



Prices Regulations Division

AMENDMENTS TO PART VII OF THE PRICES REGULATION ACT CHAPTER 320 [NO.11 OF 2008]

DISCUSSION PAPER

The Independent Consumer and Competition Commission (“ICCC”) is a statutory body, established under the *Independent Consumer and Competition Act 2002* (“ICCC Act”). The ICCC Act sets out the ICCC’s mandate to regulate the prices of certain goods and services where competition is lacking or is ineffective, together with the Commission’s roles in competition and consumer protection regulation. Other delegated legislations that the ICCC administers helps in realizing the ICCC mandate on regulating prices of certain declared goods and services. One such legislation is the Price Regulations Act 1949 (*Chapter 320*) (“PR Act”), which this policy paper addresses.

The *PR Act* was enacted before the political independence of Papua New Guinea in 1975, immediately after the end of the 2nd World War in 1945. After Papua New Guinea gained Independence in 1975, the *PR Act* was administered by the Papua New Guinea Ministry of Finance and Treasury under a less liberated economic system.

In the early 2000s, Papua New Guinea went through a face of liberal reforms, which saw the enactment of the *ICCC Act* in 2022 and the creation of the ICCC, followed by the amendment to the *PR Act*. This amendment harmonizes the PR Act with the ICCC Act in a new climate of deregulation, free markets, and competition.

The ICCC administers the *PR Act* which regulates the prices of a limited number of goods and services where their markets are less competitive or where effective competition is lacking.

This discussion paper relates to the proposed amendments to Part VII of the PR Act. These amendments would allow for the insertion of a new subsection that will give ICCC the legislative capacity and power to unilaterally impose price controls on certain non-declared goods and services under certain special circumstances based solely on the long-term interests of consumers, or consumer welfare.

This discussion paper indicates what the ICCC seeks to achieve in this amendment by imposing unilateral price controls. We therefore, invite the views of stakeholders on the proposed amendments.

“Our Competition Watchdog, Shaping our Market Economy and Protecting our Consumers”

Legal Policy Development

Part VII of the PR Act - Amending the provisions on introducing unilateral price controls under specific circumstances

1. What is the current law?

The current law that this paper seeks to discuss is the *Prices Regulation Act Chapter 320 [consolidated to No.11 of 2008] or the PR Act*. Section 21 of the PR Act requires the ICCC to satisfy the economic argument from a markets and competition perspective, and that is, to establish that the market of interest demonstrates such a lack of competitive discipline that price controls are warranted.

Section 21 (2A) of the PR Act was inserted during the amendments in 2008, which, in harmony with the ICCC Act, requires the ICCC to have regard to the need to protect consumers from the **misuse of market power** in terms of prices, pricing policies (including policies relating to the level or structure of prices) and the quality of the declared goods or services. It also requires the ICCC to consider the supplier's costs of supplying a declared good or service, the supplier's return on investment, the supplier's cash flow and borrowings, and the desirability of encouraging greater efficiency with supplying the declared goods or services, among others.

Essentially, when making a Price Control Order under Section 21 (1), and fixing the different maximum prices under Section 21 (2), the ICCC must first under Section 21 (2A) establish with reasons that **there is market power**, and that **there is the actual or potential abuse of that market power** in terms of pricing, and service standards, among other considerations.

2. What is wrong with the current law?

Section 21 (2A) provides for the ICCC to consider the economic and social impact and effect of any proposed Price Control Order without addressing the underlying issue giving rise to the need for Price Control. Price Controls are temporary measures applicable for the medium term to balance the benefits of consumers in competitive markets. However, they do not address the underlying issue of rising cost of living which applies across the economy **regardless** of specific factors such as: whether a market is concentrated or not; whether there is market power; or whether there is potential or actual abuse of that market power. The rising cost of living affects consumers irrespective of factors in addition to and outside of market factors such as **certain special circumstances** where competition is not working particularly due to **temporary impediments**.

The challenge for ICCC is that where certain special circumstances are identified as contributing towards the rising cost of living, it cannot intervene and address them as it lacks the legislative mandate. Without having a legislative mandate, the ICCC can identify special circumstances warranting Price Control but cannot **unilaterally control prices**. Because of this legislative limitation, the ICCC cannot unilaterally control the prices of goods under **special circumstances** where the market is not benefitting consumers and businesses. Since the onset of the COVID-19 pandemic and various geopolitical tensions, the global economy has undergone tremendous stress manifested by the ever-increasing cost of living in Papua New Guinea and many other countries.

The Price Control and Monitoring exercises carried out by the ICCC have been ongoing in the last five years under the *National Pandemic Act 2020 (NPA)*. Under the NPA, the Controller is vested with the power to issue measures and can delegate his powers to authorized persons to implement certain measures. ICCC as the authorized person has been implementing the Price Controls under the NPA.

However, ICCC through the PR Act and the ICCC Act can monitor and control prices but outside of the context of an emergency or any other special circumstances. In the implementation of these Price Controls, there can be challenges for the ICCC as the implementing agency about whether the price increases of goods and services are directly related to COVID-19 and any other factors, as PNG like other countries has already moved on with the “new normal” where COVID-19 is concerned.

Taking all this into consideration, the Government is very concerned about the impact of the ever-rising costs of living on consumers and businesses, hence, it has tasked the ICCC to provide options beyond those discussed here, where it can address the rising costs of living.

3. Why does the law need to change?

Price control is when the maximum price or price ceiling (upper limit of the allowable price range starting from zero) is imposed on the price of a certain good or service. It is intended to prevent businesses with significant market power from charging monopoly prices (economic justification) or to prevent any businesses at all (whether competitive or not) from charging excessive and unreasonable prices (consumer welfare justification). The former requires consultations with businesses and involves extensive reviews and inquiries into a particular market of concern to establish the economic reason for price control, while the latter is done unilaterally as and when social security is at stake. Examples of the former include regulating prices charged by a natural monopoly such as a water utility, while an example of the latter is what the ICCC has been doing temporarily through imposing and enforcing unilateral Price Control Measures issued by the Pandemic Controller under the NPA.

Imposing unilateral Price Control will allow the ICCC to address the impact and effect of the rising cost of living on both consumers and businesses by identifying those special circumstances warranting unilateral price control without undermining competition. There is always a competition element to price control where businesses are not expected to only charge at the maximum price (or upper limit of the price range) but importantly to compete below the maximum prices. That means businesses can charge at or below the maximum prices to “compete” in prices.

Therefore, amending Part VII of the PR Act as proposed will enable the ICCC can unilaterally impose price controls, but only under certain special circumstances. Such special circumstances would include the advent of national or regional emergencies, disruption to transport services, regional monopoly pricing and other circumstances that allow suppliers to charge prices well above costs. The amendments would involve the imposition of price controls beyond their traditional application to utility services, such as in the energy, water, transport and communications services, to markets where competition exists to some extent but is insufficient to serve the interests of consumers. Compared to recent price control under the NPA, the new provisions would involve closer consideration of whether existing prices reflected costs of supply and would likely be applied for longer periods of time. The ICCC’s current role in regulating the price of fuel products provides a good model of how the new provisions would operate. The over-riding consideration in the operation of these new provisions would be the long term interests of consumers, or consumer

welfare. Consequently, the focus of the new provisions will be products of most concern to most consumers, such as staple foodstuffs.

There are risks associated with the operation of the new provisions. First, the determined price ceiling for a product may be seen by suppliers as the default price, with little interest in competing at lower prices. This would mean that the setting of maximum prices by the ICCC may constitute a facilitating of price collusion, contrary to the interests of consumers. Second, if the ICCC sets a price ceiling that is below supplier costs, those suppliers are likely to cease selling that particular product, potentially leading to shortage of a product that is very important to consumers. In performing its role under the new provisions, the ICCC will be cognisant of these risks and will endeavour to avoid them.

The new pricing regime is designed to achieve the following objectives:

1. Time efficient – ICCC can independently make the Price Order compared to the current process of approaching the Pandemic Controller for exceptional powers to impose unilateral price controls and requesting Ministerial budget support.
2. Resource efficient – saves resources allocated for conducting a Review or an Inquiry before imposing Price Controls that may indicate a market-based rationale that does not justify the intention to apply price controls based on consumer interests.
3. Empower the ICCC by giving it teeth to address the rising cost of living in key products to be combined with its current role of ensuring that markets are competitive, or as competitive as they can be.
4. To be applied only on basic food items, other necessary consumer goods, and certain services not regulated by the ICCC or any other Government Ministries or Agencies.
5. To be applied only under **special circumstances** (the special circumstances to be described in the next section) as and when necessary as considered by the ICCC.

4. How does the law need to be changed?

The ICCC proposes that Part VII of the *PR Act* be amended as follows:

1. Insertion of Section 56A;
2. This creates two subsections; 56A (1) and 56A (2);
3. Section 56A (1) provides for the ICCC to impose unilateral Price Controls; and
4. Section 56A (1) is subjected to section 56A (2), which sets out the circumstances where the ICCC may exercise unilateral price controls:

The proposed amended Section 56A will read as follows –

56A. Unilateral Price Control.

1. Notwithstanding Section 21(2A) and subject to subsection (2)–
 - a) the Commission may, without consultation required under Section 20A, decide the maximum percentage margins, or the maximum selling prices, to apply to goods and services that are not declared under Sections 10 and 32A of this Act, the ICCC Act, or any other Acts; and



b) The Commission shall publish any Price Control Order made under Section 56A (1)(a) in the National Gazette.

2. The Commission may apply subsection (1):

- a) Where required under the National Pandemic Act, any other Emergency Laws, or the Constitution; or
- b) During natural disasters such as but not limited to; hurricanes, earthquakes, drought, famine, frost, flood, landslide, cyclones, and tsunami; and any form of civil unrest resulting from any natural disasters with the likely effect of affecting the supply and prices of goods and services; or
- c) In periods of inflationary pressures to prevent the exploitation of consumers by body corporates or individuals setting excessive prices of goods and services; or
- d) When there are public interest concerns, to ensure access to essential goods and services or services for vulnerable populations are met at reasonable costs; or
- e) In instances of a market failure where markets fail to allocate resources efficiently, align prices of goods and services with long term consumer interests; or
- f) In instances of international trade considerations on imported goods to protect domestic industries from unfair competition, to stabilize domestic prices affected by global market fluctuation.

