



Fiji lies at the heart of the South Pacific, and is almost directly north of New Zealand and northeast of Sydney, Australia. The four largest islands, Viti Levu, Vanua Levu, Taveuni and Kadavu are surrounded by coral reefs and have mountains located in the central region of each island which cover a large portion of the land mass.

Fiji consists of 18,376 square km of land and includes approximately 330 islands of which about 100 are inhabited. The largest island and the most populated is Viti Levu, followed by Vanua Levu.

83 percent of the land is owned communally by the indigenous Fijians, nine percent by the state and eight percent is freehold land. Only 16 percent of the country's landmass is suitable for intensive agriculture, and these areas are found mainly along coastal plains, river deltas and valleys.

Fiji is a sovereign, democratic state.

Economy

Fiji's economy is mainly based on agriculture and tourism. The sugar and tourism industries provide employment to over 50 percent of the labour force with that figure looking to increase due to the influx of resorts and hotels being built in the west. Both sugar and tourism are based in western Viti Levu. A variety of crops are also produced including coconut, cocoa, ginger and kava. Fiji's tourism industry has grown over the last decade to become an important source of jobs and the major source of foreign exchange since 1990, surpassing sugar as an export industry at that time. Several new hotels and resorts being built in the Nadi and Sigatoka area will have a major impact on the number and frequency of people arriving in Fiji, as well as creating a large number of jobs.

Competition Evolution and Environment

Prior to the introduction of export-led growth policy, the government through licences, quotas and price controls managed the economy, resulting in public utilities and government-owned companies being sheltered from competition.

PROFILE	
Population:	868.4 thousand***
GDP (Current US\$):	3.7 billion***
Per Capita Income: (Current US\$)	3,630 (Atlas method)*** 4,510 (at PPP)**
Surface Area:	18.37 thousand sq. km
Life Expectancy:	69.6 years***
Literacy (%):	99 (of ages 15 and above)***
HDI Rank:	100***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

The export-led growth policy led removal of barriers to trade and promoted competition. From 1970 to 1987, the Government's policy was based on import substitution industrialisation (ISI) and import replacing industries were granted fiscal incentives and were protected from competition through import licensing and high tariffs. The entry of new firms into the protected sectors was restricted and were allowed only if existing firms could not meet domestic demand or if they accepted stringent conditions of exporting a substantial part of their products. The result was the development of commerce and industrial sectors comprising a handful of large firms with dominant positions.

In 1989, the Government launched a reform programme of economic deregulation to redirect the economy towards export orientation through trade liberalisation and reforms in the labour and capital markets. These actions mainly applied to goods produced by the private sector.

Fiji now has a separate legislation to deal with competition and consumer protection issues. The legislation is the Commerce Commission Decree 2010 ("Decree"). Commerce Commission Decree 2010 is a merger of three

❖ Bobby Maharaj is presently the Chief Executive Officer at the Fiji Commerce Commission since July 2010. He holds Masters in Economics, Post Graduate Diploma in Economics and Bachelor of Arts (Accounting and Economics).

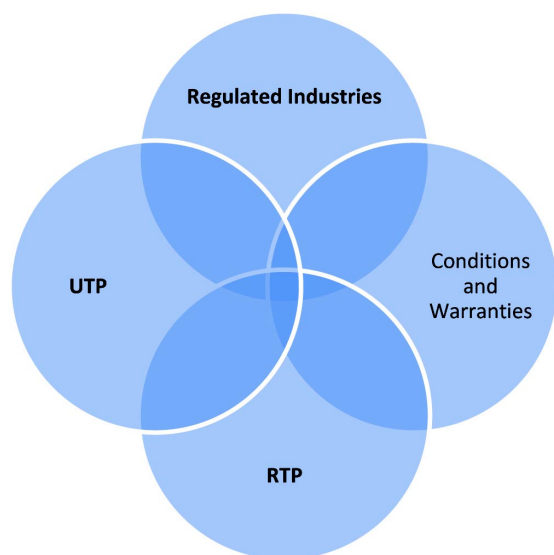
different legislations that Fiji had prior to July, 2010. These legislations were:

- Commerce Act 1998;
- Fair Trading Decree 1992; and
- Counter Inflation Act.

Following a Cabinet decision, the Commission merged with Prices and Incomes Board (“PIB”) and the Department of the Fair Trading and Consumer Affairs (“DFTCA”) from July 01, 2010. The merger has greatly widened the scope and functions of the Commission. The Commission is legally obliged to promote competition in the market, enhance consumer welfare by promoting fair trade and removing the obstacles to competition.

The Commerce Commission Decree 2010 is an extensive Competition and Consumer Protection Legislation for Fiji. The Decree establishes the Commission as a pricing regulator, competition regulator as well as a consumer protection institution.

The broad aspects of the Decree is divided into parts to deal with regulated industries, Unfair Trade Practices (“UTP”), Restrictive Trade Practices (“RTP”) and Conditions and warranties in Consumer Transactions. It is summarized as follows;



Institutions and Competencies

Fiji Commerce Commission (“Commission”) is the Competition Regulator of Fiji. The Commission is an independent statutory body established under Section 7 of the Commerce Commission Decree 2010 to ensure the integrated framework for the regulation of monopoly market structures; encourage competition, prevent restrictive trade practices, ensure consumer protection, and undertake pricing of public utilities and other price controlled items.

The Commission is headed by a Chairman and is assisted by the Commissioners, Chief executive Officer and other staff members. After the merger in 2010, the Commission has increased and strengthened its compliance and enforcement procedures of the Decree to ensure best deals for the consumers and traders and obstacles to competition are eliminated.

The paramount purpose of the Commission is to promote market efficiency by fostering:

- fair and healthy competition amongst businesses;
- an informed market place; and
- efficient and effective enforcement of the legislation.

Fiji Commerce Commission seeks to maintain and encourage the competitive process with a view to promoting economic efficiency and consumer welfare. Its objective is to spur firms and individual players in the market to compete with each other to secure the patronage of customers in terms of, *inter alia*, competitive prices, good quality and greater choice for them. This objective of the Commission ensures a fair and equitable market and provides the stimulus for growth.

There is already substantial evidence of the benefits of competition regime in Fiji *vis-à-vis* economic development, greater efficiency in international trade and consumer welfare. The Commission’s experience and achievements to date, indicates substantial benefits from the strengthening of the application of competition policy principles in terms of “greater production, allocative and dynamic efficiency, welfare and growth.” It has been observed that Commission’s activities has resulted in improvement in the consumer and producer welfare and economic growth and competitiveness in international trade have all flowed out of competition policies, and surveillance over Restrictive Business and Trade Practices.

The Commission notes that competition rewards good performance, encourages entrepreneurial activity, catalyses entry of new firms, promotes greater efficiency on the part of enterprises, reduces cost of production, improves competitiveness of enterprises and sanctions poor performance by producers, the empirical evidence in the report suggests that competition ensures product quality, cheaper prices and passing on of cost savings to consumers.

The major functions of Fiji Commerce Commission as stipulated in the Commerce Commission Decree 2010 are:

- administering the Commerce Commission Decree 2010;
- maintenance of a register of access agreements;
- provision of advice to the Minister about proposed access agreements;
- facilitation of negotiations about access to infrastructure facilities or services under access regimes;

- arbitration of disputes about access to infrastructure facilities or services under access regimes;
- promoting the interests of consumers and persons negotiating or considering the acquisition of goods or services as consumers and to assist, them to a greater awareness in relation to their assessment and use of goods or services;
- collecting, examining and disseminating information in respect of matters affecting or likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services as consumers;
- receiving and considering complaints concerning matters affecting or likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services as consumers and, if the Commission is of the opinion that such action is warranted, to investigate the complaints and take such action in respect thereof as seems proper to the Commission;
- investigating fraudulent or deceptive practices in relation to matters that affect or are likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services as consumers and to take such action in respect of the practices as seems proper to the Commission;
- advising and assisting persons who seek from the Commission information or guidance on matters affecting or likely to affect their interests as consumers or as persons negotiating or considering the acquisition of goods or services as consumers;
- encouraging and undertake the dissemination of information concerning consumer affairs to producers, manufacturers and suppliers of goods or services;
- keeping under review commercial activities carried on and to collect information regarding such activities and the persons whom they are carried on, with a view to becoming aware of, and ascertaining the circumstances relating to;
- fixing and declaring maximum prices and where need be, quantities, for goods and services and rents;
- providing policy advice to the Minister on matters relating to competition and matters of national interest;
- conducting independent competition and pricing study for goods and services offered in limited competitive markets.
- discharging such other functions as the Minister may direct or are conferred on the Commission by or under the Commerce Commission Decree, 2010 or any other written law.

Commission's Structure

The Commission is organised into the following departments:

- Corporate and Human Resource Department
- Price Control and Monitoring
- Business Competition-Fair Trading
- Regulatory Industry
- Legal Department

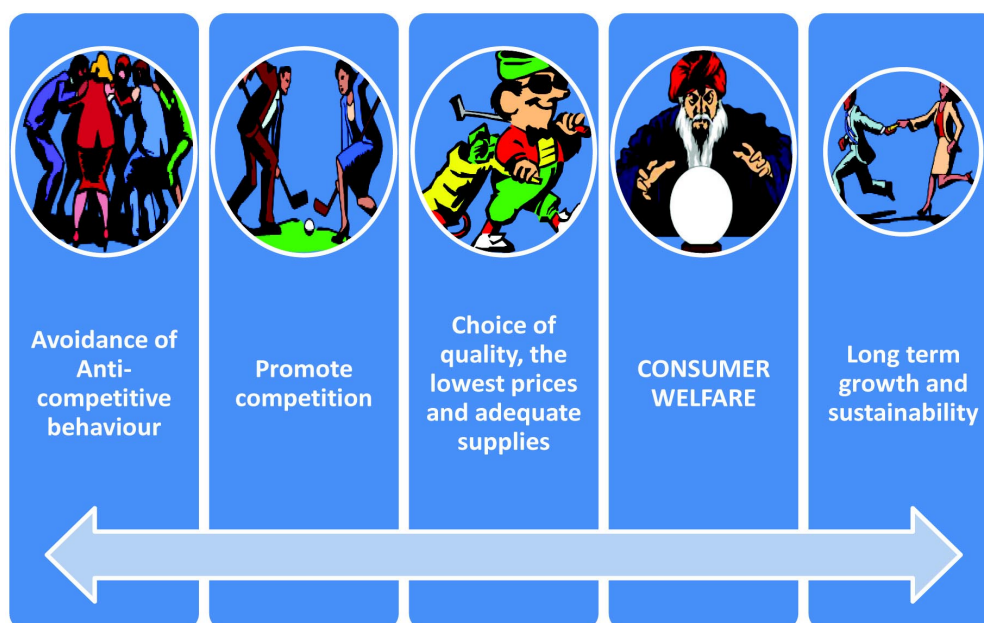
Price Control and Monitoring

The department is divided into 2 streams; the Pricing and Costing stream and the Price and Income Inspection stream.

- The Pricing and Costing Department is involved in determining the prices of the products that is controlled by the Commission. This is based on the Price Control Orders obtained by the Commission.
- The Price and Income Inspection Department is in charge of ensuring that the Business sectors abide by the prices set by the Commission.

Business Competition-Fair Trading

The function of the department is to protect consumers from unfair trading and restrictive trade practices. The department administers consumer complaints and also carries out research in areas affecting consumer interest.



Within the Fair Trading Department, a rents section is functional.

Rent is a component of housing in the National Consumer Basket and is under price control by the Fiji Commerce Commission. Its control was inherited from the Counter-Inflation Act, Cap 73 and is now governed under the Commerce Commission Decree 2010 (“Decree”).

The Commission retained rent control during the merger as dictated by the Decree and it augurs well with one of its mandated functions of protecting consumers. The control was made more relevant in light of the on-going demand for housing prevalent in urban and peri-urban areas of Fiji, caused largely by the rise in rural to urban drift and the scarcity of available land for housing purpose. The scenario has placed tenants (consumers) in a more disadvantaged bargaining position and the threat of exploitation warrants the current control to continue if considered in the light of the Commission’s function and the government’s social responsibility.

Under the Decree, rent is governed under Section 42 on Records, Section 45 on powers to restrict increases by order through the approval of the Minister, Section 46 on Exclusions and Section 47 on Notifications of increase. Other rental issues such as bond money, evictions and general tenancy matters are considered under the ambit of Section 15 (1) (h),(i) and (j) of the functions provisions. There are also certain sections of Part 7 of the Decree that could also be utilised to protect tenant rights.

Regulatory Industry

The department is responsible for undertaking independent analysis and research on regulated industries such as those engaged in the supply of electricity, water, sewage, post, broadcasting, telecommunications, ports, civil aviation or any other industry that is declared under Section 5 of the Commerce Commission Decree 2010 to be a regulated industry.

Legal Department

The department’s role is to provide legal advice to the Commission in relation to the provisions under the Commerce Commission Decree 2010 and any other applicable laws. The Legal Department consists of the Legal Officers and the Prosecutors and is also responsible for the prosecution of traders for breaches of the Commerce Commission Decree 2010.

The Commission has powers under the Decree to impose spot fines for breaches of certain sections of the Decree. For breaches of other sections, the Commission has powers to prosecute the traders and take the matter to court for the court’s decision.

The Legal Department monitors the activities of players in the market, undertakes litigation work for the

Commission and provides opinions on issues before the Commission and all other related activities. In addition, this department also ensures the effective and efficient implementation of the Decree and assists the Commission in the mediation of disputes between parties in their cases with the Commission.

Sectoral Regulation

Telecommunications Sector

Information and Communication Technologies (ICTs) have over the past two decades paved the way for economic and social development across the world. Its importance to growth in all sectors of the Fijian economy was recognised by the government and prompted the termination of the monopoly licence held by the mobile operator at that time in favour of liberalization of the telecommunications sector in 2008. The Commission notes that the Government is committed to using ICT as a key enabler to develop all sectors including health, education, tourism, security and agriculture.

The government adopted a phased approach to the liberalisation process to minimise dislocation and to ensure that the necessary legal and regulatory framework was in place to support investment and competition in existing, new and emerging services, and infrastructure.

Prior to October 01, 2008, Fiji had one mobile operator and one fixed line operator. The entry of the mobile services provider gave a new dimension to Fiji communication and information technology sector and thus the economy. However, being natural monopolies in their respective wholesale and retail markets, wholesale and retail communication tariff rates were exorbitantly high and thus had a significant impact on the cost of doing business

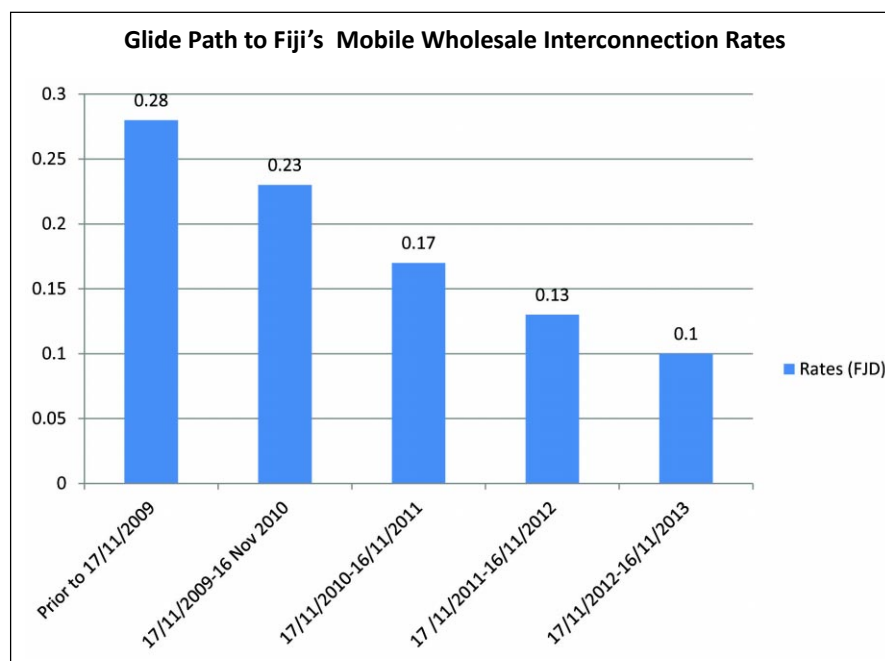
On October 01, 2008, the mobile telecommunications sector was deregulated and this saw the entry of a second mobile operator in Fiji’s market. The entry into Fiji’s market of a second mobile service provider added a new dimension to the mobile telecommunications market. While consumers did benefit significantly from falling retail rates, the existing rates are still much higher than what is generally observed in comparator economies.

Having completed the market analysis and the Substantial Market Power (SMP) study, the Commission concluded that the telecommunications market in Fiji was operating under conditions where competition was absent at the wholesale rates. The Commission then obtained the Commerce (Control of Prices of Interconnection Services Rates) Order 2009 which empowers the Commission to determine and set the wholesale service provided or offered by any person in relation to interconnection.

The Commission adopted a glide path approach to reaching the cost based interconnection rate in 2009. The mobile

termination rate existing in the market at that time (November 2009) was 28 cents per minute which with immediate effect was reduced to 23 cents. By the end of 3 years, it should fall to 10 cents as per the Commission's determination.

The graph given below shows the glide path to Fiji's mobile wholesale interconnection rates as per the Commission's determination over the three year period commencing from November 17, 2009 to November 17, 2012 (or 16 November 2013 where the Price Control Order 2009 has been extended). During this period, the mobile wholesale interconnection rates will decrease by 64.23 percent.



The current maximum fixed termination rate was 9.9 cents (November, 2009) which with immediate effect was reduced to 7.9 cents. At the end of three years, it should fall to 4.5 cents.

The graph given below shows the glide path to Fiji's fixed line wholesale interconnection rates as per the Commission's determination over the three year period commencing from November 17, 2009 to November 17, 2012 (or November 16, 2013 where the Price Control Order 2009 has been extended). During this period, the mobile wholesale interconnection rates will decrease by 54.54 percent.

The determination also noted that any regulation which will promote competition in the

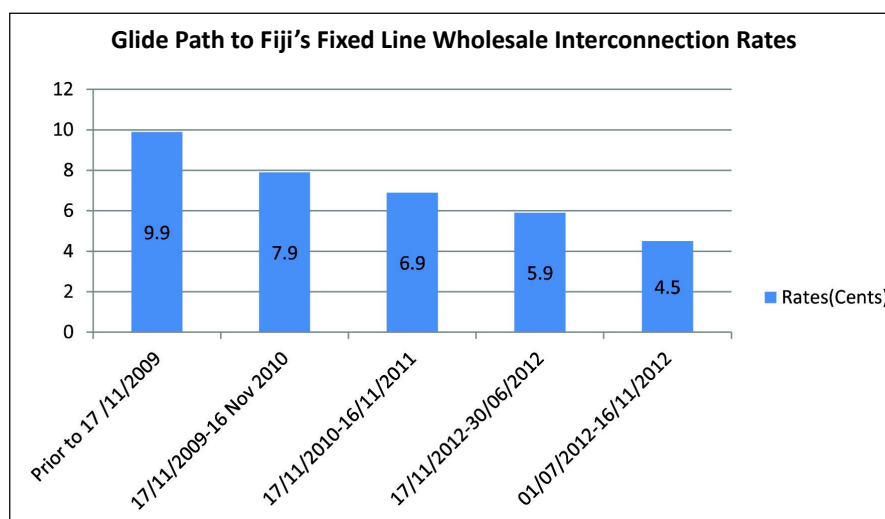
downstream retail market, end-users are likely to benefit from reduced prices and greater efficiencies in the supply of retail services. The Commission's intention is also to foster accessible and affordable data services across Fiji and net connectivity in various modes as it is an important factor in this process.

In addition to the determination on the interconnection wholesale rates, the Commission on March 04, 2010, undertook a study to examine if FINTEL had Substantial Market Power in relation to control of the Landing Station where Southern Cross Cable lands. The study concluded on April 14, 2010 and it found that FINTEL had SMP in relation to its control of the Landing Station which was a bottleneck for Fiji's ICT sector.

On June 04, 2010, the Commission issued its determination for Price and Access to Southern Cross Capacity & Network, under the powers conferred to under the Commerce Act 1998 and Commerce (Control of Prices of Interconnection Services Rates) Order 2009. The Commission believed that the new determination would be a catalyst for attraction of new types of businesses to Fiji's shores and the benefit would be passed to the end users via Internet service providers.

Electricity

Energy is the vital basis of the development of human society, which is associated with several aspects of the social production and daily life. It is the basic building block of economic development. With increasing world population and the rising living standards, the demand for energy in the world is steadily increasing. As energy is the important resource and motive power, it's



cheap and stable supply is the safeguard of the economy and social development. Developing countries are facing the double pressures of economic growth and environmental protection as they have entered the 21st century.

Among energy products, electricity is the high-quality secondary energy and the important material base of industrial production and people's life. Electricity is the most flexible form of energy that constitutes one of the vital infra-structural inputs in socio-economic development. Electricity is demanded for household, education, entertainment and commercial and industrial activity.

Electricity in Fiji is provided by the state owned entity, Fiji Electricity Authority (FEA). FEA is a natural monopoly in the generation, transmission, transformation, distribution and sale of energy either in bulk or to individual customers in any part of Fiji.

Having recognized the monopoly structure of the electricity industry in Fiji it has been declared as a regulated industry and the Commission is empowered to set its tariff rates. The Commission has approved a forward looking tariff plan up to 2015.

Other Regulated Industries

The Commission also fixes and declares fees and charges for the following regulated industries in Fiji:

- Ports,
- Civil aviation
- Marinas

Competition and Consumer Welfare

The Commission engages itself in extensive research and investigations in the areas in which it perceives as having limited or is likely to have lessened competition and affects the consumer welfare.

It is a research based institution and makes recommendations on best policies and practices to curtail the anti-competitive conduct after extensive independent research and investigations.

Since the merger in 2010, the Commission has carried out a number of investigations and makes recommendations to curb the anti-competitive conduct and promote consumer welfare. Some of these are summarised below:

Hardware Sector

The Commission carried out an independent study of the pricing and competitive behaviour of the hardware operators in Fiji in 2010. The major findings by the Commission was the existence of very high levels of mark-ups on various hardware items including fasteners, paint, tools, electrical products, plumbing and timber. The investigation also highlighted suggestive indications of

price fixing and collusion in the hardware supplies market. The Commission then recommended to the Minister for a Price Control Order for hardware items to regulate its prices.

Having obtained the Commerce (Control of Prices for Hardware Items (No:2) Order 2010 which came into force from 5 November, 2010, the Commission initiated the process of fixing and declaring the Maximum Wholesale Prices (MWP) and Maximum Retail Prices (MRP) for essential hardware items. After months of consultation with the stakeholders, the Commission fixed and declared the maximum prices for the hardware items. The determination by the Commission resulted in substantial decreases in the prices of the major categories of hardware items

The Commission recognizes that the decision to regulate hardware prices will improve the consumer and producer welfare by:

- Ensuring reasonable mark-ups are imposed to consumers.
- Making housing materials affordable to consumers to enhance home ownership and also allow existing owners to make improvements to their property.
- Contributing towards the growth of the construction sector by making hardware prices reasonable.
- Over a long period, by ensuring that hardware prices are reasonable the growing squatter problem in Fiji can be minimized. At least the quality of houses in these areas can improve.

Groceries Sector

The Commission "following the merger with the Prices and Incomes Board carried out primary research into the pricing practices of the grocery importers, wholesalers and retailers. It was noted in the review that prices were quite high. This compelled the Commission to recommend a review of the processes involved in the pricing method and seek to obtain a Price Control Order on the same. The Commission in its submission to the Minister noted the following major problems:

Under the old Order, the retailers who were importing goods were being allowed to add up the import, wholesale and retail markup before arriving at the final price. In the new order, a retailer importing a product will not be allowed to add up all three mark-up but rather only add up the retail mark-up and this means lower prices for the consumers.

The Commission has strived to balance the act between the level of control and the business sustainability. The current pricing methodologies used by the Commission ensures that businesses continue to remain profitable, while at the same time consumers have access to basic food items. The Commission has eliminated the non-essential food items from the Price Control. This are all in an endeavor by the Commission to ensure long term sustainability and growth of the economy.

Pharmaceutical Items

The Commission recognises that improving health is critical to human welfare and essential to sustained economic and social development. Today, many of people in Fiji cannot use health services because they have to pay for them at the time they receive them. And many of those who do use services, suffer financial hardship, or are even impoverished, because they have to pay high prices to obtain it. Having realised this, the Commission after the merger with PIB embarked on a new pricing mechanism for essential medicinal items. Price control on pharmaceutical items in Fiji goes back to 1992. What the Commission has done after the merger is to ensure that affordability of essential pharmaceutical items to consumers, while at the same time fostering the growth and development of the pharmaceutical sector in Fiji by removing a number of items from price control. The Commission has finalised a list of 74 essential, medicinal items that is subject to price control, and this has meant accessibility and affordability of essential medicinal items for Fiji.

The Commission recognises the following benefits of the decision to regulate prices of 74 essential medicinal items:

- Ensuring affordability of essential medicinal items so that people can have access to it to improve their health.
- Recognising the fact that improving health is critical to human welfare and essential to sustained economic and social development.
- Ensuring Fiji achieves high standard health coverage as part of its Millennium Development Goal.
- Ensuring that consumers are not asked to pay an unfairly high price at the point of delivery which discourages them from using services (particularly health promotion and prevention), and encourages them to postpone health checks. This means that they do not receive treatment at an early stage, when the prospects for cure are better.
- Better health means better productivity, higher output and greater growth in the economy.

The Fair Trading Department (“FTD”) of the Commission is tasked with handling issues such as Rents, Fair Trading Practices (“FTP”), Restrictive Trade Practices (“RTP”), and other issues necessary to safeguard the interests and protect the consumers.

The effort of the Commission in resolving 140 cases in 2010 and 304 cases in 2012 in-house has meant the consumers in Fiji have saved thousands of dollars in seeking alternative redress, time spent and also the ease of getting the issues resolved. This contributes magnificently towards helping the consumers and businesses in Fiji and has an overall impact of improving the welfare of Fiji citizens.

Concluding Remarks

Enforcement of competition law is a must for creating a level playing field for all businesses and ensuring economic growth by removing entry barriers and curbing anti-competitive practices in the economy. The Commerce Commission Decree 2010 is the art law that protects consumers from exploitative pricing collusion or other forms of cartelisation, which are designed to prevent competition. The Decree does not prevent business firms from having or gaining a large market share for their products or services. However, the abuse of dominant position is anti-competitive and is strictly prohibited by the Decree. The Commissions role is not to scare businesses but to discipline them.

The Commission continues to strive towards fulfilling its objective of a free and fair market. It will lead to enhancement of economic freedom and lower barriers to entry for new firms and competitors. In the long run, firms which believe in good corporate governance are likely to succeed in the market and also to foster a healthy competition in the market for the betterment of Fiji.