

PITA'S COMMERCIAL GOVERNANCE: SUGGESTED METHODS OF NEGOTIATING WITH SATELLITE PROVIDERS

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This paper addresses in broad terms, what appears to be the most efficient and sustainable way for the Pacific Islands Telecommunications Association (PITA) to assist its members while negotiating the best commercial deals with the satellite companies operating in the Pacific region. It represents one example of good commercial governance practice in the information and communication technology world.

Cet article présente, dans ses grandes lignes, un exemple de bonne gouvernance commerciale dont les modalités de mise en oeuvre peuvent échoir à la Pacific Islands Telecommunications Association (PITA). Ces fonctions de représentation et d'assistance de la PITA sont une alternative au modèle classique de négociations bilatérales généralement nouées entre les petits Etats et territoires du Pacifique Sud et les fournisseurs de capacités satellitaires.

I INTRODUCTION

The Pacific Islands Telecommunications Association, now commonly known as PITA, was formed on 18 January 1997 at the Pacific Telecommunications Council (PTC) conference in Honolulu Hawaii, after the closure of the Technical division of the Forum Secretariat¹.

The Pacific Islands Telecommunications Association (PITA) is a non-profit organisation formed to represent the interests of small island nations in the Pacific region in the field of telecommunications.

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¹ Website: <http://www.pita.org.fj/>.

The aim of the association is to improve, promote, enhance, facilitate and provide telecommunications services within Member and Associate Member countries.

In addition to supporting the continuity of the Regional Initiatives programme to address policy and regulatory developments, rural communications, next generation networks, small island and developing states special needs and the harmonisation of standardisations, the Pacific island government representatives also moved that provision for the special needs of small islands and developing states and the least developed countries remain a regional development focus.

PITA has a Memorandum of Understanding (MOU) with the main international organisations and has developed privileged links for the development of communications and ICT in the Pacific with the Pacific Islands Forum.

PITA² Members are telecommunication entities in Melanesia, Micronesia, Polynesia, Australia and New Zealand. Associate Members are suppliers of telecommunication equipment and services. Partner agencies are regional and international organisations with vested interests in telecommunications and its development. Telecommunications regulatory bodies are also members.

PITA's latest projects to help with its member countries and the industry efforts to identify and reduce gaps in key areas, and in customising policies and developing appropriate solutions for the Pacific islands have been endorsed by the ITU Asia Pacific region held from 5-7 May 2009, followed by APT on 8 May, in Kuala Lumpur, Malaysia.

Rather than using models based on other regions, PITA proposed that a benchmarking model be created for the Pacific islands on key factors along similar lines to those of other developed regions to assist with the region's planning and developments in policies, infrastructure and services.

PITA is also advocating the need for assistance for a regional platform or programme for continuity and critical information and infrastructure protection³.

A recurrent commercial governance⁴ concern among PITA members has been to find a way to present a common front while negotiating with satellite providers in order to obtain the best commercial and technical offers.

2 PITA's current board is: President, M Maui Sanford (International Relations Manager – OPT French Polynesia); Vice President, M Ivan Fong(Manager Corporate Planning – Telecom Fiji Ltd), Executive Member, Ms Blanche Salii (Manager Regulatory – Palau National Communication Corporation); Manager, Mr Fred Christopher.

3 Tonga was nominated as one of the Co-Vice Chairs to ensure that the Pacific is also represented in the chairing executive as the Asia peers.

4 On governance, see the forthcoming RJP hors serie issue, *Governance in the Pacific: Selected issues*, Co-Editors: Marc Debene (Gouvernance et Développement Insulaire Research laboratory (EA4240) of the University of French Polynesia) and Frederic Bessat (East-West Center, Hawaii).

II NEGOTIATING WITH SATELLITE PROVIDERS

The Pacific Islands while having to rely heavily (most totally) on satellites for their national and international communications are still facing disadvantages due to their location and their often limited technical skills, financial resources and (due to their small requirements), the cost of satellite capacity. PITA has therefore resolved to explore and develop any solution that could help its members to overcome some of these issues including the possible consolidation of the current satellite capacity and the purchasing of additional satellite capacity by investment rather than leasing (OPEX).

Between 13 and 15 February 2006 during a meeting held in Papeete (Tahiti), PITA along with all satellite capacity providers who provide satellite capacity over part or all of the Pacific, started to investigate some of the potential solutions available and which subsequent mechanisms could be implemented.

III SUGGESTED MECHANISMS

Following a systematic gathering of information, PITA has identified what are the specific needs of its members as far as ICT is concerned. On that basis a three phase plan could be suggested while negotiating the best commercial deals with the satellite companies operating in the Pacific region

A First phase

- (i) Information and data on PITA's members needs for satellite services will be collected.
- (ii) The collective satellite capacity needed on a five year plan will be assessed.
- (iii) Consolidated space segments for satellites and commercial constraints associated with long term satellite contracts and cheaper costs will be investigated
- (iv) Information and suggestions from satellite companies will be obtained and the possibility for satellite operators to convert existing long term commitments will be explored.

B Second phase

Two major issues will have to be considered:

- Help PITA's members to elaborate the appropriate solutions for reducing costs and to deploy ICT across to rural areas and outer islands and to introduce (or extend) the use of broadband in the Pacific;
- Consider whether or not the satellite capacities should be bought rather than leased.

C Third phase

During this final phase, PITA will assist its members in the negotiation process with the satellite companies, including by suggesting model of contracts.

D Comments

While the tasks listed in the first and second phase do fit within PITA's by-laws and can be easily carried on by its current executive body, those mentioned in the third phase would need more consideration in order to avoid any situation which could contravene to 'non-profit' principle which underlies all PITA's activities.

Therefore, the setting up of a separate entity emanating from PITA whose goals would have been (among other tasks) to participate directly or indirectly on behalf of its members in the negotiating process with the satellite companies, has to be proscribed.

Article 3 states, 'The objects for which the Association is established included improving, promoting, enhancing, facilitating and co-ordinating the development of communications in the Pacific island countries'.

Article 4 which asserts the no-profit principle underlying the association, adds the income and property of the Association shall be applied solely towards the promotion of the objects of the Association and no portion thereof shall be paid or transferred directly or indirectly by the way of dividend, bonus or otherwise howsoever'.

Following these provisions PITA has operated on the basis that, as a non-profit entity, it would not involve itself directly in any commercial activities.

Therefore a setting up of a separate entity emanating from PITA would be in breach of this principle if it involved actually entering into a form of commercial transactions with the satellite companies.

IV SUSTAINABLE POSSIBILITIES

There are basically only three viable possibilities⁵ available to PITA in order to achieve this three phase plan. Two of them would require PITA's direct involvement, the third would implicate PITA only indirectly.

A The Setting up of a Special Committee by PITA's Executive Body

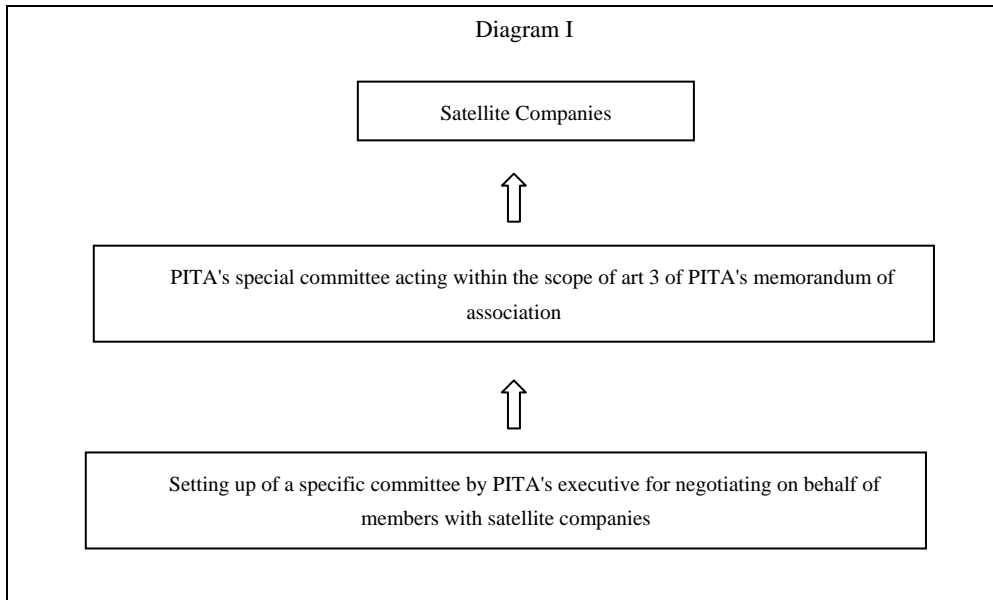
Pursuant to article 32 of PITA's memorandum and articles of association, the executive body could establish a special committee. The special committee's mission would have to be consistent with article 3 of the memorandum and articles of association.

The scope of article 3 would formally justify PITA's practical assistance provided to its members through the special committee during the negotiation process with the satellite companies.

⁵ These three possibilities represent the main basis of PITA's involvement. Nothing would prevent PITA's special committee assisting its members or even the appointed agent.

This could include suggestions made by the special committee to adopt any specific model of contracts whose terms have been previously agreed by PITA's members.

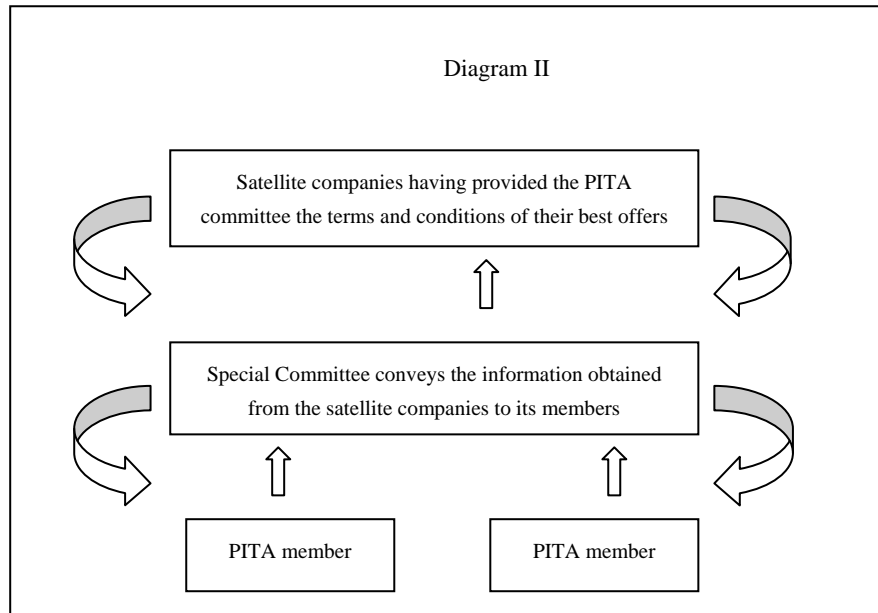
Assuming that all islands members would be able to bring to the PITA AGM their existing needs and their best estimate of needs for a five year period, one may think that phase one could be completed at the PITA AGM and the special committee elected there too.



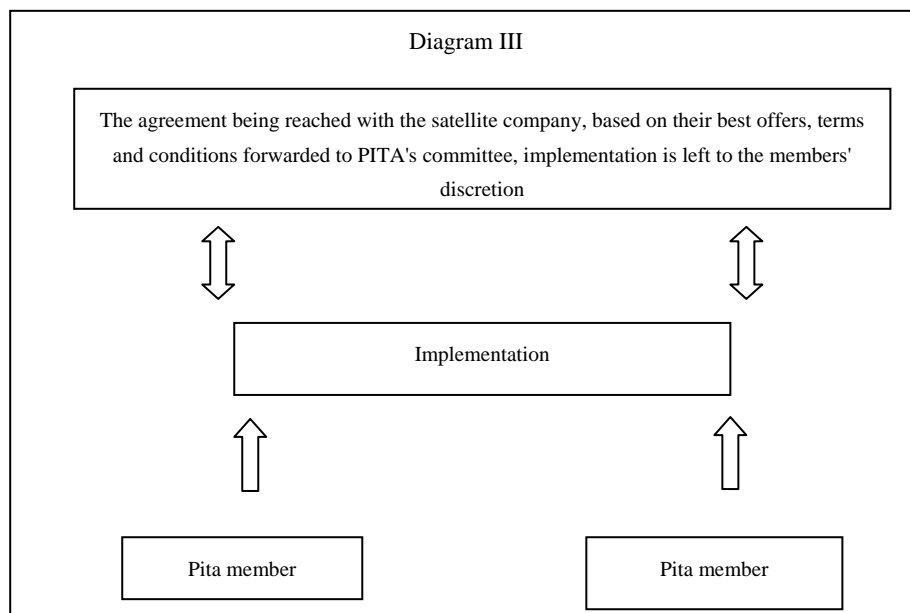
B Expected Role of the Special Committee

1 Adjusting the needs of PITA members

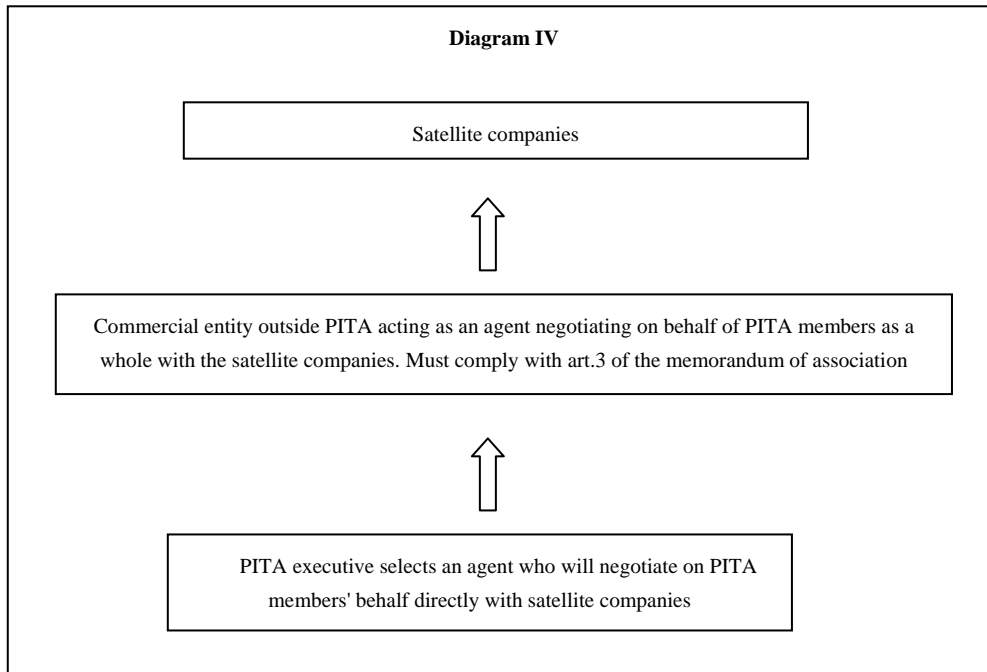
The PITA's special Committee collects first the information and needs from the members and conveys it to the satellite companies, which then submit their proposals to the Special Committee. The latter forwards the satellite companies' offers to PITA members.



2 *Leaving PITA members to take care of the commercial and technical implementation*



C Selection and Appointment of an Agent Either by PITA's Executive Body or by each PITA Member



Generally speaking the selected agent will be negotiating with the satellite companies on behalf of PITA members in order to obtain the best commercial conditions.

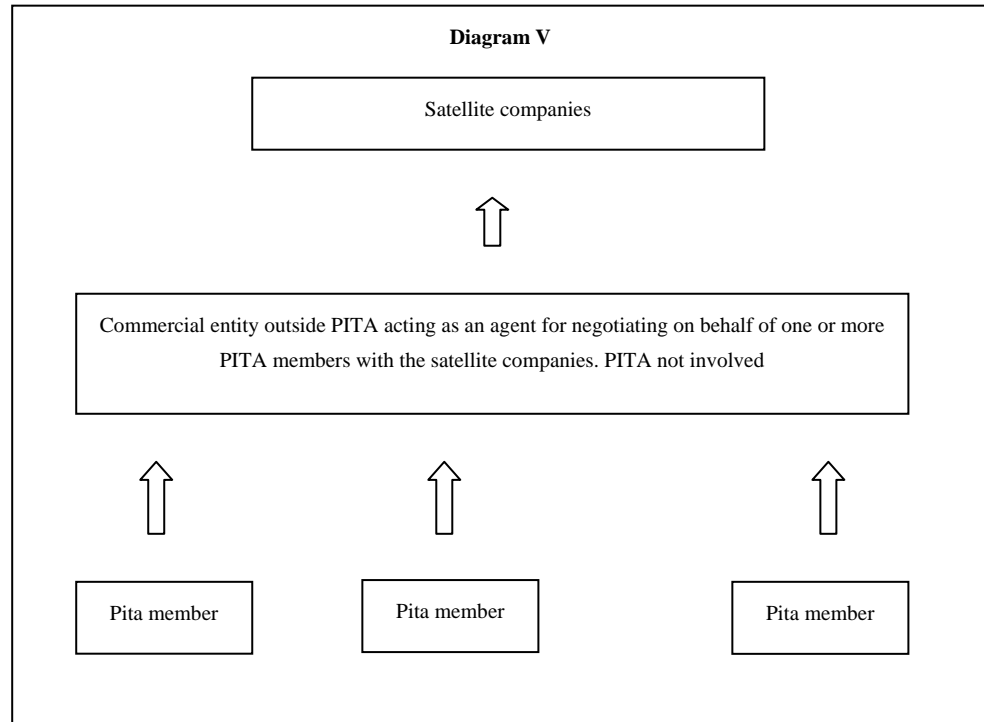
When the agent is appointed by the PITA executive, its tasks must remain within the framework of PITA's general endeavours as listed in article 3 of the memorandum and articles of association. The agent will represent PITA's members' interest as a whole. As a consequence, the agent will not enter into any kind of commercial agreement on behalf of PITA as an association.

Having established the nature and the extent of any feasible business agreements with the satellite companies which could fit with PITA's members' needs, the collected information will then be transmitted to PITA's executive body which in turn would pass it on to PITA members individually, leaving them to decide whether or not they want to enter into a commercial relationship with the satellite company.

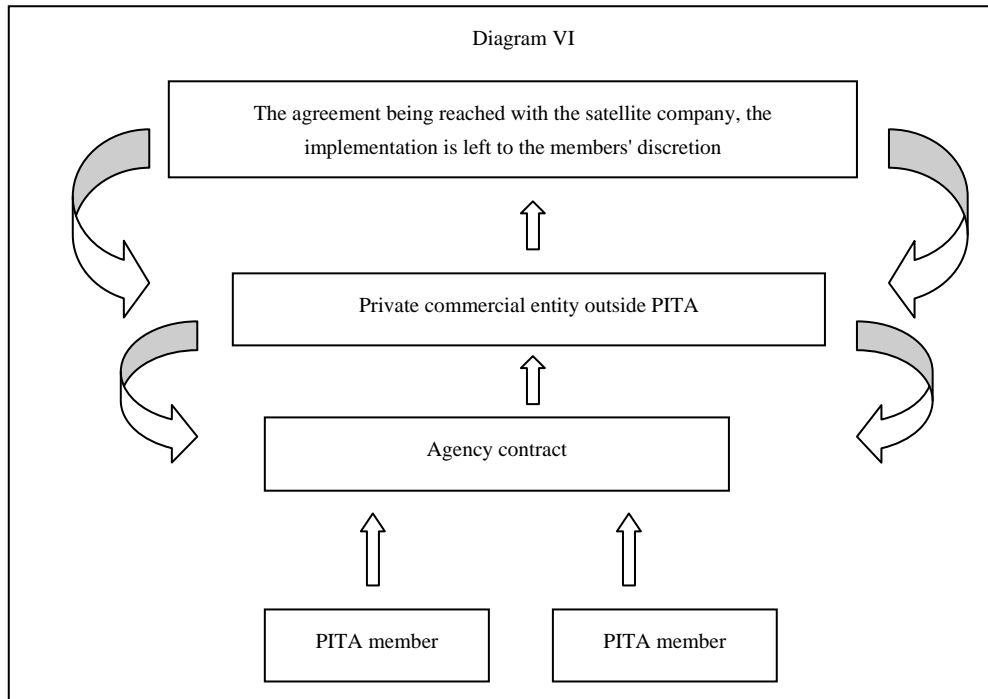
1 When the agent's powers derive from a specific mandate directly granted to him or her by each PITA member individually.

Subject to the compliance of the power of attorney with any national laws involved, the agent's instructions could include the right to negotiate any commercial deals with the satellite companies for each PITA member individually.

In such circumstances, since PITA will be in practice completely bypassed, one might fear the risk of a possible lack of consistency among the deals reached by the agent, a situation which could undermine one of the goals sought by PITA (ie to group the members' needs in order to obtain more favourable conditions from the satellite companies).



2 Practical implementation

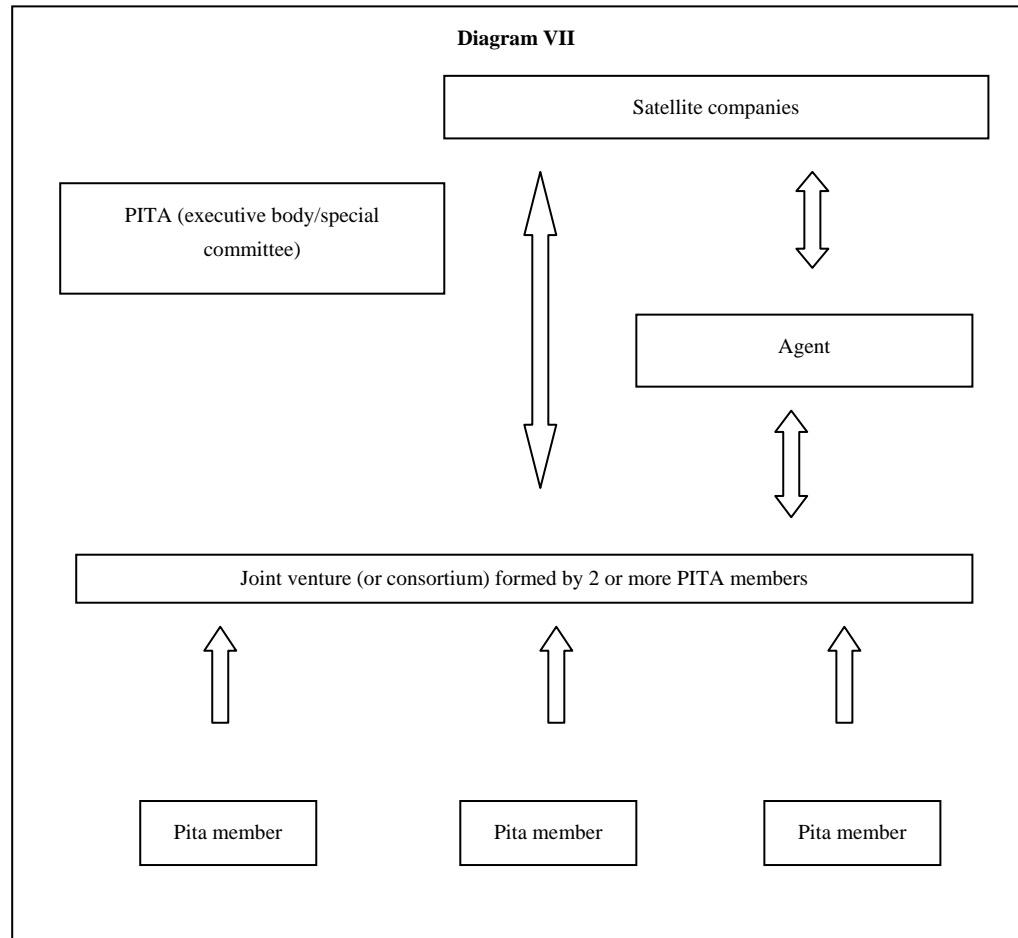


D PITA acting in a purely advisory capacity

This possibility would need as a prerequisite that some PITA's members (at least two of them) enter a joint venture agreement whose object would be to combine forces in order to negotiate more efficient and favourable deals with the satellite companies.

One must also remember that PITA's policy based on its memorandum of association does not allow it to form or to be part of any consortium organising or implementing what could be deemed to be commercial activities.

However if the joint venture is made without PITA, PITA might still be able to act in a purely advisory capacity either through its special committee (as mentioned above) or simply through members of its existing executive body.



V CONCLUSION

Having said that, it appears that the best option would be for PITA to set up a special committee being in charge of phases 1 to 3 included, ensuring not only the gathering of enough bargaining power to oppose to the satellite companies but also some form of consistency in terms of commercial conditions.

Moreover, some of the key issues mentioned in phases one and two need to be assessed thoroughly.

This would be particularly the case when consideration will be given to the pros and cons of the purchase versus lease option of satellite capacity.

According to the preliminary results obtained during the Papeete meeting in February 2006, one could think that the purchase option had to be favoured mainly because this could qualify the purchaser for some international funding or because the satellite companies' representatives are more inclined to support the purchase option for their own commercial perspective.

However one might also argue that PITA members and the satellite companies' representatives attending the Papeete meeting did not reflect the true diversity of PITA members needs for ICT and that the lease option might also enable them to have the benefit of all available new technological improvements at the time of contract renewal and finally that it is impossible in such a short period of time to evaluate properly the commercial and financial implications of the issue. Having a special committee deal with these issues would therefore certainly be efficient.

One additional foreseeable benefit of setting up a special committee would be its availability when the deals' implementation stage is reached.

Even though this would fall under the members' responsibility only, PITA through its special committee may still be requested to provide advice or assistance to the PITA member involved.

Moreover, since the whole process will be kept within PITA's control, apart from the signing of the commercial contracts left to the will of its members, and will be identified mainly as a non-profit endeavour with explicit technological, social and cultural consequences. This sound example of good commercial governance would appear to conform to the new standards issued from the current world credit crisis⁶ and should qualify PITA for obtaining some financial and human resources assistance from major funding bodies (such as the World Bank or the Asian Development Bank).

This could also apply to governments through their foreign assistance programmes (Australia, New Zealand, Japan, China, France, USA) to the small Pacific islands countries, imposing on the former a duty of assistance for the benefit of the latter.

These financial assistance programmes could also be relevant to address another major area of interest for the Pacific island developing countries - improved connectivity in the Pacific via submarine cable which involves heavy investment and also parties from the public and private sector.

6 On the subject see notably, Jacques-Marie Autefaille, 'Governance and Crisis Management: Questions and Local Responses in Light of the World Credit Crisis'. Addressed at the seminar on new approaches to governance and economic self-reliance in Pacific Island societies East-west Center, Honolulu, 21-22 January 2009 (to be published in a forthcoming RJP Hors Serie issue).

