



The development of information and communication technology law and policy in Papua New Guinea

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The development of the information and communications technology (ICT) sector in Papua New Guinea and the current legislative arrangements and law under which the sector is regulated and operated are reviewed. Recent attempts to develop a new ICT policy for Papua New Guinea are also discussed. The key institutions and organisations and their various roles and responsibilities in policy development and regulation are also examined to give context to the recent dispute between PANGTEL and the Independent Competition and Consumer Commission (ICCC) over the issuance and subsequent attempted revocation of a spectrum licence to Digicel, a new entrant to the mobile phone industry.

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When announcing the Papua New Guinea National Information and Communications Technology (ICT) policy, then-Minister for Public Enterprise, Information and Development Cooperation, Hon. Arthur Somare, stated that

[i]n the past ten years, the use of information and communication technology has transformed the rest of the world, providing opportunities for businesses, opening access to the global marketplace, delivering a wealth of information, enhancing social interaction, enabling greater community participation and bridging

the digital divide that may develop as a consequence of the advancement of technology over time (Somare 2007).

Since the new coalition government of Papua New Guinea, headed by Prime Minister Grand Chief Sir Michael Somare, took office after the 2007 general elections, a separate ministry has been created for Information and Communication. This new ministry, headed by new Kokopo MP, Patrick Tammur, will now be responsible for matters relating to Papua New Guinea's Telecommunication Authority (PANGTEL), the National Broadcasting Commission, and the Office of Information and Communication.



This article reviews the development of the ICT sector in Papua New Guinea and discusses the current legislative arrangements and law under which the sector is regulated and operated. It also examines the recent attempts to develop a new ICT policy for Papua New Guinea by the then Minister responsible for the sector, Hon. Arthur Somare. The key institutions and organisations and their various roles and responsibilities in policy development and regulation are also discussed, with a view to giving context and understanding to the recent dispute between PANGTEL and the Independent Competition and Consumer Commission (ICCC) over the issuance of and subsequent attempted revocation of a spectrum licence to Digicel, a new entrant to the mobile phone industry. Digicel was initially licensed by ICCC pursuant to the provisions of its legislation dealing with the deregulation of monopolies and the introduction and regulation of competition through industry regulatory contracts.

In order to appreciate the complexity and the difficulties associated with the recent efforts of the current government in developing an ICT policy for Papua New Guinea better, this article begins by discussing the main roles and responsibilities of the key institutions in the ICT sector, then reviews the development of the ICT sector in Papua New Guinea in the pre and post-Independence periods and the many challenges successive governments have faced in the setting up of infrastructure in the sector. The ICT policy is briefly discussed in the hope of assisting understanding of the legality or otherwise of the policy, in view of the many criticisms that have been made and the counter claims made in favour of the policy; mainly by the former Minister, Hon. Arthur Somare and the Acting Secretary of the Department of Communication and Information.

Background

Following is a snapshot of the development of the ICT sector from its embryonic stages in the 1950s in the then-fledgling colony of Papua and New Guinea, administered by Australia.

The Department of Posts and Telegraphs

The Department of Posts and Telegraphs was established in 1955 by the colonial administration. It was largely responsible for running a postal service through the establishment of post offices throughout the colony. Apart from the postal service, a telex and telegram service was also introduced, mainly to support the colonial administration and the small business community largely made up of plantation owners and operators and labour recruiters to service those plantations. There were altogether 42 post offices across the then colony and 17 telephone exchanges operating hand-wound magnetos (*Post Courier*, 26 July 2007:31).

In 1958, the use of a telephone network was investigated by the colonial administration and subsequently a new telephone plan was drawn up in 1964. The recommended national telephone plan for Papua and New Guinea in 1964 stated

[i]f a nation intends to progress efficiently, it cannot do so without a telephone network, and the development of this network has to be geared to the overall development of the country. There are two different needs to be met in the expansion of the telephone in Papua New Guinea. One is to provide telephone service to subscribers in area which are not covered by existing systems, and the other is to improve and augment the existing trunk network interconnecting existing exchanges.



Both these needs require to be met to ensure future progress of the Territory (Sinclair 1984:186).

In 1964, a Telecommunication Division was established and recognised by the Public Service Board and 'overseas' expert advice was sought from Canberra. A telephone service was subsequently introduced.

Department of Information and Communication Services

The Department of Posts and Telegraphs was changed to the Department of Information and Communication Services in 1973 when the National Broadcasting Commission (NBC) was established by an Act of Parliament and took over the operations of the PNG branch of the Australian Broadcasting Commission (ABC) and became the broadcasting arm of the Department. This was a vital period in the country's history. Given the very rugged topography, distance and isolation, the radio played a crucial role in the dissemination of information throughout the nation, using a very extensive network of provincial radio stations. No doubt, history will record that this medium of communication has played a large role in building a nation from what was then literally diverse tribes numbering 1,000 or even more. Radio communication through the NBC played a significant role in preparing PNG people for the political independence gained from Australia on 16 September 1975.

After 1975, the Department of Information and Communication Services was responsible for national information services, communication policy, research and development, and provision of support services for the Minister for Information and Communication Service. The Department of Posts and Telegraphs ceased operation on 9 December 1975 and the newly formed Department of Public Utilities took over its responsibilities and became the Department of Postal and Telecommunication Services. The

Department of Postal and Telecommunication Services continued to function as a separate organisation until its formation as the Post and Telecommunication Corporation on 1 October 1982 (Sinclair 1993:6).

In 1997, when the late Bill Skate was Prime Minister, the Department was reduced to the Office of Information and Communication and there were severe constraints on resources and staffing, resulting in a situation where it was not able to function fully and implement its mandated responsibilities. This no doubt was a setback to the growth and development of the sector as far as the government's roles and responsibilities are concerned in respect to policy development and providing guidance on growth and development.

After the 2002 general elections, the new government established the Department of Public Enterprises, Information and Development Corporation. Its core functions were, *inter alia*, to produce the monthly government newspaper called *Gavamani Sivarai*, and the weekly Government Radio Talk Back program aired on NBC's Karai Service. Its other key activities included national information and communication policy, policy development, rural connectivity and development, and the integrated government information system (IGIS). It was also required under the Medium Term Development Strategy (2005–2010) to expand telecommunication infrastructure and services in Papua New Guinea.

As stated above, with the recent establishment of the Ministry of Information and Communication Services, headed by Hon. Patrick Tammur, all matters relating to the PNG Telecommunication Authority (PANGTEL), the National Broadcasting Corporation and the Office of Information and Communication will be administered by this new Ministry.



Department of Public Utilities

When the Department of Posts and Telegraphs ceased to exist on 9 December 1975, its functions and responsibilities were subsumed under the newly formed Department of Public Utilities. It became the Postal and Telecommunications Services Division within this new Department (Sinclair 1993:6).

Following a decision of the National Executive Council (NEC) on 9 September 1981, an executive steering committee was set up to examine ways and means of making a change in the status of the Postal and Telecommunications Services to a 'legal commercial entity'. After the executive steering committee presented its report to the NEC on 16 December 1981, the NEC gave approval for the drafting of enabling legislation. An Implementation Group was formed to carry out the recommendations from the Steering Committee (Sinclair 1993:11). The Bill was passed into law by the National Parliament on 15 February 1982. The Post and Telecommunication Corporation Act 1982 took effect on 1 July 1982 (Sinclair 1993:14).

The establishment of the Post and Telecommunication Corporation not only saw the introduction of a new source of revenue, as indicated under the provisions of the Post and Telecommunication Corporation Act (PTC Act), but also saw the development of contentions between the Minister, the board, and the management, which eventually led to the resignations of its inaugural Chairman, Bill Lawrence, and CEO, Bill Peckover, in 1983 (Sinclair 1984:19).¹

Due to a shift in government policy in 1996, the Corporation was split up and corporatised. The split and corporatisation saw the creation of Telikom PNG Limited, Post PNG Limited, and the PNG Telecommunications Authority (PANGTEL).

Telikom PNG Limited

Telikom PNG Limited was tasked with the provision of telecommunication services for profit and was given the necessary legislative backing under the Telikom PNG Limited Act 1996 to perform its functions in a manner consistent with sound commercial practice and general government obligations advised to it from time to time by the government with consideration for community services obligations. Under the Telecommunications Act 1996, it was given exclusive rights up to year 2001 to provide all forms of telecommunications services within Papua New Guinea and between Papua New Guinea and other countries.

The Morauta Government commenced the process of privatising Telikom (along with other assets) on the basis that government should not run businesses and did it very badly; that such government businesses led to large public debts and yet failed to invest in the necessary upgrading of infrastructure, and, most importantly, resulted in politicisation of decisions at board and management levels.

Post PNG Ltd

Post PNG Ltd was incorporated as a public company on 24 December 1996 and commenced trading in January 1997 as a 100 per cent state-owned company. It is responsible for the provision of postal services for profit. Although it is a limited liability company incorporated under the Companies Act, it is legislatively empowered under the Postal Services Act 1996 and is given exclusive rights to carry letters and undertake other postal-related activities such as the production of stamps, registration of mail, private boxes and tags, money orders, postal orders, *salim moni kwik* (SMK), and the control of franking machines. It is obligated to perform its functions in a manner consistent with sound commercial



practice and government obligations as advised to it from time to time. Furthermore, it is required under the Act to attend to its community services obligations to make postal services reasonably accessible to all people in Papua New Guinea by provision of appropriate infrastructure for rural postal services. In carrying out these functions, it is required to observe sound commercial practices and any government policies and directives notified by the Minister for Communications.

PANGTEL

PANGTEL was established on January 1, 1997 by the Telecommunications Act 1996. Its creation was part of the then government's policy to corporatise PTC and divide it into three different organisations: two service delivery companies incorporated as public companies under the Companies Act, and one regulatory and licensing authority. PANGTEL became the sole regulator and licensing authority of telecommunications and broadcasting in Papua New Guinea. The telecommunications industry comprises all private and government-owned companies that are involved in the provision of fixed and mobile telecommunications services such as voice, facsimile, data, cellular phones, video and audio programs to the general public. The radio communications sector includes radio frequency spectrum and satellite orbital positions. The radio frequency spectrum is managed pursuant to the Radio Spectrum Act 1996. PANGTEL is also responsible for the management of the PNG orbital satellite parking slots. Its main operational functions include

- granting of licences to carriers and suppliers of telecommunication services and equipment
- monitoring of practices of licencees
- regulation of the telecommunications industry to ensure competitiveness

- protection of consumers of telecommunications services
- promotion of fairness and efficiency in the industry
- provision of arbitration to conflicting parties in the industry
- monitoring of the development of telecommunication services.

Pacific Mobile Communication Ltd trading as B-Mobile

B-Mobile is a wholly-owned subsidiary of Telikom PNG Ltd established in 2002 to trade in the mobile phone sector of the telecommunications industry. As a wholly-owned subsidiary of Telikom PNG Ltd, it is regulated by the regulatory contracts pertinent to competition issued under the Independent Consumers and Competition Commission Act 2002. Currently, it has a subscriber base of 260,000, having grown quickly from a customer base of only 25,000 just a few years ago.

The Independent Public Business Corporation

The Independent Public Business Corporation (IPBC) came into being on 30 June 2002, the date of succession stipulated in the enabling legislation, the Independent Public Business Corporation Act 2002. The IPBC now holds all state assets and liabilities of those state-owned enterprises that were corporatised and identified for privatisation under the Morauta government (2000–2002). The IPBC is therefore the successor by law to all assets and liabilities of all state-owned enterprises, and, in terms of political and ministerial responsibility, the IPBC reports to the Minister for Public Enterprises, Arthur Somare. In the last Somare Government (2002–June 2007), Arthur Somare was responsible for the Information and Communication portfolio as well as the Public Enterprises portfolio,



and it was in that capacity that he was pushing a new ICT policy, essentially to continue to protect the business interests of Telikom PNG Limited—a state-owned enterprise for which he had political responsibility and accountability.

Development of ICT Policy

In December 2005, there was a major decision by the PNG Government, under NEC decision no. 280/2005, to formulate a National ICT Policy. Under that policy the government decided that mobile competition should be introduced to commence after March 2007. There was a further government decision, no. NG 13/2007, to amend the ICT Policy, particularly in relation to telecommunication services (*The National*, 19 October 2007:18). After its formulation, the government, under decision no. 188/2007 of 21 June 2007, endorsed the National ICT Policy. The Policy was launched on 6 July 2007 by the then Minister for Public Enterprise, Information and Development Cooperation, Hon. Arthur Somare.

There are two parts to the ICT policy. The first part contains background relating to Papua New Guinea and 'The Information Age', whilst the second part discusses areas of focus by the PNG government and sets out the strategic framework designed to meet its objectives.

Papua New Guinea and the information age

The process of developing a national policy on information and communication technologies began in 1978 and in 1992 the National Policy on Information Communication of Papua New Guinea was tabled in Parliament by the then Minister for Information and Community Services, Hon. Martin P. Thompson. In 2005, a Draft National Information Communication

Technology Policy Framework was approved by Cabinet, which resulted in the establishment of an Inter-agency Taskforce to formulate a National ICT Policy. That decision was made by NEC decision no. 280/2005. The Inter-agency Taskforce's main objective was to develop a policy with the relevant stakeholders, which is to be consistent with the PNG government's Medium Term Development Strategy and the Millenium Development Goals.

Bridging the digital divide

To address concerns about bridging the digital divide and the development of an information economy, the ICT policy aims to create state-of-the-art ICT infrastructure, which can then achieve other goals. Considering the current status of ICT in Papua New Guinea, the policy aims to refurbish, modernise, and extend fixed-line networks and extend mobile phone networks.

The PNG digital strategy policy further recognises the importance of interrelated enabling conditions and these are threefold

- connection—provides the means
- confidence—provides the skills and trust
- content—provides the reason for engaging in the ICT age.

How can policy give effect to 'bridging the digital divide' when the three interrelated enabling conditions mentioned above are not in place? Currently, there is no interconnectivity between Telikom and Digicel customers, therefore these providers are yet to fulfil their legal requirements. Interconnection is a legal requirement as provided for under Part XI, in particular, ss82–86 of the Telecommunications Act 1996. These provisions address the right of a carrier to interconnect with any other carrier and also for PANGTEL to attend any of the carriers' negotiations on the terms



and conditions of an access agreement. Section 84 goes further to state that where two carriers cannot agree upon the terms and conditions of an access agreement, either carrier or both may by writing submit the matter to the Independent Consumer and Competition Commission (The Commission) for arbitration under this section.² The Commission is then required to take all steps necessary to determine the matter submitted for arbitration promptly. Section 85 further states that a determination made under s84 is taken to be an access agreement between carriers who were parties to the arbitration shall be registered by PANGTEL is, subject to compliance with this Act, may be varied by these carriers, and enforced by each of them.³ In relation to any charging principles, Section 86 states that the terms and conditions of charges are set out in the regulatory contract or the licence of a regulated entity; however, if the charges are not set out in the regulatory contract or licence, the Commission may determine, by notice in the National Gazette, principles that are to be applied in agreeing on or determining terms and conditions about charges payable by a specified carrier to another specified carrier.⁴

Areas of focus

ICT infrastructure and access

The first area of focus, relating to ICT infrastructure and access, highlights the lack of infrastructure capable of ensuring reliable delivery of telecommunications and internet signals that are realistic and cost efficient. It also highlights its obligations under the International Telecommunications Union in providing a population greater than 1,000 access to reliable telephony services.

Public utilities such as PNG Power and Telikom PNG Ltd, for example, form part of the social and economic infrastructure

to which the ICT infrastructure will be complementary. The ICT policy aims to facilitate the building of national ICT infrastructure in Papua New Guinea by ensuring that access is available to all. The ICT Infrastructure Refurbishment Plan is to be completed by 31 June 2009.

Competitive and efficient service delivery

In the area of Competitive and Efficient Service Delivery, the ICT policy highlights the technical impediments facing mobile phone competition. Hence, it intends to introduce the Operational Separation Model resulting in the creation of a 'NetCo/ServCo' structure, with the latter focusing on service delivery and the former on networks. The PNG Telecommunications Industry will adopt this model in which Netco will act as a wholesaler of Telecommunications signed to service delivery companies, while ServCo will retail telecommunications services to the end user. In this instance, Telikom PNG Ltd, which is a state-owned corporate entity, will be the wholesaler or the NetCo whilst the ServCos will be other privately owned service providers such as Digicel and GreenCom. B-Mobile is also a service provider but it is publicly owned.

Prior to March 2007, Telikom had a monopoly over mobile phone services. The government, through the ICCC, asked Telikom to reduce its monopoly period so that competition could commence early in 2007. Because mobile phone services are now a regulated entity, ICCC is mandated to ensure that participants in the sector comply with any regulatory contracts, which are statutorily created under s34(1) or s35(1) of the ICCC Act (Kalinoe 2005:11).

Whilst it is claimed that the ICT policy is aimed at promoting competition and efficient service delivery, from what is actually taking place, Telikom is promoting anti-competitive practices by refusing interconnections with Digicel customers. Furthermore,



the proposed exclusive ownership of the network by a single carrier in Telikom will not enhance competition but continue the current monopoly. The essence of competition is about striving to meet consumers' needs and this is reflected in the ways in which they are met by the different market participants. Telikom, through its operational separation model under the new policy, clearly shows that it is competing in order to prevent, restrict or limit the supply of goods or services and, by doing so, substantially lessen competition, which is prohibited and unlawful according to s52 of the ICCA Act.

Around the time of writing, the Minister for Communication and Information Services stated that he expects 'every one of us to work with the government to deliver services effectively and more efficiently at an affordable rate and the way forward is through competition' (*The National*, 19 October 2007:18). The Minister then challenged the three service providers, (Digicel, GreenCom and Telikom PNG) to partner with the government in the delivery of telecommunication services. The Government will, however, extend the monopoly, reserving the rights of Telikom to retain General Carrier License's mode of operating, including fixed lines and an international gateway under the proposed model. Even the IPBC Chairman, Mr Sumasy Singin, has challenged Telikom PNG to accept competition and stated that gone are the days of government protection. However, he reminded Telikom PNG not to forget its community service obligations to the people.

It is interesting to note in his 2008 Budget speech the Minister for Treasury and Finance, Hon. Patrick Pruaitch, projected growth in the economy, in particular 'strong growth in the communications sector as a result of competition and impressive expansion in the mobile phone segment of the market'. In 2007 the communications

sector is estimated to have grown at 27.4 per cent, followed by mining and quarrying at 14.2 per cent, building and construction at 13.0 per cent, and agriculture at 4.9 per cent (Pruaitch 2007). This growth reflects the social and economic benefits of competition, in particular in the mobile phone sector. It is estimated that the significant expansion of the mobile telecommunications sector added 0.7 percentage points to GDP growth in 2007 and will add 0.7 percentage points to GDP growth in 2008 if it continues to expand at the current rate (Pruaitch 2007:6).

Use of the Internet

The use of the Internet is also captured in the ICT policy. The policy highlights the lack of access to the information economy. It therefore aims to provide greater access to computers, encourage increased use of the internet in business and government departments, and ensure training in information and communication technology.

Educating the nation

Through information and communication technology Papua New Guineans will have the opportunity for increased access to education. Educating the nation is fundamental to developing specialised skills and through the ICT Policy this will be pursued vigorously.

Policy, legal and regulatory structures

The ICT policy also discusses policy, legal and regulatory structures; in particular when connectivity and the use of Internet become more widespread. The government's policy objectives in relation to service delivery through e-government and e-commerce are to ensure that issues relating to cyber-crime, privacy, protecting critical ICT systems, intellectual property law, and consumers' rights are protected. The policy also discusses strategies as to how it will implement its objectives.



Role of government in ICT and development

The government's role in the ICT sector is seen as an enabler, a regulator and a provider of ICT-based services. Through its policy document the government has therefore strategically taken government departments and instrumentalities to task: to engage in a coordinated manner with the aim of furthering the objectives of the ICT policy.

These departments and instrumentalities are

1. Department of Public Enterprises, Information and Development Cooperation (PEIDC). It will establish the
 - ICT Policy Overseeing Committee
 - ICT Licencing Committee and the
 - Information Technology Office (ITO).
2. IPBC—a trustee to the General Business Trust, in particular, to the state's assets and its stand as the sole beneficiary.
3. ICCC—its powers and functions are captured under the ICCC Act 2002 and its ability to issue and revoke mobile carrier licences are provided under the Telecommunication Act 1996. According to the current ICT Policy, these powers will be removed from the ICCC and will rest with the Minister for Information and Communication. ICCC will participate in the ICT Licensing Committee and make recommendations to the Minister for Information and Communication for approval and awarding of ServCo licences.
4. PANGTEL—will participate in the ICT Licensing Committee in recommending the grant of ServCo licences for spectrum use, and so on.
5. Department of National Planning and Monitoring—will be involved in the

design and implementation phases of the new telecommunications network.

6. Association of Information Technology Service Providers (AITSP)—a proposed association that will act as a central advisory consultative and coordinating body for the Information Technology suppliers in Papua New Guinea and will encourage standardisation of terminology used throughout the industry.
7. Censorship Board—its role will be expanded, with greater involvement with the AITSP and working with incumbent network providers.

Key players in the sector

For a sector to prosper it must include key players and a referee to monitor and regulate. In relation to the ICT sector there are a number of key players and a referee. The key players are Telikom PNG Ltd, Post PNG Ltd, NBC, and new mobile phone operators. The role of referee is shared by PANGTEL and the ICCC.

Public

The private sector and citizens of Papua New Guinea play an important role in the development of the ICT sector. They are the users or the consumers of the products and their interests must be protected in accordance with the law. Consumer protection is currently addressed under Part VII of the ICCC Act. The ICCC's role as a watchdog imposes on it a duty to ensure the enforcement of any declaration of state consumer policy and the rights and interests of consumers and to monitor ethical standards by those engaged in the production and distribution of goods and services.

The state must not forget that consumers have the right to safety, a right to choice, a right to consumer education, a right to



information, a right to representation, and a right to redress. ICCC is statutorily mandated to enforce these rights on behalf of consumers.

Telikom PNG Ltd

Telikom PNG Ltd is a state-owned entity incorporated under the Companies Act. Its activities are regulated under the Telecommunications Act 1996, wherein it is to provide telecommunications services for use in Papua New Guinea and overseas. As of 2007, Telikom has been operating vital national telecommunication services for 52 years now. It owns and operates the vital satellite and submarine cables that keep Papua New Guinea in touch with the outside world. It now has 60,000 fixed lines and 260,000 mobile customers through its subsidiary, B-Mobile.

Recently, Telikom PNG Ltd has renewed its spectrum licence for another ten years.

NBC

NBC is established under s3 of the Broadcasting Corporation Act (the Act). Its functions and powers are provided under ss6 and 11 of the Act. NBC is working towards improving its image by going digital. It aims to comply with the International Telecommunication Union's 2015 deadline to change broadcasting transmission from analogue to digital transmission. It has recently developed and released a new corporate plan and is working hard to introduce TV broadcast soon.

PANGTEL

PANGTEL is the technical regulator of the telecommunications and radio communications industry, including television and broadcasting services. PANGTEL is established under s20 of the Telecommunications Act 1996. Its powers and functions are provided under ss32 and 33 of the Act. (Its main responsibilities were outlined earlier.)

ICCC

The ICCC came into being in May 2002 with the specific mandate to foster competition and fair trading and protect consumers by ensuring that there was no uncompetitive conduct and other illegal trade practices. The ICCC was brought in as part of the then government's economic reforms to facilitate the implementation of the privatisation policy and to ensure that if they were privatised, the state-owned monopolies, mainly in the utilities sector, did not abuse their monopolistic market powers.

The specific powers and functions of the ICCC are given under Section 6 of the Independent Consumer and Competition Act 2002. Generally, it has very wide powers relating to price regulation, licensing, industry regulation through regulatory contracts, and ensuring compliance with the competition and consumer protection provisions of its legislation. In terms of licensing, its powers relate to giving the approval either for acquisitions or new entrants into a given market, and to the administration of Part IV of the ICCC Act, which deals with competitive market conduct. The ICCC is required under this part of its Act to consider all aspects of market conduct rules and only when it is satisfied that the proposed activity will not have any negative effect but rather enhance competition, grant the necessary approvals or licences. It is in this context that the ICCC had authority to award carrier licences to the two new entrants in the deregulated mobile phone industry in the recent past.

All the above stated institutions of government play a key role in the ICT sector and it is important that they all work together and discharge their respective roles and responsibilities and make the ICT sector function well and deliver on its promises to the people of Papua New Guinea.



Case study—Digicel

Digicel is a new entrant in the mobile phone industry in Papua New Guinea, following the NEC's decision, in December 2005, that mobile phone competition should be introduced. Part of that decision was for Telikom PNG Ltd to end its mobile phone monopoly on 31 March 2006, in order for competition to begin in 2007.

After the normal processes of government tender were completed, two carriers were selected. Digicel was one of them; the other was GreenCom. In March 2007, a mobile carrier license was issued to Digicel while PANGTEL issued the spectrum licence so that it could participate in the mobile phone industry. Digicel commenced its operations on 17 July 2007 and since then it has extended its services to several parts of Papua New Guinea, that is, Port Moresby, Lae, Madang, Mt. Hagen, Goroka, Kokopo and Rabaul, with a total investment of over K1.2 billion.

Since its network roll-out, Digicel has successfully brought affordable mobile services to other main centres and rural communities of Papua New Guinea. Despite its successful operations, Telikom PNG Ltd and PANGTEL have been challenging the validity of Digicel's spectrum and mobile phone licences in court. Thus far, the courts have ruled in favour of Digicel.

Digicel has provided good value services to its customers. It has a wide range of market products and services such as a prepaid handset pack, 24/7 customer care, post-paid price plans, international text messaging, missed call alerts, and other promotional products such as talk-for-free and happy Fridays. It has also provided employment opportunities to some 300 employees of whom 90 per cent are Papua New Guineans and indirect employment of about 500 through dealer stores, top-up vendors, distributors, and many more. Furthermore,

it has committed itself to community relations program such as Operation Open Heart; Street Vendors; providing technical support to St. John's Ambulance; Food for Schools; Sponsorship of the Pukpuk national rugby 7's team at the recent South Pacific Games in Samoa, and many more (*The National*, 12 September 2007:10). Telikom PNG Ltd, the state monopoly, has never ventured into these areas despite having the government's support in preparing itself for competition.

The Digicel case is a good case study as it places competition law and the misuse of market power by Telikom, a privatised state-owned entity, to the test.

With the entry by Digicel into the mobile phone market, the benefits promised by competition have been instantly realised. A notice published in *The National* on 13 August 2007 by the PNG business community (opposite page) tells the story.

Conclusions

The development of a National ICT Policy for Papua New Guinea should be able to bring Papua New Guinea on par with the rest of the countries within the region if all key players work together towards achieving its goals for ICT infrastructure and services for Papua New Guinea. Public utilities, in particular Telikom PNG Ltd, must appreciate the value of competition and provide service delivery similar to the other service providers in the mobile phone sector. The new Minister for Communication and Information expressed concern about the existence of a private monopoly in the communications industry. That was why the government policy aims to strengthen Telikom PNG's business structure to sustain its operations under a competition regime so that all three service providers will provide their services effectively and efficiently.



Competition for only 3 weeks has resulted in the following outcomes for PNG consumers

THE SCOREBOARD ON EFFECTIVE PLATFORMS TELECOMMUNICATIONS

No Competition 52 Years
(Telikom Only)

- Fixed lines = 65,000
- Mobile connects = 160,000
- Phone penetration = 3.75%

Competition for 3 weeks
(only one new entrant)

- Fixed lines = 65,000
- Mobile connects = 315,000 (est.)
- Phone penetration = 6.3% (est.)

(Figures are market intelligence; phone connects divided by 6m Pop.)

A 69% increase users in 3 weeks—the fastest growing network penetration is estimated in total connects for Papua New Guinea in the Asia Pacific Region!

In real terms this has already meant that more family members have been able to speak to wantoks in remote locations than ever before; businesses have been able to do business better; a level of hope has increased amongst the churches and health groups to provide better services.

Comments made by the IPBC Chairman must also be seen as a wake up call for Telikom. He stated that that Telikom must accept competition and stop running back to the government for protection (*Post Courier*, 19 October, 2007:1).

All key players in the telecommunication industry must first understand that the mobile phone industry is a declared entity in accordance with s33 of the ICCA Act and that a regulatory contract has been issued by the ICCA as provided under s35 of the ICCA Act. These regulatory contracts, which are statutorily created under Part III, and in particular s35(1) of the ICCA Act, are issued to the service providers in the industry. Because of the nature of a regulatory contract, the normal contractual elements that must be present leading up to the formation of a contract which is enforceable at common law does not

apply. Once all stakeholders satisfy the legal requirements under Part III of the Act, and upon publication in the National Gazette, by operation of s37(2) of the ICCA Act the regulatory contract takes effect on the date on which the notice is published or a later date of commencement specified in the regulatory contract. A regulatory contract is enforceable under s38 of the ICCA Act if the Commission forms an opinion that the regulatory contract is being contravened. The penalty for any contravention is a fine not exceeding K10 million, which is provided for under s39 of the ICCA Act.

In relation to the current ICT Policy, the Minister for Information and Communication, Hon. Patrick Tammur, stated during a dialogue with the telecommunications industry operators on 17 October 2007 that the ICT policy is providing room for Telikom PNG's



transformation. He stated that this is expected under Phase 1, which will run for 6–12 months at the longest. After Phase 1, the market will be open for full competition. This will see each operator operating its own network.

In conclusion, my view is that, if the current ICT Policy is basically aimed at strengthening and transforming Telikom PNG Ltd then that is in contravention of the competition laws and the regulatory contracts that were statutorily issued. The participants are bound by the December 2005 Policy that was implemented by the government to introduce mobile phone competition.

Notes

- ¹ It was the general view of the management in the 1980s that if the Government could forego its dividend payments and allow the Corporation to use the money for rural expansion, it would be able to fulfil its objectives as provided for under the PTC Act.
- ² Section 84(1) was amended by Telecommunication Industry Act 2002 (No 26 of 2002), s78. In this instance, the Commission is referred to as the Independent Consumer and Competition Commission (ICCC) established by the Independent Consumer and Competition Commission Act 2002, s3 of the Telecommunications Act 1996.
- ³ Section 85(c) amended by Telecommunications Industry Act 2002 (No 26 of 2002), s49(b).
- ⁴ Section 86 repealed and replaced by Telecommunication Industry Act 2002 (No 26 of 2002), s50.

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