



The Gambia gained its independence from the UK in 1965. The Gambia joined with Senegal to form the nominal confederation of Senegambia in 1982. However, the envisaged integration of the two countries was not successful, and the union was dissolved in 1989. In 1991, the two nations signed a friendship and cooperation treaty.

A military coup in 1994 overthrew the president and banned political activity, but a 1996 constitutional and presidential elections, followed by parliamentary voting in 1997, completed a return to civilian rule. The country undertook another round of presidential and legislative elections in late 2001 and early 2002. It is one of the most densely populated countries in Africa.

The Economy

Following the attainment of independence in February 1965, The Gambia, like many developing countries embarked on a series of economic reforms ranging from fairly loose national planning arrangements to specific controls over prices, credit and foreign exchange. Over time, these have given way to greater decentralised and market oriented policies.

The country's economy at independence was mainly agrarian with over 75 percent of GDP being accounted for from agriculture and was the main source of employment and export earnings. The 1960's and 1970's witnessed a short-lived boom in agriculture as a prolonged draught and adverse world market negated these gains afterwards. Meanwhile, the Government continued its expansionary policies relying heavily on domestic and external borrowing.

Following the First and Second Five Year Development Plans of the 1970's, the Government adopted the SAP in 1983 with the aim of stabilising the economy through fiscal and monetary discipline, liberalisation, and a productive sector led growth within a progressive move towards a realistic market-determined exchange rate regime.

| PROFILE | |
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| Population: | 1.4 million*** |
| GDP (Current US\$): | 415.1 million** |
| Per Capita Income: (Current US\$) | 290.0 (Atlas method)** 1859 (at PPP)** |
| Land Area: | 11,300 sq km |
| Life Expectancy: | 53.4 years** |
| Literacy (%): | 37.8 (of ages 15 and above)* |
| HDI Rank: | 155** |
| Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report, UNDP, 2005 (*) For the year 2001 (**) For the year 2005 | |

A successor Programme for Sustainable Development was introduced in 1990 to consolidate the gains of the adjustment and usher in a private sector led growth. The political landscape changed in July 1994 following a peaceful military takeover. The birth of the second Republic saw the advent of Vision 2020 as a development agenda for socio-economic development. All these policies were invariably influenced by a combination of both internal and external factors, such as international recessions, rising international interest rates and internal policy errors.

The Gambia has tended to impose higher import duties on manufacture imports than on primary agriculture imports. This suggests that there are some import-substituting activities that are being protected. Protection of industrial property is effected primarily through the Gambia's membership of the African Regional Industrial Property Organisation.

Competition Law and Anticompetitive Practices

Notwithstanding these economic developments, however, it would be noted that The Gambia has no legislation

* Original paper submitted in 2005. Revised in January 2006

relating to contingency trade remedies and competition laws. Consequently, what exist are various laws governing trade and customs regulations. These include legislation regarding the protection of intellectual property, new legislation on government procurement, The Gambia Free Zones Act 2001 and The Gambia Investment Promotion Act 2001 were adopted.

The Vision 2020 strategy outlines Gambia Government's current development Mission as thus:

'To transform The Gambia into a financial centre, a tourist paradise, a trading, export-oriented, agricultural and manufacturing nation, thriving on free market policies and a vibrant private sector, sustained by a well-educated, trained, skilled, healthy, self-reliant and enterprising population, and guaranteeing a well-balanced eco-system and a decent standard of living for one and all, under a system of government based on the consent of the citizenry'.

This Mission implies a commitment to a market-oriented economic development agenda with an emphasis on a 'vibrant private sector' led growth. With the adoption of new liberalising laws, the object was to promote The Gambia as a trade gateway and investment haven and to:

- Provide an attractive business environment and incentives for business activity in The Gambia;
- Be a 'one-stop-shop' for investors;
- Attract, promote and increase the manufacture of goods and trade in goods and services; haven
- Co-ordinate, encourage, promote and facilitate investments in The Gambia; and
- Advise the Government on investment policy and related matters.

Amongst other things, 'the Agency shall be exempt from corporate tax and import duties and such other taxes and duties as may be agreed upon between the Agency and the Secretary of State responsible for finance¹'. The Act provides for various facilities and incentives, and the protection of investments.

It was against this backdrop that the need to introduce a competition law was felt and her development partners, notably the World Bank, equally endorsed and recommended for it as a sign of commitment towards a free market economy. Competitive markets are responsive to changing needs and opportunities, while competition stimulates business to look for more innovative and efficient ways of satisfying the needs of consumers.

The Draft Cabinet Paper on the 'Proposed Competition Law for The Gambia' was finalised in July 2002. The paper can be considered as a document articulating competition policy in The Gambia. The policy will be implemented

through the Competition Bill of 2003, which is currently awaiting adoption by Parliament.

The objective of the proposed law is:

'To foster competitive markets and competitive business conduct in The Gambia by establishing a Competition Commission and a competition regime that will control anticompetitive arrangements, monopoly situations and mergers with the aim of improving the well-being of consumers and the efficiency of businesses in The Gambia'.

The Bill covers the supply of goods and services in The Gambia, and sets out the core elements of a competition regime to be administered by an independent Competition Commission. The Bill prohibits two forms of RBPs: collusive horizontal arrangements, and bid-rigging agreements, on the grounds that they are inherently anticompetitive. The Commission is required to demonstrate that the parties implicated have infringed this prohibition, but does not need to show that they have anticompetitive effects. It can open investigations on the suspicion that an enterprise is party to a prohibited practice.

The Bill also includes disciplines on RBPs that are not prohibited *per se*, but on which the Commission is mandated to take remedial action if the practices are shown to have anticompetitive effects. Practices in this category are defined as restrictive business practices that are subject to investigation, and include:

- non-collusive horizontal arrangements in which the parties must supply 30 percent of goods or services in the market concerned, and which the Commission has reasonable grounds to believe have anticompetitive effects;
- monopoly situations, defined as situations in which 30 percent or more of goods and services of a given description are supplied or acquired by one enterprise; a benchmark of 70 percent is applied in the case of three or fewer enterprises;
- vertical agreements in which the Commission has reasonable grounds to believe that one or more parties are in a monopoly situation; and
- mergers, where one of the parties carries on its business in The Gambia, or is operated or controlled by a body corporate incorporated in The Gambia, and where either of the both parties, following the merger, account for, either as a supplier or buyer, 30 percent of a particular market for goods or services; or one of the parties to the merger has, prior to the merger, a market share of 30 percent or more, either as a buyer or a supplier.

Exemptions to the rules are:

- activities of a statutory monopoly;
- practices or agreements expressly required or authorised by an enactment, or by scheme or instrument made under enactment;

1 Section 13 of The Gambia Investment Promotion Act, 2001

- any practices of employers or any agreement to which employers are party and that relate to the remuneration, terms or conditions of employment of employees;
- any practice, conduct or agreement in so far as it relates to the export of goods from The Gambia or the supply of services outside The Gambia;
- agreement or conduct in so far as it relates to the protection, exercise, licensing or assignment or rights under, or which exists by virtue of, laws relating to copyright, design rights, patents or trade marks, or other intellectual property rights;
- any practice, conduct or arrangement approved or required under an international agreement to which the State of The Gambia is a party;
- any agreement or conduct relating to activities within a free zone under the control of GIPFZA; and
- any enterprise with an annual turnover not exceeding D250,000.

The powers of investigation of the Commission extend to all classes of cases, and to the search for evidence to determine whether enterprises have complied. The penalties and remedies that the Commission may impose on an enterprise found to be or have been party to a prohibited agreement are:

- Directive to cease to be party to the agreement or to terminate or modify the agreement, or its parts contravening the prohibition; and/or
- Imposition of a financial penalty, where the breach of the prohibition has been committed intentionally or negligently.

Every decision taken, and every determination and directive issued, by the Commission would be appealable. The Commercial Division of the High Court would hear all appeals.

Sectoral Regulation

A Public Utilities Regulatory Act was enacted by the National Assembly in 2001. The Act establishes a multisectoral regulatory agency called the Public Utilities Regulatory Authority (PURA). The agency is to be operational in early 2004 and will regulate telecom together with electricity and water.

Telecommunications Sector²

Gambia Telecommunications Company (GAMTEL) was established in March 1984 under the Companies Act of 1955. It was set up as a Private Limited Liability Company. GAMTEL took over the provision of national and international telecommunications services from Cable and Wireless and the Government Telecommunications Department. GAMTEL is a legal monopoly in the provision of fixed line telecommunications services.

In 2001, GAMTEL established a subsidiary GAMCEL to provide GSM cellular Telecom service. GAMCEL now competes with another private cellular company, which came into market in 2001. A modern Telecommunications law is yet to be enacted.

The National Communications and Information Policy apart from the Telecommunications Sector covers Broadcasting Services, Post & Courier Services and Print Media Services. The main objectives of the telecommunications policy are to:

- ensure that reliable basic services are provided to all customers at affordable cost through the universal service obligations (USO);
- increase the telephone density (or penetration rate) in line with other development objectives and social obligations; and
- protect the interest of investors and consumers.

Energy Sector³

National Water and Electricity Company (NAWEC) established in June 1996 under the Companies Act, is engaged in the generation and provision of electricity, water and sewerage services for domestic, public and industrial purposes. The company succeeded the Gambia Utilities Corporation (GUC) established by an Act of parliament in 1972 and the Utilities Holding Company (UHC) established by Presidential Executive Order in 1992. UHC entered into a leasing contract with SOGEA, which formed a company called Management Services Gambia (MSG) Ltd to operate and manage the assets profitably. However, this arrangement with MSG was terminated on February 23, 1995, leaving UHC with the management responsibility of the assets.

Consumer Protection

The Standards and Consumer Protection Office will soon be presenting two draft bills namely a draft Standards Act and a draft Consumer Protection Act and Rules. These Acts will ensure that the rights of the ordinary consumers are adequately protected.

Concluding Observations and Future Scenario

Thus, a competition law would promote the free functioning of markets once government restraints on competition have been removed. Government also intends to introduce a Consumer Protection Bill to modernise Gambian consumer protection legislation. It is noteworthy that the Gambian businesses favoured the adoption of a competitive law and does not regard it as a threat. The proposed competition law will address two main forms of anticompetitive practice: restrictive agreements between businesses and misuse of market power; and also address merger control.

² <http://www.gda.gm/communication.htm>

³ <http://www.gda.gm/energy.htm>

While it is understandable that there is a need to keep some exceptions and exemptions in the law, their list in the draft is rather long. It needs to be recognised that such exclusions should be kept at the minimum.

To create practical effectiveness, the competition law proposes that Government asserts a level of jurisdiction to cover agreements implemented within the Gambian domestic market where at least one of the parties has a presence within Gambian jurisdiction.

The ideal envisaged institutional arrangement to optimally administer a competition regime is the creation of an

independent Competition Authority endowed with human and financial resources to conduct investigations of restrictive agreements and alleged misuse of market power. However, cognisant of Government's inability to avail such resources, the centrepiece will be a freestanding Competition Commission whose operations will be entirely independent of both Government and private sector interests. The Commission will be expected to advocate for and promote competition in The Gambia and unearth anticompetitive features in Government regulations and policies. Thus, the Commission will spearhead the cause of competition rather than just be the recipient of complaints from firms against each other.

Suggested Readings

1. Laws of The Gambia Vol. VIII & IX, 1970
2. The Gambia Free Zones Act, 2001
2. The Gambia Investment Promotion Act, 2001
3. National Employment Action Plan 2003-2008, Department of State for Trade, Industry & Employment 2002 Vol. 2
4. The Gambia Competition Policy & Law July 2002. Economic & Legal Service, Special Advocacy Service Division, Commonwealth Secretariat
5. Human Development Report 2004, UNDP

[†] **Jawara Gaye** is Policy and Budget Analyst and Acting Programme Coordinator at the Pro-Poor Advocacy Group, The Gambia. He is also a Researcher at GESDRI. He has a B.Sc (Hons) in Economics from Fourah Bay College, University of Sierra Leone and an M.Sc in Macro-Economic Policy and Planning in Developing Countries from the University of Bradford, UK. Gaye is also a professionally trained teacher. He has been involved in the conduct of various research including Public Expenditure Reviews in the social sectors and has a keen interest on poverty issues.