Papua New Guinea Update

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A Review of the Development of Information and Communication Technology Law and Policy in Papua New Guinea

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This paper attempts to Review the development of Information & Communication Technology Policy (ICT Policy) sector in PNG;

By discussing the current legislative arrangements and law under which the sector is regulated and operated; and

Update on the recent development of the ICT Policy in PNG.
Key Players in the ICT Sector

- Public
- Telikom PNG LTd
- National Broadcasting Corporation (NBC)
- Papua New Guinea Telecommunication Authority (PANGTEL)
- Independent Consumer & Competition Commission (ICCC)
Roles of respective key players

- Public: interests of consumers or users of the products must be protected in accordance with Part VII of the ICCC Act. This part relates to consumer protection. Consumers have the rights to: a right to choice; a right to consumer education; a right to information; a right to representation; and a right to redress. ICCC is mandated to enforce these rights on behalf of the consumers.

- Telikom PNG Ltd: it is mandated to provide telecommunications services for use in PNG and overseas.

- NBC: it is mandated to provide balanced, objective and impartial broadcasting services within and, if so directed by the Head of State, acting on advice, outside the country.
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- **PANGTEL**: it is the principal regulatory agency for matters relating to technical regulation of the telecommunications and radio communications industry, including television and broadcasting services.

- **ICCC**: it is specifically mandated to foster competition and fair trading and protect consumers by ensuring that there was no uncompetitive conduct and other illegal trade practices.
Under Part IIIA of the Telecommunications Act 1996, particularly under Section 19C, ICCC is the principal regulatory agency in respect of the provisions under the Telecommunications Act 1996. Both PANGTEL and ICCC are given concurrent powers given them under their respective legislation and they must exercise their powers in consultation with each other. In the event that they are unable to agree, the views of the ICCC shall prevail.

In relation to the issuance of carrier license, ICCC has been given specific powers to issue carrier license e.g. Digicel – the new entrant to the mobile sector, it is under this provision that ICCC issued licenses to Digicel and GreenCom.
Telecommunications industry is declared to be a regulated industry for purposes of ICCC. This is provided under Section 19A of the Telecommunications Act 1996. Hence, it was in that capacity that ICCC made the declaration which is in accordance with Section 33 of the ICCC Act.

All key players in the telecommunications industry, all of which I have identified and discussed in the paper, must understand that mobile phone industry is a declared entity done in accordance with section 33 of the ICCC Act, hence ICCC was mandated to make that declaration.
Case study (Digicel case)

- Digicel is a new entrant to the mobile phone industry in PNG after the NEC decision no. 257/2005 dated 15 November 2005 decided that mobile phone competition should be introduced.

- As you all know it commenced operation on 17 July 2007 which means it has been operating for only 9 months.
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- Since its network roll-out program, Digicel has successfully brought affordable mobile phone services to other main centres and rural communities of PNG. Despite its successful operation, Telikom PNG Ltd and PANGTEL have been challenging the validity of Digicel’s spectrum and mobile phone licences in court. Courts have always ruled in favour of Digicel. Recently, a Supreme Court decision no. SC906 dated 28 March 2008 dismissed an appeal by Telikom confirming the National Court decision which ruled in favour of Digicel that the licence issued to them (Digicel) was properly issued by ICCC in accordance with existing laws and processes. In the recent past, Digicel has commenced proceedings in the National Court to protect its international gateway licence.

- Digicel case is a good case study whereby it is placing competition law and the misuse of market power by Telikom to test.
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- 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 tells the story.
Results of Competition for only 3 weeks

No competition 52 years (Telikom only)
- Fixed lines = 65,000
- Mobile connects = 160,000
- Phone penetration = 3.75%

Competition for 3 weeks (only 1 new entrant)
- Fixed lines = 65,000
- Mobile connects = 315,000 (est.)
- Phone penetration = 6.3% (est.)

(Figures are market intelligence; phone penetration estimated connects divided by 6m Pop.) A 69% increase in total connects for PNG users in 3 weeks – the fastest growing network in the Asia pacific Region!
In developing its ICT Policy, the national government through the National Executive Council made four (4) key policy decisions. These key policy decisions were for the following: 1) the introduction of competition in the telecommunications sector; 2) a comprehensive ICT Policy and Deregulation Blueprint; 3) reform of the telecommunications sector; 4) endorsement of the Revised government policy for ICT sector reform.
Four key policy decisions

- 1. NEC decision no. 257/2005 dated 15 November 2005 provides for the early introduction of competition limited to mobile telecommunications sector.

- 2. NEC decision no. 188/2007 dated 21 June 2007 which is a comprehensive ICT Policy and Deregulation Blueprint identified broader policy benefits of ICT sector reform and aims to implement competition on a reseller basis permitted in all sectors (not just mobile); Telikom to be vertically separated into NetCo (network owner) and ServCo (retail service provider); NetCo would retain an indefinite monopoly on all network assets including infrastructure used by ISPs; to rescind NEC Decision No. 257/2005 particularly the issuance of mobile licenses to be declared void and new reseller licenses to be issued to Digicel and GreenCom. (This policy decision was never implemented based on NEC decision no. 13/2007).
3. NEC decision no. 13/2007 dated 3 October 2007 the Nat’l Gov’t. approved to amend its policy by noting the September 2007 document which outlined the proposed refinements to government policy for the ICT sector reform which involves restructuring the telecommunications sector in PNG in two (2) phases. The first being the transition period and second, open competition; and the transformation of Telikom PNG as the incumbent operator. It further approved to remove the proposed concept of operational/separation model or the NetCo/ServCo model.

4. NEC Decision no. 21/2008 dated 13 February 2008 the Nat’l. Gov’t. endorsed the Revised government policy for ICT sector reform which is dated February 2008. Under this policy the National Government maintains its commitment to competition in the supply of telecommunications services with a long term objective to open competition in all sectors.
Revised government policy for ICT Sector reform – February 2008

- This revised government policy for ICT sector reform is a result of NEC Decision No. 21/2008 dated 13 February 2008.

- Under this current policy dated 13 February 2008, the government maintains its commitment to competition in the supply of telecommunications services with a long term objective of open competition in all sectors.

- Introduction of staged move to open competition. Involving a transition period under Phase 1 and introduction of open competition in Phase 2.
Phase 1 – Transitional period

- Existing structure remains – for Telikom to continue as the general carrier and a mobile carrier with competing network mobile competitors.
- One general carrier – Telikom will continue to operate as the ONLY general carrier and as a mobile carrier under its existing licences. No general carrier licences will be issued to mobile carriers or others during this period.
- Reserved rights – as the only holder of a general carrier licence, Telikom will continue to have the reserved rights over the fixed line network and the international gateway.
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- Digicel – will continue to operate as a mobile carrier using its own network infrastructure and operating in accordance with its licence and the law.

- Transformation of Telikom - this will involve a strict program of transformational change. (The policy does not elaborate further on this).

- Promote efficient development of backbone network - amendments to relevant laws will be made in order for both general and mobile carriers will have the right to supply telecommunications services across the country by satellite-based and microwave facilities – these current exclusive reserved rights to general carriers will be removed.
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- Private networks – issuance of new licensing regime to private networks.
- Interconnection – interconnection to be revised aimed at providing additional clarity and certainty in securing interconnection between carrier networks. (As you are all aware there are now work in progress between the two competitors to complete the interconnection progress).
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- Regulatory powers – broad review of the mandate to each of the telecommunications regulators being PANGTEL and ICCC will be undertaken during Phase 1 aimed at improving regulatory structures and processes; and

- Rural Development Fund – development of a Community Services Obligation regime to be applied in the telecommunications sector in PNG. This will involve providing a strong funding basis to aid in the development of telecommunications networks and the provision of telecommunications services to residents in rural centres.
Phase 2 – Open competition

- Phase 1 will be reviewed after 12 months, following that, Phase 2 which relates to open competition will be introduced.
Conclusion

While Telikom is trying to deliver on its promise to the people of PNG – as the incumbent market leader in the sector, it is imperative that the government must ensure that competition law requirements under the competition law must be complied with.

From the consumers’ perspective, their main concern is for the participants or competitors not to abuse their market power which would consequently make the consumers to pay monopoly prices.

With Telikom’s sole ownership of network infrastructure it is contrary to Part VI of the ICCC Act which relates to competitive market conduct. A Government Policy can not make decisions by going against its own laws. Particular provisions which the Government stands to contravene are ss 50, 51 and 52 of the ICCC Act which collectively regulates against anti-competitive behaviour which includes lessening or substantially lessening competition in a given market. In other words, the implementation of the ICT Policy must be at all times relevant to the competitive laws.
Thank you all for listening.