



INDEPENDENT CONSUMER AND
COMPETITION COMMISSION

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Office of the Commissioner & CEO

Our Ref: 05-5000-2.6.4/EA.CPD

19th April 2013

Secretary
Department of Health
PO Box 807
WAIGANI
National Capital District

By Hand Delivery

Dear Sir,

RE: INVITATION TO COMMENT ON THE DRAFT TOBACCO PRODUCT (HEALTH CONTROL) ACT 2013

We refer to your letter of 15 March 2013 which we received on 21 March 2013 and thank you for the opportunity to comment on the proposed Tobacco Product (Health Control) Act 1987 (the TPA).

We note the proposed closing date for comments in your letter was 28 March 2013; however, we were unable to provide our comments within the proposed closing date as the time frame was not sufficient, given the scope and complexity of the legislation. We now request an extension for our comments to be considered.

There are several aspects of the TPA that the Independent Consumer and Competition Commission (ICCC) would like to bring to your attention:

1. Section 5: The Commercial growing of tobacco is prohibited

Section 5 is anti-competitive because it restricts the growing of tobacco on a commercial basis.

This type of provision should only exist where there is a clear benefit to the community and where that benefit outweighs the anti-competitive detriment.

Further such assessment should be through a transparent and objective assessment process with comprehensive reasons being provided for the decision reached.

2. Section 9: The grounds for issuing or refusing to issue a license

Section 9 is anti-competitive as it fails to set out objective and comprehensive criteria on which any license should be issued or refused.

Furthermore section 9 gives the Tobacco Control Board an absolute discretion to make decisions.

The ICCC is of the view that there should be a right of appeal clause for any aggrieved party so that the Tobacco Control Board may not unreasonably withhold its approval.

Again such assessment process should be transparent and objective with comprehensive reasons being provided for the decision.

3. Sections 11 (Suspension of licenses) and Section 12 (Revocation of licenses)

Similarly with section 9, sections 11 and 12 should also set out objective and comprehensive criteria that are consistent with the objectives of the TPA and should have a right of appeal clause.

4. Section 18: Permitted activities

The requirement to show the retail price of cigarettes in outlets also may have competition law implications.

If suppliers are able to display the retail price of their products in outlets this may be construed as an attempt by the supplier to induce the outlet to charge that price.

If price notices are provided by the supplier of the products, unless the sign indicates that the price is recommended only and that recommendation is genuine, it may fall under the price maintenance or price-fixing provisions of the ICCC Act and may amount to a per se contravention of the ICCC Act.

5. Section 49: Appointment of enforcement officers

The ICCC is active in monitoring the market place and there would be increased compliance of the TPA if the Tobacco Control Board were to appoint ICCC officers under this section.

6. Section 59: Functions of the Tobacco Control Board

There is potential for legislation of this type to be unintentionally used in an anti-competitive manner.

To safeguard against this it is suggested that the ICCC Commissioner, or his nominee, be appointed as an ex officio member.

In general terms the current TPA impinges on conduct that the ICCC Act, in a number of areas, addresses and the ICCC Act is Papua New Guinea's primary competition and consumer protection legislation. As such, the ICCC considers that in the case of a conflict between the ICCC Act and the TPA, the ICCC Act will override the TPA.

Should you wish to discuss these issues further please telephone Mr. Elastus Geroro on 325 2144 or alternatively we could make our officers available for further discussions.

Yours sincerely,



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ELASTUS GERORO

Acting Chief Executive Officer