

MEMORANDUM OF UNDERSTANDING

BETWEEN **THE REGULATOR**
AND **THE SAMOA COMPETITION AND CONSUMER
COMMISSION**

Background

The Regulator and the Samoa Competition and Consumer Commission (“SCCC”) each performs functions and exercises powers in accordance with the legislation which it administers. Each has functions and powers in relation to consumer protection and the promotion of competition. It is desirable that these functions and powers be exercised in a consistent manner and that the Commission and the Regulator coordinate their activities to avoid omissions, duplications of effort or conflicts. This Memorandum of Understanding (“MOU”) sets out the mutual understandings of the Regulator and the SCCC, on a non-binding basis, in relation to the matters falling within their respective competencies.

1. **Parties to the MOU**

1.1 Each of the Regulator and the SCCC is a **Party** to this MOU and together they are the **Parties**.

Regulator

1.2 The Regulator is the person or persons appointed for the time being as Regulator under any (or all) of the *Broadcasting Act 2010*, the *Electricity Act 2010*, the *Postal Services Act 2010* or the *Telecommunications Act 2005*.



Samoa Competition and Consumer Commission

1.3 The SCCC is established by the *Competition and Consumer Act 2016* with responsibility for promoting consumer protection and competition in Samoan markets. The roles of the SCCC include conducting research and issuing guidelines in matters of competition and consumer protection; facilitating and enforcing compliance with the laws it enforces; taking appropriate actions in response to contraventions of those laws; determining certain competition and access issues; and educating the community in relation to such matters.

2. Objectives

2.1 This MOU is made in accordance with sections 22 and 23 of the *Competition and Consumer Act 2016* (“CCAct”).

2.2 This MOU sets out arrangements to promote effective communication, cooperation and coordination between the Regulator and the SCCC in performing their functions and exercising their powers in Samoa under their respective legislation. These arrangements aim to enhance the resolution of competition and consumer issues in Samoan markets and the performance of the Parties’ statutory functions.

2.3 This MOU is a public document and communicates, in a transparent way to all stakeholders, the administrative arrangements that operate between the OOTR and the SCCC. The Parties will publish this MOU on their respective websites.

3. Notification and Consultation

3.1 The Parties recognize the importance of mutual consultation and coordination, particularly where their responsibilities overlap, but also recognize that their decisions must be made independently.

3.2 Where a Party receives a complaint which that Party considers is within the sole jurisdiction of the other Party, the first Party will:



- (a) inform the complainant that the matter should be taken up with the other Party;
- (b) assist the complainant to contact the other Party; and
- (c) notify the other Party that it has referred the complainant to it.

3.3 Where a Party becomes aware of a matter that it considers is within the shared jurisdiction of the other Party:

- (a) the first Party will promptly notify the other Party of that matter;
- (b) the Parties will confer and agree which Party shall have responsibility in relation to that matter; and
- (c) if the Parties agree to the matter being transferred from the first Party to the other Party, the first Party shall provide to the other Party all such information and evidence as the first Party is lawfully permitted to provide.

3.4 Where the Regulator becomes aware of an acquisition or proposed acquisition of shares in a body corporate or assets of any person that would or might infringe s 34 of the CCAAct:

- (a) the Regulator will promptly notify the SCCC of the relevant circumstances; and
- (b) the Parties will confer and agree which Party shall have responsibility in relation to that matter.

3.5 Where the SCCC becomes aware of a transaction that would or might involve a transfer of control in terms of s 37 of the *Broadcasting Act 2010* or s 1 of the *Telecommunications Act 2005* or a sale, transfer or lease of assets for the purposes of *Electricity Act 2010* s 18:

- (a) the SCCC shall promptly notify the Regulator of the relevant circumstances; and

- (b) the Regulator and the SCCC shall confer and agree which Party shall have responsibility in relation to that matter.

4. Coordination of Activities and Harmonization of Approaches

4.1 The Parties will, to the extent reasonably practicable and lawful, endeavour to ensure that they adopt consistent approaches to activities which they both undertake, including (without limitation):

- (a) market definition;
- (b) assessment of market power, dominance, and lessening of competition;
- (c) obtaining and handling third parties' information, including requests for treatment of information as confidential;
- (d) handling of complaints;
- (e) matter management and communication with the parties to a proceeding;
and
- (f) cooperation with overseas agencies and international bodies.

4.2 A Party will consult with the other Party prior to publishing any draft or final guidance information (e.g. "guidelines") and shall give due consideration to any comments received, with the aim of ensuring both Parties are providing consistent information and taking consistent approaches.

4.3 The Parties will, to the extent reasonably practicable, communicate and cooperate with each other when:

- (a) preparing responses to matters of media interest;
- (b) making arrangements for stakeholder consultations;
- (c) planning and undertaking internal capacity building activities;
- (d) planning and undertaking competition awareness-raising and consumer education activities; and



- (e) planning and undertaking investigations into matters of mutual interest to the Parties; and
- f) making recommendations for amendments to legislation or submissions to official inquiries, where the amendments or submissions relate to subject matter within their respective competencies.

5. Liaison between Parties

5.1 Each of the Parties will appoint a Liaison Officer, who will serve as a point of contact between the Parties in relation to the subject matter of this MOU.

5.2 The Parties' respective Liaison Officers will meet at least four times annually, or more frequently by agreement, to discuss matters of common interest, and shall:

- a) provide each other with updates and reports on consumer complaints that may demonstrate systematic issues or emerging trends;
- b) inform each other about any existing or proposed activities that may be of interest to the other parties;
- c) review the referral of complaints or inquiries between the parties;
- d) identify opportunities for joint activities or sharing of information; and
- e) report on any other developments that may impact on the other party.

5.3 Liaison Officers' written reports will be exchanged in advance of scheduled meetings.

6. Information Management

6.1. The Parties recognize the value of sharing information. The Parties also recognize that they each have obligations in relation to the protection of confidential information and will take reasonable steps to protect any confidential information from unauthorized use or disclosure.

Three handwritten signatures in blue ink are located at the bottom right of the page. The first signature is a large, stylized 'A' or 'R' with a long horizontal stroke. The second signature is a smaller, more compact 'A' or 'R' with a horizontal stroke. The third signature is a small, circular mark with a vertical line through it.

6.2. The Parties will share and exchange relevant information to the extent permitted by law and subject to paragraph 6.3.

6.3 Where a Party has received information in circumstances obliging it to preserve the confidentiality of that information, that Party will not provide the information to the other Party except:

- (a) with the written consent of the person asserting confidentiality in the information; or
- (b) pursuant to an order of a court or judicial officer or under lawful compulsion.

7. Management of this MOU

7.1 In the event of any disagreement between the parties as to the implementation of this MOU or the performance of their respective functions, powers and duties, the Parties will seek to resolve the matter in accordance with the objectives of this MOU. If the Parties are unable to resolve the matter, either Party may refer the matter to the Attorney General for his or her advice.

7.2 This MOU will continue in force until such time as another MOU is agreed and executed between the Parties. The Parties may initiate a review of this MOU at any time, by agreement between them.

7.3 This MOU is not intended to be legally binding between the Parties or legally enforceable by any third party.

7.4. This MOU is governed by the laws of the Independent State of Samoa.

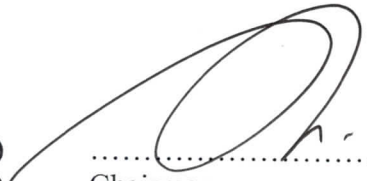



IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed in accordance with their respective names as of the day and year first below written.

Dated this 26 day of Sept 2018

NONU LEMAUGA SALEIMOVA VAAI acting for
and on behalf of the **SAMOA COMPETITION &
CONSUMER COMMISSION**

In the presence of:

) 
)
) Chairman



.....
Leulucialii Ioane Okesene
.....
(Witness Name & Signature)

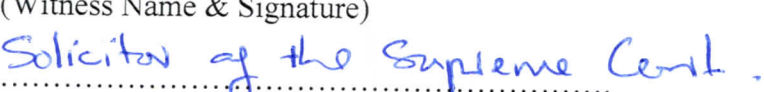

.....
Solicitor of the Supreme Court
.....
(Witness Designation)

LEFAOALII UNUTOA AUUEUA-FONOTI as the
THE REGULATOR

) 
)
) Regulator

In the presence of:


.....
Leulucialii Ioane Okesene
.....
(Witness Name & Signature)


.....
Solicitor of the Supreme Court
.....
(Witness Designation)