TO FACILITATE

IMPORT SUBSTITUTION ACTIVITIES WITHIN PNG. THIS REFLECTS A CONCERN THAT GOVERNMENTS OF THE DAY HAVE HAD TO PROTECT THE VALUE OF THE PNG CURRENCY AND TO ACHIEVE A BETTER BALANCE IN OUR TERMS OF TRADE.

PNG HAS ALSO BEEN AN ECONOMY WHERE MANY OF THE SERVICES PROVIDED TO END CONSUMERS WERE EITHER MET BY GOVERNMENT OWNED BUSINESSES, OR BY PRIVATE BUSINESSES WHICH HAD EVOLVED OUT OF THE PRE INDEPENDENCE PACIFIC ISLAND TRADING COMPANIES

WHILE THERE HAS CONTINUED TO BE A FUNCTIONING PRICES CONTROLLERS OFFICE IN PNG AS A MEANS OF CAPPING POSSIBLE EXCESSIVE PRICING BEHAVIOUR BY BUSINESSES OPERATING IN THIS COUNTRY, LITTLE ATTENTION WAS GIVEN TO THE ISSUE OF THE LEVEL OF DOMESTIC COMPETITION AND THE BENEFITS TO THE NATION FROM GREATER EFFICIENCY THAT COULD POTENTIALLY BE AVAILABLE FROM A COMPETITIVE DOMESTIC ECONOMY.

THE RESULT WAS THE DEVELOPMENT OF A COMMERCE AND INDUSTRY SECTOR COMPRISING A SMALL NUMBER OF LARGE FIRMS AND STATE OWNED ENTITIES HOLDING SIGNIFICANT POSITIONS IN TERMS OF THEIR MARKET PRESENCE AND INFLUENCE.

COMPETITION THEREFORE, WAS NOT A HIGH PRIORITY POLICY ISSUE.

DURING THE 1990'S HOWEVER, THERE WAS GROWING AWARENESS THAT PNG NEEDED TO HAVE SOME FORM OF COMPETITION REFORM. COMPETITION REFORM HAD BEEN UNDERWAY WORLD-WIDE SINCE THE 1980S AND IT BECAME INCREASING CLEAR THAT PNG NEEDED TO IMPROVE ITS OVERALL EFFICIENCY IN THE DOMESTIC ECONOMY THROUGH COMPETITION REFORM, IF IT WAS TO MAINTAIN ITS MARKETS FOR ITS MAJOR AGRICULTURAL AND MINING BASED EXPORTS.

REFORM OF COMPETITION POLICY IN PNG WAS SEEN AS BEING INTEGRAL TO THE WIDER REFORM OF THE PNG ECONOMY.

IT WAS WITHIN THIS CONTEXT OF ECONOMIC REFORM AND A MOVE TOWARDS A MORE EFFICIENT AND COMPETITIVE DOMESTIC ECONOMY THAT THE REVIEW OF THE THEN PRICE CONTROL ARRANGEMENTS AND THE BROADER COMPETITION POLICY OBJECTIVES WAS UNDERTAKEN IN 2000.

ALTHOUGH AIMED LARGELY AT PUTTING IN PLACE REGULATORY REFORMS THAT WOULD APPLY FOLLOWING THE PROPOSED PRIVATISATION OF A NUMBER OF THE MONOPOLY PUBLIC UTILITY INDUSTRIES, THE REFORMS WENT BEYOND THESE SPECIFIC INDUSTRIES TO EMBRACE THE WHOLE OF THE BUSINESS SECTOR IN THE COUNTRY.

THE GOVERNMENT RECOGNISED THAT WELL FUNCTIONING MARKETS REQUIRED A STRONG FOUNDATION OF EFFECTIVE COMPETITION LAW, AND REGULATORY AND JUDICIAL INSTITUTIONS THAT PERFORMED PREDICTABLY WITH A HIGH DEGREE OF INDEPENDENCE.

IN EMBRACING COMPETITION REFORM, THE GOVERNMENT FORMALLY ACKNOWLEDGED THAT, WHERE FEASIBLE, COMPETITION IS THE MOST EFFECTIVE MEANS OF ENHANCING CONSUMERS' WELFARE AND ENCOURAGING EFFICIENCY AND INNOVATION IN THE DOMESTIC ECONOMY. CONSEQUENTLY, THE GOVERNMENT IS COMMITTED TO THE PROCESS OF IMPLEMENTATION OF THE COMPETITION REFORM LEGISLATION PUT IN PLACE AND THE ENFORCEMENT OF THE POWERS GRANTED IN THAT LEGALISATION.

THE LAW

COMPETITION LAW IS A COMPLEX ISSUE. IT IS ABOUT MARKET DYNAMICS. MANY OF THE CONCEPTS SEEM VAGUE AND THE LANGUAGE MAY BE ALIEN TO THOSE NOT AS FAMILIAR WITH SUCH A LAW.

TERMS SUCH AS "COMPETITION", "SUBSTANTIAL LESSENING OF COMPETITION", "MARKET POWER", "EXCLUSIONARY PROVISIONS", "PUBLIC BENEFIT" AND "EFFICIENCY" ARE USED IN COMPETITION LAW, BUT RARELY APPEAR IN OTHER LEGISLATION.

I HAVE NO DOUBT THAT OUR SPEAKERS DURING THE COURSE OF THIS SEMINAR WILL PUT SOME OF THESE TERMS AND CONCEPTS INTO A LEGAL FRAMEWORK AND OUTLINE THE LITIGATION PROCESS IN COMPETITION CASES WHERE SUCH TERMS AND CONCEPTS ARE AT THE HEART OF THE RELEVANT JUDICIAL PROCESS.

COMPETITION LAW IS A MIX OF LAW AND ECONOMICS – THIS IS HOW IT DIFFERS FROM OTHER AREAS OF COMMERCIAL LAW. THUS, IN COMPLEX COMPETITION CASES NOT ONLY ARE LAWYERS INVOLVED BUT ALSO ECONOMISTS AND THOSE WHO

UNDERSTAND THE PARTICULAR INDUSTRY. LAWYERS WILL NEED TO WORK WITH THOSE HAVING SKILLS IN THESE AREAS. LAWYERS WILL NEED TO BECOME FAMILIAR WITH ECONOMIC ISSUES AND HOW TO COLLECT AND USE ECONOMIC EVIDENCE.

WHY A COMPETITION LAW FOR PNG?

THE GENERAL AIM OF AN EFFECTIVE DOMESTIC COMPETITION REGIME IS TO PROMOTE FREE AND FAIR COMPETITION, WHERE THIS IS IN THE PUBLIC INTEREST, AND AS A CONSEQUENCE INCREASE EFFICIENCY AND PRODUCTIVITY IN THE ECONOMY AND PROMOTE ENHANCED CONSUMER WELFARE.

THE BENEFITS OF INCREASED COMPETITION EXTEND TO ALL PARTICIPANTS IN THE PNG ECONOMY:

- *TO CONSUMERS* – THROUGH LOWER PRICES, MORE PRODUCT CHOICE AND BETTER SERVICES;
- *TO BUSINESS* – THROUGH CHEAPER INPUTS, BETTER SERVICE FROM INPUT SUPPLIERS, GREATER CHOICE OF SUPPLIERS AND ACCESS TO IMPROVED TECHNOLOGY, ALL OF WHICH LEAD TO GREATER COMPETITIVENESS BOTH IN THE DOMESTIC MARKET AND INTERNATIONALLY;
- *TO GOVERNMENTS* – THROUGH ENHANCED ECONOMIC ACTIVITY, INCREASED REVENUE BASE FROM AN EXPANDING ECONOMY, AND MORE EFFICIENT PRICES AND COSTS WHICH IN TURN CONTRIBUTE TO THE POTENTIAL FOR IMPROVEMENTS IN GOVERNMENT SERVICES; AND
- *TO THE ECONOMY AS A WHOLE* – THROUGH LOWER INFLATION, INCREASED GROWTH, IMPROVED INTERNATIONAL COMPETITIVENESS, GREATER INVESTMENT, ENHANCED EMPLOYMENT OPPORTUNITIES AND IMPROVED STANDARDS OF LIVING.

THE PURPOSE OF A COMPETITION REGIME IS TO ENSURE THAT MARKETS WORK. OVERALL, THIS REQUIRES COMPETITION AMONG PRODUCERS AND SUPPLIERS, AND ACCURATE INFORMATION IN THE HANDS OF CONSUMERS. COMPETITION BETWEEN PRODUCERS AND SUPPLIERS SELLING TO INFORMED CONSUMERS WILL LEAD TO THE BEST PRICES AND THE BEST QUALITY (OR PERHAPS THE BEST VALUE, BEING A COMBINATION OF QUALITY AND PRICE). COMPETITION SPURS EFFICIENCY AND INNOVATION. IT MOTIVATES FIRMS TO SEEK LOWER COSTS,

LOWER PRICES, BETTER QUALITY AND BACK-UP SERVICES. IT DRIVES PRODUCERS TO PRODUCE WHAT CONSUMERS WANT.

COMPETITION IS ABOUT ENSURING THAT NO PRODUCER CAN EVER TAKE ITS CUSTOMERS FOR GRANTED. IT IS ABOUT ENSURING THAT PRODUCERS ARE ALWAYS LOOKING FOR BETTER WAYS OF DOING BUSINESS, THE SPARK THAT LEADS TO INNOVATION AND 'BEST PRACTICE'.

THE DEVELOPMENT OF AN EFFECTIVE PNG COMPETITION REGIME IS ALSO A KEY ELEMENT IN ACHIEVING GOOD GOVERNANCE, IN THE PRIVATE AND THE PUBLIC SECTOR, AND CREATING GREATER FINANCIAL STABILITY.

HAVING SAID THAT, THE ICCC WILL ALWAYS BE MINDFUL THAT PNG IS A DEVELOPING ECONOMY AND THAT COMPETITION ISSUES NEED TO BE APPROACHED IN A WAY THAT SUITS THE PNG ECONOMY. THAT MAY NECESSITATE A GRADUAL APPROACH TO ENFORCEMENT OF THE LAW AND A 'PNG APPROACH' TO COMPETITION ISSUES THAT MAY DIFFER FROM MORE DEVELOPED ECONOMIES.

CONCLUSION

A COMPETITIVE MARKET IS AN IDEAL FOR WHICH THE GOVERNMENT ASPIRES FOR PNG. HOWEVER, THIS IDEAL IS NOT ALWAYS POSSIBLE OR MAY BE PREVENTED FROM BEING REALISED BY SOME CHARACTERISTIC OF THE MARKET OR ACTIONS OF PARTICIPANTS IN THE MARKET. THE INTRODUCTION OF SOME FORM OF REGULATION OF MARKET BEHAVIOUR HAS BECOME NECESSARY BECAUSE MARKET FORCES DO NOT ALWAYS OPERATE IN A COMPETITIVE MANNER. INDEED, IF LEFT TO THEMSELVES, THERE ARE THOSE WHO WOULD SEEK TO MINIMISE ANY FORM OF COMPETITION IN THE MARKET IN ORDER TO MAXIMISE THEIR OWN POSITION AND FINANCIAL BENEFITS.

THE NEW MARKET CONDUCT RULES AS SPECIFIED IN THE ICCC ACT ARE INTENDED TO ENCOURAGE PROPERLY FUNCTIONING MARKETS ABLY SUPPORTED BY A STRONG FOUNDATION OF EFFECTIVE GOVERNANCE AND INDEPENDENT INSTITUTIONS, WHICH PERFORM PREDICTABLY WITHOUT FEAR OR FAVOUR.

LADIES AND GENTLEMEN, THIS COUNTRY CAN BE PROUD THAT WE STILL HAVE INSTITUTIONS WHICH ARE STRONG AND CAN

PERFORM WITH PREDICTABILITY AND OUR JUDICIARY ENJOYS A HIGH STANDING IN THIS RESPECT.

YOUR ROLE THEREFORE, IS VITAL FOR MOULDING AND SHAPING A COMPETITION LAW, WHICH IS RESPONSIVE TO THE DEVELOPMENTAL ASPIRATIONS OF OUR PEOPLE. THROUGH THE ENFORCEMENT OF THE COMPETITION LAW, YOU ARE NOW EVEN MORE DIRECTLY INVOLVED IN THE GROWTH AND DEVELOPMENT OF THIS COUNTRY.

WITH THOSE WORDS, IT IS NOW MY PLEASURE TO DECLARE THIS SEMINAR, OPEN.