The Gambia ❖

– Adama Cham†

The Gambia is situated in Western Africa and surrounded by Senegal but for a short strip of the Atlantic coastline at its western end. It is the smallest country in mainland Africa. It gained its independence from the UK in 1965 and 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 2011 and early 2012 respectively. It is one of the most densely populated countries in Africa.

PROFILE	
Population:	1.8 million**
GDP (Current US$):	1.1 billion**
Per Capita Income: (Current US$)	510 (Atlas method)** 1,731 (at PPP.)***
Surface Area:	11,300 sq. km
Life Expectancy:	58.8 years**
Literacy (%):	51.1 (of ages 15 and above)*
HDI Rank:	165***

Sources:
- World Development Indicators Database, World Bank, 2012
- Human Development Report, UNDP, 2013

(*) For the year 2011
(**) For the year 2012
(***)For the year 2013

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 by relying heavily on domestic and external borrowing.

Following the First and Second Five Year Development Plans of the 1970's, the Government adopted the Structural Adjustment Programme (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.

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.

❖ The original paper was written by Jawara Gaye in 2006-07 & updated in August 2012.

The Gambia recently launched a five year development blueprint called Programme for Accelerated Growth and Employment (PAGE).The PAGE seeks to boost growth and reduce poverty by giving the Gambia the strategic direction for the realisation of the Vision 2020 development agenda.

Competition Law and Anticompetitive Practices

In order to realise the above market oriented policies and a free market economy, the Gambian authorities in 2007 passed a competition Law called Competition Act 2007. The objective of the Competition Act 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 coming into effect of the Competition Act 2007 complements various existing 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.

The Vision 2020 strategy outlines Gambia Government's current development Missions:

'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;
- co-ordinate, encourage, promote and facilitate investments in The Gambia; and
- advise the Government on investment policy and related matters.

Amongst others, '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 finance'. The Act provides for various facilities and incentives, and the protection of investments.

Following recommendation by her development partners, notably the World Bank to introduce a competition regime in The Gambia which saw it as a sign of commitment towards a free market economy, the Competition Act was born. 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.

Objectives of the Competition Act

The Act 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 Act prohibits two forms of restrictive business practices (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 Act 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 two 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 underenactment;

Box 1: Exclusive Contracts Agreements in the Money Transfer Services in The Gambia

In The Gambia, money transfer services are provided by a number of internationally recognised and established financial institutions, namely, Western Union, Money-Gram, RIA and Money Express, through various licensed outlets which include commercial banks and foreign exchange bureaus. These establishments, which act as local representatives, agents or sellers of these renowned enterprises, are bound by an agreement which bars them from serving a competitor in the same outlet, both during and after the termination of the contract, for a long duration, thereafter.

J-Financial Services Ltd., one of the many local service providers, which has been serving as an agent of Money-Gram since 2008, filed a complaint to the Competition Commission in April 2010 expressing its concern over a clause in the agreement which it considers to be unfavourable and stifling to its business. J-Financial services Ltd is therefore seeking the intervention of the Competition Commission for its nullification and expunging from the contract.

The Commission's investigation has confirmed that the agreements between the major providers of money transfer services, Western Union and Money-Gram, and their representatives have an exclusivity clause that is restrictive and anti-competitive in nature, and goes against the provisions of the Competition Act 2007, thus calling for remediation. The existing arrangements with the two dominant agents prohibit local agents from providing other money transfer services in their premises while under contract with them, and even after the termination of the contract, up to180 days thereafter.

The Commission proceeded with an investigation of the matter convinced that the clause in the agreement may have an adverse effect on competition in the money transfer business and made its findings.

The Commission's investigation discloses that –

(i) Western Union and Money-Gram together provide about ninety-six percent of the money transfer services in The Gambia and are, therefore, in a duopolistic situation;

(ii) Western Union and Money-Gram, the leading providers of money transfer services, are exploiting the monopoly situation by having in their respective agreements between them and their representatives an exclusivity clause that is restrictive and anti-competitive in nature. The existing arrangements with the two dominant agents prohibit local agents from providing other money transfer services in their premises while contracted to them.

(iii) Even after the termination or expiration of the respective contracts between Western Union and Money-Gram and their agents, a former agent should not be engaged as an agent for another money transfer service for at least 180 days in the case of Money-Gram; or for one year in the case of Western Union thereafter. This practice distorts competition and constitutes an abuse of the dominant position situation enjoyed by Western Union and Money-Gram in the Gambian market.

In the light of the provisions of the Act regarding restrictive practices, the Commission:

(i) Directs that the clause in the agreement be removed as it inhibits competition in the money transfer business, and stifles the growth and expansion potential of local Western Union and Money-Gram representatives, on the one hand, and is unfavourable and inconvenient to customers who would like to have a one-stop outlet that provides services of the various money transfer providers.

Source: http://www.gcc.gm/downloads/FINALREPORT.pdf accessed on September 05, 2013

- 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 exits by virtue of, laws relating to copyright, design rights, patents or trademarks, 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 The Gambia Investment Promotion and Free Zones Agency (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 multi sectoral regulatory agency called the Public Utilities Regulatory Authority (PURA). The sectors currently approved for regulation by PURA are telecommunications & broadcasting; electricity; water & sewerage; transport and such other public utilities as the Secretary of State, in consultation with the appropriate Secretary of State, may prescribe by an order published in the Gazette. The first Governing Board of PURA was appointed in October 2004.

Telecommunications Sector

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 Sector

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 Gambia is at an advance stage of enacting a Consumer Protection Act. A completed draft bill is already in place, and a taskforce is currently instituted to review the draft bill for submission to the National Assembly. Enforcement of the Consumer Protection Act, when approved will be under the purview of the Gambia Competition Commission (GCC), thus broadening the GCC's mandate. A consumer Protection Act ensures 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 is also on the verge of finalising the Consumer Protection Act. It is noteworthy that the Gambian businesses favoured the adoption of a competitive law and does not regard it as a threat. The competition law addresses two main forms of anticompetitive practice: restrictive agreements between businesses and misuse of market power; and also address merger control.

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

To create practical effectiveness, it is imperative that the competition law 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.

As prescribed in the Competition Act of 2007 an independent Competition Authority endowed with human and financial resources to conduct investigations of restrictive agreements and alleged misuse of market power, GCC was established in 2009 to independently carry out such functions. Since its inceptions, the Commission has been involved in capacity building of staff and the relevant stakeholders, advocacy programmes, and most importantly conducted some investigations on certain anti competitive practices as well as issue and policy advice/notes to government on competition related issues. Thus, the Commission is currently spearheading the cause of competition in The Gambia by ensuring a level playing field for all businesses.

† ***Mr. Adama Cham**, an economist by training with strong finance background is currently Manager, Statistics and Communications Manager at The Gambia Tourism Board. He is supported by a team of 6 professionals and has passion for conducting research/conducting studies and contributing casually to internationally magazines.*

Prior to his current post, Cham was an Economist (Manager) at GCC. In a career spanning almost 12 years in the public sector, Cham has also previously held positions with Enhanced Integrated Framework Project, Ministry of Trade, Industry and Employment, Compliance Officer, Financial Supervision Department, Central Bank of The Gambia. He is a an Economist by training and holds a Masters of Arts in Economic Policy Management Bachelor of Science in Economic & Finance from University of Ghana, Legon and University of The Gambia respectively. He is married with one daughter.