Regulating the telecommunications sector in Papua New Guinea

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The telecommunications sector is, by virtue of Section 19A of the Telecommunications Act 1996, a regulated industry for the purposes of the application of competition law processes and is therefore subject to the regulatory requirements and jurisdiction of the Independent Consumer and Competition Commission (ICCC) through a regulatory contract. The regulatory contract (ICCC n.d.) is binding on Telikom Papua New Guinea Limited and the ICCC pursuant to the provisions of the ICCC Act and the Telecommunications Act. Any government policies must therefore be consistent with the regulatory contract and licences issued. The PNG Radio-Communications and Telecommunications Technical Authority (Pangtel) administers the technical licensing and regulatory arrangements of the sector.

Telikom PNG is the monopolistic corporate vehicle established by the government to provide telecommunications services. Under current arrangements, Telikom PNG is given the task of providing wholesale telecommunications services relating to internet and data services. Apart from Telikom PNG, there are five private-sector service providers involved in various telecommunications services, including the internet and emails, facsimile, telex, data transfer, mobile networks, fixed-line networks, cabling, private automatic branch exchange (PABX) and key systems, paging, modems, network termination units (NTUs), private payphones and telephone directories (ICCC n.d.).

The provision of an internet gateway service is the responsibility of Pacific Mobile Communications Limited (PMC), a subsidiary of Telikom PNG. PMC is also involved in the mobile phone sector, trading as B-Mobile. The mobile phone sector has been partially opened for competition. It is regulated through contracts that have been issued pursuant to competition law requirements. In the mobile phone sector, there are currently two service providers operating (B-Mobile and Digicel) and a third yet to begin operations (GreenCom).

In the internet service sector, administration of the country’s top-level domain space (dot-pg) is in the hands of the University of Technology in Lae. Since the beginning of internet services in Papua New Guinea in April 1997, five commercial internet service providers (ISPs) have been licensed: Daltron Electronics Ltd, Datec (Papua New Guinea) Ltd, DG Computers, Global Technologies Ltd and
Online South Pacific (Data Nets). The range of services provided includes computer networking, data communications, internet, PC distribution, software, mobile phones, broadband, domain names, email accounts, dial-up accounts and pre-paid wireless internet access cards. Since Telikom PNG is the sole distributor and wholesaler of bandwidth, PMC, the operator of the internet gateway, leases bandwidth from Telikom and resells this product to ISPs under the brand name ‘Tiare’.

**Regulation of the telecommunications sector**

As the principal regulator of the telecommunications sector, the ICCC is required to ensure that provisions of telecommunications services under the *Telecommunications Act* are fulfilled, except where there is any provision relating to the technical regulation of the sector, which is the responsibility of Pangtel. Where the ICCC and Pangtel are given concurrent powers, the agencies are required to consult each other before making any decisions. In the event that they are unable to agree, the views of the ICCC will prevail and any decision taken will not be challenged. Pangtel’s core functions, after consultation with the ICCC, are to:

- establish performance standards for any carrier and monitor compliance with those standards
- regulate and control the use of the radio frequency spectrum, without causing interference
- determine codes for technical telecommunications matters
- act as the duly appointed representative of the State on all international bodies or authorities that have the purpose of designating international technical standards

- monitor the use of telecommunications services on any ship or aircraft
- in consultation with the ICCC, develop and monitor a numbering plan for Papua New Guinea.

Pangtel also has the power to enforce certain reserved rights set aside for the use of the following facilities:

- reserved line links and ancillary facilities
- supply of telecommunications services by satellite-based or microwave facilities
- provision of public pay phones
- supply of public mobile telecommunications services
- Telikom’s mobile carrier operations.

There are, however, exceptions allowed under the *Telecommunications Act* for a person other than a carrier to perform certain activities:

- line links used by civil aviation
- line links used by broadcasters
- line links for defence purposes.

Pangtel also ensures that radio communications services in Papua New Guinea comply with the standard set by the world regulatory body, the International Telecommunication Union (ITU). Papua New Guinea is a member of the ITU and is therefore required to ensure that international standards and best practices are observed.

Through the recently revised government policy on the information and communications technology (ICT) sector, which took effect in February 2008, the government aims to achieve open competition in all sectors of the industry through a staged approach beginning in the mobile phone sector.

The revised ICT policy, issued and sanctioned by the ICCC pursuant to s.197 of the *Telecommunications Act*, now sees
Telikom PNG as the
- sole operator of the fixed-line network
- sole general-carrier licence holder
- sole international gateway operator by which all telecommunications networks in Papua New Guinea are connected to international networks
- sole wholesaler of the internet gateway.

Radio-spectrum management

Matters relating to radio communications in Papua New Guinea are regulated by the *Radio Spectrum Act 1996*. The act has extra-territorial applicability in relation to the use of the spectrum. There are, however, certain exemptions. These relate to the frequency bands allocated for the exclusive use of the defence force, apparatus intended for reception of broadcast services other than broadcast satellite service receivers and low-power devices. Except for the use of the spectrum, the Defence Force pays an annual fee, as notified by Pangtel.

In relation to the granting of licences to establish radio-communications stations, Pangtel has exclusive rights over the
- the use of a radio frequency or group of frequencies
- the establishment, erection, maintenance and operation of stations and apparatus for the following purposes:
  - transmitting radio communications to, and receiving radio communications from, any place, vehicle, vessel or aircraft in the country
  - transmitting radio communications to and receiving radio communications.\(^8\)

A licensed telecommunications carrier or a person applying for a licence must be given access to such radio spectrum as is required to allow effective operation of their licensed telecommunications network.\(^9\)

Before issuance or refusal of any licence, however, Pangtel is required to consult the ICCC. A radio-spectrum licence issued to a person must be valid within the period of the person’s telecommunications carrier licence. The terms and conditions of the carrier licence must not be inconsistent with the telecommunications carrier licence. Regarding any revocation or suspension of a licence, Pangtel is required to consult the ICCC before taking any further action.\(^10\) In the event that the ICCC and Pangtel are unable to agree, the views of the ICCC will prevail.\(^11\)

Pangtel is the sole authority for ensuring that all equipment used in Papua New Guinea for the provision of telecommunications and radio-communications services is ‘type-approved equipment’. It issues
- business licences to allow the licensee to provide services within a specified area for purposes specifically stated in the licence
- spectrum licences to allow the licensee to use a particular frequency within a specified period, specifically under conditions set in the licence.

Any breach of a licence can result in the seizure of the equipment or apparatus.\(^12\)

In relation to the search and seizure of any unauthorised apparatus, Section 12 of the *Radio Spectrum Act 1996* empowers a District Court magistrate to grant a search warrant to a person authorised by Pangtel. A search warrant is, however, granted only if the magistrate is satisfied, based on the information on oath, that there are reasonable grounds that an offence has been or is being committed against the act. The granting of such powers relates to a search warrant issued to a person authorised by Pangtel in order to conduct a search and remove any apparatus that is in contravention of the act.
Any person aggrieved by any decision of Pangtel is entitled to have the decision reviewed by an appeals panel authorised under Part IIA of the Radio Spectrum Act.

Recent changes in the telecommunications sector

Telikom PNG is undergoing a transformation program in order to deliver on its promises to the people of Papua New Guinea. These promises are being translated into projects such as constructing the largest tower in Port Moresby, located on Burns Peak. The tower will be used to launch Telikom’s signals from a vantage point 85 metres skyward. This lofty tower has the capacity to serve

- B-Mobile’s base station around the National Capital District (NCD) and Central Province
- an improved police radio-communications system in the NCD and other single and dual-channel radio links
- the proposed television service by the National Broadcasting Commission (NBC) will also benefit from this improved national telecommunications network (Post-Courier April 17 2008:21).

On completion, the tower will cost Telikom K2.5 million. Issues relating to security and capacity will be adequately enhanced so that Telikom’s international gateway, routed through the APNG2 submarine cable and with satellite backup, will be further strengthened (Post-Courier April 17 2008:21).

Update of ICT policy in Papua New Guinea

The 2008 ICT policy document was put into effect in the recent amendments to the Telecommunications Act 1996, passed by the PNG parliament on 16 April 2008. The amendments to the act are intended to (Tammur 2008)

- clarify ambiguities in the legislation
- determine exclusive rights for Telikom PNG, which include international gateway and fixed-line services
- allow mobile carriers to also have the right to use satellite, microwave or any other wireless links in providing a public mobile telecommunications service, provided such links are not used between places in Papua New Guinea and outside Papua New Guinea other than through facilities owned by a general carrier
- allow private network operators the right to use physical lines and satellite, microwave or any other wireless links in operating approved private networks
- create a new licensing regime for private networks
- facilitate early interconnection through the conferral on the minister of the ability to make determinations regarding terms and conditions for interconnection; and confer on the ICCC the ability to make interim determinations
- correct inconsistencies, inaccurate references and typographical errors in the principle act. These provisions are designed to be the least restrictive or disruptive measures possible to put the government in a position to prepare for phase one of the ICT reforms (The National, 2008a. ‘World Telecommunications Day Supplement’, The National, 16 May 2008:36).

The long-awaited mobile telephone interconnection between the incumbent operator, B-Mobile and Digicel the new entrant to the market, finally arrived at midnight on 26 June 2008, much to the delight of mobile phone and landline users. Charges will depend on which
network a customer uses. The phone rates were set (Table 1) after agreement about the access charges set by the ICCC. There is not much difference between the charges set by the two operators. The current rates charged by Telikom PNG are subject to change because it currently has promotional rates commemorating Telikom’s fifty-third anniversary (which was on 1 July 2008).

Since this sector is a regulated industry subject to a regulatory contract, the ICCC, as the watchdog for competition and consumer policies, has responsibility to ensure that monopolistic prices are not charged. Telikom PNG has a substantial degree of power in the telecommunications market and therefore must behave within the rules stipulated under Division 2 of the Independent Consumer and Competition Commission Act.

Under current arrangements, Digicel has a separate international gateway, which has been of enormous benefit to its customers, who have enjoyed affordable and high-quality international services. Since its launch in July 2007, Digicel has invested in excess of K450 million in Papua New Guinea, including a substantial investment in its international gateway. It is expected to invest K1 billion in the next three years. Digicel’s enjoyment of its international gateway has, however, been under a cloud since the 16 April 2008 amendment to the legislation, which restricted international gateway rights to Telikom PNG.

**Conclusion**

No doubt the telecommunications and information sector in Papua New Guinea is an essential tool for accelerating social and economic development. The PNG government has reviewed its ICT policy in order to foster competition in the sector. In order for that to happen, the regulatory structures must be strengthened and,
furthermore, market performance must be monitored so that necessary adjustments can be made and the dominant players do not abuse their market powers.

Under the revised policy of 2008, there are two key national-interest objectives: the staged introduction of competition, which will be carried out under phase one having a transformed and efficient Telikom PNG to compete on an equal basis with incoming private operators, and full open competition under Phase 2.

The principal regulatory agency for the sector is the ICCC; however, when exercising their powers and functions, Pangtel and the ICCC must consult one another on matters relating to the provisions of the Telecommunications Act 1996 and the Radio Spectrum Act 1996. Being the watchdog on matters relating to competition and consumer policies, the ICCC is legally bound to ensure that all participants in the sector compete on an equal footing.

References


Notes

1 That declaration was made pursuant to s.32 of the Independent Consumer and Competition Commission Act 2002 (ICCC Act).
2 See https://idl-bmc.idrc.ca/dspace/bitstream
4 It was established under the Independent Consumer and Competition Commission Act 2002.
5 Pangtel was established in 1 January 1997 under the Telecommunications Act 1996.
6 See Part IIIA, s.19C of the Telecommunications Act 1996.
7 Section 191(2) reads: ‘The Commission shall ensure that any Government Policy notified in accordance with Subsection (1) is carried out.’
8 Section 6 of the Radio Spectrum Act 1996.
9 See s.7(3) of the Radio Spectrum Act 1996.
10 Section 7(6) of the Radio Spectrum Act 1996.
11 Section 7(7) of the Radio Spectrum Act.
12 This is provided under s.12 of the Radio Spectrum Act 1996.