# A Time for Action

## – Analysis of Competition Law Regimes of Select West African Countries

Volume I: The Gambia, Ghana & Nigeria

25 years 1983 2008
CUTS International

#1016

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## – Analysis of Competition Law Regimes of Select West African Countries

**Volume I: The Gambia, Ghana & Nigeria**

*** Un Temps pour Agir**
Volume II: Burkina Faso, Mali, Senegal & Togo
(In French)

25 years 1983 2008 CUTS International

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## –Analysis of Competition Law Regimes of Select West African Countries

**Volume I: The Gambia, Ghana & Nigeria**

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CUTS Centre for Competition, Investment & Economic Regulation
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**Association Togolaise des Consommateurs (ATC)**
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The project 'Strengthening Constituencies for Effective Competition Regimes in Select West African Countries' – 7Up4 Project, was a first initiative of CUTS in West Africa. It was also a first CUTS project in francophone countries, making it a challenging endeavour. Successful implementation of this project would not have been possible without the assistance provided by various people including donors, country partners, advisers, key stakeholders in the countries, CUTS staff and various other friends of CUTS from within the region and outside.

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# Acronyms

| | |
|---|---|
| BCC | Benue Cement Company |
| BPE | Bureau of Public Enterprises |
| | |
| CAMON | Consumer Affairs Movement of Nigeria |
| CBN | Central Bank of Nigeria |
| CCIER | Centre for Competition, Investment & Economic Regulation |
| CCNN | Cement Company of Northern Nigeria |
| CCOSPAG | Competition and Consumer Advocacy Group |
| CEON | Consumers Empowerment Organisation of Nigeria |
| CET | Common External Tariff |
| CPA | Child Protection Alliance |
| CPC | Consumer Protection Council |
| CRS | Catholic Relief Services |
| CSO | Civil Society Organisation |
| CUTS | Consumer Unity & Trust Society |
| | |
| DOSFEA | Department of State for Economic Affairs |
| | |
| ECOWAS | Economic Community of West African States |
| ECOWAS TLS | ECOWAS Trade Liberalisation Schemes |
| EFCC | Economic and Financial Crime Commission |
| EPA | Economic Partnership Agreement |
| ERP | Economic Recovery Programme |
| EU | European Union |
| | |
| FAO | Framework of Agreement |
| FCC | Federal Competition Commission |
| FDI | Foreign Direct Investment |
| FEZ | Free Economic Zone |
| FOA | Framework of Agreement |
| | |
| GAMTEL | Gambia Telecommunications Company |
| GBA | Greater Banjul Area |
| GBoS | Gambia Bureau of Statistics |
| GDA | Gambia Divestiture Agency |
| GDP | Gross Domestic Product |
| GEG | Global Electric Group |
| GGC | Gambia Groundnut Corporation |
| GIPFZA | Gambia Investment Promotion and Free Zone Area |
| | |
| HDI | Human Development Index |
| HDR | Human Development Report |
| HIPC | The Enhanced Heavily Indebted Poor Countries |
| | |
| IMF | International Monetary Fund |
| IPPs | Independent Power Producers |
| ITU | International Telecommunication Union |
| | |
| MDG | Millennium Development Goal |

| | |
|---|---|
| NAMs | National Assembly Members |
| NAWEC | National Water & Electricity Company |
| NCC | Nigerian Communication Commission |
| NCP | National Council on Privatisation |
| NEEDS | National Economic Empowerment and Development Strategy |
| NEPA | Nigeria Electricity Power Authority |
| NERC | Nigerian Electricity Regulatory Commission |
| NIPC | Nigerian Investment Promotion Commission |
| NTBs | NonTariff Barriers |
| | |
| PE | Public Enterprises |
| PHCN | Power Holding Company of Nigeria |
| ProPAG | The ProPoor Advocacy Group |
| PRSPs | Poverty Reduction Strategy papers |
| PSD | Programme for Sustained Development |
| PURA | Public Utilities and Regulatory Authority |
| RECs | Regional Economic Communities |
| | |
| SAP | Structural Adjustment Programme |
| SEEDS | State Economic Empowerment and Development Strategy |
| SOEs | State Owned Enterprises |
| SPS | Sanitary and Phyto-Sanitary |
| | |
| TANGO | The Association of Non Governmental Organisations |
| | |
| WAPCO | West African Portland Cement Company |
| WDI | World Development Indicator |
| WHO | World Health Organisation |
| WTO | World Trade Organisation |

# Foreword

The period including the 1990s and the first years of the present century has been characterised by the fact that a great many developing countries, in particular in Africa, adopted a competition law, or, in some cases, upgraded their existing law.

These legislative initiatives were premised on the belief that the fight against anti-competitive practices and transactions would contribute to economic development and alleviate poverty through a better allocation of resources and the elimination of monopolistic rents.

It is thus legitimate to try to assess both the effects those laws or amendments have had in the countries which have adopted them and the problems faced by countries which have not established a competition law regime.

The contribution of a competition law to economic development depends largely on two factors: first, whether the competition law is implemented in an effective way and, second, whether other economic policies such as trade policy, agricultural policy, consumer policy, and industrial policy enhance competition, thus complementing the enforcement of competition law, or stifle competition, thus undermining the enforcement of competition law.

For over a decade now, CUTS has analysed competition regimes in developing countries from across Africa and Asia, especially in terms of existing/evolving legislations, relevant institutions, prevailing environment and the role of stakeholders. In addition to strengthening CUTS efforts for promoting competition reforms in these countries, such analyses has also created a repository of information and knowledge about the nature of markets and behaviour of firms in developing countries that was otherwise absent. It has also contributed immensely in developing the understanding of (and creating interest within) the international community about challenges faced by developing countries in enforcing competition regimes – so that these challenges can be met. Furthermore, this work has also created huge local interest in the countries (and in neighbouring countries) where the 7Up projects have been implemented and built up a cadre of well informed citizens, including capacities to do research and advocacy on competition issues.

When CUTS started implementing the 7Up4 project, it ventured into an unfamiliar territory, both in terms of situation and especially language in the seven countries of West Africa. While, the earlier 7Up projects (7Up1, 7Up2 and 7Up3) were implemented only in anglophone countries of Africa and Asia; this fourth in the 7Up line-up included four francophone countries. Nothing much was available to offer a bird's eye view about the state of market competition in this region. Peer reviews and technical assistance reports of International Organisations mostly focused on state actors and institutions. There was this void that CUTS had identified and has effectively addressed through this report.

This report, 'A Time for Action', undertakes an in-depth analysis of the situation in seven West African countries: Burkina Faso, The Gambia, Ghana, Mali, Nigeria, Senegal and Togo, two of which (Ghana and Nigeria) do not yet have a comprehensive competition law.

This document is a unique source of information on the situation in each country and the comparative inter-country analysis leads to very useful observations relating to the sequencing of policies in the process of economic liberalisation, the institutional design of competition law systems at the national and regional levels, and the prerequisites for a successful transition to a market economy.

It emerges that there are huge opportunities for countries in this region to achieve economic development by evolving well-functioning markets, which are promoted by enabling policies and nurtured by effective institutions. These are areas that the international community should particularly focus its assistance efforts in the future.

**Frederic Jenny**
Judge
Supreme Court of France

# Preface

I have great pleasure in penning these lines as a preface to this report of a project which is the fourth in a series. CUTS has now implemented projects on competition reforms in 26 developing countries of Africa and Asia. Each of these projects has been an improvement over the earlier ones due to the experience gained. In this project, 7Up4, in addition to analysing the overall state of competition in the project countries, we have taken a closer look at competition concerns in the agricultural sector[1]. This project implemented during 2008-10 covers seven countries of West Africa: Burkina Faso, The Gambia, Ghana, Mali, Nigeria, Senegal and Togo.

Our experience in this project (7Up4), when compared to that of the 7Up3[2] and 7Up1[3] projects, reveals that although, regional authorities in West Africa – Economic Community of West African States (ECOWAS) and West African Economic and Monetary Union (WAEMU) – were established around the same time as that in Eastern and Southern Africa (viz. COMESA), the adoption of competition laws in many West African countries happened earlier, one of the reasons being the inclusion of competition reforms in the active agenda of the WAEMU. However, only some of the members[4] of the ECOWAS had initiated this process then; and others have only recently geared up to adopting national competition laws.

In those countries that did initiate this process, enforcement, even after a decade's experience, is still wanting. The progress in these countries has been extremely slow compared to that in Eastern and Southern African countries – casual empiricism reveals lack of political willingness, and insufficient human and financial resources as possible reasons; while experts also point to anomalies in the interface between the national and regional competition legislation as other probable reasons

However, a thorough assessment of country-specific challenges in regard to enforcement of competition was missing. CUTS felt that such a detailed assessment and analysis would help facilitate a process which would yield benefits to project countries in the form of better functioning markets. Thus, the CUTS 7Up4 project was suitably christened as *Strengthening Constituencies for Effective Competition Regimes in West African Countries***.**

This was the first initiative of a project implemented by CUTS in West Africa, and also the first time that we worked in French-speaking territories. Naturally, some of us were therefore a bit concerned in the beginning. While the project team composing of bi-lingual advisers like Philippe Brusick and Lahcen Achy gave us a lot of confidence, the language barrier that we might run into in our day-to-day operations made us worry a bit. We recruited a couple of French-speaking staff in the project team, to deal with this and stretched our hands out for assistance from colleagues and friends whenever such a situation arose.

One of the main objectives of this project was to develop the capacity of multiple stakeholders to raise the ante on the need for an effective competition regime into the wider public domain. The project was targeted to not only help countries refine their competition regimes, but also in developing a roadmap for their effective implementation.

When CUTS started the project, competition institutions existed in all four Francophone project countries ***(Burkina Faso, Mali, Senegal and Togo)***, either as a full fledged agency or a department within the trade/commerce department handling competition issues. However, only ***The Gambia*** had announced the formation of a competition authority, among the Anglophone countries. While Nigeria and Ghana had draft laws, there was not much certainty about their formal adoption in either of them.

1 Competition Concerns in the Agriculture Sector in Select Countries of West Africa
2 Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda
3 India, Pakistan, Kenya, South Africa, Sri Lanka, Tanzania and Zambia
4 Benin, Burkina Faso, Cape Verde, Cote d' Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo constitute the ECOWAS

The project team anticipated a low level of understanding on the issue in the project countries and, therefore, little interest among stakeholders. However, the response received was far more encouraging than anticipated, which pointed to a latent demand that had not come to the fore because of the general lack of attention to competition issues shown by national and international development partners working in the region.

CUTS own initiative in the form of a pre-project 'scoping mission' to test the waters in some of the project countries contributed to the enthusiasm evinced by stakeholders as it helped to convey CUTS' keen interest on competition reforms in the region and the possible benefits from the project. The contacts made during the scoping mission were extremely useful, and many of those institutions/ individuals were engaged in the project as members of the National Reference Group (NRG).

One of the key outcomes from the 7Up4 project is the realisation that there is a need for a broad-based process for the evolution and enforcement of national competition regimes to achieve well-functioning markets in the interest of consumers at large. Government departments in charge of competition and existing competition agencies were able to appreciate the 'value-addition' that could happen from involving key stakeholders in this process. Roadmaps for national competition reforms were developed by integrating research findings, and highlighted this need in all project countries. The project was also able to convince stakeholders about how competition reforms could facilitate development, economic growth and poverty eradication in project countries.

The 7Up4 project has created an interest among both state and non state actors on competition policy and law issues, which needs to be further nurtured through follow-up actions. CUTS continues to motivate its country partners to take the lead in facilitating improvements in enforcement of competition law and policy, and bring the huge interest on competition and consumer protection issues and resulting demand for capacity building in the region to the attention of the international community.

Early signs of an urge among stakeholders to continue the campaign on competition reforms beyond the 7Up4 project period were witnessed in some countries, when the project was approaching its completion. An ECOWAS Competition Authority is expected to be up and running within the next couple of years, and is likely to exert considerable pressure on member states to beef up their national competition regimes. This would create a huge demand that would have to be met. Both ECOWAS and WAEMU are very keen now to gear-up their activities on competition law evolution and enforcement in the member states, and have shown interest in partnering with CUTS towards this end.

When CUTS ventured into this region first, we did not have much experience of the state of affairs and the outcomes our intervention (7Up4 project) might achieve. But, now we have witnessed the huge demand for such work in this region which has inspired us to consider setting up our sixth overseas office in a West African country and anchor our future work on trade, development, competition and consumer protection.

Our long term development partners — the Department for International Development (DFID), UK; International Development Research Centre (IDRC), Canada; and the Ministry for Foreign Affairs (MoFA), Sweden — have kindly supported us in implementing this project. Each of these organisations has been supporting many other projects of CUTS in the area of trade and competition and we are indeed extremely grateful for their continuing support.

Furthermore, we are indebted to Frederic Jenny, noted competition scholar and practitioner, Chairman of CUTS International Advisory Board and our guide and mentor on competition issues for writing the foreword. Finally, my thanks to the entire CUTS team led by Rijit Sengupta, our partners in each of the seven countries and two advisers: Philippe Brusick and Lahcen Achy for enabling the successful completion of the project.

October 2010
Jaipur

**Pradeep S Mehta**
Secretary General

# Chapter 1

# *Competitive Markets as Means for Achieving Growth and Development in West Africa*

*(Synthesis Report)*

## Introduction

CUTS has adopted and institutionalised a research-based-advocacy and capacity building approach for competition reforms in developing countries, through the participation of multiple stakeholders, referred to as the 7Up Model.

Over the period 2000-02, CUTS implemented its first project using this methodology to assess common challenges that seven developing countries of the Commonwealth were faced with. This came to be referred to as the 7Up1 Project and was implemented in India, Pakistan, Sri Lanka, Kenya, South Africa, Tanzania and Zambia. This was followed by the 7Up2 Project that was implemented in six Asian countries, viz. Bangladesh, Cambodia, India, Lao PDR, Nepal and Vietnam, who either had or were starting to evolve and implement national competition legislations. The 7Up3 Project was the third sequel in the series and was implemented in seven countries of eastern and southern Africa, viz. Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda. The idea was to develop capacity of key stakeholders on competition policy and law issues, to enable them to play an active role in evolution and implementation of the competition regime.

This chapter collates findings from seven countries which were studied under the 7Up4 Project. A main objective of the 7Up4 Project was to raise the profile of competition issues in the countries, and facilitate a discourse on the best way forward for evolving competitive markets for growth, development and poverty reduction in them. Key challenges/concerns that need to be addressed by these countries are identified here, so that a holistic approach to competition reforms can be adopted for them and indeed the region. Readers are also encouraged to read the individual country reports (The Gambia, Ghana, Nigeria available in English; and Burkina Faso, Mali, Senegal and Togo available in French).

## Context

The 7Up4 project was a two-year research, advocacy and capacity building project launched in June 2008 covering seven West African countries — Burkina Faso, The Gambia, Ghana, Mali, Nigeria, Senegal and Togo. The major objective of the project was to develop an appreciation of the need for an effective competition regime among national stakeholders such as policy makers, regulators, civil society organisations, consumer groups, academics and media persons and build their capacity as effective facilitators of such a regime.

The project endeavoured to achieve this objective through research aimed at highlighting the various challenges to implementation of effective competition regimes, which would culminate in capacity building and advocacy initiatives for their removal. As part of the project, detailed reports on each of the seven countries have been prepared. The country reports were centred on research themes focussed on diverse issues relating to competition. This monograph is in the form of a synthesis report – it would highlight the commonalities and differences among countries and point out country specific peculiarities in regard to each of the themes by drawing on the various country reports.

The issues captured by the seven country reports and therefore by the synthesis report can be classified into two sets – the first describing the *status quo* in relation to competition law and policy and its implementation in the project countries and the second outlining the 'needs' for change. The *status quo* and 'needs' are linked by a cause-effect relationship. The former includes political economy issues, current policies and laws in place, the extent to which laws in place are being enforced, as well as the economic structure. The latter includes prevailing anticompetitive practices and the level of awareness on competition and regulation issues in the economies.

## General Social and Economic Indicators

The West-African countries covered by the 7Up4 Project are very diverse with respect to both geographical area and population. The former (see Table 1) varies from 11,300 square km in case of the Gambia to 923,768 for Nigeria and 1.2 million for Mali with the variation in population exhibiting a different pattern – Gambia unsurprisingly is the least populous country with a population of merely 1.5 million; but Mali, despite its large land area has the third smallest population of 12.1 million while Nigeria with a population of 144.7 million is the most populous as well as the most densely populated country.

In terms of GDP, the Nigerian economy is by far the largest, with a current GDP of US$207.12bn in 2008, according to the International Monetary Fund (IMF). The other economies are much smaller; Senegal, the second largest, had a current GDP of US$13.25bn in 2008, while the smallest economy, that of The Gambia, amounted to a GDP of US$806mn according to IMF data. With respect to GDP per capita in 2009, however, Senegal was first, with US$ 2009, while Nigeria was far behind with US$1089 and the remaining five were within a range of US$639 per

| Table 1: Some Key Comparative Data for 7Up4 Countries | | | | | |
|---|---|---|---|---|---|
| **Country** | **Area (Km2)** | **Population in million** | **GDP (in US$bn)** | **GDP/capita (US$)** | **UN standards classification** |
| **Burkina** | 274 200 | 14. 0 | 6.103 | 542 | LDC |
| **Gambia** | 11 300 | 1.5 | 0.806 | 434 | LDC |
| **Ghana** | 239 460 | 28.4 | 16.124 | 639 | – |
| **Mali** | 1.241 238 | 12.4 | 8.783 | 641 | LDC |
| **Nigeria** | 923 768 | 144.7 | 207.116 | 1089 | – |
| **Senegal** | 196 712 | 12.5 | 13.250 | 2009 | LDC |
| **Togo** | 56 785 | 5.4 | 2.890 | 408 | LDC |

capita for Ghana to US$408 for Togo. It is interesting to note that within this list, only Ghana and Nigeria are not counted as LDCs by the United Nations, while Senegal, which has a considerably higher GDP per capita than these countries, is still considered an LDC by the UN.

Among these countries, Nigeria can be classified as a large economy on all three counts – GDP, land area and population. The largeness of its economy enhances the scope for competition by enlarging the demand facing various industries. A higher level of industry demand enables a larger number of firms to attain economies of scale and thus function viably. Note that Senegal, the second largest economy in terms of GDP, is around seven percent of the size of the Nigerian economy.

## Government Policies that Impinge on Competition

### Overview

While competition law to punish/prevent anti-competitive practices in the market is one way of enforcing competition, the policies of the national government can also have implications for the extent of competition. It is for this reason that country specific reviews of policies to ascertain consistency/conflict with promotion of competition are important. An overview of key policies across the countries with focus on similarities, in regard to such consistency/conflict, is attempted below:

### Development Policies

All the countries covered by the 7Up4 Project, have engaged in similar economic reform programmes (see Box 1).

Given the common background of state control and central planning from independence to the early 1980s, the subsequent period lasting till the end of the 1990s saw all these countries enter into successive Structural Adjustment Programmes (SAPs), widely inspired by the IMF and the World Bank, which aimed at disengaging the State from economic production through privatisation of State monopolies and the strengthening of the private sector. Privatisation and the mentioned boost to the private sector can be seen as competition enhancing measures.

At the end of the 1990s, all these countries adopted various Poverty Reduction Strategic Papers (PRSPs), subject to periodic review, which gave a central role to the agricultural sector and especially to social initiatives with four essential objectives:

a) accelerating growth based on equity;
b) ensuring access of the poor to basic social services and social welfare;
c) increasing equitable employment opportunities and income generating activities for the poor; and
d) promoting good governance.

These PRSPs were undertaken by different countries with different levels of success. However, creation of employment was based to an extent on decentralising production (see cases of Burkina Faso and Ghana) through creation of new enterprises which should have had a direct positive impact on competition.

### Agricultural Policy

Agriculture is often considered a special case under competition policy in developed countries. The US, like the European Union (EU), have a long tradition of exempting agriculture from competition policy and of subsidising farmers heavily. The Common Agricultural Policy (CAP) in the EU and farm policy in the US provides many exemptions and exceptions from competition policy.

**Box 1: Reforms in West African Countries**

- PRSPs in Burkina Faso followed the three SAPs implemented from 1991 to 1999 as a reaction to unemployment resulting from the privatisation and economic liberalisation agenda of these. The PRSPs gave central attention to agriculture, as more than 92 percent of the poor originate from the rural sector, with creation of the Centre for Enterprise Creation (CEFORE). This facilitated a reduction in time expenses and procedural complexity in regard to creation of new enterprises – from 32 days, 10 procedures and a start up expense of 500 000 FCFA to 7 days, the use of a one-stop window and a total start up cost of 60 000 FCFA. 3000 new enterprises were born in 2008 under the new procedures in Bobo-Dioulasso and Ouagadougou.

- Gambia too was characterised by similar drivers for the creation of PRSPs which have however failed to check the increase in poverty and inequality.

- After being one of the first African countries to launch a SAP (fiscal austerity, monetary tightening and liberalisation) in 1983, Ghana is operating a Growth and Poverty Reduction Strategy: success in wealth creation and poverty reduction already achieved in the first phase is being followed by attempts to accelerate private sector-led growth; develop human resources; and promote good governance and civic responsibility.

- In Nigeria, the SAP was followed by a reform programme which focuses on addressing the structural and institutional weaknesses of the economy, tackling corruption and overhauling public expenditure management.

- **Senegal's** implementation of consecutive SAPs from 1981 to 2000 was followed by its admission to the Highly Indebted Poor Countries (HIPC) Initiative of the IMF. As a reaction, a PRSP was implemented to bring about improved income distribution with accelerated growth; liberalise key sectors such as transport and communications; train rural workforces; and generalise access to essential services.

- The Government of **Togo implemented SAP agreements in the 1980s and 1990s.** Since 2004, the government has elaborated a strategy of poverty reduction in a preliminary document (DSRP) which set in motion the preparation of the final PRSP. The final PRSP was launched in March 2006.

However, in developing countries, since the 1990s, along with the adoption of Structural Adjustment Programme (SAP), agricultural policy has introduced competition by abandoning subsidies and farming price-stabilisation boards.

Reforms in 7Up4 countries have therefore been characterised by the gradual retreat of state intervention leading to comeback of the private sector in agriculture; efforts to boost productivity and farm revenues, thereby enhancing food security and poverty; and encouragement to import substitution and export promotion (see Table 2). The retreat of the state associated with removal of price controls and introduction of market economy has direct positive implications for competition. As sketched out in Table 2, these vary from initiation of specific policies and acts in Nigeria, Mali and Senegal to long-term plans and programmes in other countries.

It should be noted that agriculture accounts for around 40 percent of GDP in these countries, employs about 70 percent of the workforce, and accounts for much of the poverty incidence. Poverty reduction strategies, therefore, attach great importance to agriculture.

## Investment and Industrial Policies

Industrial and subsequent investment policies in the project countries incorporated common elements because of the common influence of SAPs: withdrawal of the state, though to different extents across project countries (see Table 3), coupled with promotion of involvement of the private sector through investor friendly investment policies. The promotion of the private sector was marked by a differential boost to competition – in most countries, barriers to private investment were alleviated with Nigeria making more direct attempts to remove barriers to competition.

| Table 2: Policy Efforts to Boost Agricultural Productivity in 7Up4 Countries | | |
|---|---|---|
| Policies and Acts Specifically Aimed at the Agricultural Sector | Nigeria | • In 2000, farmer-friendly agricultural policy launched to achieve food security and create a conducive macro-environment for stimulating private sector investment<br>• In 2008 National Food Security Programme launched after the world food crisis to achieve import substitution through enhanced competitiveness stimulated by private sector development |
| | Mali | Agriculture Act of 2005: protection of farmers from non-sustainable practices and infringement of national, regional or international regulations; export promotion for growth of incomes |
| | Senegal | New Agricultural Policy launched in the 1980s: retreat of the state; reduction in role of public price stabilisation and schemes for commodities, liberalisation and restructuring of commodity production-distribution chains. |
| Long Term Plans and Broad Programmes | Burkina Faso | Strategic plan (2006-10) for poverty reduction in rural areas: improvement of natural resources; promotion of women and youth; introduction of market economy in agriculture |
| | Togo | Liberalisation and removal of price controls in agriculture which has stimulated private export activity in coffee and cocoa |
| | The Gambia | Vision 2020 programme as well as the Millennium Development Goals' thrust: promotion of competition to attract private investors, export promotion to ensure food security and employment |
| | Ghana | Food and Agriculture Sector Development Programme (FASDEP II): agricultural growth to achieve equitable growth and reduce poverty |

| Table 3: Investment and Industrial Policies in Project Countries | |
|---|---|
| Burkina Faso | Industrial Development Strategy adopted in 1998: close cooperation among public sector, the private sector and technical and financial institutions |
| Gambia | Full freedom for private sector expansion in an environment of social justice and equity |
| Ghana | Ghana Investment Promotion Centre Act, 1994 (Act 478) to provide a favourable climate for private investment |
| Mali | Investment promotion fund; development of better road networks and new industrial centres |
| Nigeria | Retreat of state associated with promotion of private sector through various measures:<br>• 1995: Nigerian Investment Promotion Commission (NIPC) Act No.16; and repeal of Nigerian Enterprises Promotion Act restraining FDI<br>• 1997: repeal of all laws restricting competition in the national economy<br>• 1998: adoption of the Public Enterprises Promotion and Commercialisation Decree, to open up sectors such as telecommunications, electricity generation and oil exploration as well as hotels and tourism to private participation |
| Senegal | • New Industrial Policy (NPI) of 1986 to promote private sector with a view to enhancing its international competitiveness<br>• Investment Policy providing criteria for selecting investors in strategic development sectors<br>• Legal provision for use of public-private partnerships adopted in 2004 |
| Togo | • Sustained growth based on promotion of private investments<br>• Emphasis on promotion of SMEs, agriculture and mining sector |

## Public Procurement Policies

The rules and procedures governing public procurement have a huge bearing on competition, and misnomers in the process have the capacity to distort competition in the economy. In any economy, the government, through its various departments, is the single largest buyer in the economy, including from the private sector, and adoption of improper criteria for purchases could impair competition. It can be observed from Table 4 that public procurement policy has undergone changes in all seven countries so that it now serves to promote competition better.

As mentioned in Table 4, four of the seven project countries — Burkina Faso, Mali, Senegal and Togo — have revised their national legislation on public procurement to be in line with WAEMU directives (summarised in Box 2) which aim to improve efficiency, transparency and equity in public procurement procedures in member states and increase competition in the sub-region. It should be noted however, that a Community preference capped at 15 percent is admitted by WAEMU.

## Trade Policy

Any progress in trade liberalisation can be considered good for competition on the condition that it is not accompanied by anti-competitive practices by importers who might collude to fix prices to the detriment of domestic producers (cases of dumping or predatory-pricing) or of consumers and producers using such imports as inputs (excessively high prices); or by local firms attempting to block or restrain imports. Thus, effective competition rules must accompany trade liberalisation for the latter to be effective.

Market liberalisation took place gradually in all the countries under study, first when SAPs were initiated in the 1980s and then with WTO membership between 1995 and 1996 (see Table 6 below); and concurrently through regional integration in ECOWAS and WAEMU. In addition, EPA negotiations by ECOWAS with the EU have had a direct effect on trade liberalisation in the region (see Box 4).

**Table 4: Public Procurement Acts**

| | |
|---|---|
| Burkina Faso | Public procurement reforms started in 2005 to achieve conformity with the international public procurement standards adopted by WAEMU |
| The Gambia | Public Procurement Act 2001: ended centralisation in procurement and seeks to provide transparency, efficiency, economy and accountability in public procurement through a system which is fair to all potential suppliers and provides adequate opportunities to all enterprises |
| Ghana | Public Procurement Act 2003 (Act 663) was adopted to control public procurement in line with the principles of good governance, poverty reduction and the struggle against corruption |
| Mali | Public Procurement Regulatory Authority created in 2008 to regulate public procurement with a view to increase transparency and efficiency in line with WAEMU directives |
| Nigeria | Creation of open tendering systems for government and public companies to enhance competition in 2004-06 |
| Senegal | • Public Procurement Code adopted in 2007 to achieve conformity with WAEMU directives on public procurement<br>• Adopted a Charter of Transparency and Equity in regard to Public Procurement in 2005 |
| Togo | New law enacted to ensure compliance with directives of WAEMU and institutional changes introduced in the form of the setting up of a regulatory authority to enhance transparency |

**Box 2: WAEMU Public Procurement Directives**

Directive n° 04-2005-CM/UEMOA of December 09, 2005 on awarding, executing and regulating public procurement in WAEMU and Directive n° 05-2005-CM/UEMOA on controlling and regulating public procurement and delegation of public services in WAEMU have been transposed into national law in Burkina Faso, Mali and Senegal and recently in Togo.

Although the word competition does not appear often in these Directives, it is clearly the underlying principle in the WAEMU rules. Article 2 of Directive 04-2005-CM/UEMOA for example, states that (unofficial translation) :

"Public procurement and delegation of public services of any amount are subject to the following principles:

- Economy and efficiency of the purchasing process;
- Free-access to public procurement;
- Equality of treatment for all bidders, mutual recognition;
- Transparency of processes, through rationality, modernity and traceability of decisions".

With the exception of provisions contained in Art. 62 of this Directive, member States undertake to prohibit any measure or provision based on nationality of bidders which may constitute a discrimination against nationals of a WAEMU member State. Member States further undertake to ensure that no bidder which is a public entity should distort competition to the detriment of private bidders".

Article 62 concerns Community preference, which in any event cannot exceed 15 percent of the bid amount and which is to replace any existing national preference. Article 74 on selection of bids, provides that "the bidding procedure must be open or in two stages, with due respect to exceptions considered under the present Article". with the first stage in the 'two-stage procedure' relating to pre-qualification of bidders, followed in the second stage by a competitive bidding procedure among pre-selected bidders.

Article 38, on direct agreement stipulates that "This procedure concerns cases where the authority opens discussions without proceeding through the bidding procedure with a potential supplier or service provider", but that such proceedings must "be motivated and submitted to prior authorisation of the administrative authority in charge of controlling public procurement".

The impact of WTO membership and regional integration on national trade policies can be seen in the initiative taken by African cotton producing countries (described in Box 3) at the WTO requesting the elimination of competition distorting subsidies. Membership of both WAEMU and ECOWAS, which aim at liberalisation of Community trade; and consequent adoption of a Common External Tariff (CET) and prohibition of anti-competitive practices and dumping as well as subsidies distorting competition within these communities has also had some impact on trade policies (see Boxes 4 and 5). Such membership has enhanced competition among players within the community and standardised barriers to competition from players outside the community.

The commonalities in the impact of mentioned factors across project countries can be seen in Table 5.

## Employment Policy

All 7Up4 countries have adopted modern Employment Codes, comprising basic union rights for workers, the right to strike, fixing of a minimum wage (Ghana), and detailed principles concerning collective wage negotiations. It should be noted in this respect that competition laws, where they exist, generally exclude collective wage negotiations from the list of prohibited anti-competitive practices.

All these countries suffer from high levels of unemployment and there exists an important informal sector, employing as much as 60-70 percent of the active population, a level even estimated to be around 90 percent in Gambia. This situation obviously has a bearing on competition between those firms in the "formal" sector which pay taxes and minimum wages, and abide by all the laws, regulations and standards at heavy cost, and those

| Table 5: Evolution of Trade Policy in Project Countries | |
|---|---|
| Burkina Faso | • Lifting of administrative control of prices<br>• Elimination of subsidies and export taxes<br>• Accession to WAEMU and ECOWAS in 1994 and 1995; party to ECOWAS negotiations with the EC, and adoption of the WAEMU ratified Common External Tariff (CET) in 2000<br>• WTO membership in 1995 leading to two reviews of foreign trade policy based on recommendations of the WTO Secretariat which are reflected in the National Export Strategy and the country's participation in the 2003 WTO Cotton Initiative |
| The Gambia | • Implementing CET and trade liberalisation scheme of ECOWAS; and is party to ECOWAS negotiations with EC;<br>• WTO membership in 1996 |
| Ghana | • Member of WTO since 1995<br>• Signed interim agreement with EC in December 2007 to safeguard its free access to the European market and is using the Aid for Trade Programme to develop its infrastructure |
| Mali | • Member of WTO since 1995<br>• Engaged in trade liberalisation/regional integration processes of both WAEMU and ECOWAS, as well as the EPA negotiating process of ECOWAS with the EU<br>• As LDC benefits from trade preferences under AGOA |
| Nigeria | • Member of WTO since 1995<br>• In the process of applying the ECOWAS CET and facilitating the free-movement of goods and persons agreed by the Community |
| Senegal | • Member of WTO since 1995<br>• Member of WAEMU and ECOWAS and party to EPA negotiations with the EU<br>• Benefits from AGOA initiative in favour of LDCs and is part of the EU "Everything but Arms" Programme |
| Togo | • Member of WTO since 1995<br>• Party to ECOWAS and WAEMU and participates in EPA negotiations between ECOWAS and the EU |

**Box 3: The Cotton Initiative**

Launched at the WTO in 2003 by four African cotton producing countries, (the C-4 countries) Benin, Burkina Faso, Mali and Chad, at a WTO Ministerial Conference held in Geneva on 12 December 2003 on the theme "Sectoral initiative on cotton at the WTO", the so-called "Cotton Day" focused on the demands of the African countries that the cotton issue figure prominently on the agenda of the then forthcoming Cancun Ministerial Conference.

The Cotton Initiative intended to:

- establish a discussion forum among the parties concerned by cotton initiative: Geneva negotiators, industrialists, cotton producers and NGOs;
- make known the different concerns in order to better prepare a common negotiating position in forthcoming meetings;
- mobilise the African and International Press to keep it informed of the latest developments; and
- present and publicise the study "International Negotiations and Poverty Reduction: a White Book on Cotton" jointly prepared by ENDA Third World, in cooperation with the International Centre for Trade and Sustainable Development (ICTSD), Association of African Cotton Producers (APROCA) and African Cotton association (ACA).

Concretely, the Cotton Initiative requested that the Doha Round adopt modalities for reducing progressively the subsidies afforded to the cotton sector in the countries of the North with a view to eliminating them and offering transitory measures in favour of the cotton producers of the South including financial facilities for LDCs to compensate for the losses incurred by them as long as the subsidies persist in the North.

At present, there exists no such protection for the cotton producing countries of the C4 and the conclusion of the Doha Round is still uncertain.

**Box 4: Regional Integration Agreements**

**(a) ECOWAS**

All the countries covered by the 7Up4 project are members of ECOWAS. The other members are: Benin, Cabo Verde, Cote d'Ivoire, Guinea, Guinea Bissau, Liberia, Niger and Sierra Leone.

The 30th Conference of Heads of State and Governments (January 2006) decided to establish a Common External Tariff (CET) based on the WAEMU CET model (see below), with a few changes. At their meeting on January 2008 the Heads of State requested the ECOWAS Commission to add a new tariff line in addition to the four existing ones of WAEMU, this fifth line being no more than 35 percent. The WAEMU trade agreements are regulated by amended texts in Lomé in March 2007, but these texts are pending a decision of the Heads of State and Governments.

**b) WAEMU (UEMOA)**

Members of WAEMU are Benin, Burkina Faso, Cote d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo, all members of ECOWAS. ECOWAS was established by the Treaty of Dakar of January 10, 1994 (ratified on August 01 of that year). The objectives of WAEMU are to:

- reinforce competitiveness of economic and financial activities of member States within an open and competitive market characterised by a rationalised and harmonised juridical environment;
- ensure convergence of economic achievements and economic policies of member States through the setting up of a multilateral surveillance system;
- establish a Common Market among member States based on free movement of persons, goods, services and capital and the right of establishment of persons occupying independent or employed activities, as well as a CET and a Common Trade Policy;
- coordinate national sectoral policies through implementation of joint initiatives, and eventually of Common Policies in particular in the fields of human resources, regional development, agriculture, energy, industry, mining, transport, infrastructure planning and telecommunications; and
- harmonise member States' legislation and fiscal regimes as necessary for the good functioning of the Common Market.

Accordingly, the CET was adopted in 2000. The WAEMU CET contains four distinct *ad-valorem* tariff lines (0, 5, 10 and 20 percent). Manufactured products originating from WAEMU included in the Preferential Community Tax (TPC) are imported duty-free. WAEMU has also adopted its anti-dumping code, under Regulation n°09/2003/CM/UEMOA of May 23, 2003, which fixes the conditions for the determination of dumping, opening of anti-dumping enquiries and decision-making, including establishment of anti-dumping duties and measures.

In the field of competition, WAEMU adopted Regulation n° 02/2002/CM/UEMOA of May 23, 2002, which covers cartel agreements, abuses of dominant power, State aids as well as anti-competitive practices resulting from State policy. Since 2002, the WAEMU Commission handled a number of cases at the Community level, involving airport services, motorcycles, flour-mills and State aids.

"informal" ones who can ignore every kind of legislation and bear no such costs. Nevertheless, the informal sector is sometimes the reflection of a "free market", in particular when excessive laws and regulations are imposed on developing country markets which are clearly unable to cope.

## Consumer Protection

Competition laws in general offer some consumer protection and consumer protection laws, by guarding against consumer welfare decreasing collusion or malpractice, do enhance fair competition.

The only country having a comprehensive law on consumer protection is Nigeria, but its implementation is not very strong. Apart from Ghana which has no competition law (in addition to Nigeria), the remaining countries of the 7Up4 Project enjoy a certain amount of consumer protection through their competition laws. It could be said that Ghana's Protection against Unfair Competition Act 2000 does provide consumer protection, but that law has never been enforced, neither is it clear as to who should enforce it.

It can also be seen that these countries, although lacking a comprehensive consumer protection law, do have mechanisms for consumer protection in regard to specific aspects of consumption: laws on food and drugs, weights and measures, standards and quality of products etc. as well as sector regulatory laws.

**Box 5: Negotiations on an Economic Partnership Agreement between ECOWAS Member States and the EC**

Since the Cotonou Agreement in 2000, the EC proposes a new trade partnership based on the principle of reciprocity between the EU and African, Caribbean and Pacific (ACP) member States. These agreements, named Economic Partnership Agreements (EPAs), were meant to be signed by December 31, 2007. They propose full trade liberalisation between the EU and ECOWAS in two distinct stages:

- Adoption of a CET by ECOWAS: all members States are expected to harmonise their tariffs with the CET, including adoption of a 5th tariff line in addition to those contained in the WAEMU 4-tariff-line CET; and
- Determining a free-trade agreement between the European Union and ECOWAS member States involving an "asymmetric trade liberalisation" between the two sides, 100 percent by EU and a gradual 80 percent for ACP member States (ECOWAS, in this case), who will also have the possibility to exclude certain products or services altogether.

So far, however, these agreements have not reached the final stage and some countries, like Ghana have signed interim agreements while the negotiations continue between ECOWAS and the EC. Difficulties include revenue losses to be incurred by ACP countries as a result of gradual lowering of tariffs; strength of competition unleashed by acceptance of the principle of reciprocity; search of clear gains [relation between incentives brought by EPAs and those offered unilaterally by EU under the "Everything but Arms" (EBA) initiative]; and coordination between EPA negotiations and eventual results of the Doha Round [in particular with respect to market-access for agricultural and non-agricultural (NAMA) products], while consolidating the process of regional integration of ECOWAS.

### Remarks

The general conclusion is that all the seven countries have adopted common policies, particularly those that could have a bearing on competition. Apart from granting of trade preferences which enhance as well as discourage competition in different ways, evolution of policy is in line with the objective of promoting competition, examples being policies aimed at enhancing private sector participation, and withdrawal of the state from key productive activities.

However, the state continues to play a key role in certain sectors: a number of state-owned enterprises (SOEs) including (natural) monopolies continue to exist in Burkina Faso; SOEs can be found across all major sectors of the economy, including agriculture, in Gambia though private shareholding in these companies has been allowed; 1,500 public enterprises characterised by a total investment of US$100bn (600 owned by the Federal Government and the rest by the state and local governments), mostly monopolies and characterised by inefficiencies, continue to exist in Nigeria. Such a large incidence of state ownership of production units, often monopolies, adversely affects the level of competition.

Although Ghana still has some SoEs in operation, it has done relatively well: at the time of adoption of the SAPs, the government controlled about 350 enterprises; by the end of 2000, about 300 had been privatised; and in the next three years a further 18 were privatised.

The privatisation programme is far from complete in Senegal, but monopolies are becoming scarce. In Togo, at present the State has widened its privatisation objectives, but many SoEs still remain, especially in the field of services (financial services, post and telecommunications, ports, airports, etc.)

Often however, privatisation has been marked by the creation of private monopolies, raising serious competition concerns. There was and continues to be no functional competition law or authority, in many cases, to attend to these competition concerns. The resulting problems are explained in detail in the next section.

## Progress in Operationalising Competition Regimes

### Overview

The project countries are at different stages as far as operationalising their competition laws is concerned, with two countries having no law and one law at an early stage of being made operational, while other countries have laws, but face different challenges in implementation. However, the countries without active competition laws have taken steps to develop them. This section takes a look at the existing competition regimes, and briefly discusses the steps taken to formulate and enforce laws in countries with no laws.

| Table 6: Laws and Competition Authorities in Project Countries | | | | |
|---|---|---|---|---|
| **Country** | **Competition Law** | **Date** | **Competition Authority** | **Date of creation** |
| **Burkina Faso** | Law 15-94 ADP | May 1994 | CNCC | December 2002 |
| **Gambia** | Competition Act | October 2007 | The GCC | 2009 |
| **Ghana** | None* | | | |
| **Mali** | Ordinance n° 98-019 | August 1998 | DNCC et CNC | 1998 |
| **Nigeria** | None | | | |
| **Senegal** | Law n° 94-63 | August 22, 1994 | CNC | |
| **Togo** | Law n°99-011 | December 27, 1999 | DCIC & CNCC | December 2001 |

**In Ghana, the Unfair Competition Act 2000 is not strictly speaking a competition law (dealing with cartels and abuse of dominance) but a law against 'unfair competition' such as misleading advertising, counterfeit, cheating on weights and measures, etc.*

A summary is provided in Table 6, which shows the situation in the seven countries.

## Competition Laws and Authorities

Table 7 helps us understand differences and similarities across project countries in regard to activities prohibited by the competition law, and the powers of, and problems faced by the competition authorities. All four countries with a fully or partially functional competition commission and enforced competition law – Burkina Faso, Mali, Senegal and Togo – are characterised by a resource crunch facing competition authorities which also have to defer to WAEMU's competition commission in regard to cartels and abuse of dominance. Moreover, in Togo the independence of the competition commission is more restricted as it is presided over by the Minister for Commerce. Practices prohibited under competition laws in all four countries include both anti-competitive practices and those restraining competition.

## Sub-regional Authorities and Interaction with National Laws

As we have seen, a sub-regional authority is in charge of competition matters in West Africa, i.e. WAEMU, of which four countries of the 7Up4 Project are members, – Burkina Faso, Mali, Senegal and Togo. WAEMU has established a system which takes precedence on national law and competition authority. There is also another sub-regional authority, ECOWAS, whose membership covers all seven countries under study, including The Gambia, Ghana and Nigeria, which also has a role in competition matters. The ECOWAS competition system is summarised in Box 7.

| Table 7: Laws and Authorities: Prohibited Activities, Powers and Problems | | | |
|---|---|---|---|
| | **Prohibited Activities** | **Powers/Distinguishing Features of Competition Authority** | **Problems faced by Competition Commission** |
| **Burkina Faso** | Cartels; abuses of dominance; practices restraining competition such as resale price maintenance, refusal to deal, discriminatory practices among professionals and misleading advertising | Earlier consultative role has been changed to a more proactive one with powers to initiate inquiries, receive complaints from enterprises and impose sanctions on violators | • No clarity about procedures to collect fines<br>• Insufficient human and financial resources<br>• Cartels and abuse of dominance at the level of WAEMU cannot be dealt with by it as these fall under WAEMU's competition commission |

*Contd...*

| | Prohibited Activities | Powers/Distinguishing Features of Competition Authority | Problems faced by Competition Commission |
|---|---|---|---|
| **The Gambia** | Collusive horizontal agreements prohibited *per se;* non-collusive horizontal agreements, vertical agreements and anti-competitive mergers prohibited on a rule of reason basis | Powers to impose penalties as well as issue cease and desist orders for breach of the Act | GCC has just started operation, and challenges would be identified with time |
| **Ghana** | No specific competition law in place though Protection Against Unfair Competition Act, 2000 deals with unfair competition, such as misleading and false advertising, counterfeit and cheating through weights and measures | | |
| **Mali** | Same as Burkina Faso: Unfair competition practices and practices in restraint of competition | In 1998, the National Directorate of Economic Affairs, the sole competition authority empowered with initiating enquiries and making decisions was replaced by the National Directorate of Commerce and Competition, (DNCC) which now shares the control of competition with the National Competition Council and sector regulators | Cartels and abuse of dominance at the level of WAEMU cannot be dealt with by it as these fall under WAEMU's competition commission |
| **Nigeria** | • No competition law in place but Federal Competition and Consumer Protection Bill, placed in April, 2009 before the President, envisages regulating monopolies, controlling mergers and acquisitions and prohibiting anti-competitive practices such as cartels and abuse of dominance<br>• Given past trends, unlikely to be adopted | | |
| **Senegal** | Same as Burkina Faso | Investigation and powers to impose fines are provided for under the law, though the interface with WAEMU brings complications. Cease and desist orders can also be issued | • Poor human, physical (office etc) and financial resources<br>• Defers to WAEMU's competition commission in dealing with cartels and abuses of dominance at the level of WAEMU |
| **Togo** | In addition to those above, also forgery, issuing false commercial documents, fraud regarding customs declarations, etc., | Powers to investigate, impose penalties, issue cease and desist orders as well as order closure of business are provided under the law | • Presided over by the Minister in charge of Commerce limiting its independence<br>• Defers to WAEMU's competition commission in dealing with cartels and abuses of dominance at the level of WAEMU |

**Box 6: Competition Regulations of WAEMU**

The Treaty of Dakar of August 01, 1994, which created WAEMU, had among its objectives (see Box III), "to reinforce competitiveness of economic and financial activities of member States within an open and competitive market characterised by a rationalised and harmonised juridical environment" and "to establish a Common Market among member States based on free movement of persons, goods, services and capital and the right of establishment of persons occupying independent or employed activities, as well as a CET and a Common Trade Policy" (Article 4);

Accordingly, the Treaty provides that in order to create a Common Market WAEMU will elaborate common rules of competition applicable to public and private enterprises, as well as to State aids (Article 76c). These provisions are supplemented by Articles 88-90 of the Treaty, relating to rules on competition which need to be implemented within the framework of a Common Market. In particular, Article 88 provides an absolute prohibition for a) agreements, associations and concerted practices among enterprises aiming at, or having the effect of, restraining or distorting competition within the Union; b) all practices by one or more enterprises in a dominant position of market power abusing that power in the Common Market or any substantive part thereof; and c) public aids capable of distorting the free play of competition by favouring certain enterprises or producers. Article 89 adds that the Council of Ministers of WAEMU, acting with a two-thirds majority of its members on proposal of the Commission of WAEMU, adopts by way of Regulations, the texts necessary for applying the prohibitions provided under Article 88.

Finally, Article 90, provides that the Commission of WAEMU is in charge, under the supervision of the Court of Justice of the l'Union, of applying the competition rules under Articles 88 and 89.

It is only on May 23, 2002, seven years after the Treaty of Dakar was adopted that the Regulations and Directives called for in Article 89 of the Treaty were finally adopted and entered in force on July 01, 2002 for the Directives and January 01, 2003 for the three Regulations. These are:

- Regulation n°02/2002/CM/UEMOA of 23/05/2002 relating to anti-competitive practices within WAEMU;
- Regulation n° 03/2002/CM/UEMOA of 23/05/2002 relating to procedures against cartels and abuses of dominant position of market power, within the territory of WAEMU; and
- Regulation n° 04/2002/CM/UEMOA of 23/05/2002 relating to State Aids within WAEMU and to the modalities of application of Article88c of the Treaty.

The first Regulation prohibits all forms of anti-competitive agreements, in particular those aiming at restricting the free play of competition or to fix prices (Article 3); abuses of dominant position including resale price maintenance, restraining output and markets to the disadvantage of consumers or technological progress, discriminating among professionals, etc.(Article 4); and State Aids when these distort or may distort competition within the (Article 5).

As for the Directives:

- Directive n° 01/2002/CM/UEMOA, relating to transparency of financial relations between member States and public enterprises on the one hand, and between member States and international Organisations, on the other hand, and
- Directive n° 02/2002/CM/UEMOA, relating to cooperation between the Commission and national competition authorities of member States, in application of Articles 88, 89 and 90 of the Treaty.

The latter provides exclusive competence on matters of competition within the Union to the WAEMU Commission, national authorities having only a general role of enquiry upon national initiative or upon specific reference by the WAEMU Commission. The national competition authorities are in charge of permanent surveillance of the market in order to detect infringements to the competition rules. They are also responsible for:

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- receiving and transmitting to the WAEMU Commission negative clearances, notifications for exemption, and complaints by physical or moral persons;
- elaborating and transmitting quarterly reports and information notes to the WAEMU Commission on the state of competition in sectors which have been investigated in the past;
- following up, in cooperation with other administrations in charge, the implementation of decisions related to persons other than the State, including collection of fines, and to report regularly to the WAEMU Commission;
- registering State Aids and providing quarterly reports on such Aids to the Commission;
- drafting an annual report on the state of competition in the country; and
- assisting the agents of the Commission when it conducts enquiries on its own.

The bodies in charge of applying the Community texts on competition are therefore the WAEMU Commission, the executive body of the Commission; and the Court of Justice of WAEMU. The WAEMU Commission is given exclusive powers on competition matters. Hence, Community law applies in the same way to anti-competitive practices affecting trade between States as for practices having effects only inside member States. The Commission can take provisional decisions, it can make orders against member States found in breach of competition rules, and is empowered to impose sanctions and fines in case of refusal to abide by its decisions. The WAEMU Commission is also empowered to deal with all distortions to competition among member States which result from State Aids, SOEs, and parastatal enterprises. The decisions of the WAEMU Commission can be appealed at the WAEMU Court of Justice.

**Box 7: Competition Regulations of ECOWAS**

The ECOWAS Treaty (1975) was revised by the Summit of Heads of State and Governments of Cotonou in July 1993. The revised Treaty aims at integration of West African countries, primarily at the economic level, but also in the other areas of social life, in order to accelerate development to the benefit of the people. It is within the objective of creating a Common Market that adopting competition rules was envisaged, even if the Treaty itself does not make clear reference to competition. Nevertheless, ECOWAS has also elaborated its own competition regulations. These are embodied in two Supplementary Acts of ECOWAS, adopted at the 35th ordinary session of the Conference of Heads of State and Government in Abuja (Nigeria) on December 19, 2008. These are:

- Supplementary Act A/SA.1/06/08 adopting community competition rules and the modalities of their application within ECOWAS; and
- Supplementary Act A/SA.2/06/08 on the establishment, function of the regional competition authority for ECOWAS.

The first Supplementary Act concerns practically the same anti-competitive practices as other competition laws including WAEMU regulations. Article 4(1) states that it « applies to agreements, practices, mergers and distortions caused by member States which are likely to have an effect on trade within ECOWAS. The Rules shall concern notably acts, which directly affect regional trade and investment flows and/or conduct that may not be eliminated other than within the framework of regional cooperation".

Article 4(2) provides a certain number of exemptions, among which (a) labour-related issues, notably activities of employees for the legal protection of their interests; (b) collective bargaining agreements between employers and employees; (c) agreements and trade practices approved by a regional competition organ of ECOWAS where these trade practices are authorised under the Supplementary Act; (d) activities expressly exempted by virtue of any treaty or any instrument or agreement in relation thereto or flowing there from, so long as the activities are not inconsistent with the purposes of this Supplementary Act; (e) activities of professional associations designed to develop professional standards", etc.

Article 4(3) states that "the Community rules on competition should also apply to State enterprises".

Article 5 concerns « agreements and concerted practices in restraint of trade » which are incompatible with the ECOWAS Common Market. Such agreements are prohibited and "shall be automatically void and of no legal effect in any member State of the ECOWAS Community". These are, in particular: (a)

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directly or indirectly fixing purchase or selling prices and terms of sale; (b) limiting or controlling production, markets, technical development or investment; (c) sharing markets, customers or sources of supply; (d) applying dissimilar conditions to equivalent transactions with other trading parties; thereby placing them at a competitive disadvantage; and (e) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 6 prohibits abuses of dominant power by one or more enterprises, "singularly or collectively", possessing "a substantial share of the market that enables it/them to control prices or to exclude competition". Such abuses include a list of possible abuses which repeats word for word the list given above for Article 5.

Article 7 refers to mergers and acquisitions "where the resulting market share in the ECOWAS Common Market, or any significant part thereof, (…) shall result in abuse of dominant market position resulting in a substantial reduction of competition" Article 7(3), however, states that the prohibited merger or acquisition can be authorised "if the transaction concerned is in the public interest".

Article 8 relates to State Aid, incompatible with the Common Market if it "distorts or threatens to distort competition". However, exceptions are provided when such aid is of social character, such as in relief of natural disasters, or if they serve to promote economic development of regions, they favour culture and are in the Community interest.

Finally, Article 13 establishes a Regional Competition Authority, which will collaborate with other existing authorities (WAEMU). Article 13(4) also establishes a Consultative Competition Committee, both functions of which are to be specified by a Regulation to be adopted by the Council of Ministers.

The second Supplementary Act of ECOWAS (A/SA.2/06/08) on the establishment, function of the regional competition authority for ECOWAS provides in its Article 3, that cooperation with national, regional and NGOs will take place in implementing the obligations resulting from the application of the Supplementary Acts on competition.

As a result of the commonality of objectives between ECOWAS and WAEMU, the two organisations have established a framework of permanent consultations aiming at harmonising their policies and regulations in the future. The first steps of such collaboration were made with respect to a case which emerged during the implementation of a gas pipeline project covering four member States of ECOWAS (Ghana, Nigeria, Benin and Togo), two of which (Benin and Togo) are also members of WAEMU.

In this case ECOWAS, which recognised the pipeline as a Community project, recognised the possibility of applying WAEMU competition rules to enterprises active in its market (while not present on WAEMU territory). Therefore, it is likely that with time, risks of conflicts of interest between the two sub-regional organisations should disappear.

## Remarks

The presence of two sub-regional authorities with competition mandates could give rise to some few issues. On collaboration between the two community competition authorities and national ones, each regulation refers to cooperation, but not in a sufficiently clear manner. In the WAEMU for example, Directive n°02/2002/CM/UEMOA of 23/05/2002 provides, in Article 3, that the WAEMU Commission has exclusive competence on matters of competition.

However, in a wide market which lacks transparency, it is likely that the Commission will very quickly find itself unable to cope with an extremely heavy workload of complaints. Decision-making delays might become too long. The situation is very similar in the case of ECOWAS, where the Supplementary Act on the establishment, function of the regional competition authority of ECOWAS, while not specifically providing exclusive rights for the Regional Competition Authority, provides that in case of need the national authorities may be invited to collaborate in enquiries and references.

Thus, in the ECOWAS region like under WAEMU rules, national competition authorities do not seem to have the powers of deciding on anticompetitive practices. It is also not clear if, like in WAEMU their control is restricted to "practices in restraint of competition" because, contrary to WAEMU rules, the ECOWAS Supplementary Acts do not make a clear distinction between the two kinds of practices.

It is, therefore, necessary to review the cooperation among the community competition authorities on the one hand, and between them and their national counterparts on the other hand, as the regulations should clearly avoid conflicts of jurisdiction and accord more responsibilities to the national authorities in the immense task of sanctioning anti-competitive practices. Looking at European Commission Competition practice, it is interesting to note that EC has reformed its own system in a very different direction from WAEMU i.e. towards a new, more decentralised system, giving more powers to national competition authorities to apply Community law. Details of EC Competition Policy reforms of 2003-2004, are given below, in Box 8.

In conclusion of this section on competition law it can be said that the four 7Up4 countries which are both members of WAEMU and ECOWAS, have adopted competition laws and established, sometimes after many years, their competition authorities. In addition, the WAEMU Commission, followed by ECOWAS, have obtained exclusive competence to decide on competition issues such as cartels and abuses of dominance, leaving the national authorities with very limited and to a certain extent, unclear competencies, such as that of sanctioning "practices in restraint of competition" — resale price maintenance, loss-selling, refusals to deal, discrimination, misleading advertising and false representations. As discussed above, even the latter seems to be under ECOWAS exclusive control.

**Box 8: Council Regulation (EC) No 1/2003 of December 16, 2002 on the Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the Treaty**

The preamble to the Regulation states that:
"(3) The centralised scheme set up by Regulation No 17 no longer secures a balance between those two objectives. It hampers application of the Community competition rules by the courts and competition authorities of the Member States, and the system of notification it involves prevents the Commission from concentrating its resources on curbing the most serious infringements. It also imposes considerable costs on undertakings.

4) The present system should therefore be replaced by a directly applicable exception system in which the competition authorities and courts of the Member States have the power to apply not only Article 81(1) and Article 82 of the Treaty, which have direct applicability by virtue of the case-law of the Court of Justice of the European Communities, but also Article 81(3) of the Treaty.
(……..)

(6) In order to ensure that the Community competition rules are applied effectively, the competition authorities of the Member States should be associated more closely with their application. To this end, they should be empowered to apply Community law.
(7) National courts have an essential part to play in applying the Community competition rules. When deciding disputes between private individuals, they protect the subjective rights under Community law, for example by awarding damages to the victims of infringements. The role of the national courts here complements that of the competition authorities of the Member States. They should therefore be allowed to apply Articles 81 and 82 of the Treaty in full."

Hence, Articles 5 and 6 of the Council Regulation provide that:

"Article 5, Powers of the competition authorities of the Member States
The competition authorities of the Member States shall have the power to apply Articles 81 and 82 of the Treaty in individual cases. For this purpose, acting on their own initiative or on a complaint, they may take the following decisions:
- requiring that an infringement be brought to an end,
- ordering interim measures,
- accepting commitments, and
- imposing fines, periodic penalty payments or any other penalty provided for in their national law.

Where on the basis of the information in their possession the conditions for prohibition are not met they may likewise decide that there are no grounds for action on their part.
Article 6, Powers of the national courts
National courts shall have the power to apply Articles 81 and 82 of the Treaty".

*Source: Eur-Lex/Europa/EU.*

As for the other countries studied under the 7Up-4 Project, namely Ghana and Nigeria, which are both members of ECOWAS, none of them has adopted a comprehensive competition law, although many bills have been submitted to their Parliaments. In Nigeria, the process is hampered by some political economy issues, such as uncoordinated and parallel processes resulting in different Bills being prepared by different bodies. There is also no consensus as to the line Ministry the proposed competition authority will be under, which could also be the reason for multiplicity of bills. The Bills are constantly being turned down at the National Assembly due to unclear reasons.

In Ghana, it is not clear as to why the previous two competition bills could not be adopted as laws, although the third draft is now under consideration. The other project country, The Gambia, has a competition law which is at its nascent stage of implementation.

## Interface Between Sectoral Regulation and Competition

### Overview

The need for coexistence between sector regulators and competition authorities is an issue that has been widely emphasised in developing countries. It is argued that there might be some confusion among the stakeholders as to which authority to approach for regularising deals — the sector regulator, the competition authority or both if regulations are not clear. A previous CUTS project reported instances of decision by one authority being in conflict with that of the other, thereby causing tension not only among the stakeholders but also among the two sets of regulators. This results in the need for operational frameworks involving the two authorities.

It can be established that across all the countries, including Ghana and Nigeria which do not have any competition laws, sector regulators in some sectors have also been mandated with implementing competition-related issues in their own sectors. It might be important to get an understanding as to whether the demarcation of mandate is clear, and whether operational frameworks are existing or likely to exist to minimise conflicts and tensions.

A few sectors have been selected in this section for analysis. The regulatory framework for each project country under each sector will be explored, and the revealed information will be used to gauge whether there could be areas characterised by intersection of the respective mandates of the sector regulator and the competition authority.

### Electricity

An overview of interface issues is provided in Table 8. There are no interface problems at present in the case of Burkina Faso, Ghana and Nigeria as the first and each of the other two countries are characterised by the absence of an electricity regulator and competition authority respectively. However, Ghana and Nigeria might soon have competition commissions implying that interface issues might crop up.

In both Senegal and Togo, both competition authority and sector regulator are present and in the absence of an operational framework for coordination/ cooperation, problems relating to interface exist. Mali is the only country where despite the existence of both sector regulator and competition authority, problems relating to interface do not exist. This is because the regulatory authority is not authorised to take any decisions regarding competition issues.

### Water and Sewage

In some of these countries – Gambia, Ghana and Togo— problems relating to interface are ruled out presently because the law supports the existence of a public monopoly. In Nigeria, with private entry allowed there is a possibility for interface problems but only when the competition authority, as planned, is constituted. In Burkina Faso, interface issues are absent because a sector regulator does not exist. This leaves Mali and Senegal where the problem of interface exists because the authorities regulating the sector and economy wide competition are different.

### Telecommunications

Competition exists in all project countries in this sector. In Gambia, Ghana and Nigeria the sector regulator looks after competition issues. However, out of these Ghana and Nigeria currently lack a competition authority and once these are established problems relating to interface might come up. In Mali and Senegal, the regulator does not have any mandate regarding competition issues which are looked after by the competition agency.

### Remarks

In all countries, except Mali, the sector regulator in the telecom sector has powers relating to competition in the sector, and in Gambia, the regulation law has gone a step further to try and reduce the role of the competition authority in the sector. However, competition is not always effective in these markets. While the competition authorities also have a say in these sectors, frameworks and memorandums of understanding governing how they would co-exercise their mandate with sector regulators are not yet in place.

| Table 8: Interface Issues by Country in the Electricity Sector | | |
|---|---|---|
| **Country** | **State of Interface** | **Competition Problem – Potential or Actual** |
| Burkina Faso | No electricity regulator implies that the competition authority has a free reign with no interface concerns | The National Electricity Company has a monopoly thus it is possible for it to abuse such position against its suppliers, customers, and distributors |
| The Gambia | Both PURA and Gambia Competition Commission have mandates to ensure competition in the electricity sector, which brings to the fore the need for cooperation | At present, the sector is dominated by National Water and Electricity Company (NAWEC), which is a public monopoly of electricity transport, distribution and marketing. This implies there is scope for abuse of dominance |
| Ghana | There is no Competition Commission but two authorities share electricity regulation – the general public utilities' regulator (PURC) for competition and consumer protection issues, including quality control; and the Energy Commission for applying technical standards and delivering production licences. With a competition bill on the table, delineation of mandate between PURC and the proposed competition authority might become important | At present the sector is dominated by two public enterprises namely *Electricity Company of Ghana* (ECG) and *Volta River Authority* |
| Mali | The independent National Electricity Regulatory Authority is not empowered to sanction unfair competition, which is the responsibility of the National Directorate of Commerce and Competition, or anti competitive practices which are the reserve of the WAEMU Commission | On paper, the sector is open to the competition but in reality public monopolies EDM SA and AMADER control the sub-sectors |
| Nigeria | The Electricity Regulatory Commission (NERC) is in charge of both economic regulation and competition in the sector | There is a monopoly in the sector, which means that abuse of dominance is possible. The sector is also potentially open to competition under new laws, creating scope for exclusionary abuse of dominance |
| Senegal | The electricity regulator is empowered to promote competition and given the existence of a competition authority, the possibility of conflict exists | After two failed attempts of privatisation, public enterprise SENELEC is still holding the monopoly status in the sector |
| Togo | Both the competition law and the sector regulation law do not provide an adequate framework for cooperation between the two regulators so that they harness their expertise while minimising conflicts over mandate | Private operator *Togo Electricity* obtained a concession to manage the sector and is currently the monopoly operator |

| Table 9: Interface Issues by Country in the Water and Sewage Sector | | |
|---|---|---|
| **Country** | **State of Interface** | **Competition Problem – Potential or Actual** |
| Burkina Faso | No specific regulator for water and sewage implies that the competition authority has a free reign with no interface concerns | Dominated by the public incumbent leading to scope for abuse of dominance |
| The Gambia | It is regulated by the general public utilities regulator PURA which is also responsible for promoting competition. Given that the Gambia Competition Commission also has a mandate to ensure competition in this sector, there is a need for a framework to ensure cooperation | At present, the sector is dominated by the National Water and Electricity Company (NAWEC). This implies there is scope for abuse of dominance |
| Ghana | General Regulator PURC is in charge of regulation. There is no Competition Commission. With a competition bill on the table, delineation of mandate between PURC and the proposed competition authority might become important, but only when entry into this sector is allowed | The State monopoly Ghana Water Company Limited (GWCL) has awarded the management of the sector to a private company, Aqua Vitens Rand Limited (AVRL) under a five years concession initiated in 2006. This implies that there is scope for abuse of dominance |
| Mali | A semi independent regulator exists but is not empowered to sanction unfair competition, which is the responsibility of the National Directorate of Commerce and Competition, or anti competitive practices which are the reserve of the WAEMU Commission | Private entry is taking place though the existence of a dominant player implies there is scope for abuse of dominance |
| Nigeria | The sector is regulated by the Federal Ministry of Water Resources (FMWR), thus creating scope for problems relating to interface when the competition authority is constituted | Though there is a monopoly the sector is potentially open to competition under new laws |
| Senegal | Regulated by the concerned ministry and given the existence of a competition authority, the possibility of conflict exists | *La Sénégalaise des Eaux*, a subsidiary of Bouygues Group is a private monopoly by the virtue of a leasing contract jointly with the *Société Nationale d'exploitation des Eaux du Sénégal* (SONEES) |
| Togo | Public monopoly – no question of interface problems as competition issues cannot crop up at present | There is a public monopoly – which gives rise to competition concerns |

| Table 10: Interface Issues by Country in the Telecom Sector | |
|---|---|
| **Country** | **State of Interface** |
| Burkina Faso | New regulator has been put in place. Given the existence of a competition authority, there are potential interface problems |
| The Gambia | It is regulated by the general public utilities regulator PURA which is also responsible for promoting competition. The Gambia Competition Commission only has advisory powers in regard to competition issues in this sector |
| Ghana | Regulator is in charge of competition issues. There is no Competition Commission. With a competition bill on the table, delineation of mandate between the regulator and the proposed competition authority might become important |
| Mali | An independent regulator exists but is not empowered to sanction unfair competition, which is the responsibility of the National Directorate of Commerce and Competition, or anti-competitive practices which are the reserve of the WAEMU Commission |
| Nigeria | There is a sector regulator which also deals with competition issues |
| Senegal | Has a regulator which also looks after competition issues – no problems of interface |
| Togo | Presence of a regulator as well as competition authority implies that scope for interface problems exists |

It is fortunate however that there are no conflicts or interface problems reported between the two sets of regulators across all the countries, despite the limitations in regulations. The interface issue is also not a serious concern for those project countries who are members of WAEMU, given that it has responsibilities over competition issues, with little role for the competition authority.

It can also be shown that the current competition bills in both Nigeria and Ghana have also not addressed the interface issue properly, and it is possible that such concerns could rise in future. It is pleasing to note that during the project period in Gambia, although the frameworks are not yet spelt out, both PURA and GCC registered their commitment towards ensuring that problems possibly arising from the absence of a framework in the legislations would not actually arise.

## Allegations of Possible Anti-competitive Practices

Allegations of anti-competitive practices across the seven countries in some specific sectors are summarised in this section. It is important to note that most of these cases have not yet been proven, as competition authorities (where they exist) are yet to take action. These are mostly allegations, drawn from different newspapers and interviews with key stakeholders. Some few sectors, which have cross-country concerns, have been selected for assessment as follows:

### Cement

On the seven countries studied here, three have reported problems in the cement sector. It should be noted that this sector is one which is traditionally sanctioned by competition authorities around the world. In Ghana and Nigeria, cement prices have skyrocketed and governments are at a loss regarding solutions that can be applied. The absence of a competition authority has been crippling in this regard

In **Ghana**, the cement market is dominated by a duopoly between Ghana Cement (GHACEM), and a cement firm of Indian origin, DIAMOND CEMENT, which is also present in Burkina Faso and Togo. Faced with uninterrupted cement price increases in Ghana – only in 2007 the price of a 50 Kg bag of cement more than doubled – the Minister of Commerce and Industry requested GHACEM to limit the price to a reasonable level. The Minister's request was rejected by GHACEM, which reminded the Minister that the company was now totally privatised and that prices were free in Ghana. The duopoly has been accused of creating scarcities of cement in order to benefit when prices rise. Without an appropriate competition law empowering a competition authority to enquire on this matter, the State finds itself at a loss.

In **Nigeria**, domestic cement production is insufficient to satisfy demand and imports exceed 50 percent of local consumption. Imports were liberalised towards the end of the 1980s, but faced with the inability of domestic cement producers to compete, the government tried import substitution policies by blocking imports to favour domestic production. Faced with enormous scarcities, the government then authorised imports of cement, but only in bulk, which had to be packaged locally.

The domestic market is actually composed of 13 national producers who also import cement. Among them, WAPCO, a subsidiary of the French Group LAFARGE, controls around 55 percent of the Nigerian market. Together, the 13 cement firms which are members of the Cement Manufacturers' Association, represent around 80 percent of the Nigerian market.

Like in other countries of the region prices are always on the rise, and consumers complain that the association is in reality a cement cartel, allowing its members to corner the market. The 50 Kg package is reported to rise often above 200 Naira, while in other countries the same package would only cost the equivalent of 60 Naira.

In a move to try to ease prices, the government awarded six additional import licences in 2008, allowing imports of cement packs for a limited period. That gave some respite to the market, but as soon as the measure was terminated prices started to rise again. As long as Nigeria will not have its own competition Law with a competition authority empowered to enquire the market and take measures to sanction infringements, the government will be unable to take effective remedial action.

### Fertilisers

Cartelisation is evident in Burkina Faso, Gambia, Ghana and Nigeria. In addition there are accusations regarding tied selling practices in Ghana and resale price maintenance in Nigeria. The problems regarding anti–competitive practices in these two countries are to be exacerbated given that the controlling authority of a competition agency is not present.

In **Burkina Faso,** numerous domestic private suppliers of fertilisers and phyto-sanitary products are active on the market, like SOCOMA, SAPHYTO, SCAB, SIPAM, KING AGRO, BOUTAPA and SOFITEX. Nevertheless, these companies are not present in all regions of the country and seem to have shared the market. In the Cascades region, SAPHYTO is the only big supplier. In the Hauts Bassins region SAPHYTO and SCAB share the market 50-50. Finally in the East, SOCOMA is clearly dominant with a market share of 75 percent while SAPHYTO has 25 percent. Competition seems to be more lively in the Centre region, where three firms are present: SIPAM with a 40 percent market share, BOUTARA, also 40 percent, and KING AGRO (20 percent). However, the quasi-uniform prices seem to indicate the existence of a price-fixing and market-allocation cartel.

In **The Gambia**, there are also many suppliers, some State-owned, like Gambia Horticulture Enterprise (GHE), and many private, such as FIRST CHOICE, SANGOL, SILLA, BAKARY BOJANG, etc. However, many farmers reported that in their opinion, the high-level of prices is due to collusive price-fixing and market-sharing.

In **Ghana**, liberalisation of the fertiliser market occurred in 1992, but import percent of distribution in the country. Interviewed farmers and some suppliers considered that high prices of fertilisers are due to collusive practices such as price-fixing and market sharing. Some farmers also complained about tied-selling practices in this sector.

In **Mali**, the market of agricultural inputs is characterised by a large number of retailers (84 for pesticides, 30 for fertilisers, etc.). However, 88 percent of the fertiliser market is in the hands of 4 suppliers and 81 percent of pesticides are obtained by 5 large firms. The competition commission should keep an eye on this sector where a limited number of operators control the market.

In **Nigeria,** the main fertiliser suppliers are governmental agencies which represent some 76 percent of the market; the rest is distributed by private domestic firms as well as multinationals. The CUTS interviews revealed that major anti-competitive practices encountered in this sector were price-discrimination, price-fixing and resale price maintenance.

### Telecom

In Burkina Faso, the historic operator, ONATEL, is believed to have a dominant position, reinforced by its monopoly of fixed lines and the international Gateway. This last monopoly means that all its mobile competitors have to access international lines through ONATEL's monopoly. It is reported that ONATEL has often refused to accord interconnection rights to newcomers, in spite of the fact that the Telecoms Law obliges it to do so. The two cases decided by the previous regulator, ARTEL described below in Boxes 9 and 10 are enlightening on this subject.

**Box 9: Decision n° 2002-000038/DG-ARTEL/DR Relating to Public Tariffs for International Calls by TELECEL FASO through ONATEL**

According to Annex 5 to an Interconnection Agreement signed by the historic operator ONATEL, which has the monopoly of fixed lines and access to international lines and mobile operator TELECOM FASO, the agreed tariff for international mobile calls was based on a given percentage of the public tariff of ONATEL.

After the historic operator revised its public tariffs offering a 20 percent rebate, TELECEL FASO asked to be granted the same advantage, ONATEL refused on grounds that the new tariff was a promotional offer, and in any event was not foreseen in the interconnection contract. ONATEL added that the interconnection agreement with TELECEL FASO did not contain time-related variations, which was the segment where 20 percent reductions applied.

TELECEL FASO argued that since all mobile operators were obliged to access to international lines through ONATEL, in view of ONATEL's monopoly of the international gateway, another competitor, CELTEL (ZAIN) as well as ONATEL's mobile subsidiary TELMOB obtained the rebate in question.

In its decision ARTEL considered that while telephone operators were free to fix tariffs, they were under obligation under law to offer equal treatment for the same professional services to all professionals concerned, without any discrimination.

Hence ARTEL ordered ONATEL to offer equal treatment to TELECEL FASO, and to reimburse all arrears since the time when the case emerged.

**Box 10: Decision n° 2003-000039/DG-ARTEL/DR Relating to a Dispute between CELTEL (ZAIN) and ONATEL**

CELTEL (ZAIN) issued a complaint to the regulator ARTEL about the practice of ONATEL which restricted interconnection to its competitors, in particular CELTEL (ZAIN) in spite of the existence of an Interconnection Convention among the two operators. According to CELTEL, there restraints were aimed at favouring ONATEL's mobile subsidiary, TELMOB, against its competitors on the mobile market. In response, ONATEL argued that it restrained these communications in order to protect itself from excessive calls from State administrations which were not paid, and for which enormous unpaid claims existed in its books.

In its Decision, ARTEL considered that this practice resulted in discrimination against ONATEL's competitors and ordered to cease and desist this anti-competitive action which was contrary to the Law. ONATEL was invited to solve its problems of arrears by negotiating directly with the State.

In Ghana, it should be noted that the two fixed operators, GT and WESTEL benefited from exclusivity of the international gateway until 2002 as a duopoly. Since then the international gateway is free for all mobile operators. Box 11 below provides another illustration of the competition problems faced by newcomers in a market dominated by the historic operator and regulated by an authority emerging from the Ministry and/or the historic operator, and unaware of competition law and policy.

Box 12 below summarises the complaints of Internet Access suppliers against the factual monopoly held at present by SONATEL in Senegal.

**Box 11: Ghana Telecom : A Long Story of Abuse of Dominant Position on Fixed Telephones**

The second fixed telephone operator in Ghana, WESTEL, and the operator in rural districts CAPITAL TELECOM have experienced serious interconnection problems with the historic operator, GHANA TELECOM (partly privatised in 1996 when Telecom Malaysia bought a 30 percent managing share, which it later sold in 2002 to the Norwegian operator TELENOR; the remaining 70 percent of GT was the propriety of the State until it recently sold it to VODACOM from the UK).

According to WESTEL, its interconnection problems with GHANA TELECOM retarded its entry on the market. WESTEL proposed to introduce a pre-pay system opened to its network as well as to that of GT. However, GT requested that WESTEL should develop its own network before according it an interconnection. After lengthy negotiations, where the sectoral regulator NCA proved its inability to impose an interconnection, WESTEL was obliged to abandon its project of introducing a pre-pay card.

To date, GT is heavily dominant in the fixed telephone lines in Ghana, while WESTEL has a very small market share. Although much more expensive that fixed telephones, the mobile-phone sector has an undeniable success as demonstrated by the number of subscribers which is 9 times that of fixed line ones. This is also explained by the long waiting lists which exist if one wants to subscribe to a fixed line.

Consumers consider that NCA has failed in its mandate of assuring an independent and equitable role, given that most of its managers are directly recruited from the historic operator, itself part of the ancient State monopoly.

**Box 12: Senegal – Accusations of Abuse of Dominant Position and Monopoly in the Telecom Sector**

ARTP received many complaints for abuses of dominant position from the National Union of telecenter and teleservice providers *(Union nationale des exploitants de télécentres et téléservices du Sénégal)*. They complain in particular that SONATEL applies excessive prices and price-discrimination to favour its own subsidiary SONATEL MULTIMEDIA to the detriment of its competitors on the market for access to Internet. These anti-competitive practices were accused of having caused the bankruptcy of two Internet suppliers of the name of Metissacana and Point Net.

In another case, the association of operators dealing with the last link (Collectif des opérateurs de terminaison d'appels, COPTA) accused SONATEL of fixing abusively high and discriminative prices for the minutes of end of calls, considering that fixed calls were sold for 30% more to Senegalese operators than to foreigners. As for mobile phones, the price was so high that they were unable to make offers.

## Cross-Sectional Perceptions on Competition Concerns

Competition law and policy can have an impact on the economy only if all stakeholders, from the State to public enterprises, the private sector and consumers, as well as the media and representatives of the civil society are aware of the importance and the benefits of competition to the economy as a whole, as an engine of sustainable growth and an instrument of the struggle against corruption. Hence, after having studied the countries covered by the 7Up4 Project, it appeared essential to explore to what extent the main stakeholders were aware of these questions. In order to obtain such information, a questionnaire was prepared by CUTS and submitted to a sample of stakeholders in each country under study. Table 11 below, indicates the number of stakeholders who responded to the CUTS questionnaire in each country.

**Table 11: Number of Stakeholders Responded to CUTS Questionnaire**

| Country | Number of respondents |
|---|---|
| **Burkina Faso** | 190 |
| **The Gambia** | 150 |
| **Ghana** | 195 |
| **Mali** | 49 |
| **Nigeria** | 150 |
| **Senegal** | 94 |
| **Togo** | 162 |

In some countries like Mali, the number of respondents was rather small; in others it varies around 190, which is still a rather low number for a statistical enquiry. However, as can be seen below, the results of the enquiry point to similar findings across countries, and allow us to draw some useful conclusions. The stakeholders questioned were chosen at random among three distinct groups: business leaders, representatives from public administration and representatives from the civil society. Tables below provide a condensed view of the results of the enquiries.

Asked whether a competition law existed in their country, "yes" is the reply characterised by lowest incidence in countries where a comprehensive competition law still does not exist (Ghana, Nigeria). It should be noted that for Senegal, replies are disaggregated by types of respondents: private sector/public administration/civil society. Percentages shown are those given in the Senegal study and do not total 100 percent. Thus, these are difficult to interpret.

**Table 12: Awareness About the Existence of a Competition Law in the Country**

| Country | YES(%) | NO(%) | Don't know(%) |
|---|---|---|---|
| **Burkina Faso** | 49 | 14 | 37 |
| **Gambia** | 35 | 24 | 41 |
| **Ghana** | 19 | 23 | 58 |
| **Mali** | 43 | 17 | 40 |
| **Nigeria** | 26 | 31 | 43 |
| **Senegal** | 57 | 2 | 41 |
| **Togo** | 37 | 16 | 47 |

**Table 13: Awareness of the Existence of Consumer Protection Laws**

| Country | YES(%) | NO(%) | Don't know(%) |
|---|---|---|---|
| **Burkina Faso** | 67 | 8 | 25 |
| **Gambia** | 53 | 47 | 0 |
| **Ghana** | 31 | 22 | 47 |
| **Mali** | – | – | – |
| **Nigeria** | 78 | 4 | 18 |
| **Sénégal** | – | – | – |
| **Togo** | – | – | – |

It is interesting to note that the percentage of "yes" responses to the question relating to the existence of a consumer protection law is much higher than that relating to the existence of a competition law. This shows that the public is much more keen about consumer protection issues and unaware about the effects of competition law.

**Table 14: Existence of Competition/Consumer Protection Authorities**

| Country | YES(%) | NO(%) | Don't know(%) |
|---|---|---|---|
| **Burkina Faso** | 49 | 14 | 37 |
| **Gambia** | 91 | 0 | 9 |
| **Ghana** | 26 | 11 | 63 |
| **Mali** | 83 | 7 | 10 |
| **Nigeria** | 78 | 4 | 18 |
| **Senegal** | - | - | - |
| **Togo** | 49 | 21 | 30 |

To the question, "do you know if a competition authority exists in your country?", it is useful to bear in mind that those who said " yes" were not automatically thinking about the national competition commission, but also about sectoral regulators and other agencies. In The Gambia, for instance, the general utilities regulator PURA is very well known to the general public.

| Table 15: Perceived Action Taken by These Authorities | | | |
|---|---|---|---|
| **Country** | **YES(%)** | **NO(%)** | **Don't know(%)** |
| **Burkina Faso** | 47 | 24 | 29 |
| **Gambia** | 75 | 7 | 18 |
| **Ghana** | - | 41 | 59 |
| **Mali** | 80 | 10 | 10 |
| **Nigeria** | 36 | 23 | 41 |
| **Senegal** | - | - | - |
| **Togo** | - | - | - |

With respect to action taken by these authorities, the incidence of positive replies is relatively high, although many considered that the lack of appropriate resources, and the existence of corruption may explain inaction by authorities.

| Table 16: Perceived Level of Prevalence of Anti-competitive Practices | | | |
|---|---|---|---|
| **Country** | **High(%)** | **Medium(%)** | **Low or Nil(%)** |
| **Burkina Faso** | 73 | 10 | 17 |
| **Gambia** | 22 | 45 | 33 |
| **Ghana** | 19 | 64 | 17 |
| **Mali** | 34 | 33 | 33 |
| **Nigeria** | 49 | 38 | 13 |
| **Senegal** | 32 | 38 | 30 |
| **Togo** | 31 | 33 | 36 |

The percentage of those who consider that anti-competitive practices are prevalent is relatively low, except for Burkina Faso. This might indicate the respondents were not really clear as to what was meant by such practices.

| Table 17: Perceived Impact of Competition on the Level of Income of Consumers | | | |
|---|---|---|---|
| **Country** | **High(%)** | **Low(%)** | **Nil(%)** |
| **Burkina Faso** | 47 | 42 | 11 |
| **Gambia** | 53 | 43 | 4 |
| **Ghana** | 51 | 40 | 9 |
| **Mali** | 3 | 97 | 0 |
| **Nigeria** | 20 | 80 | 0 |
| **Senegal** | - | - | - |
| **Togo** | 1 | 99 | - |

Replies shown in the above table are very different across groups of countries. There seems to be coherence among the replies in Burkina Faso, Gambia and Ghana, but this does not seem to be the case in the other countries.

| Table 18: Perceived Level of Competition in Telecom | | | |
|---|---|---|---|
| **Country** | **High(%)** | **Moderate(%)** | **Low or Nil(%)** |
| **Burkina Faso** | 57 | 28 | 25 |
| **Gambia** | 59 | 25 | 16 |
| **Ghana** | 79 | 20 | 1 |
| **Mali** | 30 | 30 | 40 |
| **Nigeria** | 58 | 39 | 3 |
| **Senegal** | 23 | 35 | 42 |
| **Togo** | 12 | 29 | 59 |

The most coherent replies are certainly those concerning the level of competition in the key sectors of the economy. Except for Togo and Senegal (where for an unknown reason totals do not add to 100%), the replies correspond to what one would have expected: it is in the telecoms sector that competition is the most vibrant and in electricity where it is the lowest.

| Table 19: Level of Competition in Electricity | | | |
|---|---|---|---|
| **Country** | **High(%)** | **Moderate(%)** | **Low or Nil(%)** |
| **Burkina Faso** | 4 | 2 | 94 |
| **Gambie** | 24 | 13 | 63 |
| **Ghana** | 3 | 6 | 91 |
| **Mali** | 3 | 0 | 97 |
| **Nigeria** | 0 | 3 | 97 |
| **Sénégal** | 1 | 4 | 95 |
| **Togo** | 23 | 7 | 70 |

| Table 20: Level of Competition in Transport | | | |
|---|---|---|---|
| **Country** | **High(%)** | **Moderate(%)** | **Low or Nil(%)** |
| **Burkina Faso** | 41 | 34 | 25 |
| **Gambia** | 43 | 39 | 18 |
| **Ghana** | 31 | 34 | 35 |
| **Mali** | 47 | 3 | 50 |
| **Nigeria** | 69 | 27 | 4 |
| **Sénégal** | 30 | 27 | 43 |
| **Togo** | 26 | 36 | 38 |

Respondents indicate that they perceive quite a lot of competition in transport as well as in distribution (below). However, distribution is not seen as competitive in Senegal, which is a surprising result.

The last comparative table relates to the media's interest on competition issues. The response is rather negative: the table indicates that respondents in all countries feel that the media almost report about issues related to competition.

**Table 21: Level of Competition in Distribution**

| Country | High(%) | Moderate(%) | Low or Nil(%) |
|---|---|---|---|
| **Burkina Faso** | 50 | 30 | 20 |
| **Gambia** | 55 | 33 | 12 |
| **Ghana** | 47 | 38 | 15 |
| **Mali** | 77 | 7 | 16 |
| **Nigeria** | 51 | 42 | 7 |
| **Senegal** | 12 | 18 | 70 |
| **Togo** | 18 | 50 | 32 |

**Table 22: Competition Issues Reported in the Media**

| Country | Often | Sometimes | Rerely/ Never |
|---|---|---|---|
| **Burkina Faso** | 4 | 2 | 94 |
| **Gambia** | 16 | 25 | 59 |
| **Ghana** | 18 | 49 | 33 |
| **Mali** | 7 | 33 | 60 |
| **Nigeria** | 24 | 55 | 21 |
| **Senegal** | – | – | Rarely |
| **Togo** | – | – | Rarely |

Two explanations could be proposed: either the media does not report on competition because it is a subject that does not interest the public and hence " does not sell"; or on the contrary, it is because the media is unaware of competition that the public is not informed and is thus not interested.

## General Conclusion

This synthesis report has tried to identify the main highlights of the seven country studies and thereby facilitate comparisons in regard to policies and situations relating to competition that bring out clearly the commonalities and differences across the 7Up4 countries. A strong degree of convergence among the policies followed by these countries is revealed: all have gone through structural adjustment under the influence of the Bretton Woods organisations in the 1980s and 1990s, and then engaged in Poverty Reduction Strategies. All these countries have been characterised by retreat of the state, though to different extents, from production and commerce through privatisation and deregulation; a gradual reduction of subsidies, although not in all sectors; and a gradual opening of markets to the private sector.

It deserves notice that the need for competition has not been adequately factored into these reforms. State monopolies were privatised, without taking care to avoid creation of private monopolies; market liberalisation took place without ensuring that newcomers could not eliminate local firms through anti-competitive practices such as cartels, abuse of dominant positions of market power or anti-competitive mergers and acquisitions.

Though membership in WTO and regional integration organisations (WAEMU and ECOWAS) has promoted competition strongly in international and regional markets, it has also created an acute need for national and regional competition rules to be effectively applied to avoid abuses. Aware of these problems, consumers in many countries have joined forces to defend their interests in the absence of competition and consumer protection laws.

A number of factors have negatively affected consumers with the liberalisation and globalisation of markets. First, contraband and fraud has developed fast in informal sectors that are free from any controls, especially official safety and health standards. Second, private enterprises have become accustomed to functioning in a system where no competition rules exist to prevent various anti competitive practices as well as others that promote unfair competition or restrict fair competition, to the detriment of consumers.

For some countries of the region, Bills on Competition are still pending in Congress or the National Assembly and have never been adopted. All the countries that have adopted competition laws have found it very difficult to establish the competition authority created by the law. These authorities, even when established, suffer from serious budget constraints and have enormous difficulties in obtaining the necessary human and financial resources. In some countries, members of the competition commission are employed part-time to perform their competition duties, and spend the rest of their time as regular employees of a Ministry, thus leading to constraints on independent functioning of these competition agencies.

The importance of competition for creating a Common Market has been well understood by regional integration organisations such as WAEMU and ECOWAS, both of which have adopted rules relating to competition and established their own competition authority to deal not only with anti-competitive practices, but also State Aids, which might distort competition, as well as anti-competitive practices by States and public enterprises.

However, the enactment of regional rules and creation of regional competition authorities has dwarfed the functions of the national authorities, which were already under duress, having to cope with budgetary constraints. The reallocation of tasks between the national authorities and the regional ones is an important question which should be reviewed to avoid a full paralysis of the decision-making process in regard to competition issues.

With respect to utilities such as oil, electricity and water, transport and telecoms, many countries have rightly established autonomous regulatory authorities, charged with, among other tasks, ensuring healthy competition in the process of privatisation of SOEs and gradual opening of markets to new competitors. However, the tasks of these sector regulators in terms of ensuring competition are often plagued with difficulties.

First, their knowledge of competition is often inadequate. Second, most of their staff are former employees of the related Ministry or of the SOE monopolising the market before liberalisation, thus seriously compromising independence of the regulator.

It is difficult to explain, for example, why the incumbent firm in telecoms is sometimes exempted from paying operating licence fees when other firms have to pay extravagant amounts to be granted a GSM licence. The length of time to reach an agreement on interconnection conditions and the inability of the regulator to intervene in a case also leads to doubts about independence and effectiveness.

Throughout the study many sectors have been examined in which collusion or abuse of dominance to the detriment of competitors and consumers is suspected but not remedied because of lack of an appropriate and effective competition regime. These cases point to the absolute necessity for adopting competition legislation in countries that still have not done so, and to establish competition authorities with the necessary resources for effective action.

The present study ends with a perception enquiry to check whether competition law and policy is an issue of clear concern to the stakeholders in the region, and it can be said that in general that is not the case, and that businessmen, government officials and the civil society as well as the media are ill-informed about the potential benefits that can derive from appropriate competition.

Accordingly, a number of general recommendations can be formulated:

- Competition and consumer protection laws should have been adopted before the initiation of market liberalisation and privatisation of SOEs. Since it is impossible to reform past mistakes, it is at least imperative that all stakeholders, starting with politicians, be convinced of the need to adopt such laws in the shortest time possible.
- In countries which have adopted competition and consumer protection laws together or as separate laws, it is not sufficient to have laws on the statute books; these laws have to be effectively applied. This is far from the reality in many countries studied under the 7Up4 Project. Competition authorities should be equipped with appropriate financial and human resources to enable them to perform adequately.
- The division of labour between national and regional competition authorities should be urgently revised to allow for a more rigorous and speedy resolution of cases.
- Sector regulators should be in close contact with their competition authority counterparts, as is provided for in the laws of many countries.
- The media should be encouraged to learn more about the implications and the need for competition and trained to contribute effectively to consumer education, in collaboration with consumer organisations.
- The civil society at large should also be encouraged to enter into a constructive dialogue with consumer organisations and competition authorities.

# Chapter 2

## *State of Competition in The Gambia*

# *Executive Summary*

The Gambia is a Least Developed Country with a per capita Gross Domestic Product (GDP) of US$360.00 in 2007. In the 2007 World Bank 'Doing Business Indicators', The Gambia is ranked 113th out of 175 countries, performing better than most of its West African neighbours, (except Ghana and Nigeria), in terms of ease of dealing with licences and permits and enforcing contracts and labour regulations. On average, the economy registered a 6.4-percent growth rate in real terms from 2003-2006.

The Gambian government's desire to promote economic reforms has prompted it to take issues of competition regulation and consumer welfare concerns seriously. The business community seem to have utilised the enabling business environment to their benefit, thereby keeping the creation of dynamic private sector as is envisaged in the country's Vision 2020 blueprint.

Competition regulation across sectors is a nascent phenomenon. It is true, however, that institutions like Public Utilities Regulatory Authority Act (PURA), 2001 and the Central Bank have already been mandated to regulate competition in the telecommunication and banking sectors, respectively like some of the other sector regulators. For the first time, a comprehensive framework was evolved with the enactment of the Competition Act in the country that aims to regulate all forms of anti-competitive business practices. It is fair to say that The Gambia is now poised to move into uncharted waters, fraught with all sorts of challenges, potential pitfalls and opportunities.

The political will to introduce and acclimatise competition was amply demonstrated by The Gambia government, when the Head of State and the National Assembly assented to the Act to promote competition in the supply of goods and services in October 2007. Despite the adoption of the law, its implementation is taking long due to human, financial and technical constraints. Insufficient funding of regulatory agencies and activities is identified as a major constraint.

A section of this report has attempted to capture a glimpse of the state of competition in The Gambia by conducting interviews with 150 key respondents. Overall, the level of competition in the country is described as moderate by the respondents. A general lack of awareness of the existence of the competition law among respondents from the business sector in The Gambia is conspicuous. It was heartening that most of the government officials confirmed their existence of a competition law in The Gambia.

The general perception is that competition issues are not well understood in the country and the lack of information on the issue is cited as a contributory factor for that state of affairs. Competition issues are rarely reported in the media due to lack of knowledge of competition issues by journalists. The media's understanding of competition issues is also perceived to be very limited and this renders them ineffective in disseminating competition-related information and issues**.** The absence of vibrant consumer groups is also considered to be a major missing link.

Firms have been alleged to have in the past, taken advantage of the absence of a competition law by engaging in anti-competitive practices. Vertical agreements between importers and distributors have been observed. The consumer goods market for rice, cooking oil and sugar gives clear examples of this kind of practice. Tied-selling is common, e.g., a wholesaler interested in sugar has to buy rice on credit from the importers. That would also be the condition for accessing certain goods on credit basis whilst paying for others upfront.

A framework of co-operation between the Competition Commission and the other regulatory authorities on how to jointly exercise their mandate of ensuring fair competition in the regulated sectors is missing. It is evident that such cooperation would enable better disposal of anti-competitive behaviour in some of the key sectors. Sector regulators need to be shielded from undue interference by the policy makers, lobby groups, political clients and other actors driven by their vested interests to be able to effectively carry out their activities in the interest of the common Gambian.

The impact of anti-competitive practices in the farm sector is felt both in the output and also quality of farm produce. The most common anti-competitive practices encountered in the input market, as reported by the farmers are collective price fixing and market sharing. In case of rice, onion, Irish potatoes and flour, collusive agreements are alleged. It is observed that the big (and few) importers concur to fix prices, thus leading to the hike in retail prices of commodities in shops. Monopolisation of the groundnut processing facilities and exportation has been observed, giving rise to anti-competitive practices in the groundnut sector as well.

The existence of monopolies like NAWEC (for water and electricity) leads to anti-competitive outcomes. In the absence of alternatives, consumers do not get the value for their money. All the GSM operators in the country (namely, Africell, Comium and Qcell) are obliged to use the GAMTEL international gateway for both voice and data. The international revenue flowing from the international gateway is like a lifeline for GAMTEL to subsidise local calls. Otherwise, it would be difficult for GAMTEL to cope and continue providing fixed telephone services. The refusal by the Department of State for Communication and Information Technology (DOSCIT) to grant licences to interested parties to have their own TV stations is undoubtedly restricting competition in the media industry. Ferry Service is not open to competition despite the numerous efforts made by the private sector to provide quality and efficient services to ease transportation bottlenecks between Banjul (the capital) and Barra (on the North Bank) particularly.

This report makes some recommendations aimed at strengthening the competition and consumer protection regimes in The Gambia. Some of these recommendations include making the Gambia Competition Commission (GCC) fully operational, as well as the establishment of linkages and partnerships with the other sector regulators to preempt possible operational conflict, especially through the signing of memoranda of understandings. It is also recommended that a competition policy be established in The Gambia to ensure that the environment is conducive to a smooth operation of the competition law and a thorough review of all government policies in undertaken in the interest of competition.

It is also recommended that the capacity of the National Reference Group, established during the project, and other key stakeholders in the country be built to ensure that they contribute to the process of competition implementation over a long-term period till the GCC becomes fully operational and effective. It is also recommended that a strong political will be promoted to foster a healthy competition culture as this hinges largely on the political class.

The report also recommends the development of a consumer protection law and policy, which is currently lacking. Together with the competition reforms, an effective consumer legislation would assist in ensuring consumer welfare. The encouragement of constructive competition and consumer advocacy engagements between the State and non-state actors would also go a long way in ensuring protection of consumers.

# *Characteristics of the Macro Economy*

The Gambia is situated in the west coast of Africa and its territory takes the form of an elongated structure, dissected in the middle by the river Gambia and embedded in the Republic of Senegal. Such a hemmed-in position makes the latter The Gambia's only neighbour and spells out the country's relative geographical isolation *vis-à-vis* the rest of West Africa. With a population of about 1.5 million (1.4 million according to the 2003 census), the country has a small domestic market and has, in the past, taken advantage of the disparities in currencies, tax regimes and trade policies to strategically position itself and benefited from significant rents from re-export trading with Senegal, Guinea Bissau, Guinea Conakry and Mali.

The Gambia gained independence from the UK in 1965 and became a Republic in 1970. The country joined with Senegal to form the confederation of Senegambia in 1982. However, the envisaged integration of the two countries was not successful due to the absence of strong political will to make it work and the lopsided nature of the agreement itself, favouring one party (Senegal) over the other (The Gambia). The confederation had to be dissolved in 1989.

Sequel to that in 1991, the two nations signed a friendship and cooperation treaty. A military coup in 1994 overthrew the president and subsequently banned political activity, but the 1997 constitution marked the beginning of the second Republic and completed the country's return to civilian rule. Significant progress has been registered in infrastructural development and public finance management.

The country is one of the least developed countries and is ranked 155 out of 177 countries, according to the UNDP Human Development Index (2006), with a per capita gross domestic product (GDP) of US$360.00 in 2007. In the 2007 World Bank 'Doing Business Indicators', The Gambia is ranked 113$^{th}$ out of 175 countries, performing better than most of its West African neighbours, (except Ghana and Nigeria), in terms of ease of dealing with licences and permits and for enforcing contracts and on labour regulations. On average, the economy registered a 6.4 percent growth rate in real terms from 2003 to 2006.

The Gambia is still largely a groundnut garden and thrives mainly on rain-fed agriculture, with little potential for value addition. Agriculture is the main source of livelihood for 75 percent of the population. The country's economy at independence was mainly agrarian, with over 75 percent of GDP being accounted for by the agricultural sector and was the main source of employment and export earnings. The sector has persistently been associated with low productivity, as a result of over reliance on poor technology, low and declining soil fertility as well as structural and cultural problems. Limitation for women to access land, lack of rural credit facilities, insufficient access to appropriate technology and inadequate farm inputs are some of the other constraining factors. The sector contributes about 19 percent to the GDP, but has enormous scope for development.

Other major crops cultivated in the country include coos, maize, sesame, millet and sorghum. It is a known fact that The Gambia is vulnerable to food insecurity, depending largely on imported cereals from South-East Asia. The vulnerability factor stems from the fact that Gambians do not produce what they eat (as they import most of it) and they do not eat what they produce (as they export most of it)!

The country's industrial sector is struggling to emerge due to numerous structural and financial constraints. The industrial sector is small, contributing approximately 10.7 percent to the GDP. The services sector is dominated by the hotel industry and a significant informal sub-sector and their aggregate contribution is about 70 percent to the GDP. After a decade of economic recovery initiatives, there is evidence to show that the living standards of the average Gambians have not improved. Declining productivity and real incomes have led to a general decline in quality of life.

Though the country has implemented various programmes aimed at poverty alleviation (since 1994 when The Gambia launched its first Strategy for Poverty Alleviation), poverty continues to increase. Poverty studies conducted in 1998 and 2003 indicate that, in addition to the increase in the prevalence and severity of poverty, inequality is also on the increase, as exemplified by the gini coefficient. Today, 58 percent of the population is considered poor (PRSP II). The Gambia recently reached HIPC completion point (January 2008) and is now eligible for debt relief.

The business landscape in The Gambia is fast changing. Past few years have seen a sudden surge of tertiary institutions: banks, telecommunication companies, information technology firms, supermarkets and all other types of service-related entities. The challenge before the government is to ensure how this revolution in the service sector can contribute towards lifting the country's population out of poverty. Evolution of fair markets through effective enforcement of the competition law is definitely an option. This will also help achieve the goal of a dynamic private sector as envisaged in the Gambia's Vision 2000 blueprint.

# Government Policy that impinges on Competition

## Overview

Competition is defined as "a process whereby firms fight against each other in order to secure customers for their products by adopting any means (fair or unfair)"[1]. The Gambians have always been competing with one another in both the formal and informal sectors albeit over an uneven playing field: in the local commodity markets; the neighbourhood shops; the transport sector; and the wholesale commodity market. What is new is the intensity of competition in the different markets, as exemplified by the sudden surge of tertiary institution, commercial business outfits and professional undertakings. The Gambian government's desire to promote economic reforms has prompted it to take issues of competition regulation and consumer welfare concerns seriously.

Competition reforms fall within the ambit of the Ministry of Trade's poverty alleviation strategies under a private-sector-led growth agenda. The Ministry of Trade has amply demonstrated its resolve to promote fair and efficient markets to reduce anti-competitive practices in The Gambian market, by setting up a competition authority. This section tries to capture the social and economic policies being promoted by The Gambian government with a view to influencing competitive outcomes for economic growth and poverty reduction.

## Structural Adjustment Programme

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 market-oriented policies. The government also continued its expansion policies, relying heavily on domestic and external borrowing. Following the First and Second Five Year Development Plans of the 1970's, the government adopted some Structural Adjustment Programmes (SAP) in 1983, with assistance from World Bank, the International Monetary Fund (IMF) and other multilateral and bilateral donors. The aim of the Economic Recovery Programme (ERP) was to stabilise the economy through fiscal and monetary discipline, liberalise the economy and promote a productive sector-led growth, underpinned by a realistic market-determined exchange rate regime. The ERP, to a certain extent, succeeded in stabilising the economy, but failed to deliver sustainable growth. A successor programme, Programme for Sustainable Development, was later introduced in 1990 to consolidate the gains of the adjustment and usher in private-sector-led growth.

The birth of the Republic in 1996 saw the adoption of Vision 2020, an agenda for socio-economic reform and development. The Vision 2020 strategy outlines The Gambian government's policy priorities as follows:

> '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 encapsulates the government's resolve to promote a market-oriented economic development agenda, with an emphasis on 'vibrant private-sector-led' growth. The SAP of the 1990s paved the way for the liberalisation of the economy and established The Gambian government's commitment to free market policies and a vibrant private-sector-led growth, as enshrined in the Vision 2020 blueprint.

## Poverty Reduction Strategy Paper

The Second Poverty Reduction and Strategy Paper (PRSP II), covering an implementation period of five years (2007-2011), outlines The Gambia's overall policy framework for growth and poverty reduction. The strategy paper focuses on the needs to eradicate poverty in The Gambia, through macroeconomic reforms that stimulate private sector growth, improved public sector management and an increased priority for human development. This second generation PRSP, which is Millennium Development Goal (MDG)-based, revolves around five robust pillars outlined below:

1. Improving the enabling policy environment to promote growth and poverty reduction;
2. Enhancing the capacity and output of productive sectors: agriculture, fisheries, industry, trade, tourism and infrastructure, with emphasis on productive capacities of the poor and vulnerable populations;
3. Improve coverage of the basic social services and social protection needs of the poor and vulnerable;
4. Enhance governance systems and build the capacity of local communities and civil society organisations (CSOs) to play an active role in economic growth and poverty reduction; and
5. Mainstreaming cross-cutting issues; gender, youths, population, HIV/AIDS, nutrition and environment into the development process.

The first two pillars are of critical importance to competition and investments. Pillar 1 includes all aspects relating to economic management: macroeconomic stability, public finance management, public debt management, divestiture and civil service reforms. Pillar 2 deals with the productive sectors of the economy, including private sector investment addressing constraints to investment in the production of goods and services.

The PRSP process is supported by policies and programmes for a broad-based, export-oriented growth strategy led by the private sector and supported by the government and development partners. The government's fiscal and monetary policy positions are aimed at creating a stimulating business environment in the country and attract foreign direct investment (FDI).

## CSOs and Development Initiatives

The PRSPs and the MDGs have allowed development partners to reach a consensus around aid priorities and ensure co-ordination among donors. CSOs like Pro-PAG, Action Aid The Gambia, Child Protection Alliance (CPA), Catholic Relief Services (CRS), The Education for All Campaign Network have been complementing The Gambian government's efforts in achieving its development agenda through evidenced-based advocacy, capacity building community empowerment, policy monitoring, budget tracking and evaluation of public service delivery.

The urgent need to address poverty in The Gambia and around the world as well as the opportunities provided by the MDGs and the PRSP II have resulted in the need for local and global partnership and provided the cornerstone of national, international and regional development policy. A diverse range of players across The Gambia and beyond are addressing the many faces of extreme poverty, hunger, unemployment, diseases, lack of shelter, gender inequality and environmental degradation. This aggregate dimension should give a revitalised TANGO (The Association of Non-governmental Organisations) a much greater clout for facilitating active CSO participation in issues-based advocacy for attaining sustainable development goals.

## Agricultural Sector

The Gambian government is making frantic efforts to woo both national and foreign investors into the agriculture sector in line with the Vision 2020 objectives and the MDGs' thrust "to halve the proportion of poor and those who suffer from hunger." The aim of the agricultural policy is to transform the country's agriculture from subsistence to commercially-oriented agriculture. However, the development of the sector is marred, among other things, by: the lack of access to short and long term financial capital for agricultural investment; the inefficient agricultural marketing systems, especially for groundnuts and food products; poor agricultural practices; limited capacity and inefficiency of extension services (PRSP II, 2007).

The overall objective of agricultural development strategy of The Gambia is to promote pro-poor growth and employment in rural areas through private sector participation. The current policy mix is geared towards promoting import substitution, to ensure food security, and export promotion through a dynamic private sector. The authorities are seeking to promote domestic production of rice and other key food crops in order to reduce reliance on imports. Cash crops, such as cotton and horticulture have the potential to diversify agricultural exports, and are being promoted. The promotion of groundnut production, the country's main agricultural export, remains an important strategic undertaking for the revival of agriculture sector. The Gambia's agricultural policy tries to target the problem of low yields, through improved inputs and extension of services.

Groundnut production, for instance, is highly sensitive to rainfall, seed availability, fertiliser use, pests, pricing policy, etc. About 60 percent of the marketable groundnut crop is exported primarily to the European Union (EU) market. The formal markets are regulated through a Framework of Agreement (FOA) concluded in 1999. Under the FOA, producer prices are determined by the government, based on inputs from an association of industry stakeholders. The operations of the FOA were effectively modified in the 2004-05 season by the introduction of a government-managed licensing scheme for operators (PRSP II).

The government directly supplies most of the fertilisers in the country. The price of fertiliser is subsidised between 30-35 percent (PRSP II). Instead of outsourcing to the private sector, the government authorities directly source and distribute fertilisers. Such heavy government involvement has undermined the ability of the private sector to develop distribution networks and sell fertilisers on flexible terms. Many countries in West Africa no longer subsidise fertilisers. A gradual and transparent process of withdrawal would allow the private sector to develop its capacity to supply the market under a strict supervisory oversight of the government. If such a shift in focus were to take root, caution will have to be taken by the competition authority not to allow private sector operatives to enter into collusive agreements and other types of anti-competitive practices that will raise the price of fertiliser further.

## Industrial Policy

The primary objective of the National Industrial Policy is to establish conditions required by the private sector to maximise gainful employment at ever-increasing levels of productivity within a framework of sustainable development. But, The Gambia's manufacturing sector remains very small and is severely constrained by the lack of human, financial and technical resources.

The power supply in the country has improved remarkably over the past two years. Electricity supply has always been a bottleneck and as such was considered to be the most pressing problem of the industrial sector, causing considerable losses due to frequent and unpredictable power outages. Prospects for the industrial sector are today promising in the light of recent developments in the energy sector, which provided additional generating capacity for NAWEC. Such experiences in the power sector should be properly analysed and utilised for the benefit of other core sectors.

There is scope for manufacturing in a few key areas, especially in the agro-based manufacturing. However, investment in the sector is constrained by the following factors:

- Small local market to absorb large scale production;
- Lack of access to medium and long term finances (venture capital);
- Lack of core skills needed for the manufacturing industry;
- Certain unfavourable elements of the enabling environment and other administrative barriers to investment and limited development incentive; and
- High and sticky interest rates (around 30 percent).

Taking due cognisance of the above factors, PRSP II Priorities and Strategies for the Industrial Sector are geared towards the following:

- Improving small scale industries' extension programmes, with emphasis on finance, product development and business information;
- Implementation of a national export promotion strategy for fisheries, horticulture and tourism;
- Promotion of air access through incentives and cheaper air freights to make Gambian products more competitive in the international markets;
- Improvement of the environment for export orientation (private-public partnership, economic infrastructure improvements, trade policy, etc);
- Stronger role of the Divestiture Agency;
- Harmonisation and the improvement of the GIPFZA Act; and
- Enforcement of the bankruptcy law and to train judges to deal with commercial law cases.

## Trade Policy

Since the introduction of the ERP in the mid-1980s, The Gambian government continues to pursue a liberal trade regime exemplified by the signing of bilateral trade agreements with a number of countries. The government has established and consolidated its trade links with the EU, US, Asian Countries and the Economic Community of West African States (ECOWAS) sub-region.

The Gambia, having already decided to negotiate with the EU on trade as part of the ECOWAS bloc, will seek to adopt the implementation of the economic partnership agreements (EPAs) as a strategy to expand its link with the EU, while finding ways and means to mitigate the negative impact of the instrument. The Gambia needs to pursue an export-oriented strategy. Trade-related services are being improved in order to complement the current development strategy. The Gambia has committed itself to the full implementation of the ECOWAS Common External Tariffs (CETs) to facilitate intra-regional trade as a means of regional integration. The Gambia started the implementation of the ECOWAS Trade Liberalisation Scheme (ETLS) and seven companies have already qualified as ETLS certified companies, although only two are currently exporting their products to the regional market.

There is still much room for improvement of trade policy. The finalisation of the formulation of a comprehensive national trade policy, which will help integrate trade into national development planning framework, is urgent and so is the design of a uniform import tariff system. But, it has to be done in such a way as not to protect inefficient domestic production. Little domestic production takes place and tariffs are low on most items. The improvement of the infrastructure network is crucial to sustain trade development. Although the port and telecommunications infrastructure is considered excellent by African standards, further expansion and technological improvements are required to consolidate and enhance the efficiency gains.

The Sanitary and Phyto-sanitary (SPS) regulations administered by the Department of Livestock Services for meat imports and the Department of Health for food imports need to be revised and updated. The government should ensure smooth and effective functioning of the Standards Board.

The Gambian government seeks to promote regional trade for an enlarged ECOWAS market. But, it will be necessary to conduct studies to establish how and to what extent the CET will affect The Gambia's trade performance, which will provide inputs for the integration process within a multilateral trading system.

## Privatisation & Regulatory Reforms

To reduce the extent of state ownership of public enterprises, the country adopted a divestiture policy, followed by the establishment of a Divestiture Agency.

The government had implemented, under its SAP, an ambitious divestiture and privatisation campaign, which resulted in the divestment of several enterprises under the implementation framework of the ERP and the Programme for Sustained Development (PSD 1986-1994).

The implementation of this first wave of privatisation in The Gambia has brought much benefit, including the following:

1. Reduction in the number of public enterprises under the government's portfolio and the enhancement of the government's capacity to focus on key strategic enterprises;
2. Reduction in the demand on the government to provide new loans thereby allowing the government to focus support for areas of high priority, particularly within the social sectors;
3. Effective elimination of government subsidies to public enterprises and reduction in the crowding out effect for credit within the banking sector;
4. Creation of new public enterprises and fostered greater private sector participation in economic activities;
5. Greater market competition and market discipline; and
6. Provision of substantial cash proceeds from divested enterprises and conditioned grant revenues to the government-linked to the implementation of privatisation benchmarks.

Despite the success of the first wave of privatisation and the benefits derived, as outlined above, many state-owned enterprises (SOEs) or public enterprises (PEs) still remain. In addition, following the events of July 22, 1994, some of the divested enterprises were re-absorbed by the government. The Gambia Airways was liquidated and incorporated as The Gambia International Airlines and the Government Printing Department was transformed into a limited liability company known as the National Printing and Stationery Company.

In his foreword to the Vision 2020 blueprint for the accelerated and sustained development of The Gambia, the President of the Republic indicated *"Government's recognition of the private sector as a serious partner in national development and the very engine of growth"*. Thus, by launching The Gambia Vision 2020, the government is formally reconfirming its private sector development stance. The government is inviting the private sector to fully play its role and collaborate effectively with the public sector to ensure the attainment of the development objectives of Vision 2020.

The PSDS of the Government of The Gambia, therefore, has been driven and guided by the desire to enhance the capacity of the government to deliver development and the recognition of the pivotal role of the private sector in this effort. The more the government's capacity is expanded, through the shedding off of activities of a competitive commercial nature, the greater the opportunities and potential of the private sector to contribute in nation building.

The primary focus of the divestiture strategy is to facilitate the structural transformation of Gambian enterprises to ensure their sustainable improvement and overall development impact.

The overriding objective of the divestiture/privatisation programme is to have government withdrawing from activities best suited for operation by the private sector – thereby creating the enabling environment for private sector-led growth. This is considered to be most effective by engendering competition in the best way possible in order to ensure that goods and services are provided at the lowest possible cost. The freedom of choice exercised by consumers motivates companies to increase efficiency in order to guarantee their own survival.

The overall aims of this reform programme include:

- Improving the revenue base – through better collection of tax receipts;
- Releasing government resources and redirect these resources to social sector expenditure programmes;
- Enhancing the role of private sector in the economy – by creating a level playing field by eliminating preferential treatment;
- Reducing the demand of the PE on the national budget so as to improve the use of The Gambia's scarce resources and enhance the returns on those resources by achieving greater efficiency in both Private and PE through greater responsiveness to market signals and commercial criteria; and
- Reducing the role and rationalising the operations of the PE sector.

The divestiture programme has from the onset grappled with the twin problems of the lack of funds and human resources. As a result, very little divestment has been achieved, despite the programme being in place since 2001. The strategy conceived for the effective implementation of the divestiture programme remains in place and still remains very appropriate. It, however, needs revitalisation with better mobilisation of resources.

### *Privatisation and Competition in Specific Markets*

Some of the principles guiding the divestiture process are as follow:

- PEs will be divested into competitive markets; purchasers will not obtain an intact or unregulated monopoly.
- In cases where the government retains a minority share-holding, it will not exercise any special or extraordinary voting rights.
- Excluding financial and operational (but not physical) restructuring that may be necessary to prepare PEs for sale, there will be a moratorium on new government investments in enterprises that are to be divested.
- All transactions will be conducted in an open and transparent manner, consistent with normal standards of commercial discretion.
- To promote and ensure the competitiveness of the markets in which divested companies will operate, the government developed a competition law to avoid transfer of a public monopoly to private hands. The government also pledged to continue its efforts to liberalise import controls, rationalise tariffs and continue the process of price decontrol and removal of marketing restrictions in all sectors.
- No new PEs will be established in the productive sector.

The above demonstrate the government's determination not only to ensure competition in the process of privatisation but also after the process, when the entity would have been transferred to a private party. This is meant to prevent a private monopoly succeeding a public monopoly – given that some of the PEs in the divestiture programme are monopolies. There were also reforms of some laws to allow, for example, the participation of private enterprises in the telecom and utilities sectors. Conscious of the fact that liberalisation is necessary, but not sufficient for competition to thrive in a particular market, the government has gone further to institute regulatory reforms. This is in foresight of the fact that some sectors by their very nature cannot be regulated by the market.

Table 23 shows the SOEs under the divestiture programme: their date of establishment, ownership structures and major activities, among other things.

## SOEs vs Private Sector - Competition, Neutrality and Favouritism

Most PEs operate in non-competitive markets. These include NAWEC, GCAA, GPA, GAMTEL, etc., and some, despite operating in a liberalised and competitive environment, were set up purposely to carry out some government assignments, while at the same time, serving the general public, namely, NPSC and MSA. To the extent that a PE is not in competition with a private sector operative, it is possible to engage

| Table 23: State-Owned Enterprises in The Gambia | | | |
|---|---|---|---|
| **Enterprise** | **Establishment** | **Ownership Structure** | **Major Activities** |
| National Water & Electricity Co. (NAWEC) | Limited Liability Company 1996 | Govt 97%<br>SSHFC 1%<br>GAMTEL 1%<br>GPA 1% | Water, Electricity & Sewerage |
| Gambia Ports Authority (GPA) | Act of Parliament 1972 | Government 100% | Cargo Handling, Shore Handling and Ferry Services |
| Gambia Telecommunications Co. Ltd. (GAMTEL) | Limited Liability Company 1984 | Government 99%<br>GNIC 1% | Telecommunications & ISP |
| Gambia Telecommunications Cellular Co. Ltd. (GAMCEL) | Limited Liability Company 1984 | Subsidiary of GAMTEL | Mobile Telecommunications |
| Gambia Public Transport Corp. (GPTC) | Act of Parliament 1975 | Government 100% | Bus Services (Urban, Interstate & Rural) |
| Gambia Civil Aviation Authority (GCAA) | Act of Parliament 1991 | Government 100% | Airport Operations and Regulations |
| Social Security & Housing Finance Corp. (SSHFC) | Act of Parliament 1982 | Owned by scheme members | Social Security Fund Management & Housing Finance |
| Gambia International Airlines (GIA) | Limited Liability Company 1996 | Government 99%<br>GAMTEL 1% | Flight Operations, Ground Handling & Ticketing Services |
| National Printing Stationery Corp. (NPSC) | Act of Parliament 1997 | Government 100% | Printing & Publishing |
| Maintenance Services Agency (MSA) | Act of Parliament 1995 | Government 99%<br>GPTC 1% | Vehicle & Plant Maintenance |
| Gambia Cotton Co. Ltd. (GAMCOT) | Limited Liability Company 1992 | Government 40%<br>DAGRIS 60% | Cotton Ginning |
| Kuntaur Rice Mill | 1998 | Government 100% | Rice Milling & Distribution |
| Banjul Shipyard | Limited Liability Company 1996 | Subsidiary of GPA | Ship Repairs |
| Gambia Groundnut Corp. (GGC) | Limited Liability Company 1993 | Government 100% | Transportation Processing & Marketing of Groundnuts |

in anti-competitive behaviour. It has to be reckoned that the rationale for keeping some sectors closed to the public sector have to be weighed against the anticipated benefits of opening up for competition in determining whether the policy is detrimental to the private sector enterprise.

In the case of PEs operating in competitive environments, one may say, of our two examples above, that the general tendency of the government to have motor repairs for government vehicles and printing and publishing services for government done at MSA and NPSC, respectively, excludes the private sector. This tendency is, however, not absolute; there is still a lot of government service that goes to private enterprises in the motor repairs and printing and publishing business. It may be the case that this is done for the convenience of a sometimes cash-strapped government. It could also be argued along some form of a "crowding out" concept that the fact that government business keeps these SOEs busy is good for the other private enterprises to thrive. This may be good for the general public – the final beneficiaries of a competitive service environment in that they do not have to compete with the government with its huge purchasing power for these services.

In conclusion, it is the case that there are some government policies that seemingly favour some PEs (e.g. MSA has given exclusive right to do repairs of government vehicles and NPSC which is the only printer from which the government prints its books/documents), their mere existence, however, does not justify a conclusion that they are detrimental to private enterprises.

Regulation in the context of the divestiture programme was conceived drawing from the fact that some of the PEs in the programme operate in non-competitive markets. Thus, if such PEs should be transferred into private hands, there is a tendency that the private owner(s) may take advantage of their position in such markets to engage in anti-competitive practices. There was, therefore, a need to put in place a mechanism to monitor and regulate the privatised entities to ensure that privatisation obligations and commitments are fulfilled.

The principal role of regulation is to protect consumers from the abuse and excesses of monopoly power, which essentially would require regulations on both the price and the quality of services. The regulatory functions would also include the promotion of competition and the direction of utility activities to achieve specified social and national objectives within the defined macroeconomic framework. For the purposes of speed of decision making, a multi-sectoral regulatory agency responsible for the regulation of enterprises and utility sector was recommended for The Gambia. Under this arrangement, the selection of appointees to the regulatory agency would be of persons with industry-specific technical expertise and/or experience in the regulated industry, in addition to appointees with broad-based expertise and experiences in economic development and decision making in the public and private sectors.

The regulatory agency would be responsible for developing a regulatory framework. Given that the introduction of competition into hitherto monopoly market may take time to develop, necessitating interim regulations on prices and quality of service, the framework is to be developed with the following principal objectives in mind:

- Promoting competition;
- Protecting customers; and
- Promoting social and national objectives.

## Investment Policy

The Gambia's choice of economic ideology is based on free market principles. The country has various laws governing trade and customs regulation, namely: The Gambia Free Zone Act (2001) and The Gambia Investment Promotion Act (2001). The latter provides the legal ground for the transfer of funds. Other business and investment laws are the Companies Act of 1955 and the Business Registration Act of 2005. There are no restrictions on the transfer of funds by investors into and out of The Gambia. The government has also set up the GIPFZA, whose primary task is to establish and manage Free Economic Zones (FEZs). GIPFZA was established to promote The Gambia as a trade gateway and investment haven and to:

- provide an attractive business environment and incentives for business activities in The Gambia;
- function as a one-stop shop for investments in The Gambia;
- attract, promote and increase the manufacture of goods and trade in goods and services;
- coordinate, encourage, promote and facilitate investments in The Gambia; and
- advise the government on investment policy and related matters.

The judicial system upholds the sanctity of contracts. To crown it all, there are no laws or regulations that limit or prohibit foreign investment, participation in or control of sectors of the economy. There are no limits on foreign ownership or control of businesses, except in the television broadcasting and defence industries, which are closed for the private sector. The protection of intellectual property rights (IPRs) is guaranteed by law and a Government Procurement Act is also in place. Price controls have been eliminated and market forces determine exchange rates, although public interventions or pronouncements have, in the past, influenced the evolution of the foreign currency market.

PRSP II emphasises private sector investment in the productive sectors and The Gambian government is trying to unleash that potential. The Gambia has liberalised the economy and thereby permitted participation of all economic agents in the economic growth process. Despite liberalisation, investment in The Gambia is low. Several factors discourage investment. Key ones include poor infrastructure and inadequate electricity supply. Domestic investors face similar constraints, in addition to low investment capital. To improve the investment climate, The Gambia has made significant investment in electricity generation, by working closely with the private sector, leading to the advent of Independent Power Plants (IPPs).

## Government Procurement Policy

In 1998, The Gambian government and the World Bank jointly conducted a country procurement assessment survey. The study basically recommended that the acquisition of goods, works and services be conducted within a milieu that posits getting better value for money and, at the same time, facilitates and enhances the development of small and medium-sized enterprises. Sequel to the review of the recommendation was the passing of The Gambia Public Procurement Act 2001 and assented to by the President in February 2002.

Public procurement is at the heart of business relations between the government and the private sector. Such a relationship takes place through the public sector's (government) acquisition of goods, works and services provided by the private sector. As a major buyer, it is imperative that the government institute/establish a plausible mechanism for the dispensation of public funds in a cost-effective manner. In doing so, it becomes incumbent upon the government to ensure that the acquisition of goods, works and services on behalf of the public is predicated on a policy that posits and supports the achievement of its overall economic, social and environmental policy objectives.

The enactment of the Public Procurement Act in 2001 demonstrates The Gambia's determination to promote fundamental attributes of good governance practices (transparency, accountability and fairness) as a means to achieving poverty reduction goals.

The Act seeks to provide a system for ensuring:

- transparent, efficient and economic public procurement;
- accountability in public procurement;
- a fair opportunity for all prospective suppliers of goods, works and consultancy services;
- the prevention of fraud, corruption and other malpractices in public procurement; and
- improvements in the social and economic capacity in The Gambia, including providing opportunities for local small enterprises to participate in an economic manner as suppliers, contractors and subcontractors in public procurement.

The passage of The Gambia Public Procurement Act marked the demise of a centralised public procurement system and its accompanying institutional framework. The new public procurement dispensation is a decentralised system in which procuring organisations (i.e. government entities, project implementation units, statutory bodies, local government authorities and public enterprises) take full ownership of their respective procurement activities, while the Gambia Public Procurement Authority (GPPA) serves as the regulatory body. Decentralisation warranted procuring organisations to restructure their administrative and operational functions relative to procurement. To achieve this, procuring organisations are required to establish 'Contract Committees' and 'Specialised Procurement Units'.

## Labour Policy

Labour policies and laws have an impact on competition in the labour market. But, the structure of The Gambian labour market itself is distorted by the large size of the informal sector, estimated at over 90 percent of the working population (NTA 2007 P.3). This situation has led to the recognition of the informal sector as a key factor in terms of employment creation and poverty alleviation. A comprehensive labour policy is currently being developed, funded under the GAMJOBS project, with a view to replacing the National Employment Policy and Action Plan that expired in 2008.

It is interesting to note that there is already a Labour Act passed in 2007, when under normal circumstances, it is the policy that should inform the development of the Act. That notwithstanding, an Act providing for the administration of labour; the recruitment and hiring of labour; the protection of wages; and the registration of trade unions and employer organisations and for matters connected therewith is in place to ensure that conditions for decent work are evolved.

The employment policy and action plan for the period 2001-2008 were key planks of the Vision 2020 strategy and the PRSP aimed at creating a skilled, versatile, dynamic and efficient workforce in the country. The instruments were premised on the desire to evolve an enabling environment that "promotes full employment as a priority in national, economic and social policy; and to enable the economically active population to attain and secure sustainable livelihood through full productive and freely chosen employment and work by the year 2020". The National Employment Policy sought to accomplish the following objectives:

- pursue poverty reduction policies through labour-intensive programmes and improvement of the labour environment;
- promote a well-educated, trained, skilled, self-reliant and enterprising population with a view to increasing employment;
- reduce unemployment by five percent;
- strengthen the existing labour administrative system for its proper functioning for the promotion of decent work, worker participation in decision–making through collective bargaining and an efficient industrial conflict resolution mechanism in the labour market;
- provide a consensus-based social security system that guarantees security of income and adequacy of compensations;
- provide maximum opportunities for workers to utilise their skills and capabilities in a congenial work environment, totally free from considerations of gender, religion, political affiliation, disability and ethnic and social origin; and
- safeguard the basic human rights and interest of workers and to promote adherence to relevant international labour standards.

These objectives remain relevant and are, therefore, being taken on board in the labour policy being developed.

## Consumer Protection Policy

There is currently no stand alone Consumer Protection Law in The Gambia. However, for the sectors that PURA regulates, the PURA and the Information and Communications (I.C.) Act, 2009 address this void. One of the key mandates of the PURA is the protection of consumers of the regulated services of telecommunications, electricity, water and sewerage services. The PURA, in defining the functions of the regulator, states in Part III Section 13(1)(c) that the Authority shall "protect the interest of consumers".

The I.C. Act devotes several sections to the protection of consumers. Part XI, captioned "Provisions Concerning the Interests and Rights of End Users", covers 13 sections of the Act which range from the right to deposit, calling line identification, standard contracts and provisions, amendments to terms of subscriber contracts, dispute resolution, right to close connections, itemised billing, etc. Further, Part XII, Section 136 has provisions on "disputes between operators and consumers".

The PURA has also endeavoured to develop a robust consumer protection mechanism to effectively represent the interests and rights of the consumers. In this regard, a Consumer Help Desk, along with a toll free line (148), was established in June 2008. The guidelines for operators in resolving consumer complaints in a timely manner were developed and assented to by the operators.

In October 2008, following a series of complaints by consumers concerning the quality of their domestic tap water, samples were collected and sent to the Water Quality Laboratory under the Department of Water Resources. It was quickly realised that the laboratory was woefully handicapped to conduct full scientific tests, as prescribed by the World Health Organisation (WHO).

In view of its mandate to monitor the standards of service providers in the water sector, PURA engaged the relevant Ministry to support the laboratory. Following the signing of a Memorandum of Understanding, the PURA began funding the laboratory to conduct quarterly tests in all parts of the country. These tests have generated reports which are currently being utilised to ensure compliance by the water operators, particularly the national water utility. Consumers are now receiving a greater degree of protection from unsafe drinking water.

In addition, the PURA, in collaboration with the African Forum of Utility Regulators, has drafted a Minimum Quality of Service Standards for Water and Sanitation for operators. Regulating service quality involves the steps of identifying the preferred level of service quality, designing a system for providing the operator with the incentive to offer this service quality and developing a system for monitoring service quality and enforcing the standards.

The PURA has also developed General Consumer Codes which establish minimum acceptable standards of service provision. These are geared towards ensuring that consumers get the services they are paying for in the regulated sectors.

In December 2008, the PURA also launched an innovative project called the Consumer Parliament. This nationally televised programme brought together consumers, service providers and the regulator together to address the concerns of consumers. Since the launch, there has been another one held in March 2009 and a third Consumer Parliament took place in August 2009. This latter event also marked the first time that the programme was held across the provinces.

Among the benefits of these events are that it:

- puts operators and the industry regulator in the spotlight, enabling consumers to have access to them;
- raises greater awareness of the rights of consumers and the obligations of the service providers, since a better informed consumer goes a long way in alleviating some of the problems that are being encountered between consumers and providers of service;
- serves as a platform to enable operators to clarify issues pertaining to service delivery, since service providers need as many vehicles as possible to communicate with their customers – this platform is thus an extension of their customer care services;
- enables operators to publicly give account of the ways in which they provide service to their customers. Transparency is very important for issues raised to be fully explained in an open and frank manner. It is good for the general state of health of the sectors;
- assist the regulator to initiate interventions. A better informed regulator will be able to address problems with a holistic view;
- enables the regulator to create an enabling environment for competition among operators. One of the goals of the regulator is to ensure that services rendered by providers are up to standard and the cost of the service is not too high for the consumers. Thus, facilitating competition on these key points is extremely important. It promotes qualitative and efficient service delivery throughout the country; and
- promotes the creation of a platform for dialogue and action by all stakeholders for better service delivery.

The Gambian government is committed to free market policies and a vibrant private sector-led growth. Open market policy has also led to the sudden surge of all kinds of products into the country, some of which are sub-standard, expensive and a cause for concern from a safety perspective. Consumers are sometimes offered inferior products at exorbitant prices – adulterated food and unsafe or worthless drugs sourced from countries with doubtful pharmaceutical capability. To compound it all, consumers are not able to choose on an informed basis. Consumers must have access to basic social services – goods and services of acceptable quality, reasonable prices and, more importantly, safe for human consumption and friendly to the environment.

Unfortunately, that is hardly the case due to the current state of competition in the country, characterised by the lack of quality control, the operation of monopolies and other forms of anti-competitive practices.

To create greater social value for The Gambian citizens, it would be necessary to disseminate consumer information, education and advocacy, with a view to maximising welfare and reducing poverty. It is, therefore, the responsibility of The Gambian government, CSOs and the regulatory agencies to protect especially the poor consumers. Consumers are affected by all the policy decisions taken in the economy. Yet, they are fundamentally disorganised and, consequently, consumer interest is not adequately protected. They often have genuine complaints, but do not always know where to channel them to seek redress. They have a right to be heard and to get assurance that their interest will always be given due consideration. Consumers deserve respect, since their decisions have a critical impact on the performance of the economy.

The emergence of consumer organisations that have public interest objectives will ensure protection of consumers. The Competition Act is meant to promote the free functioning of markets, once government restraints on competition have been removed. The government also intends to introduce a Consumer Protection Bill to modernise The Gambian Consumer Protection Legislation.

# *Progress in Operationalising the Competition Act*

The Gambia has recently started the process of operationalising its competition regime. The Secretariat of the GCC is being set up and is not yet fully functional. As of January 2010, it is only the Commissioners and the Executive Secretary who have been appointed. The board is in the process of appointing the remaining senior staff members. Study tours to Malta and Cyprus have been conducted in October 2009, with support from the Small States Network for Economic Development (SSNED). In December 2009, all the Commissioners and the Executive Secretary visited the Competition Commission of the Republic of South Africa for an educational excursion.

**The objectives of the Competition Act are to:**

- 'foster competitive markets and competitive business conduct in The Gambia by establishing a Competition Commission and a competition regime that will control anti-competitive arrangements, monopoly situations and mergers with the aim of improving the well-being of consumers and the efficiency of businesses in The Gambia';
- give confidence to those wishing to invest in The Gambia; and
- demonstrates the government's commitment to a free market economy.

The Act covers the supply of good and services in The Gambia and sets out the core elements of a competition regime, to be administered by an independent GCC. The Act prohibits two forms of restrictive business practices *per se*: collusive horizontal arrangements and bid rigging agreements. GCC can open investigations on the suspicion that an enterprise is party to a prohibited practice. The Act is also applicable to the following situations:

- Non-collusive horizontal arrangements in which the parties supply 30 percent of goods or services in the market concerned;
- 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);
- Vertical agreements in which the Commission has reasonable grounds to believe that one or more parties are in monopoly situation; and
- Mergers, where one of the parties carries on its business in The Gambia, or is operated or controlled by a corporate body incorporated in The Gambia, and where either of the both parties, following the merger, account for, either as a supplier or buyers, 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.

There are however, certain exemptions to the rules as follows:

- Activities of a statutory monopoly;
- Practices or agreements expressly required or authorised by an enactment, or by scheme or instrument made under enactment;
- Any practices of employers or any agreement to which employers are party and that relate to the remuneration, terms or conditions of employment of employee;
- 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 of rights under, or which exits by virtue of laws relating to copyright, design rights patents or trade marks, or other intellectual property rights (IPRs);
- Any practice, conduct or arrangement approved or required under an international agreement to which the State of The Gambia is a party; and
- Any agreement or conduct relating to activities within a free zone under the control of the GIPFZA.

The powers of investigation of the Commission extend to all classes of cases and to the search for evidence to determine compliance. The penalties and remedies that the Commission may impose on an enterprise found to be or has 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 subject to appeal. The Commercial Division of the High Court would hear all appeals. The line Ministry (Ministry of Trade, Industry & Employment) played a key role in setting up the GCC and wants the institution to develop as an independent entity. Once operations begin in earnest, it will be possible to gauge the degree of freedom and independence of the Commission *vis-à-vis* the government and the other regulatory agencies.

The Act indicates that the (five) Commissioners would be appointed by the President (though in consultation with the Public Service Commission) and shall as much as possible consist of persons who have knowledge or experience relevant to the Commission's purpose. One of the Commissioners would be selected as the Chairperson. It might have been useful to have had the Act specify some of the possible background of these Commissioners. Or, the Act could have indicated the broad stakeholder groups who would be represented on the Commission.

The Act tries to provide a fair amount of independence when it comes to the operation/functions of the Competition Commission. It provides, "*...... the Commission shall not be subject to the direction or control of any person or authority in the performance of its functions*". However, the Act also provides for the Secretary of State (now, The Minister) from the line ministry to make an order under certain exceptional circumstances directing the Commission to desist from certain actions in the national interest. Once the Commission starts its functions full-fledged, it would be interesting to see how it manages its linkage with the line Ministry. Appeals against decisions made by the Commission can be heard at the Court.

The Act is however silent with regards to its interface with other regulatory bodies for enforcement purposes. Given the existence of certain regulatory agencies in The Gambia whose functions would have implications for the Commission (and vice-versa), it would be necessary as the Act evolves, to lay down the *modus operandi* of coordination between the Commission and these regulatory agencies.

# *Political-economy Constraints in Implementing the Competition Regime*

Competition regulation across sectors is a nascent phenomenon. It is true that institutions like the PURA and the Central Bank have already been mandated to regulate competition in the telecommunication and banking sectors, respectively. For the first time, a comprehensive framework was evolved with the enactment of the Competition Act to regulate all forms of anti-competitive business practices in the country.

The political will to introduce and acclimatise competition was amply demonstrated by The Gambian government, when the Head of State and the National Assembly assented to the Act to promote competition in the supply of goods and services.

The process of drafting the Bill was a long protracted one, spanning the period between 2002-2007 and punctuated by a series of developments, including changes at ministerial level, lull in the designing process, etc., resulting in the process being constantly stalled, then reactivated, only to lose steam once again. It was in early 2007 that the Competition Bill was finalised, debated upon and later enacted into a law in October 2007.

The development of a Competition Act is part and parcel of the wider economic reform agenda that The Gambian government is embarking upon to create an enabling environment to lure investors into the country for sustained economic growth. For greater integration into the global economy, developing countries are increasingly urged to open up and to allow market forces to govern competition in the supply of goods and services.

Interestingly, an Act is now in place without the corresponding policy. The competition policy and the bill were being developed concurrently, but the process of developing the policy lost steam and the team that remained, being essentially made up of lawyers, concentrated on developing the Act, drawing from experiences in other countries.

The Line Ministry subsequently prepared the accompanying procedural rules and guidelines necessary for handling cases. The Ministry Trade, Industry & Employment established the GCC to provide The Gambian business community and citizens a conduit channel their grievances on anti-competitive business practices.

The GCC is in the setting up phase and faces capacity constraints: human, financial and technical. It is, therefore, urgent for the GCC to get support from more advanced agencies within and outside Africa. A strategic plan also needs to be developed: to identify stakeholders and the modalities to interact with them; define the capacity building, advocacy and public education needs; seek technical support; and strengthen the Secretariat in all possible ways.

A framework of cooperation between the Competition Commission and the other Regulatory Authority on how to jointly exercise their mandate of ensuring fair competition in the regulated sectors is missing, hence there is an air of apprehension among sector regulators as to how they could coordinate with the Competition Commission. To allay those fears, the latter has embarked on a sensitisation and consultation campaign on issues of concurrent jurisdiction.

An effective competition regime has huge potential in making substantial contributions towards achieving the Vision 2020 and the MDGs in The Gambia.

# *Alleged Cases of Anti-competitive Behaviour*

Market inefficiency is one of the most conspicuous aspects of The Gambia's economic regime. It affects both the formal and the informal sectors and brings to fore a number of questions: safeguarding public interest; allowing market forces to operate and as much as possible reconciling the inherent conflict that the two embody.

Upholding public interest is a function of good governance and implies that states like The Gambia in their quest and drive to promote efficient markets must be aware that the market does not always function properly due to lack of information, vested interest and outright corruption.

Glaring examples of large scale market failures in The Gambia in recent times include: the development of cartels, price fixing, market-sharing, bid rigging, exclusive dealing and tied selling. Commercial interest remains the driving force of business organisations. It is, therefore, the responsibility of The Gambian government and its regulatory agencies to protect the poor.

By creating the PURA and by passing a Competition Act and setting up a Competition Commission, The Gambian government is taking steps in the right direction. But, it is one thing to have the structures and the policy documents, but what ultimately matters is a viable competition culture underpinned by strong enforcement measures and.

The Gambia is presently beset with various constraints: weak institutional environment that hinder the implementation of a regulatory regime; absence of consumer awareness and strong consumer groups to contribute to the regulatory process and the presence of stakeholders who are ill-prepared to accept the rules of engagement. Some business operators in the wholesale and retail business are yet to be immersed in the culture of competition and to appreciate its importance for growth, consumer welfare and poverty reduction.

Anti-competitive practices in The Gambian economy that could be attributed to shortcomings in government policies are as follows:

- Certain policy issues such as the granting of tax holidays and development certificates may be useful to lure investors into the country, but it should be limited to extreme cases and avoid unduly distorting competition in the economy by making some firms gain at the expense of others.
- There is a lack of clear policies to curb corruption and the associated distortions due to the desire by private sector operators to maximise profit at the expense of the State and other competitors through revenue leakages.
- The government divesture programme of key institutions was carried out without going through an international bidding process. This could have led to "arranged privatisations" with a view to dominating the market.

The interplay of private operators in the transactional environment is replete with examples of anti-competitive practices that harm the consumers, particularly the poorest segments of The Gambian community. The Chamber of Commerce was categorical that importers often inflate prices of imported products (for example rice and also engage in tied selling).

In the commodity sectors of rice, onion, Irish potatoes and flour, there are indications that there exists a series of collusive practices. The main importers concur to fix prices, thus leading to the hike in retail prices.

Exclusive vertical agreements between importers and distributors have also been reported. The consumer goods market for rice, cooking oil and sugar gives clear example of this kind of practice.

A wholesaler interested in sugar has to buy rice albeit on credit from the importers. That would be the condition for accessing certain goods on credit basis whilst paying for others upfront. The same system is replicated between the wholesalers and the retailers. A wholesaler will exercise control over retailers by subjecting them to some conditional arrangements.

Similarly, private doctors running their own clinics and having pharmacies is a clear instance of vertical integration easily leading to possible tied selling. The worrying aspect has to do with the delivery of drugs to patients. Regulation in more advanced countries like France and the UK has been very careful to de-link these two functions as a measure of consumer protection. While some doctors observe high ethical standards and only prescribe what patients need, lapses are noticed among others. This results in prescribing medicines which patients may not need.

It would be important for regulatory organs to design safeguard measures and other quality control measures to deal with such situation. Further, consumers also need to be aware and voice their concerns before appropriate authorities on being subjected to such practices.

Likewise, many schools in The Gambia urge their students to buy uniforms and other products from them at a price that may be above that of the market. Such a practice is anti-competitive. Potential customers are constantly being lured by mobile telephone operators to acquire their SIM cards through various schemes etc. One of the telephone operators, Comium, has made its telephone handset incompatible with SIM cards issued by other operators (Africell and Gamcel). This is a clear case of tied selling and adversely affects competition.

Competition concerns are also witnessed in sectors/ markets characterised by government monopolies, like international gateway and fixed line in telecom sector, ferry services, television and broadcasting and electricity. It is evident from the analysis of these markets provided in one of the following sections (please refer to page 38-40) that lack of competition has considerable implications on consumer interests.

# *Interface Between Sectoral Regulation and Competition in Select Sectors*

The PURA was enacted by the National Assembly in 2001. The Act established a multi-sectoral regulatory authority called the PURA in 2004. The agency regulates the activities of providers of certain public utilities such as electricity, water and sewage services and telecommunications for the time being, but provisions have been made for the institution to also regulate petroleum, gas, broadcasting, transport and postal services. The Authority is empowered to also regulate competition in the markets of these sectors.

In March 2009, the National Assembly passed the landmark communication law entitled the 'I.C. Act, 2009', which finally brought into existence the legal basis for ensuring fair competition and protection of consumers in the communications sector. Since its passage, the PURA has been in consultation with the Ministry of Communications and Information Technology to ensure a smooth transfer of key regulatory functions which had hitherto been performed by the Ministry. These include, licensing of operators, frequency management, numbering, etc.

There is a need to streamline the wording and topics found in the sectoral laws which govern the activities of the Authority, to cover all the relevant areas of regulatory intervention. It should be noted that there is still no legislation in the water sector to regulate competition in this market. Recently, the water policy had undergone a major review and an integrated approach to water resource management was drafted and a validation workshop with all relevant stakeholders held. The PURA participated fully in the deliberations. It is expected that the policy will soon be tabled before the Cabinet and subsequently a Water Bill would be drafted and enacted by the National Assembly.

In the absence of this piece of legislation, the Authority (PURA) has been utilising the PURA Act to draft regulations, guidelines, standards and codes to ensure that there are rules to be followed by operators. This, however, is not the ideal situation.

The major problem the regulator, PURA, has been facing is the absence of any enforcement instruments to ensure compliance by operators on matters of fair competition or any other matter in the relevant sectors. This hurdle was finally addressed in April 2009, when PURA's draft "Enforcement Regulation, 2009" was signed by the Minister of Finance and Economic Affairs and gazetted. This piece of legislation closes a major gap in the compliance mechanism that the regulator had at its disposal. It stipulates penalties (including monetary) for violators of the rules, guidelines and standards, codes and regulations by operators in the electricity, water and communication sectors.

The newly enacted Information and Communication Act 2009 caters for the regulator to ensure that there is fair competition in the market. Part IV, Section 46 (1) states:

> "Notwithstanding the Competition Act 2007, but without prejudice to section 13 of the Regulatory Authority Act, The Minister and the Authority shall, in the performance of their duties under this Act and regulations made under it, promote, develop and enforce fair competition and equality of treatment among all licensees in any business or service relating to telecommunication."

This section, however, precludes the Competition Act from having any meaningful role in these sectors that are under the purview of the Authority. This is a potential source of conflict between the competition authority and PURA.

Part IV of the Act also speaks of the powers the Authority (and the Minister) has in ensuring fair competition. Sect. 46 (2) defines what constitutes unfair competition, such as the "abuse of market power by a licensee, acts of collusion, perpetuation of changes in market structure such as anti-competitive mergers and acquisitions". The Authority is also given the power to define and conduct research in relevant markets and identify operators with significant market power. It can also impose conditions on dominant players in the market.

Interestingly, Section 48 (2) (c) refers the Authority to seek advice from the Competition Commission in determining relevant markets. Part IV, Sect. 46 (2) of the Information and Communication Act addresses mergers and acquisitions (M&As) only in the context of unfair competition.

The issue of dispute resolution between operators is adequately covered in Part XII of the Information and Communication Act of the Information and it is also worthy to take note that the I.C. Act 2009 also sets aside punitive measures against abuses by operators, as covered under licensing obligations in Part III of the Act under "Terms and Conditions".

The Electricity Act 2004 is not clear in providing guidance on matters of competition. However, Sections 6 (1)(a)(b) and 8 (1) (a)-(c) give the regulator the authority to put into place procedures and conditions on licences that are in line with the PURA Act 2001.

Section 6 (1) of the Electricity Act states:
An application for a licence under this Act shall be made to the Authority in accordance with:

(a) the Regulatory Authority Act; and
(b) subject to paragraph (a), such other procedures as the Authority may determine.

In Section 8 (1) it further states:
A licensee shall comply with all –

(a) the conditions set out in its licence;
(b) the rules and regulations adopted by the Authority; and
(c) the laws of The Gambia relating to environmental protection, safety, labour, health, taxes and electric system performance and protection.

Section 13 (4) of the Electricity Act also focuses on the issue of mergers and acquisitions as follows:

"The Authority may, for any reason consistent with the purposes of this Act and the public interest, approve, refuse or restrict the carrying on by the licensee of any of the following activities:

(a) A merger or a major acquisition or sale of its assets or securities;
(b) An expansion of its business activities; and
(c) A re-organisation of its corporate structure."

However, the regulator has not yet developed any framework to address such issues, should they arise in the market.

Part III Section 13 (1) (f) of the PURA Act gives the regulator the mandate to "promote fair competition among public utilities". While there is little elaboration on how the regulator should proceed in ensuring fairness in the market place. The Act, however, compensates for this by making the provision for the Authority to devise regulations as it deems fit. Part XI Section 54(1) of the PURA ACT states:

"The Secretary of State may, on the advice of the Authority, make regulations for the better carrying out of the provisions of this Act."
In addition, the 'Enforcement Regulation, 2009' provides for the consequences of non-compliance by operators.

Among the functions of the Authority, as outlined in Part III, Section 13 (1) (c) of the Act, is the "protection of the interest of consumers and of public utilities". It further stipulates in Section 14 (1) that the Authority has powers to:

(a) Require a public utility to furnish the Authority with information in relation to its business and the regulated public service it provides; and

(b) Require a public utility or an employee or agent of a public utility to appear before and furnish the Authority with information relating to the business of the public utility and the public service it provides.

In Part VI of the Act, with the sub-heading, "Licensing Conditions", Section 29(1) states the following:

"The Authority may, with approval of the appropriate person, suspend or cancel a licence if it is satisfied that the public utility is not complying with or has not complied with any provision, term or condition of the licence."

The above-mentioned sections of the PURA Act, when taken in conjunction with the 'Enforcement Regulations, 2009', which categorises the levels and types of penalties to be imposed with each infraction, then one could clearly see that there is ample provision for the regulator to punish abusive behaviour.

# *Cross-Sectional Perceptions on Competition*

The perception survey administered to 150 key informants from the public, private and CSOs attempted to capture five important components: awareness; prevalence of anti-competitive practices; perception on the level of competition; perception on enforcement; and the role of the media.

| Table 24: Percentage Distribution of Respondents by Group and Awareness about the Existence of Competition Laws in The Gambia, 2009 | | | | | |
|---|---|---|---|---|---|
| Group | Are there rules, regulations or laws to check anti-competitive practices? | | | Total | |
| | Yes Percent | No Percent | Don't know Percent | Percent | Total |
| Private business | 18.7 | 14.0 | 27.3 | 60.0 | 90 |
| Government | 4.7 | .7 | .7 | 6.0 | 9 |
| Civil society | 12.0 | 9.3 | 12.7 | 34.0 | 51 |
| Total | 35.3 | 24.0 | 40.7 | 100.0 | 150 |

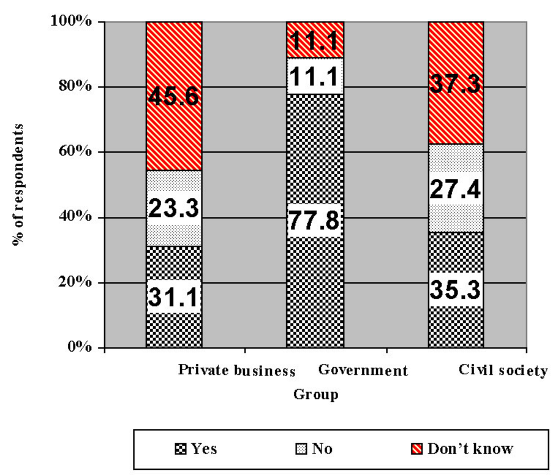
## Awareness of Competition Law and Agency

Table 24 shows that 40.7 percent of the respondents have no idea about whether or not there exist competition laws in The Gambia. However, of the total respondents, 35.3 percent reported that they are aware of the existence of competition laws in The Gambia. 24 percent respondents reported that there are no competition laws in The Gambia.

The respondents are classified into three main groups: private business, government/regulatory authority and civil society. Their views about competition laws in The Gambia can be seen in Table 25 and more clearly in Figure 1. Table 25 shows that most of the respondents from government departments stated that there is a competition law (77.8 percent). The awareness of respondents from the private business group is lowest, compared to the government and civil society groups.

Table 25 shows that 91.1 percent of the respondents said that they are aware of the existence of agencies responsible for administering competition laws in The Gambia. The civil society group is more aware of the existence of agencies responsible for administering competition laws in The Gambia (see Figure 2).

**Figure 1: Group's Level of Awareness about the Existence of Competition Laws in The Gambia, 2009**



| Table 25: Percentage Distribution of Respondents in Each Group by Awareness about the Existence of Competition Laws and Agencies Administering the Laws in The Gambia, 2009 | | | | | | |
|---|---|---|---|---|---|---|
| **Question on competition** | **Answers** | **Unit** | **Private business** | **Government** | **Civil society** | **Total** |
| Are there Rules, regulations or laws to check anti-competitive practices? | Yes<br>No<br>Don't know | Percent<br>Percent<br>Percent | 31.1<br>23.3<br>45.6 | 77.8<br>11.1<br>11.1 | 35.3<br>27.5<br>37.3 | 35.3<br>24.0<br>40.7 |
| Total Percent | | | 100.0 | 100.0 | 100.0 | 100.0 |
| Agency is responsible to administer legislation? | Yes<br>Don't know | Percent<br>Percent | 89.7<br>10.3 | 83.3<br>16.7 | 95.2<br>4.8 | 91.1<br>8.9 |
| Total Percent | | | 100.0 | 100.0 | 100.0 | 100.0 |
| Total respondents | | | 90 | 9 | 51 | 150 |

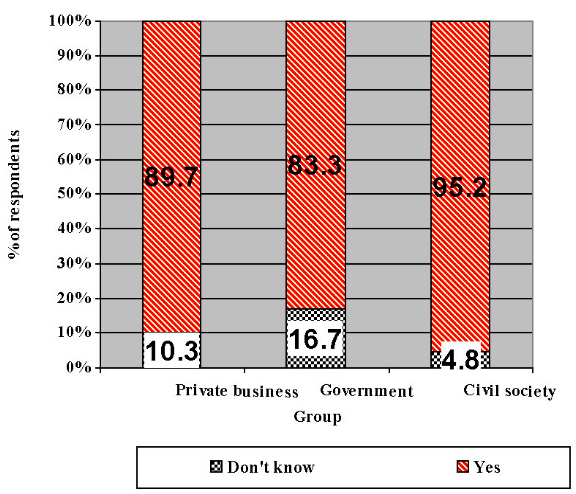
In a country like The Gambia, where both the law and the agency exist, such information would be critical in developing advocacy and communication strategy.

## Awareness of Consumer Laws and Agencies

From Table 26 it could be seen that most of the respondents do not know that there is a Consumer Protection Law in The Gambia. Of the total respondents, 42.7 percent indicated their ignorance of this fact. 35.3 percent reported that there is a Consumer Protection Law in The Gambia and 22 percent of the respondents reported that there is no Consumer Protection Law in The Gambia.

Table 27 shows that 52.7 percent of the respondents are aware of an agency or institution that protects consumer interests. The remaining 47.3 percent of the interviewees do not know of any agency that protects consumer interests.

**Figure 2: Group's Level of Awareness about the Existence of Agencies Administering Competition Laws, 2009**




The perspective of the groups concerning the availability of consumer protection law is shown in Table 28. The statistics clearly that the government group has the highest proportion of respondents (77.8 percent) who are aware of the existence of a Consumer Protection Law in The Gambia. Table 6 shows that 34.4 percent of the respondents within the business group said 'yes' to the question about whether there is consumer protection law. Figure 3 shows that only 29.4 percent of the respondents within the civil society group said 'yes' (and this constitutes the smallest proportion of 'yes') concerning the existence of consumer protection law in the country.

The opinion of the groups concerning the availability of institution protecting consumers' interests is shown in Table 6, where it is evident that 52.7 percent of the respondents reported that they know of any agency that protects consumer's interests and government institutions accounted for the highest proportion, with a 77.8 percent share. Figure 4 portrays the same information concerning the availability of an agency responsible for protecting consumer interests, using bars.

## Awareness of Competition Issues in the Country and the Reason

Concerning interviewees' perception of the extent to which competition issues in general are understood, the statement below shows what was reported by the respondents:

Most of the respondents (70 percent) thought that competition issues are not understood in The Gambia (Table 29). However, the remaining 30 percent of the respondents hold a totally different opinion.

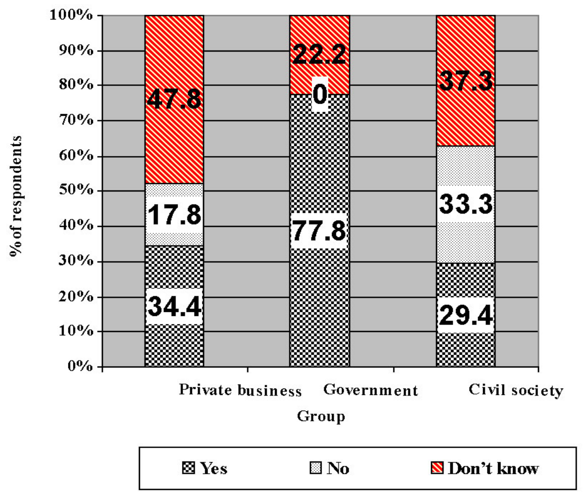
| Table 26: Percentage Distribution of Respondents by Group and Awareness about the Existence of Consumer Protection Law in the Gambia, 2009 | | | | | |
|---|---|---|---|---|---|
| Group | Is there a consumer protection law in the Gambia? | | | Total | |
| | Yes Percent | No Percent | Don't know Percent | Percent | Total |
| Private business | 20.7 | 10.7 | 28.7 | 60.0 | 90 |
| Government | 4.7 | | 1.3 | 6.0 | 9 |
| Civil society | 10.0 | 11.3 | 12.7 | 34.0 | 51 |
| Total | 35.3 | 22.0 | 42.7 | 100.0 | 150 |

Those who have some degree of understanding of competition attribute it to the role of advertisements and publicity. This is true for 71.1 percent of the respondents (Table 29). Taking a totally different view, another 68.6 percent of respondents attribute the lack of knowledge of competition to the absence of publicity.

Table 29 also shows that 36.7 percent of respondents from the private business group believe that competition issues are well understood in the country due to publicity about competition. The remaining 63.3 percent begged to differ.

| Table 27: Percentage Distribution of Respondents by Group and Awareness about the Existence of Agencies that Protect Consumer Interests in the Gambia, 2009 | | | | |
|---|---|---|---|---|
| Group | Know of an agency that protects consumers' interest | | | |
| | Yes Percent | No Percent | Percent | Total |
| Private business | 28.7 | 31.3 | 60.0 | 90 |
| Government | 4.7 | 1.3 | 6.0 | 9 |
| Civil society | 19.3 | 14.7 | 34.0 | 51 |
| Total | 52.7 | 47.3 | 100.0 | 150 |

**Figure 3: Group's Level of Awareness about the Existence of Consumer Protection Law in The Gambia, 2009**




| Table 28: Percentage Distribution of Respondents in Each Group by Awareness about the Existence of Consumer Protection Laws and Agencies for Protecting Consumers' Interests in the Gambia, 2009 | | | | | | |
|---|---|---|---|---|---|---|
| Question | Answers | Unit | Private business | Government | Civil society | Total |
| Is there a consumer protection law in The Gambia? | Yes<br>No<br>Don't know | Percent<br>Percent<br>Percent | 34.4<br>17.8<br>47.8 | 77.8<br><br>22.2 | 29.4<br>33.3<br>37.3 | 35.3<br>22.0<br>42.7 |
| Total Percent | 100.0 | 100.0 | 100.0 | 100.0 | | |
| Know of agency that protects consumer's interest? | Yes<br>No | Percent<br>Percent | 47.8<br>52.2 | 77.8<br>22.2 | 56.9<br>43.1 | 52.7<br>47.3 |
| Total respondents | | | 90 | 9 | 51 | 150 |
| | Percent | 100.0 | 100.0 | 100.0 | 100.0 | |

| Table 29: Percentage Distribution of Respondents in Each Group by Opinion about People's Awareness on Competition Issues and the Reasons for Opinion, 2009 | | | | | | |
|---|---|---|---|---|---|---|
| Question\reasons | Answers | Unit | Private business | Government | Civil society | Total |
| Do you think that competition issues are well understood? | Yes | Percent | 36.7 | 33.3 | 17.6 | 30.0 |
| | No | Percent | 63.3 | 66.7 | 82.4 | 70.0 |
| | Total Percent | | 100.0 | 100.0 | 100.0 | 100.0 |
| Reasons competitions issues are well understood in The Gambia | Political will | Percent | 9.1 | 33.3 | 11.1 | 11.1 |
| | Active Competition Authority | Percent | 15.2 | | 22.2 | 15.6 |
| | Publicity about competition issues | Percent | 75.8 | 66.7 | 55.6 | 71.1 |
| | Other | Percent | | | 11.1 | 2.2 |
| | Total percent | 100.0 | 100.0 | 100.0 | 100.0 | |
| Reasons competition issues are not well understood in The Gambia | lack of political will | Percent | 5.3 | 16.7 | 4.8 | 5.7 |
| | Inactive Competition Authority | Percent | 22.8 | 16.7 | 23.8 | 22.9 |
| | Lack of publicity on competition issues | Percent | 68.4 | 66.7 | 69.0 | 68.6 |
| | Other | Percent | 3.5 | | 2.4 | 2.9 |
| | | | 100.0 | 100.0 | 100.0 | 100.0 |
| Total respondents | | | 90 | 9 | 51 | 150 |

**Figure 4: Group's Level of Awareness about the Existence of Agency Protecting Consumer Interests in The Gambia, 2009**

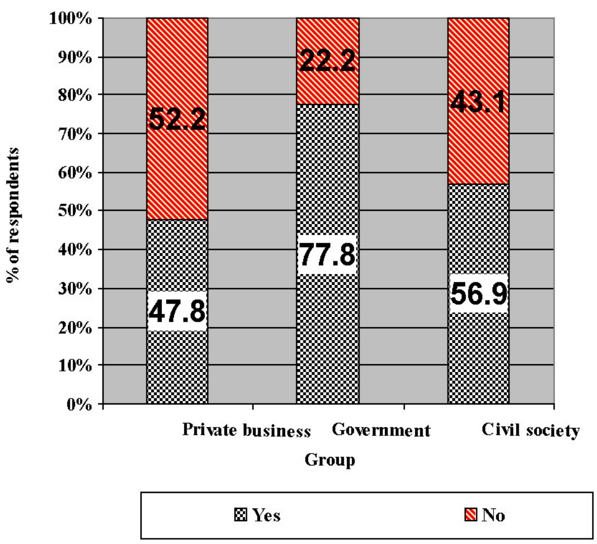



**Figure 5: Group's Opinion About the Understanding of Competition Issues in The Gambia, 2009**

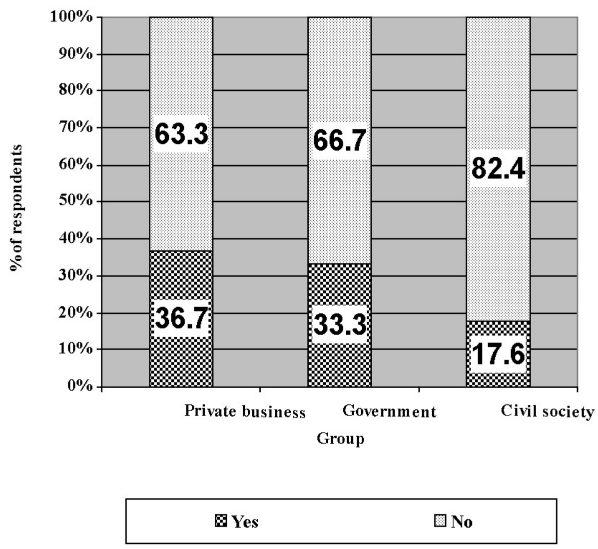


Figure 5 shows the extent to which competition issues are understood across groups.

For respondents from government institutions, the picture is more or less similar: 33.3 percent voted for the former (availability of publicity) and the remaining 66.7 percent for the latter (the absence of publicity).

CSOs, on the other hand, portray a complete departure in perception. Only 17.6 percent of the respondents thought that competition issues are well understood in the Gambia, the remaining 82.4 percent perceiving that they are not, with most feeling that this is due to the lack of publicity about competition issues.

The information from Table 29 is presented in a different way in Table 30. The purpose of Table 30 is mainly to show the consistency between those saying 'yes' and the justification 'yes' or 'no' and their reasons for doing so.

## Prevalence of Anti-competitive Practices

**Perceived Level of Anti-competitive Practices**

Concerning the extent to which anti-competitive practices are encountered in the country, it could be seen in Table 30 that the majority of the respondents said that such practices are quite frequent (44.8 percent of them). The remaining respondents 21.7 percent said the practice is very frequent; another 29.4 percent said that the practice is infrequent. Only 4.2 percent said that the practice is not noticeable (i.e. it does not happen at all).

The comparison across groups shows that most of the respondents in each group are of the view that anti-competitive practices happen quite frequently. CSOs accounted for the highest proportion, with 50 percent followed by private businesses with 44 percent. The government accounted for the lowest proportion of respondents that reported anti-competitive practices as happening quite frequently.

**Table 30: Percentage Distribution of Respondents by Opinion about People's Awareness on Competition Issues and the Reasons for Opinion, 2009**

| Reasons for understanding or not understanding competition issues | | Do you think that competition issues are well understood | | Total | |
|---|---|---|---|---|---|
| | | Yes Percent | No Percent | Percent | Total |
| Reasons competition issues are well understood in The Gambia | Political will | 11.1 | | 11.1 | 5 |
| | Active Competition Authority | 15.6 | | 15.6 | 7 |
| | Publicity about competition issues | 71.1 | | 71.1 | 32 |
| | Other | 2.2 | | 2.2 | 1 |
| Reasons competition issues are not well understood in The Gambia | lack of political will | | 5.7 | 5.7 | 6 |
| | Inactive Competition Authority | | 22.9 | 22.9 | 24 |
| | Lack of publicity on competition issues | | 68.6 | 68.6 | 72 |
| | Other | | 2.9 | 2.9 | 3 |
| | Total | | 100.0 | 100.0 | 105 |
| | Total respondents | 30.0 | 70.0 | 100.0 | 150 |

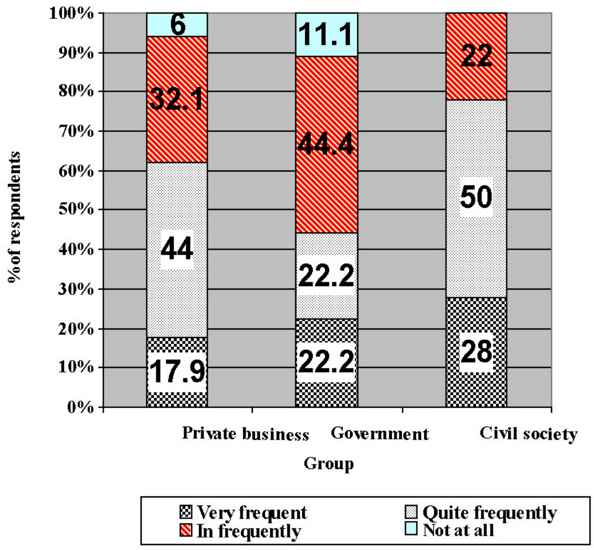
### Most Frequent Anti-competitive Practices

Since the frequency of anti-competitive practice can be classified as most frequent, second most frequent and third most frequent, it is possible to encounter a situation where each of the anti-competitive practices is classified in each one of the categories by respondents (most frequent, second most frequent and third most frequent). This situation is depicted in Table 10. With this situation, the practice that constitute the modal value of the frequency distribution of the anti-competitive practices for each of the categories (most frequent, second most frequent and third most frequent) would be regarded as the value most frequent or the second most frequent or third most frequent practice. With this type of analysis, it is possible to encounter a situation where a given practice can, at the same time, appear as the most frequent, second most frequent and third most frequent. This, of course, would be an unrealistic analysis. A multiple response analysis that sums each variable across the three different categories is also not suitable here.

Fortunately, in Table 31, the practice with modal value for each category is different from the other. Hence, the majority (77) out of the 144 respondents who mentioned the most frequent anti-competitive practices named 'price fixing'. Similarly, the majority (35) out of the 139 respondents who mentioned the second most frequent anti-competitive practices named 'market sharing' as the second most frequent anti-competitive practice. Following a similar line of reasoning, the third most frequent anti-competitive practice is 'price discrimination'. The majority of those who mentioned 'price fixing' are from the business group. The majority of those who mentioned 'market sharing' are from the civil society group. The majority of those who mentioned 'price discrimination' are from the business group.

From Figure 7, it can be observed that the government did not mention market sharing and price discrimination as second and third most frequent anti-competitive practices, respectively.

**Figure 6: Percentage Distribution of Respondents in Each Group by the Extent of Anticompetitive Practices in The Gambia, 2009**




| Table 31: Percentage Distribution of Respondents in Each Group by Perceived Frequency of Anti-competitive Practices Encountered in The Gambia, 2009 | | | | | |
|---|---|---|---|---|---|
| **Frequency of anti-competitive practices in The Gambia** | **Unit** | **Private business** | **Government** | **Civil society** | **Total** |
| Very frequently | Percent | 17.9 | 22.2 | 28.0 | 21.7 |
| Quite frequently | Percent | 44.0 | 22.2 | 50.0 | 44.8 |
| Infrequently | Percent | 32.1 | 44.4 | 22.0 | 29.4 |
| Not at all | Percent | 6.0 | 11.1 | | 4.2 |
| Total Percent | | 100.0 | 100.0 | 100.0 | 100.0 |
| Total respondents | | 90 | 9 | 51 | 150 |

## Perception of Level of Competition

### Assessment of Level of Competition

Table 32 shows that 38 percent of the respondents reported that the level of competition in The Gambian market is high; 44.7 percent consider the level moderate and 14.7 percent as low. The majority of the private business respondents (44.4 percent) reported it is high, 66.7 percent of respondents from government institutions reported that the level of competition is moderate and 49 percent of the respondents from CSOs also reported that the competition is moderate.

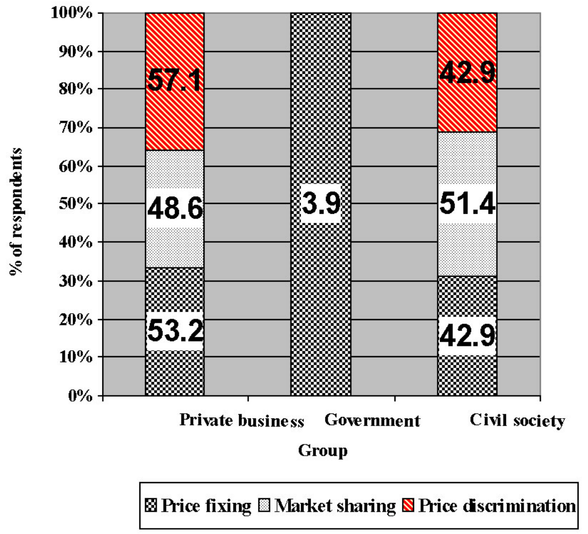
### Competition Assessment in Selected Sectors

For the telecommunication sector, Table 33 shows that 58.7 percent of the respondents consider the level of competition high for the sector. From the perspective of the private business group, the level is high, as reported by 63.3 percent of its respondents. Whereas, for the government institutions, the competition is moderate, as reported by 44.4 percent of its respondents and, for the CSOs, the competition is high, as reported by 54.9 percent of its respondents.

For the power and energy sector, the data shows that the majority of the respondents, 34.9 percent reported that the level of competition in the sector is low. From the perspective of the private business group, the level is perceived as low, according to 38.2 percent of the respondents. For government institutions, the level of competition is also low, as reported by 44.4 percent of its respondents. On the contrary, 33.3 percent of the respondents from the CSOs reported that there is no competition in the power or energy sector.

About 56 percent of the respondents within the retail consumer goods sector (Table 33) are of the opinion that the level of competition in the sector is high. That

**Figure 7: Percentage Distribution of Respondents in Each Group by the First Three Anticompetitive Practices (price fixing, market sharing and price discrimination), in The Gambia, 2009**




| Table 32: Percentage Distribution of Respondents in Each Group by Assessment of Level and Impact of Competition Encountered in The Gambia, 2009 | | | | | | |
|---|---|---|---|---|---|---|
| **Level/impact** | **Level** | **Unit** | **Private business** | **Government** | **Civil society** | **Total** |
| Respondent assessment of level of competition in The Gambia | High | Percent | 44.4 | 22.2 | 29.4 | 38.0 |
| | Moderate | Percent | 40.0 | 66.7 | 49.0 | 44.7 |
| | Low | Percent | 13.3 | 11.1 | 17.6 | 14.7 |
| | Nil | Percent | 2.2 | | 3.9 | 2.7 |
| Total Percent | 100.0 | 100.0 | 100.0 | 100.0 | | |
| The extent to which competition impact on daily lives of Gambian | Highly | Percent | 56.7 | 66.7 | 44.0 | 53.0 |
| | Moderately | Percent | 38.9 | 33.3 | 50.0 | 42.3 |
| | Not at all | Percent | 4.4 | | 6.0 | 4.7 |
| Total respondents | | 90 | 9 | 51 | 150 | |
| Total Percent | | 100.0 | 100.0 | 100.0 | 100.0 | |

| Table 33: Percentage Distribution of Respondents in Each Group by Assessment of Level of Competition in Selected Sectors, 2009 | | | | | | |
|---|---|---|---|---|---|---|
| **Sector** | **Level** | **Unit** | **Private business** | **Government** | **Civil society** | **Total** |
| Level of competition in telecoms | High | Percent | 63.3 | 33.3 | 54.9 | 58.7 |
| | Moderate | Percent | 17.8 | 44.4 | 35.3 | 25.3 |
| | Low | Percent | 16.7 | 22.2 | 9.8 | 14.7 |
| | Nil | Percent | 2.2 | | | 1.3 |
| Level of competition in Power | High | Percent | 21.3 | 33.3 | 27.5 | 24.2 |
| | Moderate | Percent | 13.5 | 11.1 | 11.8 | 12.8 |
| | Low | Percent | 38.2 | 44.4 | 27.5 | 34.9 |
| | Nil | Percent | 27.0 | 11.1 | 33.3 | 28.2 |
| Level of competition in Retail consumer goods | High | Percent | 56.8 | 55.6 | 52.9 | 55.4 |
| | Moderate | Percent | 29.5 | 44.4 | 35.3 | 32.4 |
| | Low | Percent | 11.4 | | 11.8 | 10.8 |
| | Nil | Percent | 2.3 | | | 1.4 |
| Level of competition in Transport, Bus, Taxi | High | Percent | 48.9 | 33.3 | 33.3 | 42.7 |
| | Moderate | Percent | 35.6 | 44.4 | 43.1 | 38.7 |
| | Low | Percent | 11.1 | 22.2 | 21.6 | 15.3 |
| | Nil | Percent | 4.4 | | 2.0 | 3.3 |
| Total respondents | | | 90 | 9 | 51 | 150 |

same view is corroborated by the private business group, the government and the civil society group, as exemplified by 56.8 percent and 55.6 percent of the respondents, respectively. 50 percent of respondents from the CSOs also reported that the level of competition is high in this sector.

In the transport sector, Table 33 shows that 42.7 percent of the respondents said that the level of competition is high in this sector. From the perspective of the private business group, the level is high, as reported by 48.9 percent of its respondents. With regard to government institutions, the competition in this sector is moderate, as reported by 44.4 percent of its respondents. Majority of the CSOs (43.1 percent) also reported that the level of competition in the sector is moderate.

## Perception on Enforcement

### Perception on Whether Action is Taken on Violations

Concerning respondents' opinion on the level of confidence in competition enforcement or in the regulatory system of competition in the country, 49.1 percent of the respondents reported that action is sometimes taken following violations of competition laws (Table 34).

The 7.5 percent of the respondents who reported that no action is taken following violations gave the following reasons:

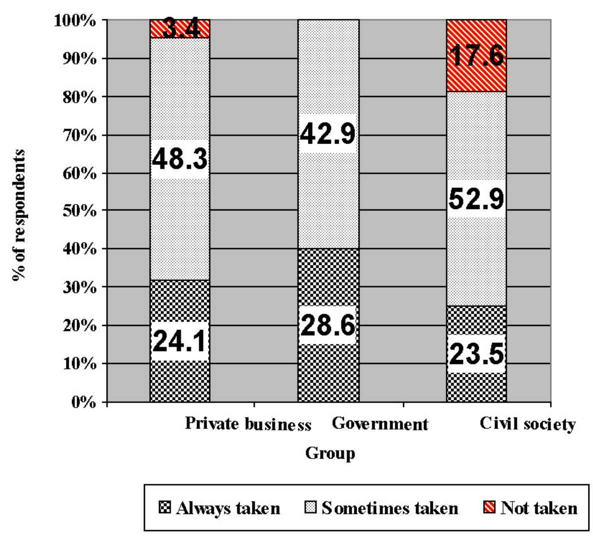
- Law is not enforced;
- Agency not strong enough;
- Corruption; and
- Strong lobbies.

| Table 34: Distribution of Respondents in Each Group by Perception on whether Action Is Taken against Violation of Competition Laws and the Reasons for No Action, 2009 | | | | | | |
|---|---|---|---|---|---|---|
| | | | **Private business** | **Government** | **Civil society** | **Total** |
| 14. Action taken if rules are violated? | Yes, always | Percent | 24.1 | 28.6 | 23.5 | 24.5 |
| | Yes, sometimes | Percent | 48.3 | 42.9 | 52.9 | 49.1 |
| | No | Percent | 3.4 | | 17.6 | 7.5 |
| | Don't know | Percent | 24.1 | 28.6 | 5.9 | 18.9 |
| Total | Percent | | 100.0 | 100.0 | 100.0 | 100.0 |
| Total respondents | Number | 90 | 9 | 51 | 150 | |
| Reason for not taken action against violation - Law is | Law is not enforced | Number | 8 | | 10 | 18 |
| Reasons for not taken action against violation – Agency | Agency not strong enough | Number | 10 | 2 | 4 | 16 |
| Reasons for not taken action against violation – Corruption | Corruption | Number | | | 2 | 2 |
| Reasons for not taken action against violation – Strong | Strong lobbies | Number | | | 2 | 2 |

The responses on strong lobbies and corruption indicate some of the constraints for the establishment of an effective competition regime.

Figure 12 shows the extent to which competition is enforced in the country, as reported by the different groups. Among the private business group, 48.3 percent reported that action is sometimes taken against violations of competition laws and rules. The government and CSOs also reported that action is sometimes taken.

**Figure 8: Percentage Distribution of Respondents in Each Group by Level of Confidence in the Regulatory System of Competition, in The Gambia, 2009**

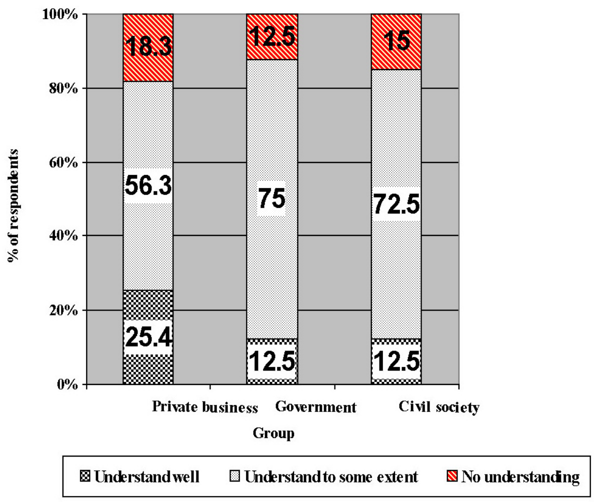



## Role of Media

According to 44.4 percent of the respondents, reporting on competition issues in the media is not as frequent as it could be. As it stands, the media is playing no significant role in competition awareness and advocacy. The most active medium of communication is newspapers. Table 35 shows that 63 percent of the respondents believe that the media is currently incapable of effectively communicating competition issues, due to lack of knowledge. That points to the need for capacity building of the media representatives better understand and report competition concerns.

| Table 35: Distribution of Respondents in Each Group by Selected Issues Relating to Competition and the Media, 2009 | | | | | | |
|---|---|---|---|---|---|---|
| **Selected issues** | **Response category** | **Unit** | **Private business** | **Government** | **Civil society** | **Total** |
| Frequency of reporting anti-competitive practices | Very often | Percent | 15.5 | | 18.4 | 15.5 |
| | Sometimes | Percent | 31.0 | 33.3 | 14.3 | 25.4 |
| | Rarely | Percent | 41.7 | 55.6 | 46.9 | 44.4 |
| | Not at all | Percent | 11.9 | 11.1 | 20.4 | 14.8 |
| Total | Percent | | 100.0 | 100.0 | 100.0 | 100.0 |
| Media used for reporting anti-competitive practices | Television - local or national | Number | 21 | 4 | 16 | 41 |
| | Newspapers | Number | 59 | 6 | 33 | 98 |
| | Radio | Number | 34 | 3 | 19 | 56 |
| | Other | Number | 5 | 4 | 3 | 12 |
| Based on their reports I think journalist understand the issue of competition | Yes | Percent | 25.4 | 12.5 | 12.5 | 20.2 |
| | To a certain extent | Percent | 56.3 | 75.0 | 72.5 | 63.0 |
| | No, not at all | Percent | 18.3 | 12.5 | 15.0 | 16.8 |
| Total respondents | | | 90 | 9 | 51 | 150 |

**Figure 9: Percentage Distribution of Respondents in Each Group by Opinion as to the Extent to which Journalist Understand Competition Issues in The Gambia, 2009**




## Other Issues

The sector that has been regarded to be characterised by monopoly is the power sector, as indicated by a multiple response analysis in Table 37. Since each respondent can indicate at most three sectors, the expected minimum score for the three most important sectors is, therefore, 150, if each respondent indicates at least one sector. The maximum score is 450, if each respondent indicates three sectors. Table 37 indicates that the total score is 320 responses. Of these responses, 38.1 percent classified the power sector in at least one of the three most important sectors. This sector was followed by the telecommunications sector, with 19.4 percent of the responses. The third most important sector is the retail trade sector, which accounted for 12.2 percent of the total responses. The commodities which were frequently highlighted as being traded by monopolies were cement, rice and petroleum.

Table 36 shows the majority of respondents in each of the group that named the power sector as

| Table 36: Percentage Distribution of Respondents in Each Group by Sectors They Think Are Characterised by Monopolies, 2009 | | | | | | |
|---|---|---|---|---|---|---|
| **Sectors** | | **Unit** | **Private business** | **Government** | **Civil society** | **Total** |
| Sectors characterised by monopoly - first | Telecommunication | Percent | 22.2 | 25.0 | 20.9 | 22.0 |
| | Power: electricity, gas, charcoal, firewood | Percent | 65.3 | 50.0 | 58.1 | 61.8 |
| | Retail, consumer goods: wholesale and retail trade | Percent | 4.2 | | 4.7 | 4.1 |
| | Commuter transport -Bus, Taxi | Percent | 2.8 | 25.0 | 2.3 | 4.1 |
| | Agriculture and horticulture | Percent | 2.8 | | 7.0 | 4.1 |
| | Manufacturing | Percent | 1.4 | | | .8 |
| | Public administration – Government | Percent | 1.4 | | | .8 |
| | Other – Banking and insurance | Percent | | | 2.3 | .8 |
| | Other – Construction | Percent | | | 4.6 | 1.6 |
| Total | | Percent | 100.0 | 100.0 | 100.0 | 100.0 |
| Sectors characterized by monopoly - second | Telecommunication | Percent | 17.2 | 28.6 | 15.8 | 17.4 |
| | Power: electricity, gas, charcoal, firewood | Percent | 29.7 | 42.9 | 31.6 | 31.2 |
| | Retail, consumer goods: wholesale and retail trade | Percent | 15.6 | 14.3 | 18.4 | 16.5 |
| | Commuter transport -Bus, Taxi | Percent | 4.7 | | 5.3 | 4.6 |
| | Agriculture and horticulture | Percent | 3.1 | 14.3 | 7.9 | 5.5 |
| | Fishing | Percent | 3.1 | | 5.3 | 3.7 |
| | Manufacturing | Percent | 6.3 | | 7.9 | 6.4 |
| | Public administration – Government | Percent | 14.1 | | 5.3 | 10.1 |
| | Other - Banking and insurance | Percent | 11 | | 2.6 | 4.6 |
| Sectors characterised by monopoly - Third | Telecommunication | Percent | 13.0 | 42.9 | 20.0 | 18.2 |
| | Power: electricity, gas, charcoal, firewood | Percent | 15.2 | 14.3 | 11.4 | 13.6 |
| | Retail, consumer goods: wholesale and retail trade | Percent | 19.6 | | 20.0 | 18.2 |
| | Commuter transport -Bus, Taxi | Percent | 13.0 | 14.3 | 5.7 | 10.2 |
| | Agriculture and horticulture | Percent | 6.5 | | 2.9 | 4.5 |
| | Fishing | Percent | 2.2 | 14.3 | 11.4 | 6.8 |
| | Manufacturing | Percent | 6.5 | | 11.4 | 8.0 |
| | Public administration – Government | Percent | 23.9 | | 8.6 | 15.9 |
| | Other - Banking and insurance | Percent | | | 2.9 | 1.1 |
| | Other – Construction | Percent | | 14.3 | 5.8 | 3.3 |
| Total respondents | | | 90 | 9 | 51 | 150 |

| Table 37: Distribution of Responses by Sectors, 2009 | | |
|---|---|---|
| **Sectors characterised by Monopoly** | **Responses** | |
| | **Number of responses** | **Percent** |
| Telecommunication | 62 | 19.4 |
| Power: electricity, gas, charcoal, firewood | 122 | 38.1 |
| Retail, consumer goods: wholesale and retail trade | 39 | 12.2 |
| Commuter transport -Bus, Taxi | 19 | 5.9 |
| Agriculture and horticulture | 15 | 4.7 |
| Fishing | 10 | 3.1 |
| Manufacturing | 15 | 4.7 |
| Public administration – Government | 26 | 8.1 |
| Other - Banking and insurance | 3 | .9 |
| Other – Construction | 9 | 2.8 |
| Total | 320 | 100.0 |

| Table 38: Distribution of Respondents in Each Group by Perception on State-owned Monopolies and Competition Authority, 2009 | | | | | | |
|---|---|---|---|---|---|---|
| **Questions** | **Answers** | **Unit** | **Private business** | **Government** | **Civil society** | **Total** |
| Are there state-owned monopolies in The Gambia | Yes | Percent | 61.1 | 66.7 | 64.7 | 62.7 |
| | No | Percent | 11.1 | 11.1 | 15.7 | 12.7 |
| | Don't know | Percent | 27.8 | 22.2 | 19.6 | 24.7 |
| Total | Percent | | 100.0 | 100.0 | 100.0 | 100.0 |
| State-owned monopoly indulged in - tied selling | Yes | Number | 4 | 2 | 4 | 10 |
| State-owned monopoly indulged in - exclusive dealing | Yes | Number | 12 | 3 | 4 | 19 |
| State-owned monopoly indulged in - resale price maintenance | Yes | Number | 5 | 3 | 3 | 11 |
| State-owned monopoly indulged in - price discrimination | Yes | Number | 15 | 2 | 1 | 18 |
| Ways the Competition Authority should involve different stakeholders | On a random manner when needed | Percent | 24.4 | 11.1 | 25.5 | 24.0 |
| | Through a structured process | Percent | 70.0 | 66.7 | 70.6 | 70.0 |
| | Not at all | Percent | 5.6 | 22.2 | 3.9 | 6.0 |
| Total respondents | Number | | 90 | 9 | 51 | 150 |

characterised by a monopoly. The majority of the business group identified retail of consumer goods as the third sector characterised by monopoly. From the perspective of the government, it is the telecommunications sector which ranks third among sectors characterised by monopoly. The civil society group struck a balance between the telecommunications and retail of consumer goods in deciding the third monopolistic sector. Table 36 shows that the business group had 19.6 percent of its respondents who named the retail of consumer goods as the third monopolistic sector.

The majority of respondents (62.7 percent) strongly believe that there are state-owned monopolies. The government institutions accounted for the highest proportion (66.7 percent) of those who said there are state-owned monopolies, followed by CSOs (64.7 percent) and those in the private business group accounting for the lowest proportion (61.1 percent).

When asked to indicate the type of anti-competitive practices being experienced or known (Table 38), most of the respondents reported that state-owned monopolies indulge in exclusive dealing and price discrimination.

Table 38 also shows that 70 percent of the respondents would like to see a competition authority emerge to regulate and structure the processes to promote a healthy competition culture.

# Assessment of the Implication of Natural Monopolies on Competition

A certain number of monopoly situations are in existence in The Gambia. Some qualify to be natural monopolies in that they require extremely large fixed capital investments for their operations to get off the ground and can benefit from large economies of scale, leading to lower costs for the consumer. This is the case for the distribution and transmission of water and electricity in The Gambia.

## The Electricity Market

The National Water and Electricity Company (NAWEC) has, since inception, been a monopoly in the generation of electricity until in 2007, when that monopoly was relaxed to accommodate one IPP. This IPP, with an installed capacity of 25 megawatts, can only produce and sell to NAWEC, but can neither distribute nor bill customers. NAWEC dictates the tune by determining the quantities produced by the IPP. It is worth observing that electricity generation is the less problematic component of the electricity value chain in terms of risk. Building the transmission line would require huge investments that private investors may not be prepared to shoulder, unless they can benefit from government subsidies. Otherwise, it would take a long time before they break even and begin to make profits.

The existence of a monopoly which is poorly run is by nature not competitive. In the absence of alternatives, the consumers may not be getting the best value for their money. The IPP has only been allowed to produce electricity and is obliged to work with the NAWEC – the only company in The Gambia with the distribution infrastructure. Consumers have to put up with whatever conditions are laid down by the NAWEC. Table 39 gives a summary about the status of the NAWEC.

| Table 39: NAWEC Status in Electricity Sector | |
|---|---|
| Liberalised? | Partially at the Production Level |
| Monopoly? | Yes, Transmission and Billing |
| Competitors Name: | IPP – supplementing the power shortage gap (selling to NAWEC) |
| Approx Market Share | 100 percent |
| **Price fixed by** | - PURA<br>- Gambia Government (Oil prices set by the Government) |
| **Sector- Specific Restraints** | |
| Essential Inputs/Services | - Fuel (HFO + LFO) – rising oil prices<br>- Spare Parts<br>- Low Voltage Network and distribution losses due to inefficiencies<br>- Low Production Capacity<br>- Pricing Structure<br>- High Retail Cost |

## The Water Market

The provision of water services is still a monopoly of the NAWEC. The majority of its activities are centred around the Greater Banjul Area and in 10 other Provincial Growth Centres. All the water is obtained from underground sources. Like the electricity network, huge investment outlays are required to cover the ground and the rapidly expanding demand due to urbanisation. However, we have recently witnessed the emergence of companies using ground water sources to bottle/bag and sell water resources via various distribution outlets, including supermarkets. That notwithstanding, the NAWEC remains unchallenged as a monopoly in the water market.

## Gambia Telecommunication Services (GAMTEL)

### Fixed Telephone Lines

After liberalising the GSM market to allow mobile operators Africell, Comium and Qcell to emerge and compete with Gamcel, The Gambia Telecommunications Services retains a monopoly situation over the fixed telephone network. The company was established in March 1984, under the Companies Act of 1955, to operate a fixed telephone network. According to the PURA Annual Report, there were close to 48,000 fixed telephone subscribers in 2007. However, the last few years have seen stagnation in the number of fixed line subscribers in The Gambia, due to the use of mobile phone.

According to sources from the GAMTEL, no investor has ever applied to compete with the national operator in the fixed telephone line sector, due to the huge investments required. The technology favoured by potential investors in the telecommunications sector is GSM technology, with micro-wave links "point to point connections" using powerful antennas, rather than having to go into nationwide coverage with cables, as is required by fixed telephone networking. For that reason, the transition from the actual monopoly situation enjoyed by the GAMTEL is not likely to change any time soon. Actors in government circles, in particular, allege that monopoly situations may persist in some sectors due to the unwillingness of the private sector to invest in heavy infrastructure, but would rather wait until the

| Table 40: NAWEC Status in Water Sector | |
|---|---|
| Liberalised? | No |
| Monopoly? | Y es |
| Incumbent Firm | NAWEC |
| Approx Market Share | 100 percent |
| **Price fixed by?** | - PURA, Government of The Gambia through tariff review |
| **Sector- Specific Restraints** | |
| Essential Inputs/Services | Capacity constraints |

| Table 41: GAMTEL Status in Fixed Line Telecoms | |
|---|---|
| Liberalised? | No |
| Monopoly? | Fixed Lines and International Gateway (GAMTEL) |
| Which sub-sector is liberalised? | Mobile |
| **Price fixed by/for which Products?** | |
| - Interconnection | PURA |
| - Wholesale for International Calls | PURA/Government of The Gambia |
| **Sector- Specific Restraints** | |
| Essential Inputs/Services | e.g. Telecom: Interconnection costs<br>e.g. Hydrocarbons<br>Import/Refinery/Depot? Monopoly or Free, Owned by State/ Private/Mixed?<br>e.g. Transport = Port/ Airport Monopoly |

government puts in place the infrastructure to advocate for competition.

The private sector, on the other hand, argues that the government will not be fair if it requires the private players to simply create their own infrastructure to compete with state monopolies, especially the GAMTEL (telephone) and the NAWEC (electricity), when they are benefiting from taxpayers' money, most of which emanates from private businesses. Informed private sector operators further argue that The Gambian government should be playing a central role in assisting private players to afford such costly investments in the first place.

However, one of the dangers of running a monopoly is that it leads to inefficiencies. According to the people interviewed, the GAMTEL has been resting on its laurels and has not been investing to upgrade its network and since the sector has not been open to competition, standards have been falling. This is the situation that the current management of the GAMTEL is trying to address. The technology of the early '80s is no longer in consonance with the requirements of today. And, to compound it all, the carrying capacity of the network is overstretched, leading to problems of connectivity, interference and inefficiencies.

### International Gateway for Voice and Data

All the GSM operators in the country, namely, Africell, Comium and Qcell, are obliged to use the GAMTEL International Gateway for both voice and data. The GAMTEL again benefits from a monopoly situation. The private operators have issues with such a restrictive arrangement which, during times of crisis, has knock-on effects on their operation. Also, to create more economic value for their shareholders, they would rather bypass the GAMTEL and increase their profit margins. From the national operator's point, the charges on land to land communications have always been made reasonable to make the facility accessible to the general public.

According to them, the GAMTEL is even losing money in maintaining fixed telephone services and was quick to point out that for the purpose of public service delivery, they also have to consider the flip side, not just profit-making: the social dimension pertaining to job creation, maintaining minimum public service, etc. For that reason, the international revenue flowing from the International Gateway is like a lifeline for the GAMTEL to subsidise local calls. Otherwise, it would be difficult for the GAMTEL to cope and to continue providing fixed telephone services.

All the ISPs continue channelling their Internet traffic through the GAMTEL international data gateway, although some of the ISPs already have wireless access infrastructure configured for high speed Internet services! They continue to be restricted from offering full broadband access (PURA, 2007). This is for obvious reasons of maintaining revenue flow to support public service delivery.

### Fibre Optic

Fibre optic network owned by the GAMTEL is grossly underutilised, using only 30 percent of its capacity. It remains a monopoly not because it is restricted to private participation, but rather because the investment requirements are colossal. For this reason, investors shy away from building their own fibre optic network.

### Television and Broadcasting

TV broadcasting is also a monopoly of The Gambia Radio and Television Services (GRTS) and is yet to be opened to competition. Private operators have, in the past, attempted to apply for licences to operate, but were denied. As a monopoly, the GRTS has total control of all advertisements on television in the country. It is true that the television is a powerful communication tool for political messaging and whoever is in control of it can use it for mass communication and political propaganda. The refusal by the Ministry for Communication and Information Technology (DOSCIT) to grant licences to interested parties to have their own TV stations is undoubtedly restricting competition.

## Transport and Communications

### Ferry Services

The river Gambia stretches across the country, taking its source from the Fouta Jallon Mountains in Guinea and dividing the North and the South banks. There are numerous points across the river Gambia that are served by ferries operated by a State-owned enterprise, Gambia Ferry Services, under Ports Authority. This sector is also not open to competition, despite the numerous efforts made by the private sector to provide quality and efficient services to ease the transportation bottlenecks between Banjul (the capital) and Barra (on the North Bank). This link is a very important source of revenue for the government, handling a huge volume of passenger and cargo traffic on a daily basis.

# *Assessment of Competition in the Agricultural Sector*

## Agricultural Crops Production and Trade Patterns

Agriculture is the most important economic activity in The Gambia. The agriculture sector plays a significant role in the socio-economic development of the country as a food and feed provider, employer and income earner. It provides employment for over 75 percent of the population (the active farm population is actually 86 percent of the economically active population), contributes about 19 percent to the GDP and generates almost 85 percent of foreign exchange earnings and 40 percent of total export earnings.

In general, Gambian agriculture has been characterised by subsistence production of food crops comprising cereals (early millet, late millet, maize, sorghum, rice and findo) and semi-intensive cash crop production (groundnuts, cotton, sesame and horticulture). These are the two main components that occupy crop activities in the country. Farmers generally practice mixed farming, although crops account for a greater portion of the production. The agricultural sector is characterised by little diversification, mainly subsistence rain-fed agriculture, with a food self-sufficiency ratio of about 50 percent.

The climate and land represent the main agricultural resources of the country. The climate is "Sudano-Sahalian, with a short rainy season from June-October and a long dry season from November-May. The mean annual rainfall varies from 900 mm in the South West to about 500 mm in the North East. In addition to seasonal rains, the country's water resources comprise inflow of the river Gambia and two aquifer systems underlying the entire country, thus the main sources of surface and underground water for irrigation.

## Crops

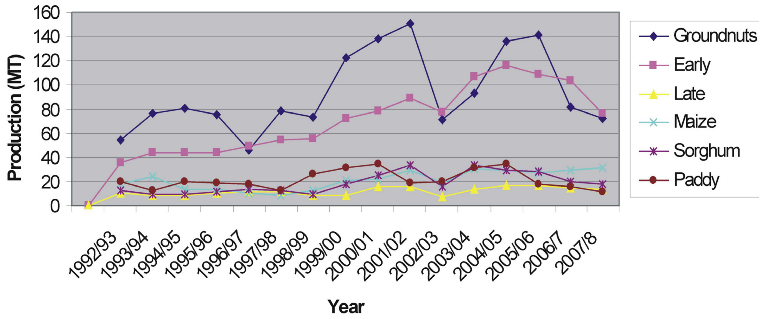
The major activities of the agricultural sector continue to revolve around food and cash crops (contributing 60 percent to the Agricultural GDP [AGDP] and 14 percent to the GDP). The major crops grown in The Gambia are groundnuts, coarse grains (millet, maize and sorghum), sesame and findo. Root crops (cassava and sweet potato) are gaining momentum across all agricultural regions, especially in the Western Region.

Farming systems are traditional, influenced largely by social norms (a marked gender-based division of labour by crops or operation, or both) and by two main forms according to the local ecology: either upland or in lowlands. The short wet season (July-October) limits production to one crop per year. Crop rotation is practiced, involving legumes (mainly groundnuts and cereals). Use of chemical fertiliser is minimal and declining due to high cost and increasing risk in rain-fed upland farming. Use of animal traction (oxen, donkeys and horses) is increasing and, at present, over 95 percent of the coarse grain and groundnut area is prepared using animal traction.

Of the 1.04 million hectare land in The Gambia, 54 percent is classed as arable (basically rain-fed annual crops), of which 58 percent was cultivated in 2007, with 63.0 percent being put under cereal production (mostly millet), while 36.7 percent was put under groundnut, the main cash crop. Rice is the staple food and accounts for 25-30 percent of total cereal production.

Crop production is highly dependent on rainfall, whose distribution has been erratic and inadequate over the past 30 years. Recent data on crop production shows a declining trend in the production of coarse grains (millet, maize and sorghum). Total production of coarse gains dropped from 248,400 tonnes in 2003 to 181,400 tonnes in 2007. Data from the National Agricultural Sample Survey (NASS) for the period 1992-93 to 2007-08 indicated a general decline for the field crops, except for early millet (Figure 10). The situation is more marked for 2002 and 2007 when sharp declines in production of all cereals were experienced due mainly to the poor distribution of rainfall. The drought of 2002 resulted in a 30 percent drop in the production level of coarse grains, after its increasing trend from 1997-2001 (Figure 10). In addition to erratic rainfall, important agronomic and biological constraints to agricultural production in The Gambia are declining soil fertility, soil erosion, pest and disease problems and weed management problems.

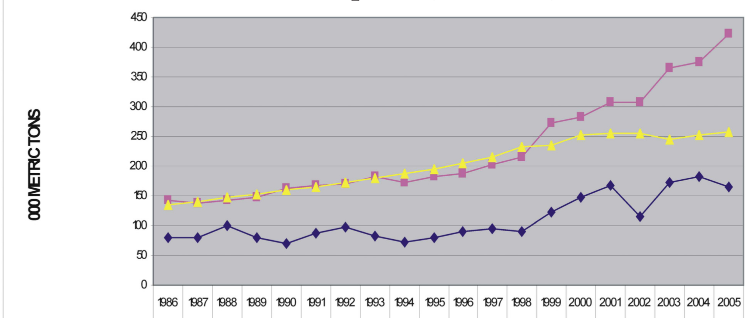
**Figure 10: Production of Major Crops (000MT) 1992-93 to 2007-08**




*Source: Department of Planning, NADA, 2008.*

The dependence on a short rainy season for food production makes output varying according to the year. The production level in 2007 was very low because of inadequate rainfall during the cropping season. Groundnut production was 72,558 tonnes, rice production was 11,395 tonnes and production of other cereals was 149,940 tonnes. These poor production levels caused income loss for many farmers, especially smallholders.

**Figure 11: Comparison of Trends in Production, Availability and Consumption (1986-2005)**




| | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Net production | 78.8 | 79.6 | 100.2 | 78.9 | 70.1 | 86.9 | 97.3 | 81.8 | 72.7 | 80.7 | 89.6 | 94.8 | 90.46 | 121.4 | 148.3 | 168.3 | 115.8 | 172.4 | 183.3 | 166.1 |
| Total Availability | 142.4 | 137.7 | 143.7 | 146.7 | 163 | 168.5 | 170.6 | 182.4 | 171.7 | 181.8 | 188.3 | 202.8 | 214.2 | 271.9 | 283.7 | 308.1 | 306.5 | 365.9 | 374.8 | 422.3 |
| Total Cereal Consumption | 135.5 | 141.1 | 146.8 | 152.9 | 159.2 | 165.6 | 172.5 | 179.6 | 187 | 194.6 | 205.5 | 214.2 | 233.7 | 234.6 | 252.5 | 254 | 255.5 | 245.4 | 252.2 | 258.6 |

YEARS

*Source: Department of Planning, NADA.*

Cereal consumption, on the other hand, has continuously increased from 214,000 tonnes in 1997 to 291,000 tonnes in 2007. Hence, a widening gap between the country's cereal production and demand was created. A World Food Programme (WFP) analysis indicated that this cereal gap widened in the last three years, from 65,700 metric tonnes to around 150,000 tonnes in 2007.

Given that the local food production cannot meet the food consumption requirements, food, particularly rice, fruits and vegetables, are imported. Food imports for the country account for almost 50 percent of the national food requirement (National Strategy for Food Security in The Gambia, 2003).

The consumption of the country's staple food rice is 160,000 Mt of which only 7,406.75 Mt is produced locally (NASS, 2007), equivalent to 4.63 percent of the annual requirements. Figure 11 presents a comparison of production, availability (import and local production) and consumption requirements and shows that while the availability and consumption have peaked, the production is stagnant.

## Cash Crops

### Groundnut

Groundnuts still remain the dominant crop of the economy receiving government priority support, providing incomes for a large part of the population and generating appreciable foreign exchange earnings. It is estimated that 80 percent of rural households grow the crop on over 40 percent of the land under cultivation. It accounts for about 55 percent of The Gambia's export earnings and 38 percent of the GDP. It is the most intensively cultivated crop and use of animal-powered farm implements for land preparation, sowing and weeding is widespread, notably in the North Bank Region. Groundnuts thrive well on the sandy loam soils in Western Gambia. The main production areas are North Bank, Lower River and Central River Regions, where farmers have access to production inputs and some level of mechanisation. Yields have remained low, with an average yield of about 1.0 tonne/hectare This declining production has been mainly attributed to drought and other factors such as insufficient use of fertilisers, shortages of good quality seed, inadequate mechanisation and ineffective farmer training and extension services.

According to the NASS 2005-06, an estimated 105,260 households derive income from groundnut cultivation throughout the country. The recent Diagnostics Trade Integrated Survey study under the Integrated Framework estimated that in 2006, 30,000 tonnes of commercially purchased groundnuts yield GMD 164 million for farm households. The total national production was about 75 000 tonnes in 1995, compared to 145 000 tonnes in 1974, showing that production has declined.

## Cotton

Cotton was introduced in early 1970s not only as a drought tolerant complementary cash crop but also as a means of reducing the economy's overdependence on the groundnut crop, which was always vulnerable to weather uncertainties. The results were encouraging, thus providing an opportunity to diversify and complement groundnut production with another cash crop. This led to the establishment of the Cotton Development Project in 1975, with funds from the African Development Bank.

The cotton crop is produced in the Sudano-Sahelian Agro-ecological Zone (AEZ), mainly in the Central and Upper River Regions. The inputs required for production are made available to Gambian farmers on loan by GAMCOT. The lint is exported. Cotton is the other traditional cash crop with groundnut and was being increasingly produced for export. In 1991-92, the production stood at 2,290 tonnes, up from 900 tonnes in 1989-90. However, since 1994, cotton production has progressively declined from 3,000 metric tonnes of seed-cotton to 200 metric tonnes in 2006, a 93-percent decline.

A number of factors reduced the production base of cotton. Among them are unfavourable climatic factors, changing farmer attitudes (skewed towards more food production), high cost of inputs and relative uncertainty in prices. Poor loan recovery of projects supporting the production of the crop weakened the continuation support to the crop, resulting in declines in technical services provided to producers.

## Sesame

Sesame had traditionally been cultivated in The Gambia as a backyard plant, for the medicinal value of its oil, until the Catholic Relief Services (CRS) promoted it as a field crop in the mid-80s, to enhance rural nutrition. Currently, sesame is grown both for export and for domestic use. In addition to its potential as a non-traditional export crop and foreign exchange earner, sesame has the advantage of thriving on marginal soils, requiring limited crop management inputs. It is relatively drought tolerant, early maturing and has not shown susceptibility to diseases. In 1995-96, approximately 840 hectare were cultivated, yielding a total of 335 tonnes. Currently, farmer yields are very low, averaging 146 kg/hectare. However, research efforts have brought about the introduction of a range of confectionery varieties for export that strengthened sesame production and led to the establishment of a marketing agency, Lenri Holdings.

## Food Crops

Major food crops grown in The Gambia include cereals, consisting of coarse grains (millet, maize and sorghum) and rice, groundnut and roots (cassava and sweet potato). Coarse grain production and the area planted for these grains have significantly increased in the past few years. Rice, which is a staple food, engaged 10,091 people, less than the number of people cultivating millet and maize. On the other hand, groundnut is considered both a food and cash crop and it engages more people than any other crop.

Yields of staple food crops are relatively low and inadequate to meet the year-round household food demand. At the best of times, only 50 percent of the national requirements of food staples are met from the local production. This chronic deficit has classified the country as a net importer of food, especially rice.

## Millet

Millet is the most widely cultivated coarse grain and the area under millet increased by 103 percent, from 57,100 hectares in 1995 to 116,200 hectares in 2006. The total production in 2006 stood at 118,160 tonnes, with an equivalent market value (average GMD 6000/tonne) of GMD 700 million. About 51,003 households derived income from it. The domestic market price for millet is showing an upward trend from 2001 to 2005. Millet is grown early in the season and both late and early types respond to dry seeding prior to the onset of the rains. The crop is tolerant of adverse environmental conditions, making it responsive to the low management levels of small scale producers. Because of low investment in inputs, low yields are usual.

Total production of early millet for 1995-96 was estimated at 43,444 t and valued at GMD 87.2 million. Because of the changing climatic condition aggravated by declining rainfall, early millet has now assumed a new significance as a commodity with a high priority in terms of farmer resource allocation. Early millet area cultivated and total production reached 101,000 hectare and 103,000 tonnes in 2006. This early millet tonnage represents about 88 percent of market value for millet in 2006. While the total production has increased as a result of an increased area under cultivation, yields have stagnated over the years. The average yield countrywide is about 1.0 tonne/hectare largely due to less than optimal crop environment.

Late millet, because of the long growth period, compared to early millet, has been relegated a low to medium priority crop. In consequence, the yield (11,879 tonnes in 1995-96, valued at GMD 17.8 million) has stagnated and overall production has declined as a result of the preferential cultivation of early millet. Total production was 14,600 tonnes and an equivalent market value of GMD 87.6 million or 12.4 percent of total millet value in 2006. Late millet is preferred and so cultivated most in the Sudano-Guinean agro-ecological zone, i.e. Western Region and the eastern third of Upper River Region, where total rainfall is high and risk of bird damage low, because of late millet's bristly ears.

## Maize

The cultivation of maize was confined to the backyard crop until the late 1970s, when it was promoted on a large scale by the Mixed Farming Project. Most of the maize is grown in the Sudano-Guinean AEZ, particularly in the western half of the country. The production in other parts of the country is gradually gaining momentum. The recent NASS report of 2005-06 estimated 27,700 tonnes of production in 2002, which is a drop as compared to 33,400 tonnes in 2003 and 29,200 tonnes in 2006. Although the producer price has been erratic in 2002 (D4, 920 per tonne) and 2004 (D7, 520 per tonne), the market registered a significant increase in the price of maize. The crop matures relatively earlier than rice and early millet and contributes to amelioration of the acute food shortages that occur during the 'hungry month.'

Given its popularity as a widely cultivated crop and its marketability, maize has become a higher priority crop for food security and poverty reduction. Maize produced is consumed and sold in the domestic market. It provides a strong support to the livestock sub-sector and increase in livestock production may stimulate maize production, as maize is a livestock and poultry feed. However, compared to millet, maize is less adaptable to low input farming system, yields are usually around 1.0 tonne/hectare.

## Sorghum

Most of the sorghum crop is cultivated in the Central River and Upper River Regions and it is largely for domestic food use. Sorghum is a low priority crop in terms of research needs and because it is more drought tolerant, it is cultivated in areas where maize production is poor and risky. However, it enjoys huge sales in the marketplace.

Its share of the total cultivated area compares favourably with that of maize, but yields are generally low (800 kg/hectare), except in Upper River, where yields of over 1,000 kg/hectare have been recorded. In 2006, the 19,000 ha cropped with sorghum gave a total production of 20,266 tonnes, at a market value equivalent to GMD 101 million. Sorghum sells at a slightly lower price than the other coarse grains. The local long-duration varieties (130 day) that are cultivated countrywide are tall with loose open panicles. They are known to be low in fertiliser use efficiency. Sorghum has a tremendous capacity for consumption of nutrients. Early accumulation of nutrients is normally used for survival under low soil fertility conditions.

## Rice

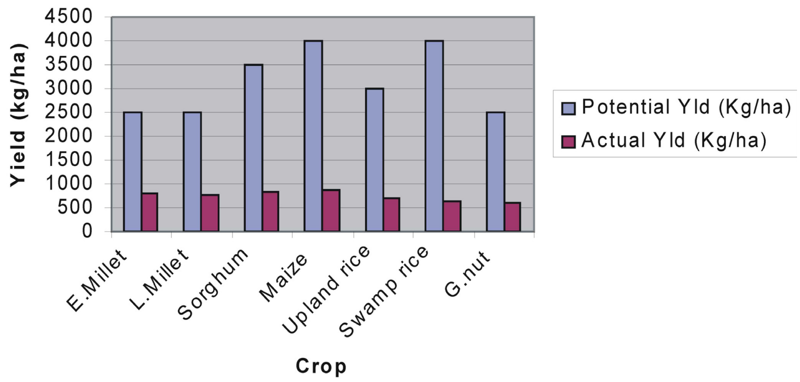
Rice is the main staple food of The Gambian population, with its consumption, 117 kg/caput/year, far exceeding production. Initially, a lowland crop, rice is now grown on virtually all categories of arable land (upland, swamp and irrigated) and in all regions of the country. Among these ecologies, swamp rice in 2007 covered some 5,688 ha; upland rice covered an area of 10,722 ha and irrigated rice with an area of about 2,200 ha.

Rice has received more than any other crop in terms of development-oriented interventions and assistance from the GOGT and donors. Yet, over the years, rice yields have stagnated across the different ecologies. Rice yields have been fluctuating and range from around 1.0 to 1.5 tonnes per hectare under upland and natural swamp conditions to over 5.0 tonnes per hectare under irrigated conditions. Key constraints in rice production relate to timely operations, access to swamp land, salt intrusion and low input use.

In the upland ecology, where soils are free draining and subject to moisture stress, rice yields have been consistently low, ranging from 1.0 to 1.5 tonnes/hectares. In areas with adequate rainfall, i.e. the Sudano-Guinean AEZ, high yields have been recorded. Planting of rice in this ecology is usually by broadcasting and incorporation with a hoe. Little weeding and fertiliser application is done. However, the introduction of NERICA rice, coupled with the positive response of farmers, there is optimism for increased rice production. Growers, however, need regular input supply and reliable marketing outlets.

The lowland rice ecology consists of the tidal swamps and the rain-fed lowlands. The rain-fed lowlands are situated in close proximity to the flood plains and can be cultivated after the construction of water retention dikes and moisture conservation bunds. Rice cultivation in the tidal swamps occurs in three ecologies: tidal mangrove swamps, tidal freshwater swamps and pump-irrigated freshwater swamps.

Figure 12: Actual Yield against Potential Yield per Hectare




In the tidal mangrove swamps, local medium to long-duration varieties are cultivated and farmers' yields are relatively low, 1.3-1.5 tonnes/hectares, but has the potential of 2.5-3.5 tonnes/hectares. The tidal freshwater swamps support long-duration rice varieties, with average yields ranging from 1.4 to 1.7 tonnes/ hectares, and a potential of 3.5 to 5.0 tonnes/hectares.

The pump-irrigated freshwater swamp ecology is confined to the flood plains along river levees in parts of Central River and Upper River Regions. Rice production in this ecology is largely funded by donor projects, with subsidies from GOGT and non-governmental organisations (NGOs). The cost of operations is usually too high for small scale farmers. Rice yields of over 6 tonnes/hectares have been recorded in this ecology, but yields of 3.0 tonnes/ hectares are common, because of lack of resources for inputs and land preparation.

The data presented in Figure 3 reveals a huge gap between actual and potential production and productivity for all key crops: rice, millet, maize, sorghum and groundnuts. The Gambia can achieve 50 percent of its requirements for rice by increasing productivity for the area under production for swamp and upland and, if the current area is increased by two folds, the national requirements for rice would be met.

## Horticulture

The horticultural sector is rapidly emerging as one of the key sectors of The Gambian economy. The sector contributes about four percent to the GDP and employs over 65 percent of the agricultural labour force. Horticultural production, mainly fruits and vegetables, is an important source of rural income, employment and food, thus ensuring food security and poverty alleviation. It has great potential for export and thus foreign exchange earnings for The Gambia. Increased horticultural production further adds impetus to the diversification of the country's export base. Various studies in The Gambia indicated that horticulture is a sector where The Gambia has a strong comparative advantage.

Horticultural crops (vegetables and fruits) are mainly concentrated in the Western and North Bank Regions, where the climate is more favourable for horticultural production, increasing urban population and the tourist industry providing a ready market as well. Although the sector has major private sector players, it also has a large number of small scale growers, especially women. For this reason, almost 88 percent of women farmers in The Gambia are engaged in individual or communal horticultural activities, including the growing of perennial crops.

Most vegetables are grown during the dry season (November to June) when pests and diseases are less. However, yields and quality are generally low. Its growth, however, is constrained by unreliable water supply for the dry season, the lack of access to markets and inadequate storage, processing facilities and limited techniques. The absence of linkages with other sectors of the economy, particularly tourism, is also a major constraint to growth in the sub-sector.

In addition to fruits and vegetables, the cultivation of root crops such as cassava and sweet potatoes is fast increasing.

## Cassava

Cassava cultivation is gradually recovering from the cassava mealy bug epidemic in the late 1970s that reduced cassava yields from 34 tonnes/hectares to 6 tonnes/hectares and devastated the cassava cottage industry in the country. Cassava is grown as a backyard crop, mixed or a sole crop for domestic consumption and income. Most farmers have resorted to extensive cultivation of cassava owing to the risks associated with growing maize, groundnut or cotton under the prevailing irregular rainfall conditions. Cassava production is increasing in the Sudano-Guinean AEZ in the North Bank and Western Regions and the majority of growers are small scale using few inputs. Under these conditions, average yields of 3-6 tonnes/hectares are recorded. There is potential for a threefold increase in the yield, even with semi-intensive cultivation practices. The total

| Table 42: Summary of Crop Productions (2006-07) | | | |
|---|---|---|---|
| **Crops** | **2006** | **2007** | **% Change** |
| **Early Millet** | | | |
| Area Planted (Ha) | 101,397 | 94,151 | -7.1 |
| Average Yield (Kg/Ha) | 1,021 | 805 | -21.2 |
| **Total Production (MT)** | **103,539** | **75,825** | **-26.8** |
| **Late Millet** | | | |
| Area Planted (Ha) | 14,821 | 17,567 | 18.5 |
| Average Yield (Kg/Ha) | 987 | 761 | -22.9 |
| **Total Production (MT)** | **14,621** | **13,361** | **-8.6** |
| **Sorghum** | | | |
| Area Planted (Ha) | 18,960 | 21,720 | 14.6 |
| Average Yield (Kg/Ha) | 1,069 | 826 | -22.7 |
| Total Production (MT) | 20,266 | 17,951 | -11.4 |
| **Maize** | | | |
| Area Planted (Ha) | 32,261 | 36,156 | 12.1 |
| Average Yield (Kg/Ha) | 903 | 869 | -3.8 |
| **Total Production (MT)** | **29,147** | **31,408** | **7.8** |
| **Total Coarse Grains** | | | |
| Area Planted (Ha) | 167,439 | 169,594 | 1.29 |
| Total Production (MT) | 167,573 | 138,545 | -17.3 |
| **Upland Rice** | | | |
| Area Planted (Ha) | 10,192 | 10,722 | 5.2 |
| Average Yield (Kg/Ha) | 927 | 713 | -23.1 |
| Total Production (MT) | 9,447 | 7,646 | -19.1 |
| **Swamp Rice** | | | |
| Area Planted (Ha) | 5,007 | 5,866 | 17.2 |
| Average Yield (Kg/Ha) | 1,275 | 639 | -49.9 |
| Total Production (MT) | 6,385 | 3,749 | -41.3 |
| **Total Paddy** | | | |
| Area Planted (Ha) | 15,199 | 16,588 | 9.14 |
| Total Production (MT) | 15,832 | 11,395 | -28.0 |
| **Total Cereals** | | | |
| **Area Planted (Ha)** | **182,638** | **186,182** | **1.94** |
| **Total Production (MT)** | **183,405** | **149,940** | **-18.2** |
| **Groundnuts New Variety (73/33)** | | | |
| Area Planted (Ha) | 55,267 | 57,145 | 3.4 |
| Average Yield (Kg/Ha) | 695 | 550 | -20.9 |
| Total Production (MT) | 38,399 | 31,437 | -18.1 |
| **Groundnuts Old Variety (28/206)** | | | |
| Area Planted (Ha) | 55,116 | 60,446 | 9.7 |
| Average Yield (Kg/Ha) | 787 | 680 | -13.6 |
| Total Production (MT) | 43,376 | 41,120 | -5.2 |
| **Total Groundnuts** | | | |
| Area Planted (Ha) | 110,383 | 117,591 | 6.53 |
| **Total Production (MT)** | **81,775** | **72,557** | **-11.3** |
| *Source: Department of Planning, The Gambia* | | | |

production in the country now stands at 20,000 tonnes/year, valued at D 70.1 million (1997) (NARI 1997).

### Sweet Potato

Sweet potato is becoming increasingly important among rice farmers in inland valley swamps that practice rice-potato relay cropping. They are able to produce sweet potato crops twice in the year, during the rainy season and after a rice crop is harvested during the dry season. Sweet potato is cultivated primarily for domestic consumption and, to some extent, for cash in the peri-urban markets of Greater Banjul. It is relatively drought tolerant, takes 60-70 days to mature and does well in poor soils. The lowland ecology is the most suitable ecology for expanding the production of sweet potato. Sweet potato provides twice as many calories per hectare as other root and tuber crops and yields between 4 and 6 tonnes/hectares. Improved cultivars that have yield potentials of about 20 tonnes/hectares are available (NARI 1997).

## Marketing of Major Cash Crops (Groundnut and Cotton)

Groundnut and cotton are the two major cash crops grown in The Gambia, predominantly for export, with the involvement of SOEs. Formal institutions exist chiefly for major crops like groundnut and cotton that are produced mainly for export. Horticultural produces such as fruits and vegetables are also becoming increasingly significant in terms of the share of export value. Other crops such as coarse grains are marketed domestically through informal institutions like spot markets in various localities and weekly sale markets *(Lumos)* and some degree of cross-border trade with neighbouring countries like Senegal and the Guineas.

### The Groundnut Business Channel

Exports of domestically produced goods remain dominated by groundnuts, for which The Gambia benefits from preferential treatments in the EU market. Rather than tariff measures, erratic domestic marketing arrangements and high aflatoxin content are the most significant constraints to market access. The marketing of this crop was monopolised by a Government institution, The Gambia Produce Marketing Board (GPMB), which was taken over by The Gambia Groundnut Council in 1992, as part of the privatisation programme of the **Economic Recovery Programme.** Agencies involved in groundnut marketing operate at different levels. Licensed buying agents and The Gambia Co-operative Union (GCU) purchase groundnut at the producer level. The Gambia Groundnut Corporation (GGC) buys the groundnut from various agents for processing and export.

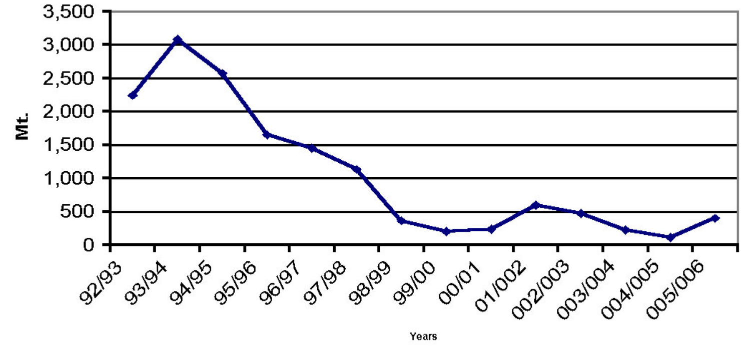
However, a new pricing policy in 1989-90 abolished the licensing of agents to enable farmers and other interested organisations to sell directly to the GMPB to realise world market prices. Of late, less than the threshold of 70,000 tonnes required to profitably operate the mill at Saro (Denton Bridge) is collected by The Gambia Groundnut Corporation. Similarly, the phasing out of input subsidies, which stood at 60 percent, and the drastic measures of the GGC in streamlining its operations led to major setbacks. Exports from The Gambia over the past three decades have been dominated by groundnuts.

In 1975, exports of groundnuts and its oil and cake totalled US$49mn. Since then, declines in production, world prices and processing capacity, combined with rising domestic consumption, have led to a collapse in these exports to just $9.6mn in 2004. Also, the depression in the world market prices due to continued competition from alternative sources of vegetable oil does not offer a bright future for groundnut export.

### The Cotton Business Channel

Like groundnut, this crop was originally being marketed by the GPMB, but its promotion and marketing are now the mandate of the GAMCOT, a commodity-based project and the only agency that buys cotton from farmers for processing and export. The GAMCOT has a 10,000-metric tonne ginning plant capacity at Basse, Upper River Region, where the cotton is processed into lint and baled for export. This ginning plant is, however, operating far below its potential capacity and at huge losses. Seed-cotton production has never reached 600 metric tonnes during the past eight years (Figure 13).

**Figure 13: Seed Cotton Commercial Production: 1992/03 to 2005/06**



The marketing system for cotton is subject to problems on the side of the farmer. The fact that the GAMCOT controls the process from production to marketing means it has greater control over product quality and other important variables.

The Gambia's trade is characterised by a narrow export base and a large and widening trade deficit, as indicated by official trade flows (Figure 14). Unofficial re-exports, however, are much larger than official exports. Overall, the nation had a large trade deficit of GMD 3.2 billion during the first-half of 2008. The value of total trade reached GMD 3.65 billion during the same period, with imports representing about 94.8 percent of the total.

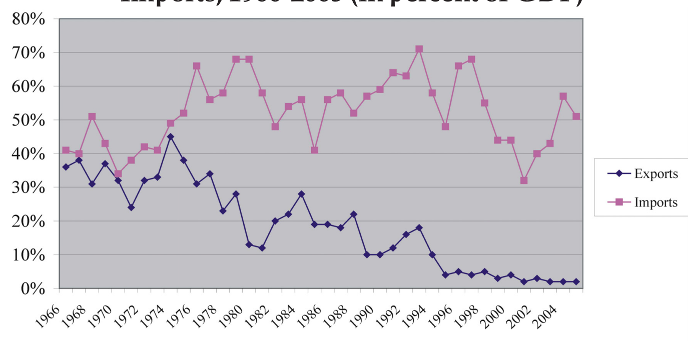
The main agricultural exports are groundnut, horticultural crops, fish products and livestock (Table 42). Groundnut accounts for over 80 percent of domestic exports, representing about 55 percent of export value. On the other hand, key agricultural commodities imported are rice, flour, sugar, vegetable oil, tomato paste, vegetable and milk products. Rice, sugar and vegetable oil are the largest imports. The available trade statistics from 2004 and 2005 indicate that imports from the EU amounted to D3, 023, 462, 000 and D3, 313, 701, 000 billion, respectively. In the same period, exports amounted to D277, 269, 000 and D47, 531, 000, respectively. Although imports registered from 2004 to 2005 increased, there was a significant drop in exports. This may be attributed to the decline in groundnut export to EU due to high aflatoxin content.

Imports are strongly affected by demand for re-exports, with perhaps 40 percent of imports exiting the country as re-exports. Although there is no reliable data on the re-export trade, there is general recognition that re-export activities have long been one of the most important industries in The Gambia. Re-exports are estimated to account for about 80 percent of total exports. Net re-exports (after deducting imports intended for re-export) contribute about 20 percent to foreign exchange earnings and seven percent of the GDP, a contribution larger than those for groundnuts.

The conclusion that could be drawn from the above analysis is that agriculture remains the most important sector of The Gambian economy in terms of addressing poverty and food insecurity, particularly in relation to the rural population, where poverty is more pervasive.

The Gambia's import to GDP ratio averaged nearly 60 percent in the 1980s and 1990s, before dropping somewhat in the early 2000s, but remaining well above the regional average, due to the fact that many of these imports are re-exported. On the other hand, official exports have plummeted, falling to only 2-3 percent of the GDP in the 2000s. This precipitous decline in exports largely reflects the difficulties of the groundnut sector and the failure to diversify into other exports. Fish exports have collapsed, while fruits and vegetables, which surged in the early 1990s, have also suffered a setback.

**Figure 14: The Gambia Official Merchandise Exports and Imports, 1966-2005 (in percent of GDP)**




*Source: DTIS 2006*

| Table 43: Composition of Merchandise Exports (in US$mn) | | |
|---|---|---|
| | **1998** | **2004** |
| Groundnuts | 12.5 | 9.8 |
| Fruits and Vegetables | 3.5 | 3.0 |
| Fish and Fish Products | 3.1 | 0.3 |
| Cotton | 1.4 | 0.2 |
| Other Domestic Products | 2.3 | 3.1 |
| Re-exports | 109.3 | 101.1 |
| Total | 132.1 | 124.8 |
| *Source: DTIS 2006.* | | |

## Agricultural Policy

Agricultural development in The Gambia has gone through a number of stages and strategies, by virtue of the country's historical realities and changes in the global economic climate. During the colonial period, agricultural policies were aimed at developing select export commodities such as groundnut to satisfy the demands of British industries. In addition, there were efforts to promote mechanised rice production, although this was done with little or no involvement of the communities. However, animal-drawn technologies were promoted, especially by the MFCs.

Agricultural policies and development have undergone many changes since The Gambia gained independence in 1965, and can be summarised as follows (GNAIP, 2008):

- After independence in the 1965, the agricultural policy priority expanded to include general food production, and increasing irrigation.
- Later, focus shifted in the 1970's to achieving food self-sufficiency. These efforts, however, suffered serious setbacks in the 1980's when macroeconomic adjustments compromised the country's ability to sustain the food production gains of the 1970s.
- The 1990s saw a shift towards a more robust response to the decline in agricultural production during the '80s. Furthermore, the attainment of food security and diversification of the export base became the overriding themes during this period.
- These efforts were redoubled from around the year 2000 onwards, when food security at the household and national levels became the focus of the agricultural sector and its contribution to reducing poverty and economic growth in the country.
- A new agricultural and natural resources (ANR) policy (2009-15), based on the national development blue print, Vision 2020, the PRSP of the country, and the ideals of the MDGs, has been formulated. This ANR policy aims at transforming agriculture into a robust, market-oriented sector that is aligned with macroeconomic framework of the country and measurably contributes to sustainable poverty reduction and economic growth in the country.

These agricultural policy objectives were set with considerations to the country's historical realities and changes in the global economic climate. The setting of the objectives was carried out through consultancies (local and international) and validated with the active participation of the various stakeholders in agriculture.

There are no subsidies on any agricultural production. However, groundnut marketing and the sale of fertiliser have been subsidised over the years. For groundnut marketing, the subsidy is under 0.6 percent of the buying price. This low subsidy, coupled with the declined level of commercialised crop volume (7,000 and 10,000 tonnes in 2007 and 2008, respectively) would represent an insignificant proportion of the GDP.

The mechanisms to administer these subsidies include payment of price differential between buying agent and producer of groundnut and the removal of sales tax on fertilisers.

The subsidies positively facilitated the commercialisation of the groundnut crop and allowed producers to break even with increased use of production-enhancing inputs and technologies such as fertiliser and quality seed and farm mechanisation.

There is no tax (direct or indirect) on agricultural products. However, fish and fisheries products for export attract taxation. The tax exemption is a general waiver on all agricultural products, thus serving as an incentive for increasing local production. The tax exemption programme created both local and foreign investment opportunities in agriculture, especially in the horticulture and livestock sub-sectors.

All the sensitive agricultural products such as the cereals, horticultural products and other cash crop products are protected through tariffs. These products are protected on a CET at a rate of 35 percent. Some of the effects of the tariff protection measures include increase in local production, increased income to producers and increase in commodity prices due to revenue tax. In addition to these tariff measures, other non-tariff protection measures in place are revenue tax, sales tax and phyto-sanitary regulations at ports of entry and exit.

There are no specific policy objectives put in place for the marketing of agricultural products, locally and internationally. The formal export of agricultural products is only applicable to groundnut and cotton, with the involvement of The Gambia Groundnut Corporation (GGC) and the GAMCOT, respectively.

The export of other agricultural products is organised and promoted by The Gambia Chamber of Commerce and Industry through expositions and trade fairs. Also, a policy initiative to assist Small and Medium Enterprises to access markets is in the offing at the Ministry of Trade, Industry and Employment.

Some measures put in place to support the export of agricultural products include tax exemption, nearness to export zone, cargo space and storage available at air and sea ports and reduced bureaucracy.

There are no specific regulations as to entry in the agricultural sector. The overall legal framework for business in The Gambia is largely consistent with international practices and the land tenure system does not in itself pose any major obstacles for industrial use of land. The climate for foreign investment is conductive, as it gives tax holidays and allows repatriation of profits. To crown it all, the judicial system is functioning properly.

The agricultural policy that has just been finalised will go a long way in addressing the key concerns the sector has been grappling with. The representative of the National Farmers' Platform deplores the fact that although it is generally accepted that agriculture is the backbone of the economy, little is done to address the constraints hampering the development of the sector. He further argues that rain-fed agriculture has a short life span in The Gambia, lasting from June-October and is prone to a variety of risks, making it less attractive to potential investors. Agricultural production, therefore, remains small scale, because the machinery required is too expensive for small and medium-scale farmers representing the majority.

## Competition Concerns

In order to assess the competition concerns in the agriculture sector – field interviews were conducted with farmers.

Crops grown by the farmers interviewed were groundnut, rice, maize and vegetables. About 33 percent of them grew groundnuts and 16.7 percent rice. The other crops mentioned were grown by lower proportions of farmers interviewed.

The dataset revealed that 42 percent of farmers interviewed got their seeds from previous harvest and 33.3 percent of them through local suppliers.

Many of the farmers are not sure of the number of suppliers of seed that exist in The Gambia. However, the few that responded said that there is large number of them. Concerning the availability of seeds, over 66.7 percent of the farmers said that seeds are easily available. With regards to the price of seeds, the majority of farmers said it is very competitive. The quality of seeds was described as being very good by most of the respondents.

Most of the largest suppliers mentioned are Brikama Market, Sulay Sowe Enterprise, Essa's Enterprise, Marasa, Sanyang Village, etc. These are suppliers who are close to the residence of the farmers interviewed**.** The farmers were unable to give any reliable information about the percentage contribution of the suppliers to the market. Only a few of the farmers mentioned something about the prevalence of some anti-competitive practices in the supply of seeds.

Although most of the farmers cannot tell the extent of the prevalence of anti-competitive practices in the seed market, they could, however, make some allegations of collective price fixing being a common practice. All the farmers reported that local firms are involved in the supply of fertiliser for commercial use in the country. A significant proportion (i.e. 83.3 percent) reported that multinational firms are also involved in the supply of fertilisers. About 33 percent of the farmers also refer to the government as a supplier of fertilisers.

The largest suppliers of fertilisers named were Gambia Horiticulture Enterprise; Government enterprise NARI and private firms Silla, Bakary Bojang, Brikama (Aminata), First Choice, Brikama Market, Modou Ceesay, Alagie Tabara, Baraba (Brikama), Busumbala Market, Garden Centre, Narka and Sangol. Information on their percentage share of the fertiliser market could not be obtained**.**

When asked about specific anti-competitive practices which exist, most of the farmers accorded first prevalence to collective price fixing among producers/ suppliers of fertilisers, while the others noted prevalence of market sharing among suppliers. Some of the, also pointed towards tied selling. The marketing of the crop from the farm is done by the farmer to the wholesaler/retailer. A moderate number of suppliers are involved in the buying of the crop from the farmers.

Domestic distributors are involved in the purchase of the crop from the farmers as reported by 42 percent of the farmers. The most common anti-competitive practices encountered at the stage of buying from farmers include collective price fixing and market allocation. Farmers also feel that the government has not done much to address some of these concerns.

### Opinion from Seed Firms

Five seed firms were interviewed. Table 44 shows the distribution of seed firms interviewed by region. The Kanifing Municipal Council harbours two of the seed firms interviewed and Brikama the remaining three. Four of the seed firms said that there are very few firms involved in the production/supply of seeds. GHE, Karafi and Farmland are the few competitors named by the seed firms**.** Two of the seed firms said that prices of seeds are determined by many factors.

| Table 44: Distribution of Seed Firms by Region | |
|---|---|
| **Region** | **Number** |
| Kanifing | 2 |
| Brikama | 3 |
| Total | 5 |

Concerning anti-competitive practices, two of the seed firms believe that such practices do not exist. However, one firm said that such practices are highly prevalent, whilst another said anti-competitive practices are moderately prevalent. The firms alleged that the groups which are mostly engaged in anti-competitive practices in the seed production and supply market are farmers. There are several stages at which the anti-competitive practices are encountered in the seed production/supply market.

The alleged anti-competitive practices among the producers/suppliers of fertilisers include price fixing and market sharing. The impact of anti-competitive practices on the farms is felt in both the output and quality of farm produce. Anti-competitive practices have affected consumers of agricultural products in terms of high prices, low availability of products and poor quality of products. The government has taken some action, but not much to address some of the concerns with respect to certain crops.

## Opinion from Fertiliser Firms

Only three fertiliser firms were covered. In fact, one of them did not complete the interview. Those that responded got their fertilisers from wholesalers and from weekly local markets. In these markets, a lot of cross-border trade takes place. It is, however, known from The Gambia's trade statistics that tonnes of fertilisers are imported into the country. These imported fertilisers enter the wholesale and retail distributive trade. One of the firms reported that a large number of firms are involved in the production/supply of fertilisers in The Gambia. The other firm that responded said that only a moderate number of firms are involved.

The largest competitors of the fertiliser firms interviewed are First Choice, G.H.E and Sangol. Two firms believe that the prices of fertilisers are determined by dominant firms. Hence, the firms reported that anti-competitive practices are highly prevalent. The most common anti-competitive practices evoked in order of prevalence are price fixing and market-sharing. Both firms that responded thought that these anti-competitive practices affected farmers' demand for fertilisers. They believe that the practices have contributed to poverty and low quality crop.

# Conclusions

The Gambia faces formidable challenges in its talk to develop a culture of competition and consumer welfare in the country. The country lacks expertise in competition administration. Capacity building and human resource development is necessary to ensure that regulatory agencies can fulfil their mandate effectively. The weak institutional environment that underpins the entire system hinders the implementation of regulatory regimes, hence the need for capacity building initiatives. Technical assistance from international experts would have to be sourced, especially on competition law, given that there is a dearth of experienced people to handle the issue locally.

Admittedly, there is a big gap between government officers, civil society and business operatives on the perception of competition and existence of consumer protection laws. It is alarming to note that only 49 percent of the respondents are aware of the law. From the perception survey, it is safe to assume that more than three quarters of the population need sensitisation on competition issues. There is, therefore, a glaring need for capacity building of key stakeholders, particularly the National Assembly members and the journalists, to ensure that the competition reforms get the support they need at the highest level.

Many sectors in The Gambia lack sector- specific laws (e.g., water)[2]. This continues to inhibit regulatory effectiveness. Such laws are required to supplement the PURA Act, by giving it the specific mandate within the sectors and delineate the complementary policy and regulatory roles and responsibilities of all stakeholders. Donors seem not too keen commit funds to a sector that does not have proper regulatory framework.

The independence of the regulatory authorities is critical for effectiveness. Sector regulators like the PURA and officers of the emerging Competition Commission need to be shielded from undue interference by policymakers, lobby groups, political clients and other actors driven by their vested interests. 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 on 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 ideally be independent of both government and private sector interests. The Commission will be expected to advocate for and promote competition in The Gambia and unearth anti-competitive practices in government regulations and policies.

Experience has amply demonstrated that autonomy is only possible to a certain extent in developing countries. For a Competition Commission to be successful, it is essential to have the interest and support of the government. Otherwise, even the most independent authority will, sooner or later, become irrelevant.

The timeliness of the CUTS 7Up4 project in West Africa cannot be overemphasised. If anything, it has given The Gambia the opportunity to explore competition issues even before The GCC begins to roll out its strategies. The project has brought to the fore the need for awareness that enables consumers and stakeholder to take informed decisions. There is ample evidence to suggest that anti-competitive business practices are a result of firms taking advantage of the lack of awareness on the part of consumers to question such practices.

While it is important to advocate for more competition in the economy and low prices, quality should be the underpinning success factor.

## Way Forward

- The strengthening of the Competition Commission and the signing of MoUs with sector regulators;
- Finalisation of Competition Policy;

- Building the capacity of the National Reference Group and other key stakeholders in the country;
- The strengthening of regulatory institutions: The Divestiture Agency, The Central Bank and the PURA, The Gambia Competition Commission, Gambia Civil Aviation Authority and the GPPA;
- The promotion of a strong political will to foster a healthy Competition Culture;
- The development of a Consumer Protection Agency;
- The encouragement of constructive competition and consumer advocacy engagements with State and non-State actors; and
- The PURA intends to develop consumer codes, which will establish minimum acceptable standards of service provision. These are geared towards ensuring that consumers get the services they are paying for.

The political will emanating from the executive is critical to the success of competition regimes and that enforcement is a key success factor. It remains to be seen whether there will be enough political will to enforce the Competition Act, once the Competition Commission is fully functional. The setting up of a Competition Commission alone may not, after all, guarantee the promotion of a healthy competition culture for economic development and poverty alleviation. The ideal situation would be for consumer and business interest to be reconciled in a win-win pro-market environment.

But, in the absence of the appropriate legal and regulatory framework, it is not possible to combat anti-competitive practices effectively. Policymakers and sector regulators must, therefore, endeavour to improve interactions in the transactional environment for economic growth and poverty alleviation.

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**The 7Up4 project launched in Accra, Ghana (June 2008)**


**Participants at the First National Reference Group Meeting in Lome, Togo (September 2008)**


**Hon'ble Trade Minister of The Gambia addressing the Interim Review Meeting held in Banjul, The Gambia (July 2009)**

**Second National Reference Group Meeting in Dakar, Senegal (October 2009)**


**Regional Training Workshop on Competition Policy and Law for Francophone countries of West Africa inaugurated in Lome, Togo (December 2009)**

**Regional Training Workshop on Competition Policy and Law for Anglophone countries of West Africa concludes in Abuja, Nigeria (January 2010)**

**Participants at the Final Project Conference in Dakar, Senegal (August 2010)**


**A full house at the Final Project Conference in Dakar, Senegal (August 2010)**

# Chapter 3

## *State of Competition in Ghana*

# *Executive Summary*

This study investigates the state of competition in Ghana. It was especially interested in identifying prevailing anti-competitive behaviour in various sectors and sub-sectors of the Ghanaian economy. Particular sectors of interest were: utilities, cement, cargo-handling and the agricultural sector.

Section One of the report gives a brief description of the Ghanaian context and outlines the objectives and scope of the project. It also presents the data sources and analytical methods used in deriving the findings and conclusions contained in this report. Section Two gives a general overview of Government policies that impinge on competition. Section Three looks at the current state of competition in Ghana. Section Four looks at the interface between sector regulators and competition authorities. Section Five examines some possible instances of competition abuse and/or distortion. Section Six reports the findings of a survey on consumer perceptions of competition issues. Section Seven targets the actions of monopolies and their transformation over time. SectionEight gives an in-depth analysis of the agricultural sector, by looking at two of Ghana's most important crops – cocoa and maize. Finally, Section Nine presents some conclusions and recommendations.

The prevailing school of thought is that competition is a contributory factor to a country's healthy growth and development. Ghana has made significant economic progress over the last decade and it seems that it is the ideal time to put competition issues front and centre in trying to push towards sustainable and equitable growth. Ghana is still in the process of trying to pass a Competition Act. The passage of this Act and the provision of adequate resources to the appropriate authorities will go a long way in propelling the movement forward. Until this research project began, there was a dearth of knowledge on the state of competition in Ghana and a lot of policies put in place may have been done on an *ad hoc* basis. This study should serve as a guide for policymakers in their decision-making.

The study identified a number of possible instances of anti-competitive practices in a range of sectors including, *inter alia*, beverages, cement, cargo-handling and utilities. In all these cases, consumers were over-charged for goods or services. The government has a strong role to play not only in putting regulations in place to forestall these abuses but also in enforcing these regulations. Civil society should get involved, especially in drawing consumers' attention to the abuses they are facing. The government also needs to be pro-active in preventing the establishment of monopolies and must take stringent action when unfair practices are revealed.

The study reveals that passing the pending Competition Bill into law is very important in bringing about change for the better. Thereafter, the Government should move quickly to establish a well-resourced and legally empowered Competition Authority to oversee all competition issues. Efforts must be rigorously made to ensure that other pressing governmental concerns do not push this issue to the backburner. Impressing on the public the benefits that will come from competition reform and the losses they will continue to make, if the *status quo* is maintained, would be a good way of doing this. Apart from educating consumers on competition issues, training must also be given to media persons so that they can quickly identify abuses and put together impacting stories to push the competition agenda forward.

The agricultural sector must be given special attention, as it makes the biggest contribution to national income. A few possible competition abuses have been identified by looking at the value chain of the two most important crops to the Ghanaian economy – cocoa and maize. These included, among others, cartel-like behaviour in the fertiliser sub-sector and collusion among licensed buying companies (LBCs) in the buying of cocoa. However, there is an obvious need for further in-depth research to catalogue, in detail, the behaviour of key players at each stage, which is actually outside the scope of this project.

Overall, this project has been quite successful in achieving its aims, though more work needs be done in consolidating the gains. Advocacy must now take the driver's seat in convincing the policymakers and the public that reform is desirable and will bring benefits to the general populace as a whole.

# Introduction

## General Background

### Geography, Climate and Demographics

Ghana, the third African country to gain political independence from colonial rule in March 1957, is located on the west coast of Africa, about 750 km north of the equator. The country has a total land area of 239,460 square kilometres and borders Burkina Faso to the north, Côte d'Ivoire to the east, Togo to the west and the Gulf of Guinea to the south. Northern Ghana is mostly flat savannah, with brush and grasses being the primary form of vegetation. The southern coastline is generally low-lying, with sandy shores vegetated by scrub grasses. The area of the country in between was, prior to the 20th century, covered by thick rainforest. Now, however, only a few clumps of forest remain, mainly scattered in the southwest. Ghana is also notable for being home to the world's largest artificial lake, Lake Volta.

The climate is generally tropical, with temperatures ranging from 21°C to 32° C. The north is hot and dry, the southeast coast warm and dry, and the southwest hot and humid. There are two rainy seasons: March to July and September to October.

Demographically, Ghana's population was estimated at 28.4 million in 2008 with the annual population growth rate is estimated at 1.9 percent (CIA, 2008). Like most developing countries, Ghana's population is skewed towards the youth and, as at 2008, 37.8 percent of the population was estimated to be 14 years old or younger.

### Economy and Poverty

There is no doubt that Ghana has been enjoying a period of relatively strong economic performance over the past few years. This is certainly an encouraging change from the previous decades when economic growth was either negative or stagnating. The last 20 years have seen real GDP growing steadily at about five percent per year. This good performance is principally attributable to relative macroeconomic stability and reform, substantial inflows of external financing and debt relief and rising prices for primary commodities.

In 2007, Ghana's GDP was estimated at US$14.89bn and its real GDP growth rate at 6.2 percent. The economy has traditionally been dominated by agriculture and, in 2006, this sector accounted for 39 percent of the GDP, with services accounting for 33 percent and industry 28 percent. In terms of employment, agriculture employs about 55 percent of the labour force, with services employing 30 percent and industry 15 percent. In recent years, however, the service sector has been gaining increased importance.

Ghana's major sources of foreign exchange are its gold and cocoa exports, as well as remittances from abroad. Ghana is very dependent on international aid and, in 2007, the total amount of aid in loans and grants was estimated at US$1.3bn. In recent years, Ghana has benefited extensively from debt relief: first under the Heavily Indebted Poor Country (HIPC) programme in 2002 and then under the Multilateral Debt Relief Initiative (MRDI) in 2006 (CIA, 2008; ISSER, 2008).

The incidence of poverty remains high in Ghana, albeit substantial declines from the 1991-level of about 52 percent to 40 percent in 1999 and 28.5 percent in 2006. Research at ISSER (2006) suggests that this positive trend is likely to continue if Ghana maintains the average growth rates of the last few years, making it likely that a number of targets contained in the Ghana Poverty Reduction Strategy II (GPRS II) will be achieved. This optimism is, however, tempered by the fact that, while poverty declined, inequality increased significantly during the same period.

The Gini index for consumption per equivalent adult increased from 0.353 in 1991-92 to 0.378 in 1998-99 and finally 0.394 in 2005-06. The evidence shows that the northern savannah area has been left behind in the national reduction of poverty, even though poverty was less in 2005-06 than in 1991-92.

Large poverty reductions have occurred among private sector employees in both the formal and informal sectors and among public sector wage employees, but export farmers have experienced the largest reduction in consumption poverty. Poverty reduction among the large numbers of food crop farmers, on the other hand, has been modest. Reductions in the incidence of poverty over the period have been smaller also for the non-farm self-employed and informal sector wage employees. A recent publication by the World Bank suggests that had there been no change in inequality, the reduction in poverty would have reached 27.5 percent in 2006, so that Ghana would have achieved the MDG target of reducing poverty by half its level of 1990. To raise the growth rate and sustain it at the level that will allow Ghana to halve poverty by 2015 requires the recognition of the importance of complementary policies in enhancing benefits of globalisation.

### Culture and Religion

There are several tribes in Ghana, but the major ethnic groups are Akan, Moshi-Dagomba, Ewe and Ga. Over 200 languages and dialects are spoken, including Asante (14.8 percent of the population), Ewe (12.7 percent), Fante (9.9 percent) and a slew of other less prominent languages. However, for official business (and in schools), the language of choice is English. The major religions in the country are Christianity (69 percent of the population), Islam (16 percent) and traditional African beliefs (9 percent) (CIA, 2008).

### History and Worldwide Perception

Ghana attained independence in 1957, the first country in sub-Saharan Africa (SSA) to do so. From 1966 till 1981, the country was racked by coup d'etats and their attendant social and economic disruptions. In 1992, however, Ghana became firmly established as a constitutional democracy and since then the country has become noted in the sub-region, and in the whole of Africa, as an example of burgeoning democracy and political stability. Indeed, Ghana's worldwide rankings in terms of civil liberties and press freedom are amongst the best on the continent.

For instance, Reporters without Borders ranks Ghana 29 out of 168 countries in terms of its Worldwide Press Freedom Index, while Transparency International ranks Ghana 69 among 179 countries according to its Corruption Perception Index (Wikipedia, 2008).

## Objectives and Scope

The main objective of this research is to identify the prevalence of anti-competitive practices and their ill-effects, especially on consumers. Efforts have been made here to identify factors that give rise to anti-competitive practices in the market and to find the best way of dealing with the problems. An assessment of the reasons that give rise to natural monopolies would be made – especially in order to analyse if free competition in these sectors (where these natural monopolies exist) could negatively impact the economy and the consumers.

Further, an in-depth analysis of the agricultural sector would be done in order to ascertain significant impacts of anti-competitive practices prevailing in that sector, having adverse impacts on welfare, poverty and growth. Efforts would also be made to assess the nature and extent of such impacts in the cocoa and maize sectors in order to understand the interface between the lack (or weak level) of competition in these products in Ghana and its negative impacts on producers (small and marginal farmers) as well as consumers.

## Data and Methodology

Information on market players and sources of non-competition in several markets (e.g., rivalry and pricing policies and structural and behavioural impediments to competition) was collected from secondary sources as well as through key informant interviews. This output was complemented by a review of the existing legal and institutional framework aimed at fostering competition, including consumer protection and dispute settlement systems where they exist.

Existing competition concerns were also identified through a structured questionnaire, which was distributed to about 200 selected key individuals to get an idea of their perceptions on the state of the competition regime in the country and identify areas that need immediate attention. Respondents comprise of people in the government, business, civil society, especially consumer groups and business associations, lawyers working in the field and quasi-governmental bodies, e.g., regulators and public utility heads. This was followed up by interviews with some targeted respondents, in order to gain information regarding prevailing anti-competitive practices at the micro-level and to ascertain the extent to which such practices hurt consumers and/or the economy.

# Overview of Relevant Government Policy

## Development Policy

### Structural Adjustment Programme (SAP)

Ghana was one of the first countries in SSA to initiate a programme of economic stabilisation and market reform, under the banner of the Economic Recovery Programme (ERP), supervised by the World Bank. This structural adjustment reform package, adopted in the middle of 1983, was characterised by devaluation, fiscal austerity and tight monetary and liberalisation policies. The programme had a mixed impact on the agricultural sector.

On one hand, the initial opening up of the economy to foreign trade (alongside the flood of foreign assistance to finance it) led to increased availability of capital goods and inputs such as fertiliser. Cocoa producers profited from increased producer prices of cocoa and liberalisation of cocoa marketing. On the other hand, the food sub-sector seems to have been weakened by the switch to cash crops (Kraev, 2004).

With regard to the industrial sector, the ERP had a varied impact. The investment incentives, including unlimited repatriation of profits and a reduction in corporate tax rates, led to a shift in price incentives in favour of export industries and against the formerly protected manufacturing industries. The main components of the industrial sector are mining, manufacturing (largely for the domestic market) and utilities (largely government-owned). In response to the investment incentives listed above, together with generous tax concessions, the mining sector grew substantially. However, the impacts of ERP policies on domestic manufacturing were largely negative, mainly because the cost of capital goods increased astronomically (Kraev, 2004).

### Poverty Reduction Strategy Paper

The overarching aim of Ghana's current socio-economic development agenda is the attainment of middle income status (with a per capita income of at least US$1000) by the year 2015 within a decentralised democratic environment. The Growth and Poverty Reduction Strategy Papers (GPRS I & II) provide the underlying framework by which this agenda may be achieved. GPRS I emphasised poverty reduction initiatives, but GPRS II focuses on the implementation of growth-inducing policies and programmes, with the potential to engender wealth creation and sustainable poverty reduction. With the attainment of relative macroeconomic stability and modest economic growth under GPRS I, Ghana's focus has now shifted to the priorities of the GPRS II, which include: continued macroeconomic stability; accelerated private sector-led growth; vigorous human resource development; good governance and civic responsibility.

Under the GPRS II, Section 3.2.2 (Promoting Trade and Industry) devotes some space to consumer concerns and aims to "ensure the health, safety and economic interest of consumers". This is to be achieved through: the enforcement of legislation that prevents the sale of unsafe and poor quality goods in the local market; strengthening of the regulatory and enforcement framework for protection of economic rights of consumers; development and implementation of national consumer awareness programmes; encouragement of the formation of a consumer association; and ensuring that consumers have adequate representation on relevant national bodies.

Consumer protection is seen as a way to ensure a consistent and stable policy environment within which the private sector and consumers can operate effectively. The expectation is that of an environment that increases competitiveness of producers in both local and international markets.

Despite tremendous gains achieved since the inception of the GPRS, some policy and development challenges still remain to be overcome. Firstly, there are serious infrastructural gaps noticeable in the water, energy, roads and sanitation sectors. Experts estimate the cumulative needs in the four major infrastructural sectors at US$3.4bn for the period 2004 to 2008, representing annual outlays of approximately eight percent of the GDP (Briceno-Garmendia et al., 2004).

Secondly, the production and export base of the Ghanaian economy still remains relatively narrow, exposing the vulnerability of the economy to external shocks. Agriculture productivity has been low and it has been recognised that the share of agricultural products (cocoa, timber and other non-traditional exports) in total foreign exchange earnings has been declining since 2004. For instance, agricultural production contributed 52.8 percent of total foreign exchange earnings in 2004, but this declined to 45.9 percent in 2005 and 41.1 percent in 2006 (ISSER, 2007). The gains that have been achieved over the years through export diversification have not been significant enough to make the export sector a major engine of economic growth.

In addition, while the investment climate has improved in recent times, lapses are still noticeable in some key areas such as starting a business, getting a licence, registering property and accessing credit, among others. There has also been a slow rate of progress with public sector reform and further progress is needed specifically on public expenditure/ financial management, transparency and internal audits.

## Agricultural Development Strategy

The main focus of Ghana's economic reform programme has been in the area of trade and agricultural liberalisation, reflecting the importance of these sectors in the economy of Ghana. Like the vast majority of SSA countries, Ghana has had restrictive and distortionary agricultural policies since independence until the 1980s (at least), typically motivated by some desire to protect domestic producers. Prior to 1983, the agricultural policy in Ghana was geared towards three main objectives, amongst others: (i) to increase food production, (ii) to provide raw materials and other inputs to the other sectors of the economy, and (iii) to ensure food security and adequate nutrition by improving the availability of food for consumers (Brooks *et al*., 2006).

Policies used to achieve these objectives included price controls, input and credit subsidies, obligatory credit allocations and heavy state involvement in production, distribution and marketing. The Ghana Food Distribution Corporation (GFDC), which was established in 1975 to replace the defunct Agricultural Development Board, which had been in place since the 1960s, was the main institution responsible for procurement and storage of maize and rice at the guaranteed prices (Brooks *et al*., 2006).

Since the reforms, which began in 1983 and especially in the 1990s, the sector has undergone dramatic changes. The reforms since 1983 have involved removal of price distortions on crops, elimination of subsidies for agricultural inputs including fertilisers, and reducing the role of parastatals (Nyanteng and Seini, 2000). The government eliminated the guaranteed minimum price paid to farmers for food crops (mainly maize and rice) in 1990 and subsequently abolished subsidies on inputs (mainly fertilisers) in 1992. As detailed in Nyanteng and Seini (2000), the low level of productivity, particularly in food crops, can partly be attributed to poor farming practices and very low use of fertilisers, following the withdrawal of government subsidies on agricultural inputs.

These reforms notwithstanding, the performance of the agricultural sector has not been impressive, relative to other sectors of the economy. Between 1988 and 1998, agriculture is reported to have grown on average by about 2.7 and 2.5 percent per annum during the 1990s. As expected, agriculture's relative importance has been declining with economic development in Ghana. By 1998, for example, the share of agriculture in the GDP had decreased from 45 percent in 1985 to 36 percent, while the industrial sector increased from 16 percent to 25 percent, with negligible changes to the service sector.[1]

Nonetheless, as in most of SSA, agriculture still remains the mainstay of the Ghanaian economy. As the main source of employment and income, agriculture plays a very important role in rural Ghana. It is estimated that about 70 percent of the population of Ghana (mainly rural households) is dependent on agriculture for its livelihood.

*The Government implemented the second Food and Agriculture Sector Development Programme (FASDEP II), which articulated the contribution of agriculture towards the overall objective of GPRS II, to achieve equitable growth and reduce poverty. In 2008, the broad policy of the Ministry of Food and Agriculture (MoFA) was to develop a progressive, dynamic and viable agricultural economy that will ensure food security, vulnerability and emergency preparedness, income, growth and, hence, poverty reduction. These new initiatives have resulted in the agricultural sector performing much better in terms of overall growth. In 2008, the sector grew by 4.9 percent, while in 2007, the growth rate stood at 4.3 percent and 4.1 percent in 2004.*

## Industrial Policy

Ghana does not have an industrial policy, but the government has initiated steps to get one drafted to guide the country's industrialisation process.[2] The Ghanaian manufacturing sector has undergone tremendous changes and has been subjected to various policy prescriptions since independence over four decades ago, in an attempt to make it the engine of growth and economic prosperity. At independence, Ghana had a relatively underdeveloped and very narrow manufacturing sector, accounting for only 0.8 percent of the GDP. The manufacturing sector, after three decades of independence, was still small, generating only nine percent of the GDP and accounting for just about 10 percent of total employment.

Under an import substitution industrialisation (ISI) strategy, the manufacturing sector between the early 1960s to the early 1970s saw tremendous changes, with the state taking an important and growing role in the process. According to Steel (1972), by 1962, state-owned firms were producing about 12 percent of manufacturing output and this increased to about 20 percent in 1966. During the beginning of the 1970s, the ISI strategy had begun to fail and by 1983, the sector was in a bad shape, with negative growth rates.

The ERP initiated in 1983 to get the Ghanaian economy out of the mess in which it was, seemed to have had a mixed impact on the manufacturing sector. Steel and Webster (1992) indicated that not only did many small manufacturing firms become more competitive but also they changed their product mix and created new market niches. The period soon after the ERP was initiated also saw the emergence of a new crop of dynamic entrepreneurs. This culminated into increased growth in manufacturing output to about an average of five percent per annum between 1984 and 1987. However, this declined to about three percent between 1988 and 1995, due to the negative impact of trade liberalisation, credit and financial constraints, poor infrastructure, excessive bureaucracy, competition from illegal imports and market conditions, etc. The decade, 1995-2004, saw the manufacturing sector growing at 4.4 percent on average.

Although Ghana has been categorised as a relatively successful reformer, trade liberalisation has had some negative impact on the manufacturing sector. Manufacturing value-addition did rise rapidly after 1983, when imported inputs were made available to existing industries that were suffering from substantial excess capacity. However, as liberalisation spread to other imports and excess capacity was used up, the exposure to world competition led to a steady deceleration of manufacturing growth. For instance, the rate of growth of manufacturing value added fell to 5.1 percent in 1988; 1.1 percent in 1990; 2.6 percent in 1991; and 1.1 percent in 1992. Indeed, between 1981 and 2001, manufacturing value added per capita grew annually by less than 0.9 percent, from US$37 to US$44 (ISSER, 2004).

The performance of the Ghanaian manufacturing sector after the inception of structural adjustment does not suggest that it is responding well to liberalisation. Employment in manufacturing has fallen from a peak of 78,700 in 1987 to 28,000 in 1993. Indeed, between 1992 and 2003, the proportion of the working population aged 15 years and above who were employed declined from 8.2 percent to 6.4 percent. Although the reforms saw the emergence of a new crop of dynamic entrepreneurs and a subsequent rise in the number of small enterprises, most of the enterprises were engaged in low-productivity activities aimed at local markets. In addition, foreign investment in manufacturing activities did not respond well to the adjustment, as most of it was concentrated in primary activities, rather than in manufacturing. This was against the background of the inability of domestic private investment to adequately boost the manufacturing sector.

Due to the prudent macroeconomic policies instituted by the government under this period, one would have expected that the manufacturing sub-sector and the industrial sector as a whole would show remarkable improvements in growth performance, in line with the sustained rising real GDP growth rate recorded since the year 2000. Unfortunately, the manufacturing sub-sector and industrial sector as a whole have not performed too well. This is reflected in the fact that the industrial sector continues to make low contributions to GDP growth and lags behind the service and agricultural sectors in their contributions to GDP growth. In 2006 and 2007, the manufacturing sub-sector appeared to have experienced the lowest growth in the last decade.

Although the Bank of Ghana's Composite Index of Economic Activities (CIEA), an index of eight economic indicators which measures the level of confidence of businesses in the economy, indicates significant increases over the past few years, a combination of factors, namely, unfavourable competition from cheap Asian imports, rising crude oil prices, the energy crisis of 1998 and 2006/07, poor management, outdated machinery, credit squeeze as well as high taxes and multiplicity of levies, have hindered the growth of the manufacturing sector.

## Trade Policy

Over the course of the late 1980s and throughout the 1990s, there have been several macroeconomic and trade policy reforms, including tariff policy and devaluation (depreciation) of the Ghanaian Cedi, all of which have the potential to impact on food production, consumption and poverty. In the case of import tariff liberalisation, the reform process was, perhaps, not dramatic and has generally lagged behind reforms of quantitative restrictions.

Ghana was already open by the early 1990s, but she has become continuously more open since then. The stabilisation and adjustment policies were generally maintained in the 1990s. Extensive reforms aimed at reversing previous inward-looking policies were pursued. The liberalisation process entailed a gradual reduction of the tariff structure and level. Trade reforms in the 1990s included specific export promotion measures aimed at improving the relative incentives to producers of exportables. By the year 2000, the simple average applied MFN tariff rate had fallen to 15 percent.

In addition, the tariff structure has been simplified and few non-tariff-barriers (NTBs) are applied. Following trade liberalisation, one would expect to see an increase in imports and exports. The increasing openness of the economy saw both imports and exports increasing as a share of the GDP, but as has always been the case for decades, imports have consistently exceeded exports.

At the start of the 1990s, Ghana operated a tariff regime of five lines (i.e., 0 percent, 10, 15, 20 and 25 percent), but the tariff system was subsequently changed to the present four-tier structure, with rates of zero, five percent, 10 percent and 20 percent. Most food imports attract the highest duty rate of 20 percent, although the simple average tariff declined from 17 percent in 1992 to 13 percent in 2000 (WTO, 2001). In the unique case of poultry, the import tariff was raised from 20 percent in 1993 to 40 percent by the year 2000, as a concession to the National Poultry Farmers' Association, which called for higher tariffs aimed at protecting the nascent domestic poultry industry from unfair imports from the European Union (EU).

In addition to these import duties, the government charges a 12.5 percent (previously 10 percent until 2000) Value Added Tax (VAT) on both imported and domestically produced goods and services. Special import taxes have been a common feature of Ghana's tariff regime, with a previous rate of 17.5 percent only abolished in March 1999, but soon re-introduced at a higher rate of 20 percent on mainly consumer goods, covering some seven percent of tariff lines, which in effect adds a fifth tariff rate of 40 percent (WTO, 2001).

## Economic Partnership Agreements (EPAs)

The EPAs were originally conceptualised to be negotiated as trade and development agreements between the European Community (EC) and groups of African, Caribbean and Pacific (ACP) countries, going beyond pure market access, because both sides agreed that trade was not enough to stimulate economic development in low income countries. The Economic Community of West African States (ECOWAS) position had always been that the EPAs should come into force in January 2011, instead of the 1st January 2008, as provided under the Cotonou Partnership Agreement. The extension was deemed necessary to allow for further negotiations of the many outstanding issues, including strengthening of the regional integration process.

As it became apparent that the EC was not prepared to extend the deadline for the waiver, some ECOWAS, including Ghana, began scrambling for an interim deal on goods, the so-called 'EPA light'. Ghana signed an interim trade deal with the EC in mid-December 2007 as a stepping stone to safeguarding exports to the world's biggest trading bloc, leaving controversial issues, such as trade in services or measures to strengthen competitiveness, to be negotiated in a second stage in 2008.

Ghana's interim agreement provides for the immediate abolition of tariffs on virtually all exports to Europe and the gradual dismantling over 15 years of tariffs on 80 percent of imports from the 27-member EU bloc. The remaining 20 percent of imports deemed "sensitive products" will be subject to tariffs even after the 15-year transition period for food security, employment and fiscal reasons.

Future developments in world trade and in the performance of the Ghanaian economy will be influenced, to a large extent, by the full-blown EPAs and the Doha Round of multilateral trade negotiations, when completed. For a country like Ghana, although the signing of an EPA may provide benefits, these are unlikely to be significant in magnitude at least in the medium term. First, import-competing sectors in Ghana are relatively underdeveloped, so that even if they have the potential to be competitive and efficient, they are not so at present.

Moreover, weak institutions and unfavourable structural characteristics (e.g., export dependence on a narrow range of primary commodities) may mean that Ghana is unable to avail of the potential benefits from the EPA. Thus, the EPA presents both opportunities and challenges but the latter are more direct and immediate than the former.

As negotiations for the full-blown EPA continues, there is a call for strong effort and political will to advance and achieve a truly development-oriented outcome. Ghana's negotiators should recognise her unique structural problems and the need for the flexible use of trade policy instruments that could help maximise the impact of trade integration on the development of our domestic productive capacities. It is fundamental to find an arrangement that deals directly with the structural problems of African countries, the real impediments to production of the items to be traded. The EUs 'Aid for Trade' agenda could be helpful in financing infrastructure needs, building ACP state capacities and establishing appropriate regulatory structures.

## Privatisation & Regulatory Reforms

The private sector has since the early 1970s been on the periphery of Ghana's economy. In the mid-1980s, the government at that time controlled more than 350 state-owned enterprises, but nearly 300 had been privatised by the end of 2000 under a privatisation program. By the end of 2003, 18 more had been divested. In the last five years, attention has been drawn to the importance of the private sector in boosting economic growth, given the right incentives. The development of a National Medium term Private Sector Development Strategy (2004-08) will attest to this. The strategy is designed to accelerate the government's progress towards achieving the 'Golden Age of Business'. The aim is to create a conducive market system for the private sector to flourish. The key targets are to create a favourable investment climate in Ghana and eliminate any key barriers to doing business.

Ghana reformed trade, tax and property administration. It introduced a single window clearance process at customs, where traders can now file all paperwork at one place. Clearance time dropped from seven days to three days for imports and from four days to two days for exports. Ghana also reduced the corporate tax rate and reconstruction levy for businesses, cutting the overall tax burden from 35.6 to 32.3 percent of profits. The stamp duty on property transfers decreased from two percent to 0.5 percent of the property value.

Ghana has been able to create a workable framework to regulate all aspects of the economy and minimise any form of duplicity. All these regulatory bodies have been mandated to maintain high standards and protect the interests of both producers and consumers. These bodies are gradually moving from licensing services to ensuring compliance with the maximum standard for quality of service delivery. Though there have been improvements in the areas to do with business, many other sectors in Ghana face a lot of bottlenecks in terms of regulatory reform and the enforcement of these regulations once they are passed as laws.

## Investment Policy

Ghana has a comprehensive investment law, the Ghana Investment Promotion Centre Act, 1994 (Act 478). Part 1 of the Act establishes the Ghana Investment Promotion Centre (GIPC), whose functions include initiating and supporting measures that will enhance the investment climate in the country for Ghanaian and non-Ghanaian companies, as well as promoting investments in and outside Ghana, through effective promotional means. In 2006, Section 25 of the Act was activated by the government to empower the GIPC Board to enter into negotiations towards the granting of special incentives for projects it considers of strategic importance to national development.

In regard to Foreign Direct Investment (FDI) flows into the country, in 2006, India, China, Britain, Lebanon, US and Germany were Ghana's major sources of foreign direct investments (FDI). Indeed, Ghana has benefited significantly from investment inflows from China and India in the past decade. In 2004, India became one of the main source of foreign investment, followed by China. Between 1994 and 2006, India registered a total of 256 projects, with 37 percent of them being in the manufacturing sector and 16 percent in general trade. China followed with a total of 249 projects registered, 34 percent of these in the manufacturing sector and 19 percent in general trade (GIPC, 2006). Nigeria and South Africa remain the leading African investors in Ghana. About 65 and 50 percent of FDIs from South Africa and Nigeria, respectively, have been invested in the services sector. This increased investment in the services sector is a reflection of the positive impact of the new tourism Law (Legislative Instrument 1817), which grants generous incentives to investors in the tourism and hospitality sub-sector.

## Government Procurement Policy

In 1960, the Government enacted the Ghana Supply Commission Act, which was reviewed later in 1990 by Provisional National Defence Council (PNDC) Law 245. In the same year, Contracts Act, Act 25 of 1960, was also passed. In 1976, the National Procurement Agency Decree SMCD 55 was passed by the Supreme Military Council. In 1979, another law, the Financial Administration Decree SMCD 221, was also passed. All these laws, decrees and instruments were meant to provide a comprehensive framework of administrative powers to regulate the activities of procurement within the public sector. The Ghana Supply Commission and National Procurement Agency were established as Central Procurement Agencies which were involved directly in frontline procurement.

However, the legal frameworks did not include the establishment of oversight body to oversee the successful implementation of these laws. Hence, the procurement process was characterised by unclear legal framework, lack of harmonised procedures and regulations and unclear institutional and organisational arrangement required in the management of the public procurement process. It became clear, therefore, that there was the need to critically examine the processes and procedures of public sector procurement to ensure operational efficiency and institutional capacity to address procurement issues. The draft bill was finally passed into law on December 31, 2003 and was called Public Procurement Act 2003, (Act 663). The Act essentially provides a framework for developing and strengthening procurement institutions and streamlining their operational processes in the context of poverty reduction, private sector development and good governance as well as anti-corruption. The Public Procurement Authority has, therefore, been established to perform this role.

Currently, there is no single code for the government procurement process. The rules vary from transaction to transaction. However, a unified code is under preparation. The government alone accounts for about 50-70 percent of all imports in the country, with the Ghana Supply Company (GSC) acting as the principal purchasing agent of the government. Previously, some parastatal entities received government subsidies to finance imports on behalf of the government, but this practice has been abolished. The former government import monopolies have also ceased.

In spite of this, rent-seeking private businesses continue to exploit the absence of a harmonised legal framework for government procurement by paying bribes to government ministries, departments and agencies to gain favours in the award of government procurement contracts. It is hoped that the passing of the Public Procurement Act and the establishment of a Public Procurement Authority will curb these practices and make the procurement process transparent and free of corruption.

## Labour Policy

Ghana's labour regulations and policies are generally favourable to business and labour-management relations are fairly good. A revised Labour law (Act 651) passed in 2003 became effective in March 2004. The new law unified and modified the old labour laws to bring them into conformity with the core principles of the International Labour Convention, to which Ghana is a signatory. All the old labour-related laws, except the Children's Law (Act 560), have been repealed. Under the 2003 Labour Law, the Chief Labour Officer issues collective bargaining agreements (CBA) in lieu of the Trade Union Congress (TUC). A National Labour Commission has been established to resolve labour and industrial disputes.

Finally, the Tripartite Committee that determines the minimum daily wage now has legal backing and public and private employment centres can be created to help job seekers find work. There is no legal requirement for labour participation in management. However, joint consultative committees, in which management and employees meet to discuss issues affecting business productivity, are common. There are no statutory requirements for profit-sharing, but fringe benefits in the form of year-end bonuses and retirement benefits are generally included in collective bargaining agreements.

Ghana has a statutory minimum wage legislation, which is aimed at protecting workers and their families and guaranteeing low-skilled workers a wage that is enough to cater for their basic needs. The main objective of introducing the minimum wage policy in Ghana was to raise income levels of unskilled workers within a social policy context. The policy was necessary because of the belief that the minimum wage may be a policy instrument for reducing poverty, but most employers have no legal obligation to pay apprentices and casual workers the minimum wage.

Currently, the National Tripartite Committee (NTC) is tasked with the determination of a daily national minimum wage rate in Ghana. The national minimum wage is the lowest daily wage below which no employer is permitted to pay an employee and it is enforceable by law. Thus, the NTC shapes the structure of wages in the formal sector of the labour market in the country.

As a result of the problems encountered in the implementation of pay reforms in the country and the fact that salary adjustments have mainly been in response to workers' strikes, public sector wages have continuously received a lot of media attention. Committed to preventing such bad media publicity and to develop and implement a comprehensive public sector pay reform, the government decided in its 2006 budget to embark on a comprehensive salary structure in early 2008.

In furtherance of this agenda, the government enacted the Fair Wages and Salaries Commission Act (Act 737) on 4$^{th}$ June, 2007. The Act is to ensure that there is fair, transparent and systematic implementation of public service pay policy and that decisions relating to salaries, wages, grading, classification and job analysis, among others, are properly co-ordinated and managed. The Act sets up a commission to play the role of ensuring effective conduct and co-ordination of public sector wage and salary negotiation.

An important aspect of the reform is the introduction of a unified single spine pay structure which places all public sector workers on an integrated pay structure. This pay structure incorporates an incremental point adjustment which will adjust salary levels from time to time. Although the single spine pay structure has been criticised for its inability to address the issue of the numerous allowances and the market premium in the public sector, it is expected to ensure pay equity in the public sector, since all the workers in the public sector will be placed on the same spine. It can also make it easier to monitor and control the budget for the public sector and the ability to accommodate accelerated increments by extending the spine.

## Consumer Protection Policy

There is no comprehensive consumer protection law. However, there are a number of non-governmental organisations operating in Ghana as advocates of consumer protection and welfare. Three such NGOs are Third-World Network-Africa (TWN-Af), Friends of the Earth-Ghana (FOE-Ghana) and the Consumers Association of Ghana.

TWN-Af is particularly concerned with issues related to development and the Third World and North-South interaction. In Ghana, TWN-Af is very active in organising and participating in seminars and advocating for the interests of Ghana, Africa and developing countries, in general. It is also involved in research on economic, social and environmental issues pertaining to the developing world and in disseminating results through books and journals.

An example of a TWN-Af initiative is a workshop that was organised in May 2007 in Accra on "Extractive Industries and Human Rights in Africa", during which the participants resolved to, among other things, "work together and with communities, the media and partners from the global south and north to promote, uphold human rights values, and also expose alleged human rights violations".

FOE-Ghana is an NGO focused on environmental, social and economic issues. In 2005, FOE-Ghana issued a briefing paper on Ghana's Trade Policy, highlighting key concerns for civil society in which it advocated for continued protection of farmers and producers, especially with the advent of the Economic Partnership Agreements.

The Consumers Association of Ghana is a locally-based NGO whose activities are focused exclusively on the promotion of competitive practice and the safeguarding of consumer interests. The association was formed in 1984 and has ever since taken a very active role in discourse and advocacy on issues on competition and consumer welfare.

The government has initiated recently the process of drafting a National Consumer Protection Policy – a draft of which was developed in late 2009 and is currently being refined. Further, a consumer protection framework law is also being prepared, and is expected to be readied towards the end of 2010.

# Nature of Competition

## Competition Act

The Government of The Republic of Ghana is in the process of developing a bill on competition law, as a means of removing anti-competitive practices in the economy, to ensure efficiency in the production system. Two draft Bills have been prepared before: the Trade Practices Draft Bill, drafted in 1993, and the Draft Competition and Fair Trade Practices Bill in 2004, all of which could not be developed into an act of Parliament. Although the two draft bills have a lot of limitations that can hinder the effective implementation of competition policy in the country, they provide an important starting point for the drafting of any future competition law in Ghana.

Ghana does not have a comprehensive competition law at present. The main source of legal authority to protect consumers of goods and services was the issuance of the "Protection against Unfair Competition Act, 2000" (Act 589), which is administered by the Minister for Justice. In terms of Act 589, commercial behaviour such as causing confusion with respect to another person's enterprise or its activities, damaging another person's goodwill or reputation, misleading the public, discrediting another person's enterprise or its activities, misleading advertisements and violation of trade secrets or breaching Ghanaian law or international or regional obligations contrary to honest business practices constitute an act of unfair competition. Causing confusion is defined in the Act as any act or practice during industrial or commercial activities that causes confusion with respect to another person's enterprise or its activities.

Act 589 covered mostly misleading acts, discrediting acts (false allegations concerning a competitor, which is likely to harm his commercial goodwill) and violation of trade secrets, where one's manufacturing secrets and commercial secrets, which may be information of a purely technical character, is divulged without the owners' consent. Moreover, any act or practice, in the course of industrial or commercial activities, would be regarded as an act of unfair competition, if it is deemed to be contrary to honest business practices. The Minister of Justice is authorised under the Act to cause the issue of legislative instruments for the purpose of developing regulations aimed at protecting the public as consumers and also as producers of goods and services from unfair competition.

The Act, although it was an important starting point, cannot regulate the general competition environment in Ghana, particularly with respect to restrictive business practices, mergers and acquisitions and unfair trade practices, given the need for an autonomous body to perform the task. The Act is also outdated and less relevant as far as laying out the ideal environment for the attainment of efficiency in production and distribution of goods and services through fair competition is concerned. This was recognised by the government, hence a process of drafting a new Competition Act of Ghana was initiated in 2007-08, but has taken a while to be embraced as an Act of Parliament.

## Competitiveness of Local Firms

Firms in Ghana are unable to participate effectively in the markets because of weak competence and capacity. The main factors contributing to this include low skill level of the labour force; poor production methods; lack of marketing know-how; and lack of low-cost finance for their operations. In recent times, there have been several efforts by the government to enhance the capacity and competence of Ghanaian firms through the provision of micro-credit, venture capital and export credit as well as business support and training.

## Barriers to Effective Competition

Import tariffs remain a problem for businesses that rely on imported raw material. Most of them complain that the payments of VAT and import duties greatly reduce their ability to produce at competitive rates, whilst foreign firms are given tax incentives to bring these items in. Other constraints are labour costs, the high cost of fuel, lack of access to credit and delays in payments when firms are engaged in government contracts. Some firms (e.g., publishing firms) have to pay about US$5,000 to tender textbook contracts, which are sometimes difficult for local firms to do. Construction firms in Ghana are currently facing stiff competition from Chinese firms, when bidding for contracts. This is because the Chinese firms often have access to cheap public credit (from the Chinese government) and benefit from lower unit costs for raw materials, since they are often subsidiaries of large construction conglomerates which are able to take advantage of bulk purchases. This gives the Chinese firms a competitive advantage, even though they face the same VAT that local firms do.

# Interface between Sectoral Regulation and Competition in Select Sectors

## Background

From interviews with key stakeholders in select sectors, some insight was gleaned into some aspects of competition. With regard to the level of competition in the sectors, there was variation. In some sectors like utilities, there was little competition, with some monopolies being present. In sectors like communications, however, there was plenty of competition. There was also variation in the attitude towards mergers and acquisitions, with firms in the communications sector needing to get prior written approval before a merger or acquisition, but firms in the utilities not having to conform to this requirement. With regard to the formation of associations for the discussion of issues of common interest, firms in all the sectors are under no restrictions.

The regulatory agencies generally have a policy of no-tolerance of anti-competitive practices, but not all are equipped with provisions for punishing such behaviour. The Public Utilities Regulatory Commission (PURC), for instance, relies on the mandate provided by a legislative instrument, but has no specific provisions in place for rectifying instances of abuse. The NCA, on the other hand, is quite proactive in regulating competition and has intervened on a number of occasions and issued fines to firms that have transgressed.

With regard to independence of these regulatory agencies, it was found that although these institutions were independent by law from the related ministry, they were not independent in the nomination of their chief executives. The President was the one who appointed (and dismissed) the chief executives in most cases. Furthermore, only a few of the regulatory agencies were financially independent (most notably the National Communications Authority [NCA]) and a majority of then were funded through Government subvention. This, undoubtedly, impacted their independence. The agencies noted that there was ample room for political interference in major decisions, such as the awarding of licences.

## Water Sector

Currently, there is one public utility, the Ghana Water Company Limited (GWCL), which owns the production of potable water in Ghana. Aqua Vitens Rand Limited (a joint Dutch and South African company) is responsible for the distribution and management of GWCL. Ghana now has its National Water Policy in place, with 31 focus areas, mainly aimed at ensuring adequate financing and planning of the sector to enable equitable distribution of potable water to all parts of the country. Also, the Rural Water Sector Investment Plan and the Urban Water Sector Investment Plan are in the completion stages.

Aqua Vitens has come under fire in recent times, with some civil society organisations and other pressure groups calling for the termination of the management contract due to the acute water shortage in the Accra-Tema areas and other parts of the country.

The provision of pipe-borne water is a monopoly, but due to deficiencies in service provision, an informal market has developed in which private operators provide water using water tankers. This secondary market is fairly competitive, though it is characterised by excessive pricing.

The market for drinking water supply in Ghana is very diverse. There are only 350,000 domestic connections for the roughly seven million people in Ghana with access to drinking water. A high percentage of urban consumers depend on water tankers for their drinking water supply. This includes both consumers who are not connected to the piped water system and consumers who are connected, but receive irregular service. These consumers pay rates far in excess of those who rely on water from the piped system. Estimations indicate that whilst water from the piped system is charged at 0.6 Ghana Cedis per 1000 litres, those who rely on water from stand pipes have to pay between 3 and 5 Ghana Cedis, while water tankers charge approximately 13.5 Ghana cedis for the same volume of water.

### Public Utilities Regulatory Commission (PURC)

The PURC was set up under Act 538 and its activities are also governed by the Energy Commission Act 1997 (Act 541). In summary, PURC's key tasks are to (i) provide guidelines for rates to be charged for the provision of utility services; (ii) examine and approve water and electricity rates; (iii) protect the interest of consumers and providers of utility services; (iv) monitor and enforce standards of performance for provision of utility services; (iv) promote fair competition among public utilities; and (v) receive and investigate complaints and settle disputes between consumers and public utility.

The PURC is empowered to seek compensation for a consumer if necessary, pressure the utility to employ technology that improve services delivery and/or reduce cost for the consumer over a reasonable time period. The act does not permit any public utility to refuse to serve anybody, except with the permission of the Commission. Public utilities are required to make public all rates charged by them by publishing them.

Given the problems of price-fixing by water tankers, the PURC could establish a pricing schedule for water tankers, with small adjustments permitted to reflect varying costs of servicing different communities. There is no evidence that such a plan is under consideration. Many consumer protection provisions provided in regulatory agencies from other countries appear to be absent the PURC. These include formalised quasi-judicial hearings and a specified right of intervention in hearings and monetary support for intervention.

The PURC says that it operates under a philosophy of self-auditing by regulated utilities, on the theory that the utilities are in the best position to provide information about their water quality and operations. However, self-audits are extremely controversial and, internationally, have been shown not to protect consumers.

The legislative framework that shapes the regulatory mandate of the PURC, both in relation to consumer protection and in relation to general oversight of the utilities, could be significantly strengthened. Building and strengthening local Ghanaian capacity for effective water service delivery should be a critical part of any water sector reform proposal, especially with the current problems with the management company (AVRL).

## Power Sector

The power sector is still characterised by government control. The Volta River Authority (VRA), the Electricity Company of Ghana (ECG) and the Northern Electricity Department (NED) of VRA are the key players in the industry. A quarter of Ghana's 3.8 million homes are electrified. Electricity satisfies about 10 percent of the total energy demand and is mainly produced from hydro sources. From late 2006 to September 2007, due to a severe drought and under-investment in power capacity, Ghana's consumers were affected by endemic power cuts.

The present regulatory framework of the electricity sector in Ghana results from a reform in 1997, when the Parliament enacted two laws which created the PURC and the Energy Commission. The former is responsible for competition regulation and the quality of service monitoring, while the latter is in charge of technical standards and licensing of electricity utilities. There has been no significant privatisation programme to date. Electricity pricing should also reflect the true economic cost of generation, transmission and distribution and be attractive enough to send the right signals to consumers and investors. It is not certain if this is the case, however, previous government subsidy of electricity has been drastically slashed in the past year, with consequent increases in electricity tariffs by more than 100 percent.

### Energy Commission

The Energy Commission was set up under Act 541, which requires the Commission to work together with the PURC to develop standards of performance for the supply, distribution and sale of electricity or natural gas to customers by licensed public utilities. The law makes provisions for the payment of compensation, where the utility fails to satisfy the standards set by the regulatory body. The Energy Commission's main focus is on licensing and monitoring the technical and business aspects of energy provision. The PURC, on the other hand, mainly handles the setting of tariffs. There is a great deal of collaboration between the Energy Commission and the PURC, with each agency having representation on the other's technical committee.

## Telecommunications Sector

Ghana has a vastly liberalised telecommunication market. It led the way in telecommunications liberalisation and deregulation in Africa, when it privatised Ghana Telecom in 1996 (with a 30-percent managing share bought by Telecom Malaysia, replaced by Telenor of Norway in 2002). However, reforms have stalled so far, leaving the door open for anti-competitive practices by operators. Reaction to the news that UK-based Vodafone has finally secured a deal with the Government of Ghana to annex 70 percent stake in state-owned Ghana Telecom has been mixed. Many people, mainly from the opposition parties, believe that even though the capital injection would improve GT's fortune significantly (GT's enterprise value would be approximately US$1.3bn plus a cash injection of US$500mn, totalling US$1.8bn after the deal), Vodafone should have paid more.

Now, with two national operators and four mobile networks, the annual growth has been significant, notably in the mobile sector, where the number of lines exceeds fixed lines by almost 9:1. The four mobile operators are Scancom (MTN), Millicom (TIGO), GT-OneTouch and KASAPA. According to the National Communications Authority (NCA), as of the end of 2007, these operators had, respectively, 52.8 percent, 26.6 percent, 16.8 percent and 3.8 percent of the total number of subscribers. The two national operators (Ghana Telecom and Westel) held a duopoly on international service until February 2002. Now, international service is provided by most operators. Since 1994, the number of fixed line telephone subscribers in Ghana has grown from about 50,000 to 909,106 in 2007 and, in the same period of time, mobile subscribers have gone up from a couple of thousands to about 7,600,000.

### National Communications Authority

The National Communication Authority (NCA) was set up in 1996 under Act 524, with the main objectives being (i) ensuring that communications services are provided throughout the nation, as far as practicable, to satisfy consumer demand; (ii) ensuring that provision of communication services is highly efficient and is responsive to customer and community needs; (iii) promotion of fair competition among persons engaged in the provision of communication services; (iv) protection of operators and consumers from unfair conduct from other operators with regards to the quality of communications services; and (v) protection of consumer interests.

In its duties, the NCA is required to grant exemptions from licences; handle applications for licensing; determine conditions of licence; monitor performance of equipment and compensation for damage; outline standards of performance; and suspension and cancellation of licences as well as settling disputes among operators. The Act also provides that an operator who controls a network or facility may not limit access to the network for competitors. In addition, a dominant operator in the geographic market, as specified in a licence, should not resort to conduct or practice that unfairly disadvantage rival operators or calculated actions to curb competition.

In spite of mobile services being more expensive than fixed line services for the subscribers, there are many customers for mobile services, because of the flexibility of mobile services and also because mobile subscriptions are actually available in contrast to fixed line services, where there are long waiting lists. Ghana telecom is the dominant wire line provider, with Westel accounting for a very small share of fixed lines.

Indeed, all the mobile operators and the second fixed network operator Westel (and the rural operator Capital Telecom) have had great problems with Ghana Telecom over interconnection. Westel experienced a lot of interconnection problems with Ghana Telecom in the early stages of its operation and this delayed the commencement of its business for some time. According to Westel, the initial interconnection problems encountered with Ghana Telecom and the inability of the NCA to resolve the impasse negatively affected the sector in the capital market.

Westel had wanted to operate a pre-paid system which would have allowed users to access its network as well as that of Ghana Telecom. Ghana Telecom objected to this and argued that Westel was to develop its own network as a second national network operator, as contained in the licence issued by NCA and then interconnect with Ghana Telecom on that basis. This dragged the interconnection negotiations until Westel backed down. Thus, from all indications, the NCA was negligent in fulfilling its regulatory role. However, competition in mobile telephony is still relatively strong, but its sustainability will depend on the government's future commitment to ensuring it.

## Financial Sector

The past few years have seen a phenomenal growth in the Ghanaian banking sector with a large number of foreign banks, particularly from Nigeria, entering the market. Ghana's financial sector, according to the Bank of Ghana (Central Bank), is well capitalised, very liquid, profitable and recording strong asset growth.

The Bank of Ghana has licensed 23 banks to operate in the country. In addition to the 23 banks (made up of 21 commercial banks and two merchant banks), the sector also comprises a range of non-bank financial institutions, including five finance houses, three leasing companies, two savings and loans companies and several community banks established to mobilise rural savings.

The ARB Apex Bank is the umbrella bank for Rural Community Banks and supervises 125 such banks throughout Ghana. A distinguishing feature of the sector is the level of ownership by the private sector, directly or through the capital market, when compared with the level of state ownership seen in the financial sector in other African countries. Notwithstanding this phenomenal growth in the financial sector, interest rates are still too high for the average Ghanaian and a great majority of Ghanaians are un-banked. There are high interest rates and very little competition among the banks, especially with the interest rates deterring people from borrowing from the banks.

### Bank of Ghana

The Bank of Ghana (The Bank), which is the Central Bank for the country, has the overall supervisory and regulatory authority in all matters relating to banking and non-banking financial business. The Bank aims to achieve a sound, efficient banking system in the interest of depositors and other customers of these institutions and the economy as a whole. All banks, non-bank financial institutions and foreign exchange bureaux operations in Ghana are governed by the regulatory and legal framework as defined in the following legislations:

- Bank of Ghana Act 2002, Act 612;
- Banking Act, 2004 (Act 673);
- Financial Institutions (Non-Bank) Law 1993, PNDC Law 328; and
- Companies Code Act 179, 1963.

The Bank of Ghana is, therefore, charged with the responsibility of ensuring that the financial system is stable, so as to serve as a facilitator for wealth creation, economic growth and development. Part of the functions, responsibilities and mandates of the Central Bank as a Regulator, as defined in Act 612 and Act 673, include (i) regulating, supervising and directing the banking system and credit system to ensure the smooth operation of a safe and sound banking system; (ii) considering and proposing reforms of the laws relating to banking business; (iii) ensuring that depositors' funds are safe; (iv) ensuring that solvency, good quality assets, adequate liquidity and profitability of banks are maintained; (v) enforcing adherence to statutory and regulatory requirements; (vi) and ensuring that there is fair competition among banks in Ghana.

Pursuant to this, the laws governing banking operations in Ghana have provisions regarding licensing, withdrawal of licence and arrangement for examining and monitoring banks, powers and duties as well as protection of the supervisor, all of which fall under the ambit of the Bank.

## Transport Sector

The institution in charge of the policy direction of the sector is the Ministry of Transportation. The sector covers road, rail, air and water transport.

### Road

The road sub-sector has no single regulatory body, but rather a group of bodies in charge of different aspects of regulation. These bodies include, among others, the Driver and Vehicle Licensing Authority (DVLA), which is generally responsible for the licensing of drivers and certification of vehicles; the National Road Safety Commission (NRSC), whose main mandate is to plan, develop and promote road safety; and the Motor Traffic and Transport Unit (MTTU), a part of the Police Service that focuses primarily on maintaining and enforcing traffic rules and regulations.

There are 23 public road transport operators in Ghana, all organised under one umbrella union, the Ghana Road Transport Coordinating Council (GRTCC). The major operators under the GRTCC are the Intercity STC Coaches Company Ltd. (STC), the Ghana Private Road Transport Union (GPRTU), the Progressive Transport Drivers Association (PROTOA) and the Commercial Drivers Association (CDA). These operators have essentially segmented and divided the market and thus there is little direct competition between them. Fares in this sub-sector are set by a committee made up of representatives from the Ministry, the NRSC and the GRTCC.

The World Bank is currently undertaking a study with the aim of restructuring the sector so that there is one distinct regulatory body and a separate body in charge of asset management and infrastructure development (as is the case in the aviation sector).

### Rail

The rail sub-sector is relatively undeveloped, with a network that covers only a small part of the country and has a total track length of only 1,300 kilometres. The sub-sector was initially set up with a single railway company, which served as both the regulator and the operator. Currently, the Ghana Railway Company Ltd. serves as the operator. Act 779 (2008) was recently passed, which has established the Ghana Railway Development Authority (GRDA) as the institution that will be in charge of regulation, asset management and licensing of operators. Eventually, however, there is to be a separation of the regulatory and asset management functions into two different bodies, in line with what has been done in the aviation sector.

## Air (Aviation)

This sub-sector is probably the best organised of the transport sub-sectors and is being used as a model for revamping the other sub-sectors.

The Ghana Civil Aviation Authority (GCAA) is the regulator in charge of this sub-sector and the particular department in charge of economic regulation is designated as the Economic Regulation Department (ERD). The ERD mainly functions to ensure the smooth and efficient running of airport operations, air navigation services, airlines and allied aviation service providers, as well as to ensure that the interest of the consumer and the general public are protected. This last function is pursued by ensuring non-discrimination in the application of charges and also that there is no overcharging, anti-competitive practices or abuse of dominant position.

The operators in this sub-sector can be divided into three groups: the airlines, the handling companies and the management company. Among the airlines, there is ample competition, with the number of airlines rising from 14 in 2004 to 21 in 2006 and the average airfare falling between 2005 and 2006. Fares are exclusively determined by the industry, but the GCAA intervenes if cartel-like behaviour is noticed or suspected.

For a long time, the handling business was a monopoly with only one handling company – Aviance. However, another company – Aviation Handling Services (AHS) – has now joined in the provision of handling services, thus increasing the level of competition.

The management company is the Ghana Airports Company Ltd. This company is in charge of planning, developing, managing and maintaining all airports and aerodromes in Ghana. Act 678 (2004) provides for further separation of the management and regulatory duties.

## Water

The regulator of this sub-sector is the Ghana Maritime Authority (GMA), with mandate for overall maritime and inland water transport. The operators in this sub-sector are the Ghana Ports and Harbours Authority (which is the asset management arm in charge of managing and developing ports) and the stevedores (who load and unload cargo).

# *Alleged Cases of Anti-competitive Behaviour*

Admittedly, it is generally acknowledged that anti-competitive behaviour damages the business environment everywhere both in the developed and developing worlds. Practices such as price-fixing, market-sharing, bid rigging, exclusive dealing, tied-selling, misuse of dominant market positions and unfair trading practices which prevent firms entering new markets, deny consumers the wide benefits that competition can bring. In a situation like this, a country becomes less competitive, with detrimental long term effects on growth and employment.

Currently, Ghana does not have legislation on anti-competitive practices, although a Bill has been under consideration for the last few years. There is also no competition authority to tackle any anti-competitive practices. The Ministry of Trade and Industry, however, oversees all trade dealings and practices, including unfair trade practices. These practices have damaging effects on trade and competition, especially in the domestic markets.

Most countries have competition legislation to control the creation and abuse of monopolies and regulators empowered to enforce these laws. This has been fairly successful in stopping some types of abuses (such as the formation of cartels or the buy-out of competition), though not all kinds. It is quite obvious that there is the need for the establishment of an authority that is solely mandated to assess the extent of anti-competitive behaviour and inappropriate regulation in particular sectors in Ghana. This also indicates the need to build capacity to implement and enforce competition rules.

Due to the absence of a competition authority, it is difficult to get proved cases of anti-competitive practices. Below are some reported allegations of anti-competitive practices from different sources.

## Dominance in Telecom

For many years, and until very recently, when the telecommunications sector in Ghana was liberalised, the state-owned Ghana Telecom (GT) was accused of abusing its dominant position on the Ghana telecommunications market. For many more years, GT was suspected to be charging unfair prices for the provision of local access to its fixed telecommunications network (local loops). This meant that alternative operators could not compete effectively with GT and Ghanaian consumers were deprived of the benefits of choice and price competition for more many years.

## Excessive Pricing in Cement

Excessive pricing has also been alleged in the cement industry. This has caught the attention of both consumers and the government and the Minister of Trade and Industry has called on Ghacem to reduce prices to manageable levels. Prices of cement in Ghana have nearly doubled in 2007, causing great concern in the building industry, as the nation revisits the dominant hold that Ghana Cement (Ghacem) has over the industry. The pressure had started even before news reached Ghana that, over the years, Scancem, the owners of Ghacem, the country's main player in the duopoly of a cement industry (the other player is Diamond Cement), used bribery to consolidate its predominance in the local industry.

Indeed, calculations commissioned by the Auditor-General, using data concerning price movements, production and raw material costs, suggest that cement can be retailed at less than 4.6 Ghana Cedis and a decent profit can still be made on top. Even queries by the Auditor-General into Ghacem books are sharply rebutted as interferences into the affairs of a company no longer state-owned. Government owned 75 percent of Ghacem until 1999, when it eventually sold off its entire stake in the firm to Scancem. The Government appears helpless in the face of allegations of excessive pricing and very little action is taken against suspected cartels and market rigging.

## Price-fixing in Beverages & Road Transport

Price-fixing seems to be evident in the beverage industry. Although there are a number of beer and soft-drink manufacturers, they all sell their products at virtually identical prices and seem to review these prices at the same time. Furthermore, the manufacturers regularly announce "recommended prices" at which their products are to be sold. These prices then become *de facto* prices all over the country. Price-fixing is also present in the road transport sector. As mentioned earlier, the operators all belong to unions which fix the fares charged on various routes.

## False Advertisement in Pharma

This practice of unfair trade practice is prevalent in the pharmaceuticals industry, particularly with regards to herbal medicines. Some of these medicines claim to cure a variety of unrelated ailments – for instance, indigestion, asthma and impotence – but they most often turn out to be entirely ineffective. The Food and Drugs Board regularly alerts the general public to the dangers associated with taking such drugs, but they still get some level of patronage.

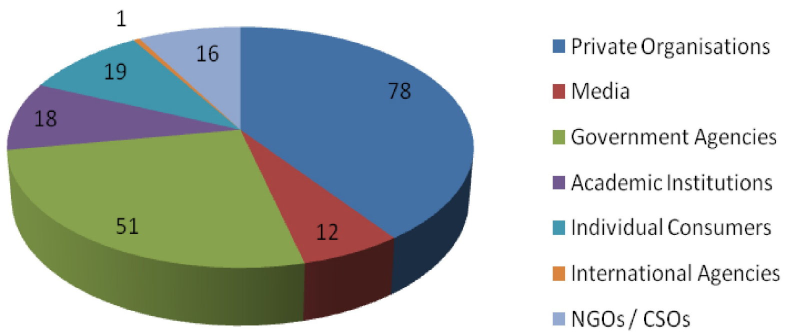
## Trademark Violation in Entertainment

This practice is extremely common, when it comes to music and movies. A tour of any of the business centres will reveal traders selling pirated music and movie CDs at only a fraction of the cost of the original material. Both local and foreign music and movies are targets of such trademark violation. The Musicians Union of Ghana (MUSIGA) wages regular campaigns against this practice, and urges the consumers to cooperate.

# Cross-Sectional Perceptions on Competition

This section gives a summary of the perceptions of people regarding the state of the competition regime in Ghana and identifies areas requiring immediate attention. A sample of 195 respondents was drawn from government agencies, which include regulators, private organisations, NGOs/CSOs involved with consumer protection, members of the media and individual consumers (Figure 15).

**Figure 15: Breakdown of Respondents**




## Assessment of Level of Competition

The first category broadly looks at perceptions regarding the state of competition and anti-competitive practices. About 52 percent of respondents perceive the level of competition among companies to be moderate, whilst 31 percent perceive it to be high (Table 45). They, however, admit that competition levels differ from sector to sector. Generally, competition levels seem to be higher among service providers than the manufacturing sector, where few companies dominate and, therefore, adopt monopolistic tendencies.

On the impact of competition on consumers in terms of price, choice and quality, 51 percent of respondents perceive consumers to be highly affected by competition, with about 40 percent perceiving the impact to be moderate (Table 45). In their opinion, low levels of competition mean consumers are unable to access quality goods at affordable prices. On the other hand, intense competition brings lower prices. A notable example given is the telecommunication sector, where the intense competition among mobile phone service providers has lowered call charges and the cost of starter packs.

The assessment also covered the perceptions of competition in the key sectors of the economy such as telecoms, power, water, commuter transport, retail and finance. Majority of the respondents perceive competition to be high in the finance (83 percent) and telecoms sectors (79 percent). In the retail sector, 47 percent perceived competition to be high, whilst 31 percent perceived competition to be high in the commuter transport sector. The least competitive sectors were power and water sectors (Figure 16).

**Table 45: Perception of the State of Competition in Ghana**

| Assessment of Level of Competition among Companies | % |
|---|---|
| High | 30.8 |
| Moderate | 51.8 |
| Low | 16.4 |
| Nil | 1.0 |
| Total | 100 |
| **Impact of Competition on Consumers** | |
| Highly | 51.0 |
| Moderately | 39.7 |
| Not at all | 9.3 |
| Total | 100 |

Figure 16: Assessment of Competition in Key Sectors

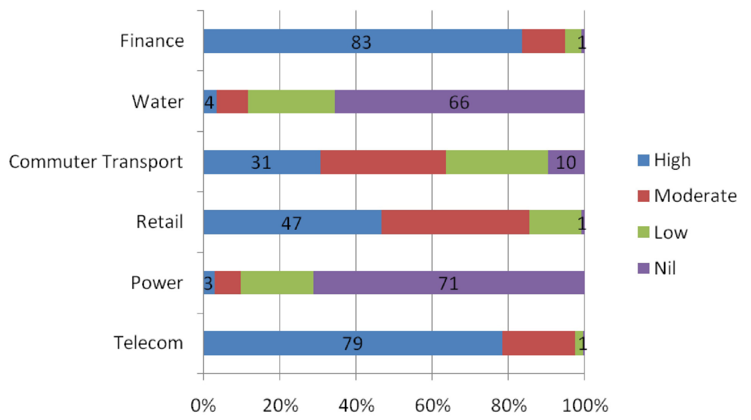
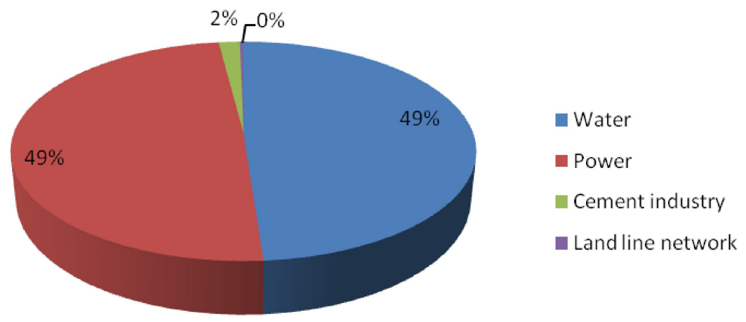



Figure 17: Sectors Characterised by Monopolies




When asked which sectors were characterised by monopolies, most chose the water and power sectors, followed by the cement industry and land line network (Figure 17). Many were of the view that consumers are made to put up with poor quality and bad service delivery from these sectors because there are no alternative providers. However, others contend that these sectors should be wholly state-owned to ensure access and equity in distribution.

## Assessment of Anti-competitive Practices

Regarding anti-competitive practices, 25 percent had encountered price-fixing, followed by price discrimination (14 percent) and entry barrier (13 percent). Bid rigging and exclusive dealing are other anti-competitive practices that were also flagged (Table 46). According to a few respondent, the lack of transparency in the public sector tendering process needs to be looked at critically.

Majority of respondents (58 percent) have quite frequently encountered anti-competitive practices, whilst 24 percent are of the opinion that they encountered these anti-competitive practices very frequently (Table 47).

## Assessment of Enforcement Issues

When asked about any knowledge of rules or laws to check anti-competitive behaviour, majority did not know (58 percent), whilst 19 percent had some knowledge of existing rules or laws. Some of the laws mentioned by respondents included the Public Procurement Act, the Banking Act, the Weights and Measures Decree (NRCD 326, 1975) and the PURC Act. Regarding whether the respondents had any knowledge of agencies put in place to administer such rules or laws, majority did not know of any (63 percent), 26 percent knew of some agencies, whilst 11 percent of the respondents perceived that there were no agencies in place to administer these rules and legislations. For those who knew, some of the agencies listed included the Public Procurement Board and the Ghana Standards Board.

On enforcement issues, again, the majority (64 percent) did not know if any action is taken in instances where the rules are violated. 17 percent perceive that no action is taken, whilst 19 percent are of the view that agencies are able to take necessary actions when rules are violated. Forty-one percent of respondents are of the view that no actions are taken because the laws are not enforced, whilst others attribute this to agencies

Table 46: Perception of Most Frequent Anti-competitive Practices

| Anti-competitive practices | % |
|---|---|
| Price–fixing | 25 |
| Price discrimination | 14 |
| Entry barrier | 13 |
| Exclusive dealing | 10 |
| Bid rigging | 10 |
| Market–sharing | 9 |
| Tied–selling | 6 |
| Predatory pricing | 6 |
| Resale price maintenance | 5 |
| Concerted refusal to deal | 2 |
| Anti-competitive M&A | 0 |

not having enough clout to punish offenders. Others believe that corruption and the influence of strong lobbies make taking action less appealing for agencies (Table 48).

One respondent had this to say:

*"It seems that the PURC and other regulators only issue directives but seem to have little power to ensure the provision of good quality services."*

| Table 47: Rate of Anti-competitive Practices Encountered | |
|---|---|
| **Rate** | % |
| Very frequently | 24 |
| Quite frequently | 58 |
| Infrequently | 16 |
| Not at all | 2 |
| Total | 100 |

| Table 48: Perception regarding Inaction by Agencies when Rules Are Violated | |
|---|---|
| | % |
| Law is not enforced | 41 |
| Agency not strong enough | 27 |
| Corruption | 19 |
| Strong lobbies | 13 |
| Total | 100 |

## Consumer Protection

Knowledge of consumer protection laws is very limited. 47 percent did not know of any such laws, 22 percent said there was no consumer protection law, whilst 31 percent of the respondents were of the view that such laws existed. However, majority of them (56 percent) perceived that there were agencies or institutions in place to protect the interest of consumers.

Some of the institutions listed include the following:

- Consumer Protection Agency;
- Consumer Concern Initiative;
- Food and Drugs Board;
- Ghana Standards Board;
- Narcotics Control Board;
- Public Utilities Regulatory Commission;
- National Communications Authority;
- National Media Commission; and
- Association of Ghana Industries.

### Role of Government

On issues regarding state-owned monopolies, majority (89 percent) agreed that indeed these entities were still in existence. About half of the respondents were of the opinion that these institutions indulged in anti-competitive practices, some of which are listed in Table 49. Exclusive dealing and price discrimination come on top of the list.

| Table 49: Perception of Some Anti-competitive practices Engaged by State-owned Monopolies | |
|---|---|
| **Anti-competitive practises** | % |
| Exclusive dealing | 42 |
| Price discrimination | 34 |
| Resale price maintenance | 14 |
| Tied–selling | 10 |
| Total | 100 |

Assuming Ghana had a Competition Authority, majority of respondents (89 percent) were of the view that it should involve different stakeholder groups in a structured process. This, in their view, will ensure sustainability. 11 percent of the respondents were of the view that stakeholder groups should be involved on a random manner, as and when they are needed.

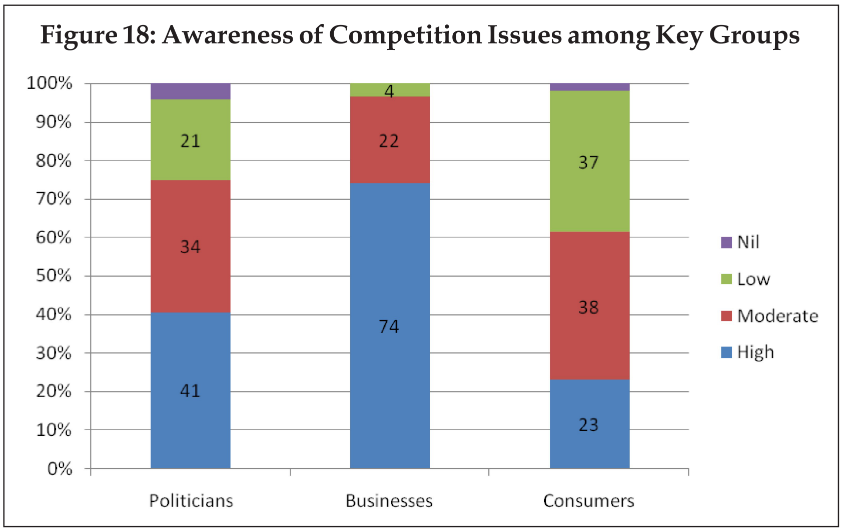
## Competition Culture and Public Awareness

The analysis included the perception of the competition culture among various groups in Ghana and the general awareness of competition issues. The role of the media in increasing awareness of competition issues will also be considered.

Generally, majority of respondents (82 percent) perceive that competition issues are not well understood in Ghana. The main reason being the lack of publicity of competition issues and lack of political will. Nonetheless, awareness of competition issues is perceived to be high among businesses and low among consumers (Figure 18).

### Role of Media

Assuming they encountered any anti-competitive practice in the market, 36 percent of respondents said they would report such cases to the media houses and 24 percent would inform local authorities or traditional leaders (Table 50).




On journalists' understanding of competition issues, majority (74 percent) believe they were aware about competition issues to a certain extent, but about 14 percent think otherwise (Table 31). In their opinion, competition issues are not reported because there is no institutional framework to handle such issues. The regulators charged with tackling anti-competitive activities seem powerless to do so. Others believe that the media are more interested in sensational news items and, therefore, are less likely to report them. Still others believe that competition issues are not part of the syllabus in journalist institutions and, therefore, journalists lack the training needed to appreciate such issues. However, business correspondents are sometimes able to highlight some anti-competitive practices.

**Table 50: Action Taken if Encounter Anti-competitive Practices**

| Action to be taken | % |
|---|---|
| Report to media houses | 36 |
| Inform the local politician/MP/ traditional leaders | 24 |
| Seek intervention of the local court/council | 14 |
| Seek help from consumer forums | 8 |
| Report to the local police | 6 |
| Complain to the company concerned | 6 |
| Take no action | 6 |
| Total | 100 |

Majority of the respondents believe that competition issues or violations are sometimes reported to the media. Others are of the view that this is rarely done (Table 52). Of the various mediums used, 47 percent of respondents perceive that most of these competition issues are reported to radio stations, 33 percent to the print media and 20 percent to television stations. Some noted that the Internet, especially blogs are becoming popular conduits of competition issues (Figure 19).

**Table 51: Frequency of Reports on Competition Issues or Violations in Media**

| Frequency | % |
|---|---|
| Very often | 18 |
| Sometimes | 49 |
| Rarely | 30 |
| Not at all | 3 |
| Total | 100 |

**Figure 19: Reporting of Competition Issues**

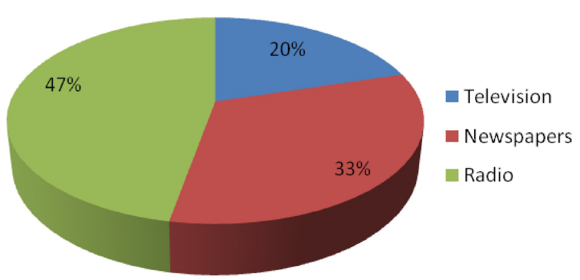



**Table 52: Perception of Journalists' Understanding of Competition Issues**

| Do you think that journalists understand competition issues well? | % |
|---|---|
| Yes | 12 |
| To a certain extent | 74 |
| No, not at all | 14 |
| Total | 100 |

## Conclusion

In conclusion, respondents are of the opinion that the government should play a key role in ensuring the setting up a Competition Authority to protect consumers and producers. Also, regulators need to be fully equipped to enforce laws and legislations which they are charged with. There is also the need for more advocacies on the negative effects of anti-competitive practices on the economy and especially on consumer welfare.

# Assessment of the Implication of Monopoly Situations on Competition

Ghana, like most developing countries, has a number of monopolies. These are typically state-owned enterprises or enterprises that were formerly state-owned, but have been since privatised and have now become private monopolies. This section will focus on a few instances of monopolies for which reasonably reliable data could be obtained.

## Water

As mentioned earlier in the report, Aqua Vitens Rand Limited (AVRL) a joint Dutch and South African company is solely responsible for the provision of pipe-borne potable water in Ghana.

AVRL has come under attack in recent times, with some civil society organisations and other pressure groups calling for the termination of the management contract due to the acute water shortage in the Accra-Tema areas and other parts of the country.

Currently, there are only about 350,000 domestic connections for the roughly seven million people in Ghana with access to drinking water. Consequently, due to this deficiency in service provision, an informal market has developed in which private operators provide water using water tankers. A large percentage of urban consumers depend on these informal providers for their drinking water supply. This includes both consumers who are not connected to the piped water system and those who are connected but receive irregular service. These consumers pay rates far in excess of those who are able to receive water from the piped system.

Estimations indicate that whilst water from the piped system is charged at 0.6 Ghana Cedis per 1000 litres, those who rely on water from stand pipes have to pay between 3 and 5 Ghana Cedis, while water tankers charge approximately 13.5 Ghana cedis for the same volume of water.

## Cargo Handling

In November of 2008, the Ghana Ports and Harbours Authority (GPHA) gave Meridian Port Services (MPS) exclusive handling rights over cargo from ships carrying 50 containers or more at the Tema Port. This essentially gave the company a monopoly over cargo handling at the port, because most of the ships calling at the port carry 50 or more containers. Meridian Port Services Limited is actually a joint venture between Ghana Ports and Harbours Authority and Meridian Port Holdings Limited and so is a public-private monopoly.

The announcement caused uproar and rival Stevedoring companies complained strongly to the GPHA and then eventually filed a lawsuit. The case is a very significant one, as almost 70 percent of Ghana's seaborne freight traffic comes through the Tema Port. The port also sometimes serves as an entry point for cargo destined for landlocked neighbouring countries like Burkina Faso, Mali and Niger.

## Cement

Ghana Cement (Ghacem) is by far the biggest player in the Ghana cement industry and although there is another firm in the country that produces cement (i.e., Diamond Cement), Ghacem seems to exert monopoly power. The Ghanian government initially owned about 75 percent of Ghacem. However, in 1999, this entire stake was sold off as part of a divestiture programme to Scancem (now part of the cement conglomerate HeidelbergCement). Thus, a virtual public monopoly was transformed to a virtual private monopoly.

In 2007, cement prices in Ghana increased by nearly 100 percent (from US$3.58 to US$6.9), having huge ramifications on Ghana's construction industry. There were allegations of excessive pricing and calculations commissioned by the Auditor-General seemed to provide evidence of this. Using data on price movements and production and raw material costs, it was found that cement could be retailed at less than US$3.17, with Ghacem still making significant profit. Furthermore, certain items in the company's cost structure have raised suspicion of being a means to unfairly raise prices. The Auditor-General, in 2006, described the charges of US$196bn stated on the company's financial statements, accrued between 2000 and 2004, as "charges made without transparency." He went on to further say that "lack of transparency had contributed significantly to the cost of the company's cement to the detriment of the construction industry in the country."

# *Assessment of Competition in the Agricultural Sector*

The agricultural sector is a key sector in Ghana, as it contributes greatly to the GDP and employs a large proportion of the labour force. Agriculture plays a significant role in terms of food security, poverty alleviation and political stability. The aim of this section is to understand the competition characteristics of the agricultural sector by analysing in more depth two main crops, cocoa and maize, across their supply chains to ascertain the key barriers to access, either upstream (agricultural inputs) or downstream markets (for products).

The two crops were selected based on the production levels, area of cultivation as well as number of producers involved. Cocoa and maize are extensively grown in Ghana and, therefore, afford a more thorough assessment than the other crops. Both cocoa and maize are smallholder-based and, therefore, their productivity levels have a higher impact on the poverty levels of those engaged in it. Increasingly, the prices of basic food items in the local market are rising, due mainly to the global economic crises, and this calls for improvement in agricultural production methods to yield more food and also generate more income for the large proportion of Ghanaians dependant on the sector.

## Agricultural Production Levels and Trade Patterns[3]

Ghana's main agricultural products are cassava, yam and cocoa beans. In 2004, cassava production was 9.7 million tonnes, yam production 3.9 million tonnes and cocoa bean production 736 thousand tonnes. By 2008, cassava and yam production had increased to 11.4 million tonnes and 4.9 million tonnes, respectively, but cocoa production had fallen to 681 thousand tonnes. Maize is another important crop and its production level has been relatively stable. Between 2004 and 2008, production increased only marginally from 1.2 million tonnes to 1.5 million tonnes.

### Agricultural Contribution to Economic Activity

The agricultural sector has always been, and still remains, the largest contributor to the GDP, but the share of the sector's contribution has been declining since 2006. In 2006, agriculture contributed 39.3 percent to the GDP, with services contributing 32.9 percent and industry 27.8 percent. By 2007, its share had dropped to 38 percent, reaching 34 percent in 2008. Subsequently, foreign exchange earnings from agriculture, which followed a declining trend over the period 2000 to 2007, increased slightly in 2008. The share of agricultural products in total foreign exchange declined from 52.8 percent in 2004 to 45.9 percent in 2005 and then 41.1 percent in 2006. In 2008, agriculture contributed 37.9 percent to foreign exchange earnings, representing a 1.0 percentage increase over the 2007 share of 36.9 percent (Table 53). This signifies that an increasing proportion of Ghana's foreign exchange is contributed by the non-agricultural sectors. But, the agriculture sector contribution is still very large for agriculture despite its decline.

### Major Agricultural Imports and Exports

Ghana's total agricultural imports in 2004 were valued at US$1,037.9mn. The top three imports were cotton lint (US$25.5m), milled rice (US$10.4m) and refined sugar (US$9.6m).

Ghana's two main agricultural exports are cocoa and timber products. In 2008, the total value of cocoa exports increased from U$1,103.2mn in 2007 to US$1,5195mn. Earnings from timber amounted to US$309m in 2008, from US249.0m in 2007. Earnings from other non-traditional agricultural exports amounted to US$187m in 2008. Ghana's major non-traditional exports are horticultural products (shea nuts, pineapple and yam), fish and seafood (tuna and frozen fish).

| Table 53: Foreign Exchange Earned by Agricultural Sector, 2000-2008 (US$m) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Year | Cocoa | | Timber | | Non-traditional | | Total | |
| | US$ | % | US$ | % | US$ | % | US$ | % |
| 2000 | 437 | 22.5 | 175 | 9.0 | 75 | 3.9 | 687 | 35.4 |
| 2001 | 381 | 20.4 | 169 | 9.1 | 82 | 4.4 | 632 | 33.9 |
| 2002 | 463 | 22.4 | 183 | 8.9 | 86 | 4.2 | 732 | 35.5 |
| 2003 | 818 | 34.9 | 174 | 7.6 | 138 | 6.0 | 1130 | 48.5 |
| 2004 | 1,071 | 39.2 | 212 | 7.7 | 160 | 5.9 | 1443 | 52.8 |
| 2005 | 908 | 32.4 | 227 | 8.1 | 151 | 5.4 | 1286 | 45.9 |
| 2006 | 1,187 | 31.8 | 199 | 5.3 | 203 | 5.4 | 1589 | 42.9 |
| 2007 | 1,103 | 26.3 | 249 | 6.0 | 197 | 4.7 | 1549 | 37 |
| 2008 | 1,502 | 28.5 | 309 | 5.9 | 188 | 3.6 | 1999 | 38 |

*Source:* Bank of Ghana.

## Agricultural Policy

The government implemented the second Food and Agriculture Sector Development Programme (FASDEP II), which articulated the contribution of agriculture towards overall objective of GPRS II, to achieve equitable growth and reduce poverty. Under the crop sub-sector, the Ministry of Food and Agriculture (MoFA) continues to supply quality seeds and planting materials to farmers, where possible, to boost increases in crop production. Indeed, the Grains and Legumes Development Board provides foundation seeds of maize, rice and sorghum to seed growers to ensure the production of good quality seeds. Other agencies supporting the sector include the Ghana Irrigation Development Authority (GIDA), which supports private-public partnerships in the provision of irrigation facilities, to boost all year round farming.

### Analysis of Value Chain of the Cocoa Sector[4]

In Ghana, cocoa cultivation is usually a family activity. Statistics indicate that farm sizes typically average less than ten acres in the Ashanti and Eastern regions and 10 to 20 acres on an average in the Western North and Western South regions. Ghana has approximately 720,000 cocoa farmers and these farmers harvest on average 300 to 400 kg of cocoa beans per hectare per year.

A number of reform measures have been instituted in the cocoa sector since the early 1980s, with the aim of arresting the falling cocoa production levels and also to make the industry more efficient. These reforms typically involved operational and institutional re-organisation in many areas of the cocoa industry.

One instance of the reform initiatives was when, in April 1999, the government pushed through a Cocoa Sector Development Strategy to guide the development of the cocoa industry. The strategy encompassed accelerated increases in farmers' share of the FOB export price and the introduction of private sector competition in the external marketing of cocoa. Within this strategy, the regulatory role was to be undertaken by the Cocoa Board (Cocobod), with the industry and quality control function remaining with the Quality Control Division of the Cocobod.

Under the Strategy, it was projected that cocoa production would increase from the then average of 335,000 tonnes to about 500,000 tonnes by 2004-05 and to 700,000 tonnes by 2009-10 and sustained at that level. The strategy is under review currently because the 2009-10 target is already within reach. Cocoa production more than doubled from 390,000 metric tonnes in 2000-01 to 680,780 metric tonnes of cocoa in the 2007-08 season (Table 54). Producer prices rose almost three-fold between 2000 and 2006, driven by the surge in world cocoa prices. Cocobod's medium term target now is to produce 1 million metric tonnes of cocoa by 2011, by using increased fertilisation, improved disease control and sustained enhancement of farmers' welfare.

### Market Structure[5]

Before the liberalisation of the sector, the cocoa chain was rather simply organised. The Cocobod was the main driver of the chain and responsible for external and domestic marketing. There was also only one (state-owned) buying company, the Produce Buying Company (PBC), which hired Purchasing Clerks (PCs) to buy cocoa in communities. Different subsidiaries of the Cocobod provided for the support and services the farmers needed. The Cocoa Marketing Company (CMC), a subsidiary of the Cocobod, sold all cocoa beans to buyers overseas, who were then responsible for the roasting, grinding and manufacturing of cocoa

| Table 54: Cocoa Production, 1992-93 to 2007-08 | | |
|---|---|---|
| Year/Period | Cocoa (000 tonnes) | Seasonal Change (%) |
| 1992-93 | 312.0 | 28.5 |
| 1993-94 | 354.7 | 13.7 |
| 1994-95 | 309.5 | -12.7 |
| 1995-96 | 403.9 | 30.5 |
| 1996-97 | 322.5 | -20.2 |
| 1997-98 | 409.4 | 26.9 |
| 1998-99 | 397.7 | -2.9 |
| 1999-00 | 436.6 | 9.8 |
| 2000-01 | 389.8 | -10.7 |
| 2001-02 | 340.6 | -12.6 |
| 2002-03 | 496.8 | 45.9 |
| 2003-04 | 736.6 | 48.3 |
| 2004-05 | 601.9 | -18.3 |
| 2005-06 | 740.4 | 23.0 |
| 2006-07 | 614.5 | -17.0 |
| 2007-08 | 680.8 | 10.8 |

Source: Ghana Cocoa Board.

products as well as the branding and marketing of products.

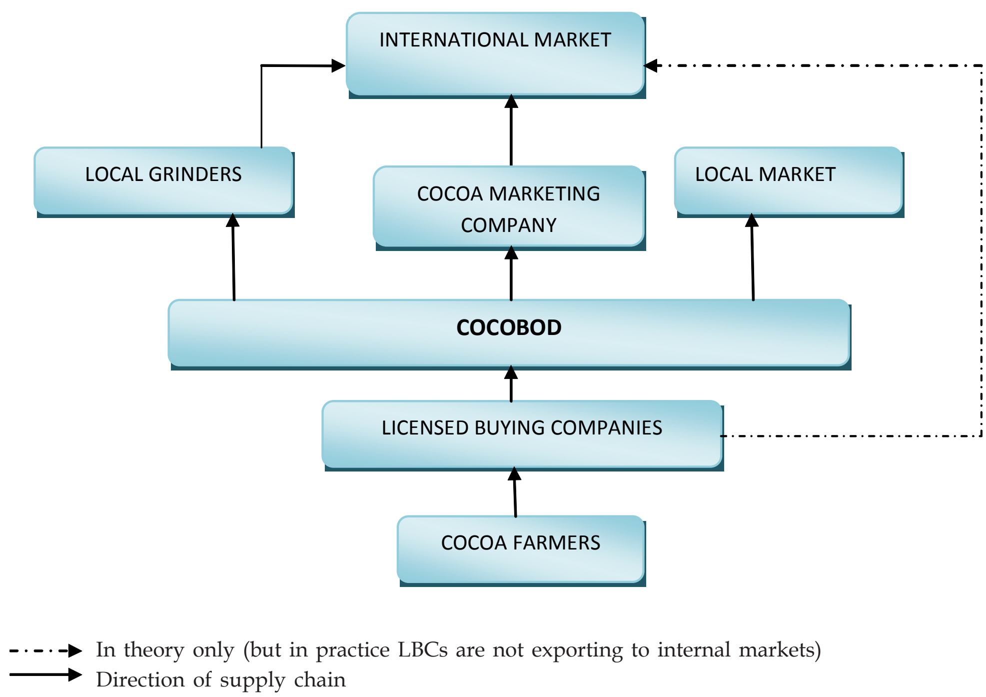
The Cocobod officially functions under the Ministry of Finance. The Cocobod continues to determine the producer price of cocoa and is still the sole exporter of cocoa beans. Through a system of forward sales, the Cocobod manages to pre-finance cocoa. Furthermore, this institution is responsible for regulating the internal marketing of cocoa.

## Supply Chain[6]

After harvesting, fermenting and drying, the cocoa beans are sold to Licensed Buying Companies (LBCs) or one of the Government-approved traders. The Licensed Buying Companies operate via recognised buying stations in the cocoa-producing regions. The traders give the farmers a minimum price which is determined by the Producer Price Review Committee (PPRC).

The second step in the cocoa supply chain involves Government inspections of the beans. The Quality Control Division of the Cocobod samples and weighs the cocoa at a price determined in advance by the PPRC. Next, the recognised traders transport the weighed and sealed bags to 'takeover points where the cocoa is sold to the Ghana Cocoa Board at a price again fixed by the PPRC.' By way of illustration, for the 2009-10 season, the producer price of cocoa was set at 2,400 Ghana Cedis per tonne, the buyers margin at US$193 per tonne and the rate for hauliers at US$78 per tonne. Finally, the Cocobod sells the cocoa to exporters or ventures that process the cocoa themselves (Figure 20).

**Figure 20: Cocoa Supply Chain**



Ghana exports about three-fourths to eight countries listed here according to the size of their imports: The Netherlands, Malaysia, the UK, Japan, Estonia, the US, Belgium and Turkey. The Netherlands is by far the largest importer of Ghanaian cocoa. The country has major cocoa grinding installations of Cargill and Archer Daniels Midland (ADM) situated in Amsterdam. There are signs that these two companies dominate the international cocoa grinding market, with well established production units in Ghana. The four main companies involved in grinding of the cocoa beans locally include three Ghanaian based companies – West African Mills, Cocoa Processing Company and Afro Tropic Cocoa Processing – and Swiss-based company, Barry Callebaut.

A wide variety of cocoa products including cocoa beans (whole or broken, raw or roasted), cocoa paste (whether or not de-fatted), cocoa powder, cocoa butter, fat and oil and cocoa shells) and the majority of these end products are exported, since there is only limited local consumption. In 2006, Ghana exported about 75,000 tons of cocoa paste, cocoa peels, cocoa butter and cocoa powder, of which three-fourths was cocoa paste. The total export of cocoa products increased to about 91,000 tonnes in 2008 (Table 55).

## Market Structure of Suppliers of Inputs of Cocoa and Maize

A major component of production cost in Ghana's agriculture is the high cost of inputs, which makes it difficult for the many poor smallholders who operate in the sector to operate efficiently.

### *Fertiliser Sub-sector*

The fertiliser sector is comprised of four private companies that together import essentially all the inorganic fertiliser that comes into the Ghanaian market. By order of market size, these companies are: Yara Ghana Ltd. (subsidiary of Yara International ASA) and its partner cocoa fertiliser company Wienco Ghana Ltd.; Golden Stork (subsidiary of SCPA Sivex International); Dizengoff Ghana Ltd. (subsidiary of Balton CP Ltd.); and Chemico Ltd. Interviews with officials of the Ministry of Food and Agriculture have not revealed any anti-competitive practices among these suppliers. Indeed, anecdotal evidence suggests that there is intense rivalry among these firms, especially when it comes to taking advantage of government subsidy programmes, and this may indicate a level of healthy competition in the sector.

However, the fact that there are only four firms in the sector (three of which are subsidiaries of huge international companies) and that entry into the sector requires prohibitively huge capital investment, hints that there may be cartel-like behaviour, though no direct evidence of this has been found. Indeed, the suppliers have formed an organisation to convey their concerns to the government and this body may be the means through which they collude.

### *Seed Sub-sector*

The 'formal' seed market in Ghana consists of a large number of small-scale private growers, certified by the Ministry of Food and Agriculture, to provide high-quality seeds. Unfortunately, however, unauthorised dealers have swamped the market with non-certified seeds, leading to poor uptake of the certified products. Allegedly, unethical businessmen are illegally packaging uncertified grains and presenting them to farmers as certified. According to the Seed Producers Association of Ghana (SEEPAG), about 90 percent of seeds in the system are non-certified. Thus, the major problem in the seed market is that of unfair trade practice, with uncertified 'counterfeit' seed dealers rendering the market in essence dysfunctional. Seed

**Table 55: Exports of Cocoa and Processed Products (2004-08)**

| Product | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|---|---|---|---|---|
| **Cocoa Total** (US$mn) of which: | 1,025.7 | 908.4 | 1,187.4 | 1,103.2 | 1,519.5 |
| **Cocoa Beans** (US$mn) | 984.4 | 818.5 | 1,041.1 | 957.7 | 1,257.4 |
| Volume (000 tonnes) | 620.4 | 536.9 | 657.2 | 531.7 | 545.9 |
| Unit Price (US$/tonne) | 1,586.9 | 1,524.5 | 1,584.0 | 1,779.5 | 1,787.2 |
| **Cocoa Products** (US$mn) | 41.2 | 89.9 | 146.4 | 157.0 | 262.0 |
| Volume (000 tonnes) | 21.1 | 42.9 | 78.7 | 75.5 | 90.8 |
| Unit Price (US$/tonne) | 1,950.2 | 2,097.0 | 1,860.2 | 2,077.9 | 2,886.5 |

*Source:* Bank of Ghana.

growers' associations are now urgently calling for more government supervision and regulation of the sub-sector to weed out unauthorised dealers. The Ministry met with seed growers in early 2010 for consultations as to how to go about reorganising the sector. A new seed law is being proposed to foster private sector involvement in seed marketing, so as to boost the uptake of the certified product. In addition, the number of inspectors is to be increased from 20 to at least 50, so as to weed out counterfeit dealers.

### *Cocoa Situation*

Prior to reforms in the cocoa sector, the Cocoa Services Division (CSD) used to have monopoly on the procurement and distribution of inputs. In 1995, the Ghana Cocoa, Coffee and Sheanut Farmers Association (GCCSFA) took over this responsibility. Besides Ghanaian suppliers of inputs, there are currently a few foreign-based ones.

The main aim of privatising input supply was to increase competition, which would ultimately lead to the availability of the right quantity of inputs at the right time, and, above all, effect a reduction in the price paid for inputs. However, the results were not as expected. The removal of subsidies, depreciation of the local currency (*Cedis*) and high interest rates resulted in an enormous rise in the price paid for inputs, which directly affected the rate at which these inputs were being used.

As a result, many farmers today are worse off, as inputs have become more expensive and extension services are not working effectively. The only ways of increasing the volume of cocoa is through intensification of cocoa production, rehabilitation of old cocoa farms and the planting of hybrid trees. All these require more inputs and farmers in general need more support and access to more credit (Laven, 2005, and others). In 2008, as a result of high relative prices of inputs, the prices of most commonly used fertiliser NPK 15-15-15 increased by as much as 67.2 percent, while Sulphate of Ammonia increased by a high 110.6 percent in the same period (Table 56).

## Role of Co-operatives in Inputs Supply

Farmer-based Organisations (FBOs) have increasingly become the main channels through which agricultural services and inputs are supplied to farmers. There are over 4000 FBOs functioning across the length and breadth of the country. For instance, Wienco (Gh)

**Table 56: Price of Selected Agricultural Inputs, 2001-08 (Ghanian Cedis)**

**(Average National Price)**

| *Input* | *2001* | *2002* | *2003* | *2004* | *2005* | *2006* | *2007* | *2008* | *% Change 2007-08* |
|---|---|---|---|---|---|---|---|---|---|
| **Fertiliser (50 kg)** | | | | | | | | | |
| NPK 15-15-15 | 10.83 | 12.35 | 14.94 | 18.86 | 20.21 | 20.24 | 21.72 | 36.31 | 67.2 |
| 20-20-0 | 10.90 | 11.77 | 15.56 | 21.34 | 20.41 | 19.91 | 20.05 | N.A | |
| 17-17-17 | 10.91 | 12.00 | 13.92 | 14.22 | N.A. | N.A. | N.A. | N.A | |
| 10-120-15 | 9.49 | 11.50 | 13.97 | 0 | 17.12 | N.A | N.A. | N.A | |
| Urea | 12.66 | 13.84 | 14.22 | 18.94 | 21.56 | 24.10 | 25.53 | 37.13 | 45.4 |
| Muriate of Potash | 8.90 | 13.88 | N.A. | N.A. | N.A. | N.A. | 22.66 | N.A | |
| Sulphate of Ammonia | 9.09 | 10.16 | 10.98 | 14.22 | 15.80 | 16.78 | 18.10 | 38.12 | 110.6 |
| *Other Chemicals (litres)* | | | | | | | | | |
| Round up | N.A. | 5.92 | 6.07 | 6.81 | 6.73 | 6.31 | 6.65 | 8.93 | 34.3 |
| Karate | N.A. | 7.07 | 7.87 | 7.90 | 6.92 | 6.90 | 8.85 | 8.28 | -6.5 |
| Actelic | N.A. | 9.16 | 10.78 | 11.00 | 14.88 | 11.03 | 17.77 | 11.35 | -36.1 |
| Dursban | N.A. | 7.00 | 7.89 | 8.83 | 8.86 | 7.54 | 7.52 | N.A. | |
| Atrazine | N.A. | 8.16 | 6.00 | 6.57 | 7.94 | 6.11 | 6.48 | N.A. | |
| Grammozine | N.A. | N.A. | 6.85 | 7.44 | 7.60 | N.A. | 6.00 | N.A. | |

N.A.. = Not Available    S*ource*: Ministry of Food and Agriculture.

Limited has established a scheme for cocoa farmers called Cocoa Abrabopa. Cocoa Abrabopa is simply an association of cocoa farmers who desire to raise the productivity of their farms. Farmers of these associations receive a package of hi-tech cocoa inputs sufficient to cover two acres of mature cocoa farm on credit, with the promise to repay the total amount of the credit facility after harvest. The Abrabopa package consists of six bags of 590 kg Asaase Wura Special Cocoa Fertiliser, agro-chemicals (16 bottles of 30 ml Confidor 200SL, 48 sachets of Nordox and 48 sachets of Ridomil) and a Matabi Pneumatic Sprayer, supported by extension education, all valued at US$219.

Wienco started the scheme in 2006 with 1,500 farmers and plans to expand to cover more farmers. The Centre for the Study of African Economies at Oxford University assessed the Abrabopa scheme and found it to be successful in increasing the production and incomes for farmers, with average farm output increasing by 20 percent and the increase in production equal to about three times the value of the loan.

## Marketing of Cocoa

Before the liberalisation of internal marketing of cocoa in 1992, a subsidiary of the Cocobod, Produce Buying Company (PBC), handled the domestic marketing of cocoa. Liberalisation was pushed through to improve the efficiency of the internal marketing system and encourage higher competitive producer prices. The price set by the government would serve as a function as the administrative/floor price. The liberalisation of internal marketing, however, allowed private Licensed Buying Companies (LBCs) to start buying cocoa as well. In order to avoid a monopoly position of one of the buyers, regulations were put in place to check speculative mergers and takeovers in the sector.

Currently, LBCs hire Purchasing Clerks (PCs) at the community level to buy the cocoa directly from farmers and/or their caretakers. Recently, the PBC itself was partly divested and its shares are now traded on the stock market. The government, the PBC's major shareholder, owns little more than 39 percent of the company's stock. The PBC holds around 35 percent of the market share and remains the largest cocoa buyer. However, it is interesting to note that competition is heating up in this enterprise as other companies seem to be grabbing market share.

There are only two locally-based foreign buyers: Armajaro and Olam, both owned by their parent companies in the UK and Indonesia, respectively. The government sets a yearly fixed "buyer's margin", which the LBCs (including the PBC) are supposed to adhere to. However, this margin has fallen over the last few years.

Some have insisted that the liberalisation in the domestic market has had negative impact on the quality of cocoa beans, since buyers are suspected of trying to compel farmers to sell their beans before adequate fermenting and/or drying have taken place (Asenso-Okeyere, 1997: 117). On the other hand, however, competition amongst the LBCs gives the cocoa farmer freedom to choose whom to sell to.

## Prevailing Anti-competitive Practices

One of the main goals of the liberalisation of the domestic market was to encourage price differentiation, as is common in any good competitive market. Unfortunately, it has turned out that LBCs do not compete with regard to the price they pay to the farmers. All LBCs pay the floor price as set by the government, even though there is a small number that pays something extra in the form of bonuses to the farmers. In spite of this uniformity in terms of price, buying companies have found other ways to ensure that farmers sell only to them. Each LBC has its own strategy, ranging from prompt payment to selecting their purchasing clerks (PCs) with the help of community representatives.

As part of the reforms, qualified LBCs were allowed to export part of their cocoa purchases with effect from October 2000. Officially, LBCs were allowed to export 30 percent of their domestic purchases, with the remaining 70 percent covered by the CMC. Here again, there were issues with quality of cocoa beans being exported by LBCs. Currently, none of the LBCs is currently exporting cocoa directly to international buyers, which means that the Cocoa Marketing Company (CMC) continues to handle all external marketing of cocoa beans, cocoa liquor and cocoa butter. The high volumes traded by CMC enable offshore borrowing to finance local purchases. Also, since the price is still determined before the crop is harvested, farmers are guaranteed reliable income (even if the price of cocoa in the world market falls in the course of the purchasing period) and subsequently the government is similarly assured its revenues from cocoa.

The question here is whether LBCs are incapable of exporting directly to create a more competitive market for the supply of cocoa products to the international market. Although the Cocobod has stressed that LBCs are incapable of taking over the role of CMC, a study by Laven (2005) gathered from interviews with a number of LBCs that there was a deliberate effort by the Cocobod to hinder their involvement in export activities. LBCs are reluctant to confront the Cocobod as they depend on the Cocobod for their license to buy cocoa. Most LBCs, as well as other stakeholders in the chain, emphasised during the interviews held with them that the stake of the Ghanaian government in cocoa is very high and this might explain their reluctance to let the private sector become involved in direct export of cocoa. There were also claims that weak governmental structures may also account for these lapses (Laven, 2005).

The government has a trustworthy reputation in terms of the quality of cocoa products exported to the international market and is quite hesitant to ruin this by liberalising the international market as well. The result is that despite the reforms, government control over the private sector is high and the level of competition among LBCs remains limited, due to their restricted resources. This rather repressive regime does not favour the development of a strong and motivated private sector that is able to take over the responsibilities of the public sector. LBCs should not be limited to the domestic market alone. LBCs should be supported and trained to be competitive in the international market if full liberalisation is done.

There are also allegations that the purchasing clerks for the LBCs use wrongly adjusted scales, to the detriment of farmers, and are also buying cocoa beans which had not yet been thoroughly fermented or dried, which affected the quality of the beans. In spite of these setbacks, one key benefit of the liberalisation of the domestic marketing of cocoa products has made it possible for a farmers' co-operative, Kuapa Kokoo Limited, to register and participate in the internal marketing of cocoa. Its cocoa is sold on the Fair Trade Market, which enables it to distribute the fair trade premium earned on the sale of its cocoa to its member farmers.

The main differences between experiences in Ghana in comparison with other countries are that in Ghana the pricing and the quality control system remained intact; farmers (still) get a stable price and receive a premium price for cocoa beans on the world market.

**Table 57: Identifying Main Players in the Supply Chain (domestic market)**

| | Company | Function and Mode of operation |
|---|---|---|
| 1 | **Produce Buying Company, Ghana Limited** | Produce Buying Company is a 100 percent owned subsidiary of Ghana Cocoa Board and the single largest buyer of cocoa for the domestic market. The company operates throughout the cocoa buying districts of Ghana.<br><br>Produce Buying Company purchases cocoa beans from farmers and stores them in purpose-built sheds at village/society level, cart these to collection points for inspection, grading and sealing by the Cocoa Board's Quality Control Dept. |
| 2 | **Wienco Ghana Limited** | Wienco, one of the major input providers, is actively involved in educating farmers on the effective use of input and the importance of good farm practices. Wienco (Ghana) Limited is an agricultural company specialising in importation and distribution of fertilisers and agro-chemicals. In Ghana, the name Wienco is synonymous with fertilisers. Since the privatisation of fertiliser import by the Ghana government, Wienco has been the biggest importer of fertiliser into the country. Wienco always has over 25 types of fertiliser all year round in stock. |
| 3 | **Barry Callebaut Ghana Limited** | Barry Callebaut Ghana Limited was incorporated on August 5, 1998. The company obtained the Free Zones Enterprise Licence to act as a free zone enterprise as of November 13th, 1998. On November 1st, 2001, the production plant was officially commissioned. BC Ghana Ltd. processes cocoa beans into roasted nibs and cocoa liquor for export. Our main raw material, cocoa beans, is wholly of Ghana origin. Our main markets are in France, Belgium, Italy, Poland, Switzerland, US, Canada and Asia. |
| 4 | **Cocoa Processing Company Limited (CPC)** | A former subsidiary of the Cocobod, CPC is now privatised, but the Cocobod is still a major shareholder. It is one of the four processing plants in operation in the country. |

The gradual scale of the reforms made it also possible to prevent unprofessional buyers coming into the scene. Local buyers need a licence before they are allowed to buy cocoa from farmers. The government has remained the sole exporter of cocoa, which has prevented international traders from getting involved in the marketing processes. Although the gradual scale of the reforms has had a relatively positive effect on the position of cocoa farmers in the chain, the reforms have not resulted in an 'optimal mix between co-operation and competitiveness'. In Ghana there are only few farmers who work together in formal farmer organisations and competition among farmers is absent, as the introduction of competition among buying companies has not resulted in price-differentiation.

Marketing of cocoa products remains a critical and sensitive aspect of the industry. Cocoa Marketing Company (CMC) remains the sole body to sell Ghana's beans abroad. Although this monopoly is geared towards ensuring cost-effectiveness and retaining the ability to obtain good prices and stimulate the payment of remunerative prices to farmers, there are doubts as to whether these remain the main reasons for the Cocobod restricting LBCs from entering the international market.

## The Maize Economy of Ghana

Maize has been cultivated in Ghana for several hundred years. After being introduced in the late 16th century, it soon established itself as an important food crop in the southern part of the country. At quite an early stage, maize attracted the attention of commercial farmers, but it never achieved the economic importance of traditional plantation crops, such as oil palm and cocoa. However, over time, rising world commodity prices and the use of maize as an alternative form of energy in the production of bio-fuels has served to strengthen interest in commercial food crops, including maize.

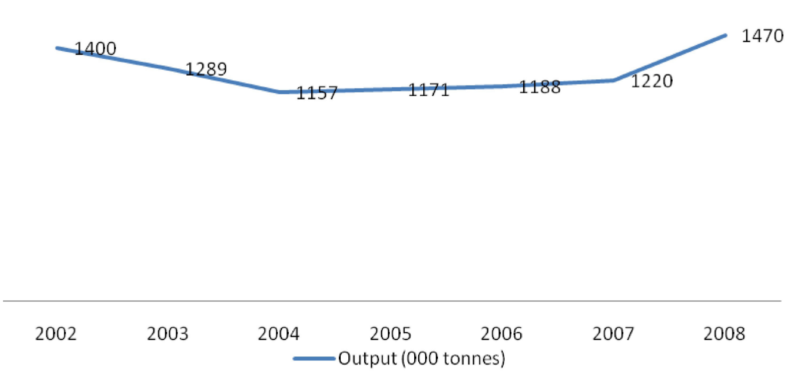
Today, maize is Ghana's most important cereal crop. It is grown by the vast majority of rural households in all parts of the country, except for the Sudan savannah zone of the far north. As in other African countries, in Ghana, maize is cultivated by both men and women. What distinguishes Ghana from many other countries, however, is that in Ghana women frequently manage their own maize fields, contribute an important proportion of the overall labour requirements and exercise complete discretion over the disposal of the harvest.

In spite of its popularity, production of maize has shown little improvement in almost two decades (Figure 21). Among other cereals produced in Ghana such as sorghum and millet, maize recorded the least percentage increase in output from 2007 to 2008. The production of maize increased by 20.5 percent in 2008 over the previous year's production figures, while sorghum recorded a whopping 133.5 percent increase in output over the same period. Millet increased significantly by 71.7 percent and milled rice performed better and recorded a percent change of 63.2 in 2008. Yield per hectare has averaged 1.6 tonnes in the past six years, increasing slightly to 1.74 tonnes per hectare in 2008.

## Suppliers of Inputs of Maize

Distribution bottlenecks and price disincentives discourage use of improved seed. Certified seed accounts for only 6-7 percent of total seed maize requirement in Ghana, despite awareness created by extension personnel. Studies have shown that the adoption of improved seed varieties has been hampered by lack of a well-developed input supply system. The recently privatised agricultural input supply system is struggling to establish itself and, as a result, seed distribution outlets are scarce in many areas. Again, the rising cost of certified seeds is seen as a major factor militating against increased utilisation. It is estimated that certified seeds cost about three times more than farmers' own retained seed valued at the average farm gate price.

**Figure 21: Level of Production of Maize, 2002-08**




Source: Ministry of Food and Agriculture.

## Market Structure

Maize is, by far, the most important cereal crop in Ghana, exceeding total output and acreage planted for rice, millet and sorghum put together. Though the crop is adapted to nearly all the agro-ecological zones of Ghana, production is concentrated in the forest-savannah transition zone comprising the Ashanti, Brong Ahafo and Eastern Regions. Because it is not an important staple in this 'maize belt', it is grown mainly as a cash crop, but farm holdings are small, between 1-2 hectares, with only about 15 percent of maize farmers cultivating more than two hectares. Consumption is concentrated in the southern regions, particularly in Greater Accra, where it is a traditional staple. This tends to magnify its perceived significance as a food security crop.

## Market Structure of Customers (Downstream)[7]

### *Consumption*

It is estimated that about 70 percent of maize is used in traditional food preparations (e.g., kenkey) and the rest for seed, animal feed, industrial purposes and exported through informal channels to Togo, Burkina Faso and to Niger. It is also estimated that approximately 50 percent of the output is retained on farm and the remainder is released into the market. The poultry industry is the most important non-food user of maize. Estimating maize consumption by the sector is, however, hampered by lack of reliable data on the poultry population in Ghana. Imported yellow maize is also used widely in the poultry industry. Utilisation of local maize and other feed ingredients is often hampered by irregular supply, inconsistent quality and high carrying costs, leading to poultry farmers relying on imported maize.

Industrial utilisation of maize is currently very low, but there are indications of significant growth potential. Nestlé (Gh) Ltd. has been using between 350 and 500 tonnes of maize per annum for production of infant food, but currently buys from a single producer (Ejura Farms) because of high quality requirements, particularly with regard to aflatoxin.

Two of the country's three *brewery groups* have recently begun to use locally manufactured maize grits and the other company is believed to be considering the possibility. One brewery is presently using 20 tonnes of grit per week, which translates to 34.5 tonnes of maize per week or 1,656 tonnes per annum. In the industry, it is generally accepted that it is possible to substitute 21 percent of malted barley with maize grits and sugar without perceptibly change in flavour. If this occurred, demand for maize grits could rise to 3,400 tonnes per annum (or about 5,800 tonnes of maize). Breweries stand to make major savings by using maize grits: the current cost of imported malt is around US$429 per tonne (including 10 percent import duty) delivered to Kumasi, whereas the cost of local grit cost is about 60 percent of this. The brewery market is of particular interest to Ghanaian farmers, because of its rapid rate of growth.

## Market Supply Chain

The maize supply chain is made up of a dominant traditional (informal) sector, consisting of a large number of small operators and a modern sector handling not more than 40,000 tonnes per annum. The traditional chain supplies the household and catering sectors, while the modern sector mainly sells to poultry farmers and industrial end-users. Informal traders make extensive use of public markets, but their use of mechanical dryers is negligible and maize sold may have up to 19 percent moisture. Modern traders, on the other hand, tend to handle dry grains with low aflatoxin levels and contracting is a growing phenomenon in this sub-sector.

The informal chain starts with assemblers of various sizes, (ranging from those handling 20 kg to 20 bags), who buy directly from farmers. They finance their activities mainly from own resources and sometimes with advances provided by other traders. Buying from these and also directly from farmers, secondary assemblers ship produce to central supply (wholesale) markets like Techiman and Nkoranza. The produce weight at primary assembly points ranges from 135 kg per bag for dry maize to 165 kg per bag for wet maize. At the central supply markets, standard weights average 130 kg per bag.

## Unfair Competition

Standard weight measures are usually not used, the measure being somewhat subjectively based on type and age of sack used. Loaders, therefore, play the additional role of being arbiters in weight disputes. This gives a group of loaders' leaders considerable power in the market, with their fees reflecting not only loading charges but also their 'commission as agents' of traders.

### *'Market Queens' Facilitate Trade in the Face of Constraints*

The bulk of produce traded in central supply markets end up in wholesale markets in southern Ghana and in export markets in the sub-region. Il-liquidity and lack of basic handling and storage facilities at markets are the main problems in the maize trade. In the face of these problems, 'market queens' have emerged as the most influential group of traders in the southern wholesale markets, dominating trade in local produce with their role, including:

- providing informal producer finance (to meet both production and consumption needs of farmers - often tied to produce supply/price agreements – exercising first option to buy produce);
- providing advances to itinerant assemblers (bringing supplies from the maize belt) including paying off immediate commitments to transporters and acting as one-stop 'clearing' point for them;
- providing suppliers' credit to small retailers; and
- controlling 'storage' facilities at markets.

The key to their power (including the ability to control supplies at markets and influence producer prices) lies in the long-term relationships they maintain with farmers, assemblers and retailers. The cost of losing this relationship appears sufficient to discourage other players from exploiting more beneficial terms from new market entrants, who cannot guarantee regular supply or market.

Until 1990, the Ghana Food Distribution Corporation (GFDC) dominated the modern sector of the maize trade, but the corporation is virtually bankrupt and has ceased operations at most of its locations in the maize belt. The 1990s also saw the emergence of a group of new entrants, most of them with professional background. These traders often have integrated operations and have relatively better access to formal credit and trade using supply contracts with poultry farmers, other industrial users like the breweries and relief agencies.

The growing significance of contracting and the entrance of more modern traders seeking to apply trade standards suggest that it may be possible to reduce transaction cost, by encouraging trade by description, rather than by sight, as is currently the norm. Further reduction in distribution costs is possible as certain links in the existing chain, which add to the build up of costs, e.g., fees/commission for loaders and council levies, can be avoided or minimised. The share of the market controlled by this group can, however, experience significant growth only with improvements in drying and warehousing facilities and increased access to trade finance.

## Conclusion

Ghana can be described as a low-yield, high-cost maize producer. Factors contributing to this situation include low rates of utilisation of productivity-enhancing inputs like high-yielding seed maize varieties and fertiliser. Lack of drying and storage facilities increase post-harvest losses, raise distribution costs and create problems of supply and quality uncertainty that discourage industrial utilisation of maize on a significant scale. Distribution costs are increased further by a marketing network dominated by a large army of under-capitalised traders using variable weight and quality standards which impede the development of efficient trade by description (rather than by sight).

Consequently, local maize production is only competitive in the face of high tariffs. This, in part, explains why production of yellow maize, which is less protected than the white maize (because tariffs tend to be waived by MoFA), has not really picked up in the country.

The potential to turn this situation around, and quickly too, clearly exists. There exists technical capacity to develop high yielding seed maize and private distribution systems for agricultural inputs (especially for fertiliser and seed) have been developing despite disturbances arising from ad hoc interventions by the government.

Production is becoming increasingly concentrated in the 'maize belt', where such trends as growing intensification of production, awareness of marginal returns to use of fertilisers and evolving cash-rent tenure arrangements favour rising productivity. Subsidisation or public distribution of fertiliser is not sustainable and should be avoided. The government should investigate the financial and economic feasibility of local blending of fertilisers and encourage private operators to invest in this. Private drying and storage operations are emerging, providing services that the moribund GFDC is strategically well-placed to offer.

A modern maize trade sector is also emerging, with the potential to bring about improvements in the trade, while the demand from industrial users is growing and will do so even faster if supply chain and quality problems are reduced.

# *Conclusion and Recommendations*

Ghana is a promising country in SSA, which has made significant advances in recent years. At this stage of its economic development, there is the need to put in place measures to foster the emergence of a competitive environment in which consumers' rights are protected. The first step in this process is the collection of data and information about what goes on in the different key sectors and this research project is aimed at doing exactly this.

A number of possible instances of anti-competitive practices were found in a range of sectors including, *inter alia*, beverages, cement, cargo handling and the utilities. In all these cases, the ill-effects on consumers consisted of having to pay higher prices and accepting lower quality than would have been the case with more (and fairer) competition. The prevalence of anti-competitive practices can be ascribed to lack of adequate governmental regulation and civil society action.

The government has, for the most part, been lax in preventing the establishment of monopolies and taking stringent action when any unfair practices are revealed. CSOs, for their part, do not seem to have placed high priority on tackling competition concerns and pushing for consumer protection. Anti-competitive practices have also resulted from the privatisations that took place after the implementation of the Economic Recovery Programme (ERP) in the early 1980s. Several previously public monopolies were effectively transformed into private monopolies, which tend to be less concerned about protecting the welfare of consumers.

The major step in addressing competition concerns in Ghana will be the passing of the pending Competition Bill into law. Following this should be the establishment of a well-resourced and legally empowered Competition Authority. The fact that the new Minister of Trade and Industry seems quite keen on pushing for the Bill's passage is very encouraging. Efforts must be sustained to make sure that other pressing concerns of the government do not push this issue to the backburner. A key part of this process will be impressing on the public the benefits that will come from competition reform and the losses they will continue to make if the *status quo* is maintained. Results from our perception survey suggest that this will involve not only educating the public but also educating the media to identify abuses and produce well-thought-out stories that accurately detail the ills of the situation.

Like most countries in SSA, agriculture makes the biggest contribution to national income and thus it is important to zoom in on what goes on in this sector. Efforts made to streamline the sector and reducing competition abuses will be in good stead. A few possible competition abuses were identified by looking at the value chain of the two most important crops to the Ghanaian economy, cocoa and maize. These included, among others, cartel-like behaviour in the fertiliser sub-sector and collusion among LBCs in the buying of cocoa. However, there is the need to do further in-depth research (outside of the scope of this project) to catalogue in detail the behaviour of key players at each stage. This will not be easy to do, because their operations are deeply shrouded in secrecy and there might be vested interests to overcome.

Overall, this project has been eye-opening and the comprehensive results should be crucial in pushing forward the agenda of competition reform. It is now left to advocacy to convince the policymakers and the public that reform is desirable and will bring benefits to all.

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# *Endnotes*

1 Hutchful (2002) attributes this to the often contradictory and poorly co-ordinated ERP. The author highlights especially the substantial fall in the share of agriculture in public expenditure and, in particular, the abolition of fertiliser subsidies and the decline in access to credit.

2 At the time of writing this report, Ministry of Trade and Industry informed that a consultant has been hired and the consultative processes of drafting the policy are already underway.

3 Data for Section 8.1 was largely obtained from issues of ISSER's State of the Ghanaian Economy Reports (SGERs).

4 Information for Section 8.3 was largely taken from Cappelle (2009), an Oxfam International Research Report.

5 Section 8.3.1 was taken from Laven (2005).

6 Information on this sub-section was taken from Cappelle (2009).

7 Information on this sub-sector was taken from Onumah, G. and J. Coulter (2000).

# Chapter 4

## *State of Competition in Nigeria*

# *Executive Summary*

This report is a product of a research undertaken as part of the project entitled "Strengthening Constituencies for Effective Competition Regimes in Select West African Countries" referred to as 7Up4 Project.

The Research was conducted by Consumers Empowerment Organisation of Nigeria (CEON) on the prevalence of anti-competitive practices and their ill-effects, especially on consumers in Nigeria. The research findings revealed factors that give rise to anti-competitive practices in the market and to find the best way forward to purge those factors. Also, constraints that are prevalent in Nigeria and affect competition reforms were analysed.

Further, an in-depth analysis of competition in the mobile, telecom, cement and electricity sector was done. Some of the findings revealed possibility of a cartel among the mobile telecom market players in Nigeria. In the cement industry, WAPCO Lafarge controls the largest share in the market. The cement market in Nigeria is regionally segmented among the competitors, due to high haulage costs, given the lack of basic transport infrastructure such as rail and good roads. While Lafarge WAPCO dominates the south-west markets, with the exception of Lagos, Ashaka Cement controls sales in the north-eastern region of the country. Both Benue Cement Company (BCC) and Obajana Cement Company have their sales concentrated in the north and central markets (both part of the wider Dangote Group), UNICEM Cement Company has its sales concentrated in the southeast and Cement Company of Northern Nigeria (CCNN) is strategically positioned to serve the north-western markets.

Analysis of competition in the Nigerian electricity sector revealed that the sector is still controlled by the state monopoly. The reform in the sector has led to the unbundling of former NEPA into six electricity power generation companies, 11 distribution companies and one transmission company and is managed by the PHCN. Presently, PHCN is the main electricity power generating, distribution and transmission company.

A perception survey and analysis on the level of competition in Telecom, Power, Commuter Transport and Retail (consumer goods) sectors/markets was done also. Another major component of this research work was a detailed assessment in the agricultural product market in Nigeria, in order to understand the interface between the lack (or weak level) of competition in the rice and cassava products and its negative impacts on producers (small and marginal farmers) and consumers in Nigeria.
Some of the 'key findings' contained in various sectors of the Nigeria country report are elucidated below:

### *Progress Made towards a Competition Law*

- The Government of Nigeria is yet to adopt a competition law for the country. Though efforts have been made on several occasions to adopt legislation (with development of draft competition Bill), such attempts have not been successful. There seems to be lack of consensus among different segments within the Government about the need for a competition law for the country and the situation of the competition commission.

- The former President showed his keenness on competition reforms, when he presented a Bill on Competition and Consumer Protection to the Federal Executive Council in April 2009 for approval and eventually sent it to the National Assembly for enactment.

### *Political Economy Constraints in Implementing Competition Regimes*

- There is a lack of understanding/awareness in the political circles of the benefit for the economy/country from a competition law. Advocacy efforts towards adoption of a competition law should articulate the pro-poor benefits from a competition legislation upfront, especially for sensitising policymakers.

- There is a possibility of hostility from large business (state monopolies that were privatised at the beginning of the privatisation process), which are worried that the competition law is designed to weaken their position in various (sectoral) markets.

### *Interface between Competition and Sector Regulation*

- The interface issue has not been adequately treated in the draft Competition and Consumers Protection Bill (2009). When the Act comes into force, it should enable proper consultation and co-operation between the competition agency and the sectoral regulators for the promotion of competition in specific sectors.

- The need for co-operation between the sector regulators and the competition authority is particularly necessary, given that most of the sector regulators have also been entrusted (as per provisions in their respective sector legislations) with the function of promoting competition in the sector markets (especially in securities, telecoms and electricity sectors). Confusion and inter-agency turf issues may emerge, if the *modus operandi* of such co-operation/co-ordination is not addressed in the final version of the competition law.

### *Existing Anti-competitive Practices in the Nigerian Economy*

- Allegations of a cartel in the cement industry and downstream petroleum sectors.
- Reported/documented cases of anti-competitive practices bordering on the issues of consumer welfare, product availability, high cost of products and poor services quality among others.

### *Perception Analysis*

- There is a low-level of awareness among government agencies and business community about competition issues in Nigeria. However, there is a fairly high level of awareness among all the three groups of stakeholders about the existence of a consumer protection law and agency in Nigeria.
- Strong lobbies (vested interests) and high level of corruption are perceived as factors that could impede enforcement of the competition law.
- Anti-competitive practices (violation of competition) are frequently reported in the media.

### *Competition Issues in the Agriculture Sector*

- Nigerian farmers feel that the price of rice seeds is fairly high in the market. This is a possible reason that a majority of them rely on seed stocks from their previous harvest, rather than opting to buy from certified companies (dominated by a government seed company). This could be attributed as a reason for the decline in productivity of domestic rice in the country. The situation in the cassava crop market is not much different.

- The recently promulgated "National Food Security Programme' (2008) focuses on the need for improvement in productivity of the farm sector, through market-based interventions.

# Characteristics of the Macro-economy

## Geographical Location, Population and Other Characteristics

Nigeria, commonly regarded as the most populous black nation, is situated in West Africa. The country sits on a land mass of 923,768 square kilometres, situated between Longitude 3º and 15º East and Latitude 4º and 14º North. The longest distance from East to West is about 767 kilometres, and from North to South is 1,605 kilometres. The country shares common boundaries with Cameroon on the East, Republic of Benin on the West, Niger Republic and Chad on the North and the Gulf of Guinea – a vast coastline of the Atlantic Ocean measuring about 800 km on the South.

The topography from the southern coastland to the north consists of lowlands, plains, highlands and plateaux. The coastal and Niger delta areas are typical lowlands, extending about 60 km into the hinterland and sitting about 20 metres above sea level. More lowlands occur in the undulating plains of the western part of the country, about 100 metres above sea level. The Sokoto plains, which are characteristically uniform, are about 150 metres above sea level and the Chad basin is located in extreme north-east, with a large depression into which a number of rivers flow. The highlands are more prominent in the Jos plateau area, the Mandara Mountains and the Adamawa highlands. The last two are at the extreme north-east, with each standing about 1,200 metres above the Niger basin. The Obudu plateau is found in the south-east (Cross River State, specifically) and is about 1,200 metres above sea level.

There are two important rivers – the River Niger, flowing from the north-west and its major tributary and the River Benue, flowing from the north-east to form a confluence at Lokoja, capital of present day Kogi State. The River Niger continues its flow towards the Atlantic Ocean, breaking into a network of tributaries consisting of streams, creeks and lagoons, forming a great delta, called the Niger delta trough, which it drains into the Atlantic Ocean. The Niger delta measures about 450 km on the coastline, accounting for about 60 percent of the entire length of the country's coastline. Nigeria is endowed with a number of other important rivers. In the south, you have Ogun, Sghasha, Benin, Imo, Cross River and all these drain into the Atlantic as estuaries. In the North, the notable Rivers are Kaduna and Sokoto, draining into the River Niger, while the Shari, Hadejia, Komadugu, Yobe and Yesdaram rivers flow into the Chad basin.

Nigeria has two main tropical vegetation zones – the rain forest zone and the savannah zone. These two reflects the amount and spatial distribution of the rainfall in the country.

The forest zone occurs in the south, starting with the mangrove swampland along the coast to tropical rain forest in the hinterland. The savannah is located towards the north, starting with the guinea savannah in the middle belt, the Sudan savannah in the most part of the north and Sahel, a semi-arid vegetation zone in the extreme north. This extreme northern part of the country suffers from the encroachment of the Sahara Desert, while gully erosion is a major challenge in the southern part, especially the south-east. Forests account for about 10percent of the entire land mass, although rapid deforestation has meant the reduction of Nigeria's forest by 50 percent over the last 15 years. The large forest resources create a rich source of biodiversity that serves as a reservoir of the pharmaceutical industry and source of genetic materials for improving the nation's food production potential.

The climate condition is marked by two alternate seasons, wet marked by intermittent rainfall and dry marked by hotness and sometimes dry north south trade wind (popularly known as Harmattan). The wet/rain season lasts from April- October, while the dry season lasts from November through March. There are some variation and seasonal patterns. The trend moves from the south, which is characteristically humid with substantial rainfall, to the north, which is mostly dry, with little rainfall. Overall, there is a vast range of arable land in both the northern and southern parts of the country, with the possibility of year-round farming, a potential which, if properly harnessed, would give the country a comparative advantage in agriculture.

The 144.7 million population is made up of about 374 pure ethnic stocks. Three of them, Hausa, Ibo and Yoruba are the major groups and constitute over 40 percent of the population. In fact, about 10 ethnic linguistic groups constitute more than 80percent of the population: the other large groups are Tiv, Ibibio, Ijaw, Kanuri, Nupe, Gwari, Igala, Jukun, Idoma, Fulani, Edo, Urhobo and Ijaw.

Each ethnic group has its own identifiable way of life, mode of dress, values, food and food habits, cultural predispositions for members to do or not to do certain things and its shared mechanisms or patterns of socialising of its members.

Each group also has its systems of marriage and family organisation which are affected by the system of descent and, hence, the domination or parity of men and women in their societies.

Nigerians from different ethnic groups appreciate the diversity of cultural dances, dress forms, food, handicrafts, drumming, songs, farm implements and practices and other traits. For example, many Nigerians eat *eba*, pounded yam, *'amala'and* even *usi* (starch) and *akpu* that do not traditionally belong to their cultures. They enjoy the Efik 'Edikang-lkong', the Hausa and Fulani *tuwo*, the *Urhobo ukodo* and the *lgbo* pepper soup.

## GDP, Economic Structure and Other Characteristics

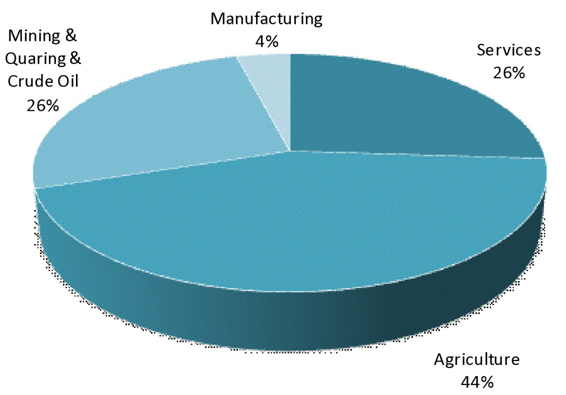
The Nigerian economy is run under medium-term economic development and poverty reduction strategy developed under the past administration of Olusegun Obasajo – the National Economic Empowerment and Development Strategy (NEEDS). The core policy objectives of NEEDS include value reorientation, poverty alleviation, wealth creation and employment generation[1]. The first stage of implementation (2004-2007) has elapsed and opinions vary as to the gains derived.

Nigeria's Gross Domestic Product (GDP), as at 2006, amounted to US$103.3bn (see Table 58). The agriculture sector, which contributed 47.02 percent to the GDP and employed about 70 percent of the labour force, comprises of crops, livestock, forestry and fishing. The mining and quarrying sector accounted for 24.95 percent of the GDP. Moreover, the manufacturing sector contributed 4.43 percent to the GDP and 17.63 percent of the GDP constituted the services sector, which includes Transport, Communication, Utilities, Hotel and Restaurants, Finance and Insurance, Real Estate and Business Services and Producers of government Services. Though the government is directly involved in direct productive activities at both the industrial and services sectors, but it concentrated on the provision of major infrastructural facilities and the petroleum sub-sector.

The per capita income in Nigeria in year 2005 was about US$640. The Nigerian economy is divided into two parts, namely, (i) the middle-income oil-producing and (ii) the non-oil producing Nigeria. The country is ranked 158 out of the 177 countries covered by the United Nations Development Programme (UNDP) Human Development Index (HDI). About 70 percent of the Nigerian population lives on less than US$1 per day; the literacy level is 69.1 percent; about 30 percent of Nigerian children are malnourished; the infant mortality rate is 194 per 1,000 live births and life expectancy at birth is 46.5 years.

The Nigerian national currency is Naira (N). Multiple foreign exchange markets are being maintained by the Nigerian government. These markets are: the

**Figure 22: GDP Contribution by Sector**



| Table 58: Major Features of the Economy | | |
|---|---|---|
| | **2005** | **2006** |
| General | | |
| Population (2006 census) | | 144.7 million |
| Population Annual Growth Rate | 2.2 | |
| GDP (current US$) | | 103.3 billion |
| Per capital Income (current US$) | | 640.0 (Atlas Method) |
| Real GDP Growth Rate (%) | 6.51 | 6.03 |
| Oil GDP Growth Rate (%) | 0.50 | |
| Non-Oil GDP Growth Rate (%) | 8.6 | |
| *Of which Agriculture (%)* | 7.1 | |
| Consumer Price Index | 13.5 | |
| Foreign Reserves (US$) | | 41.96 billion |
| Inflation (%) | | 8.5 |
| Life Expectancy | 46.5 years | |
| Literacy (%) | 69.1 (age 15+) | |
| HDI Rank | 158 | |
| Monetary Sector | Percent | |
| Average Exchange Rate (N/US$) | 132.15 | |
| Minimum Rediscount Rate | 13.0 | |
| Treasury Bill Rate | 12.2 | |
| Savings Deposit Rate | 3.7 | |
| Prime Lending Rates | 17.8 | |
| GDP by Sector | Percent of GDP | |
| 1. Agriculture | 43.67 | 47.02 |
| 2. Manufacturing | 4.04 | 4.43 |
| 3. Mining & Quarrying (and Crude-Oil) | 26.01 | 24.95 |
| 4. Services | 16.20 | 17.63 |
| Visible Trade (Naira Million) | | |
| Import | 2,479,322.50 | 2,528,085.97 |
| - Oil Sector | 182,754.78 | 221,086.37 |
| - Non-oil Sector | 2,296,567.72 | 2,306,999.60 |
| Exports | 6,372,052.44 | 5,752,747.74 |
| - Oil Sector | 6,266,096.62 | 5,619,152.88 |
| - Non-oil Sector | 105,955.82 | 133,594.86 |

*Source: (i) World Development Indicators Database, World Bank, 2008; (ii) World Development Indicators Database, World Bank, 2007; (iii) Human Development Report Statistics, UNDP, 2007; (iv) CBN Annual Report & Statement of Accounts Tables for the year 2007.*

official Dutch Auction System (DAS), the largest foreign exchange market, a sealed bid multiple auction used by the Central Bank of Nigeria (CBN) in transaction with bureau de changes (BDC); the inter-bank market, which allows for freely negotiated foreign transactions amongst authorised dealers and through which foreign exchange is obtained from non-CBN sources; and the non-official market.

Nigeria gained her independence from Great Britain on the of October 01, 1960. This marked the end of an era of nationalist struggles fought on the intellectual and political fronts. It also marked the beginning of a new era of hope, of lofty aspirations of nationhood. The country already had a three-region structure before independence – the Northern Region, the Western Region and the Eastern Region. These Regions were autonomous to a large extent, including in the management of resources and development planning[2], with the Central Government manning the ship at the centre. The emphasis was on fiscal federalism, marked by resource autonomy among the constituent regions that pay taxes to the Federal Government. There was fairly equal opportunity for all in the new independent state. Even though politics and political parties at this stage had some regional flavour, there seems to be a general consensus that government policy was generally understood to be for the common good, rather than selfish end.

The incidence of ethnic conflicts or undertones in the Nigerian socio-political space dates back to the period of colonialism. Like in most other countries with fragile inter-ethnic harmony, the economy was dominated by agricultural production, with the famous groundnut pyramids in the North, the palm oil plantations in the East, Cocoa in the West and rubber in the Mid-west. These and many more products, as well as the rich solid mineral deposits found in different parts of the country, formed the major foreign exchange earner and driver of the GDP of the country. Trading activities were dominated by foreign giants like the UAC, John Holts, UTC, etc., with the local businessmen acting as agents and intermediaries between these companies and the local producers. The Government participated actively in economic activities, owning companies and produce marketing boards that were active trading concerns.

# *Government Policy that Impinges on Competition*

## Introduction

This Section deals with government policies that impinge on competition. Though there is no competition law in operation in Nigeria, there are lots of government policies and sectoral laws that deal with issues of competition in the Nigerian economy. Some of these policies treated in this Section are: National Economic Empowerment and Development Strategy – NEEDS, NEEDS-II and the Seven-Point Agenda of President Yar'Adua, Structural Adjustment Programme (SAP), Trade Policy, Industrial Policy, Agricultural Development Policy, Privatisation Policy, Industrial Policy, Labour Policy and Consumer Protection Policy, to mention a few.

## Development Policy

Nigeria's reform programme, implemented under the Administration of President Yar'Adua, is based on the country's home-grown poverty reduction programme, the National Economic Empowerment and Development Strategy (NEEDS and NEEDSII). It focuses on addressing the structural and institutional weaknesses of the economy, tackling corruption and overhauling the public expenditure management.

The broad goals of NEEDS, NEEDSII and the Seven-Point Agenda are poverty reduction, wealth creation and employment generation, through the development of an enabling environment for growth.

NEEDS is a medium-term economic strategy covering the period 2003-2007. It has been described as Nigeria's plan for prosperity, the vision for a greater tomorrow. Within that perspective, NEEDS focuses on four key strategies: reorienting values, reducing poverty, creating wealth and generating employment. These key visionary goals are, in turn, built into three major macroeconomic frameworks, namely, empowering people, promoting private enterprise and appropriately reordering approaches to governance. The overall long-term vision of NEEDS includes social and economic transformation of Nigeria on a sustainable and competitive basis.

The following are, therefore, the strategies and instruments for achieving the NEEDS objectives:

- Drastic reduction in domestic cost structure, especially infrastructure cost, to enhance a competitive investment climate necessary for production and exports;
- Aggressive promotion of exports and "economic diplomacy";
- Harmonisation of tariffs with the West African Economic and Monetary Union (UEMOA) and others to create the common external tariff (CET);
- Continuation of specific systems of import restrictions in particular circumstances to protect industries and critical sectors against unfair competition;
- Rationalising and strengthening institutions responsible for trade facilitation;
- Co-operation with other African and developing countries to ensure that the WTO trade negotiations address the concerns and interests of Nigeria and Africa, including leadership in the negotiation of Economic Partnership Agreements (EPAs);
- Reform customs and ports to drastically reduce turnaround time and transaction costs at the ports, enhance the prompt collection of government revenues and ensure customs clearance within a 48-hour time frame; and
- Develop deep-sea port facilities, inland container depots, Free Trade Zones and shipbuilding capacity to enhance coastal shipping, international trade and regional integration.

### Structural Adjustment Programme

The Structural Adjustment Programme (SAP) was introduced in Nigeria on July 1, 1986. This was against a background characterised by structural imbalances, fiscal, foreign exchange and balance of payment crises as well as external debt problems that defied all forms of reform measures put in place before 1986 (NCEMA, 2004). The policy thrust of the SAP, as stated in the basic document, was on economic reconstruction, social justice and self-reliance, through the alteration and re-alignment of aggregate domestic expenditure and production patterns for the purpose of restoring the economy back to the path of steady and balanced growth. With respect to the industrial sector, the SAP had recognised that the sector was under some problems, which included the inadequacy of the supply of imported inputs, culminating in capacity underutilisation of plants, unemployment, scarcity of goods and inflation, as well as the inadequacy of approved import licences, coupled with the thin spread of its allocation for the purchase of improved industrial inputs. It was also noted that there were poor and un-reliable infrastructural facilities and generally a weak structure of the industrial sector, coupled with the Naira over-valuation.

The major objectives in line with the policy thrust included:

(i) Restructuring and diversifying the production base of the economy to complement crude oil sector;
(ii) Achieving fiscal and balance of payment viability;
(iii) Laying the basis for a sustainable growth;
(iv) Lessening the dominance of unproductive investments in the public sector; and
(v) Improving the sectors efficiency level and intensify the growth potentials of the private sector.

In this regard, the SAP had the following elements *inter alia*:

(i) Rationalisation and privatisation of public enterprises to encourage competition through liberalisation and deregulation to reinforce the process of efficiency;
(ii) Stimulation of domestic production and the broadening of the supply base of the economy;
(iii) Strengthening of the hitherto strong demand management devices;
(iv) The adoption of a realistic exchange rate policy through the floating exchange rate regime;
(v) Rationalisation and restructuring of tariffs to reinforce the prevention of industrial diversification;
(vi) Improved trade and payments liberalisation;
(vii) Reduction of complex administrative controls simultaneously with a greater reliance on market forces; and
(viii) Adoption of appropriate pricing policies via the elimination of subsidies, particularly for petroleum products, social services and utilities.

In anticipation of the possible painful impacts of the SAP, as well as in response to protests against some of the moves, the government adopted some complementary policies aimed at alleviating some of the negative effects of the SAPs, which include:

(i) The National Directorate of Employment (NDE), which was put in place in 1986 to seek ways of addressing the problem of mass unemployment;
(ii) Special SAP Relief Package, an extra-Budgetary package put in place in 1989 to provide, among other things, employment opportunities, improved health care delivery and reduce transportation problems;
(iii) Urban Mass Transit Programme, established in 1988, to alleviate the problems of transportation, particularly in the urban centre;
(iv) Community Banks, established in 1990, to provide effective banking services for the economies of the rural areas as well as micro-enterprises in the urban centres; and
(v) The Directorate of Food, Roads and Rural Infrastructure (DFRRI), put in place in 1986 to foster the achievement of integrated rural development, with a view to improving the quality of life of the rural dwellers, thereby laying the foundation for self-sustenance development.

The SAP increased the country's access to foreign capital and the total debt burden increased from US$19.5bn in 1985 to US$34.4bn in 1991, due to new borrowing and increase in foreign interest rate (MPRA, 2007). Nigeria, on October 10, 1989, introduced a maximum interest rate spread between saving and prime lending rate. This increased investors' access to credit, leading to an increase in the ratio of private sector investment to total investment from 22.3 percent in 1986 to 28.6 percent in 1989 (Obadan and Ayodele, 1995). The second-tier foreign exchange market, introduced in 1986, after abolishment of the 30 percent import surcharge and licensing system, saw the naira depreciating by 66 percent to N1=US$0.64 (N1.56=US$1)[2] and declining further in value through July 1987, when the first and second tiers were merged.

Large firms benefited from the second-tier foreign exchange market and enjoyed higher capacity use than smaller ones. The state also privatised many public enterprises by selling equity to private investors, while restructuring other parastatals to improve efficiency. The Federal government encouraged private investment in the late 1980s, allowed foreign ownership in most manufacturing units and liberalised and accelerated administrative procedures for new investment.

## Agriculture Development Policy

Nigeria's agricultural policy is the synthesis of the framework and action plans of the government designed to achieve overall agricultural growth and development. The policy aims at the attainment of self-sustaining growth in all the sub-sectors of agriculture and the structural transformation necessary for the overall socio-economic development of the country as well as the improvement in the quality of life of Nigerians. Sustainable agricultural development is propelled by agricultural policy. The first national policy on agriculture was adopted in 1988 and was expected to remain valid for about fifteen years, that is, up to year 2000.

The history of agricultural policies and programmes in Nigeria dates back to 1935, with the policy on formation of co-operative societies. After this, a number of policies and programmes, aimed at achieving the goals of the agricultural sector, have been put into place by several governments.

These policies and programmes are summarised below:

i. Co-operatives (1935 to date);
ii. Commodity Boards (1947 to 1986);
iii. Agricultural Research Institutes (1964 to date);
iv. National Accelerated Food Production Project (1970s);
v. Nigerian Agricultural Co-operative Bank (1973 to date);
vi. Agricultural Development Projects (1975 to date);
vii. Operation Feed the Nation (1976 to 1979);
viii. River Basin Development Authorities (1977 to date);
ix. Directorate of Foods, Roads and Rural Infrastructure (1986 to 1993);
x. National Agricultural Land Development Authority (1991 to 1999);
xi. Presidential Initiatives on Cocoa, Cassava, Rice, Livestock, Fisheries and Vegetables (1999 to 2007); and
xii. The National Food Security Programme (2008 to date).

The broad objectives of agricultural policy in Nigeria over the past two decades have been:

i. Attainment of self-sufficiency in basic food commodities, with particular reference to those who consume considerable shares of Nigeria's foreign exchange and for which the country has comparative advantage in local production;
ii. Increase in production of agricultural raw materials to meet the growth of an expanding industrial sector;
iii. Increase in production and processing of exportable commodities, with a view to increasing their foreign exchange earning capacity and further diversifying the country's export base and sources of foreign exchange earnings;
iv. Modernisation of agricultural production, processing, storage and distribution through the infusion of improved technologies and management so that agriculture can be more responsive to the demands of other sectors of the Nigerian economy;
v. Creation of more agricultural and rural employment opportunities to increase the income of farmers and rural dwellers and to productively absorb an increasing labour force in the nation;
vi. Establishment of appropriate institutions and creation of administrative organs to facilitate the integrated development and realisation of the country's agricultural potentials; and
vii. Protection and improvement of agricultural land resources and preservation of the environment for sustainable agricultural production.

The main features of the policy include the evolution of strategies that will ensure self-sufficiency and the improvement of the level of technical and economic efficiency in food production. This is to be achieved through:

i. The introduction and adoption of improved seeds and seed stock;
ii. Improved husbandry and appropriate machinery and equipment;
iii. Encouragement of ecological specialisation and recognition of the roles and potentials of small-scale farmers as the major producers of food in the country;
iv. Reduction in risks and uncertainties through the introduction of the agricultural insurance scheme to reduce natural hazard factors militating against agricultural production and security of credit outlay through indemnity of sustained losses;
v. A nationwide, unified and all-inclusive extension delivery system under the Agricultural Development Programme (ADP) was put in place in a joint Federal and State Government collaborative effort;
vi Active promotion of agro-allied industries; and
vii Other incentives such as rural infrastructure, rural banking, primary health care, cottage industries, etc., were provided to encourage agricultural and rural development and attract

youth, including school leavers, to go back to the land.

The agricultural policy is supported by sub-policies that facilitate the growth of the sector. These sub-policies cover issues of labour, capital and land whose prices affect profitability of production systems; crops, fisheries, livestock and land use; input supply, pest control and mechanisation; water resources and rural infrastructure; agricultural extension, research, technology development and transfer; agricultural produce storage, processing, marketing, credit and insurance; and co-operatives, training and manpower development, agricultural statistics and information management.

Most of these programmes were not sustained and even those that were sustained are currently having very minimal impact. A number of reasons have been adduced for this lack of effectiveness and sustainability of these policies and programmes. These are:

i. Policy inconsistency and administrative dislocations;
ii. Instability of research institutes and lack of funding;
iii. Lack of political support;
iv. Non-provision of counterpart funds in the case of ADPs;
v. Lack of qualified manpower to provide effective leadership;
vi. Lack of continuity and shift in approaches by successive governments; and
vii. Lack of institutional arrangements for implementation.

Some of the challenges facing the Nigerian agricultural sector include the following:

i. Small farmer plots, limited access to external funding and mostly subsistence farming;
ii. Seeds: limited supply and low yield per Ha;
iii. Soils: varied types and unascertained nutrient status; and
iv. Water supply: 99 percent rain-fed, only 200,000 Ha or less than one percent of cultivated land area is irrigated.
v. Inconsistent agricultural policies
vi. Dearth of reliable planning statistics and poor research uptake;
vii. Seasonal rainfall, low irrigated land area;
viii. Extension (poorly resourced, multi-commodity and low morale);
ix. Aging farmers;
x. Low land area per farmer, difficulties in valuation of rural land (non-collateralisable);
xi. Credit – access and management;
xii. Poor rural infrastructure;
xiii. Brood stock: poor breed characteristics, low milk yield, artificial insemination (AI) very limited and limited sources for top quality chicks and poultry; and
xiv. Limited irrigation facilities.

## The National Food Security Programme

The National Food Security Programme is an effort by the Nigerian government at formulating an effective agricultural policy, especially in the light of the recent threat of a food crisis. The policy document was produced in May 2008. It was developed by the Federal Ministry of Agriculture and Water Resources, as part of its quest to achieve the objectives of the present administration's Seven Point agenda. The vision of the programme is to ensure sustainable access, availability and affordability of quality food to all Nigerians and for Nigeria to become a significant net provider of food to the global community. ***One of the major objectives of the policy is to achieve substantial import substitution through improved competitiveness along the agricultural value chain.***

The goals of the National Food Security Programme are, in the short term, to significantly improve Nigeria's agricultural productivity, in the medium term - expand and improve large-scale production, improve storage/processing capacity as well as required infrastructure to achieve food stability and, in the long term - derive over 50 percent of the nation's foreign exchange through agricultural exports.

In achieving the objectives of agricultural policy stated above, the Government of Nigeria has put in place certain initiatives. These initiatives include intervention measures that are aimed at addressing supply-side constraints, agricultural market development, storage and price stabilisation, livestock development and fisheries development.

## Other Measures to Promote Agriculture

In an effort to address supply-side constraints, some measures were adopted. This includes the establishment of Agricultural Seed Centres (ASCs). All the out-growers involved in the ASCs will be trained on improved seed production practices for maize, rice, sorghum, millet, cowpea and soybean. In addition, efforts were made for the procurement of 500,000 MT of fertilisers for the 2009 production season to be sold at 25 percent subsidy, amounting to about N15 billion. The fertilisers were expected to be distributed between March and May 2009. A Tractor Service Delivery Programme was launched, which involved provision of 10,000 units of 55-75 HP tractors and implements within three years, under a PPP arrangement.

Measures were also adopted to improve agricultural production. This includes the establishment of 200 Cottage Cassava Processing Plants in 22 states and Federal Capital Territory (FCT) through Public Private Partnerships (PPP), with Federal Government (FG) contributing 40 percent as grant to the private investor who will contribute 60 percent to the total cost of the project. Each will cost US$11mn. 25 rice processing mills in 13 states, in partnership with private investors, at a total cost of US$17bn, were established.

Moreover, there was the establishment of export crop handling, preservation and conditioning centres for hygienic packaging of fresh produce for domestic and export markets to be implemented through PPP arrangement, using Design, Build, Finance and Operate (DBFO) delivery (turnkey) model. There was also the development of market infrastructure for fruits and vegetables, a project to be implemented through PPP arrangements.

Measures were also put in place aimed at storage and agriculture price stabilisation. These include Strategic Grains Reserve (five percent) and Buffer Stock (10 percent); construction of country warehouses in 23 states; construction of commercial warehouses as a way of promoting commercial storage as a business and 60 warehouses to be constructed in 13 states under PPP arrangement with BO model. In addition, a guaranteed minimum price scheme was established. This is a predetermined price the farmer will get for a given unit of produce. The key participants are farmers, LBAs, Commodity Development and Marketing Companies, ASCE, co-operative organisations, NFRA, state and local governments and commercial banks. The suspension of import duty (100 percent) and levy on rice for six months was also a strategic scheme.

## Macro-economic Policies

Implementation of the agricultural policy is, usually, moderated by the macro-economic policies which provide the enabling environment for agriculture to grow *pari passu* with the other sectors. These policies usually have major impact on profitability of the agricultural system and the welfare of farmers, as they affect the flow of funds to the sector in terms of budgetary allocation, credit, subsidies, taxes, etc., and, therefore, must be in harmony with and mutually reinforce the agricultural policy. The macro-policies comprise the fiscal, monetary, trade, budgetary policies and other policies that govern macro-prices.

In the past, disharmony between macro-economic policies and the agricultural policy have resulted in a non-conducive environment for agricultural policy to thrive. In addition, inconsistency and instability in macro-economic policies do not engender confidence in the economy and tend to discourage medium and long-term investments in agriculture. Also, protectionism through high tariffs and quantitative trade restrictions has had negative impacts on the competitiveness of the agricultural sector in Nigeria.

Import substitution industrialisation, which is a logical outgrowth of the declining terms of trade thesis, has been pursued vigorously since the late 1950s in Nigeria. It was envisaged that this strategy would have Hirshman-type linkages with the rest of the economy and, consequently, import substitution was equated with development. Nigeria has historically and generally maintained highly protective agricultural trade regimes, partly to support this development policy. Trade policies were also substantially influenced by the periodic balance of payments difficulties and the need to generate revenue. The presentation here focuses on import policy since the 1960s.

In general, during the first-half of the 1960s, customs duties were designed specifically to raise revenue for the government and protect import-substituting industries that were at their threshold. But, by 1965, it was clear that measures needed to be taken urgently to correct the balance of payments difficulties. Consequently, an Official Committee on balance of payments was set up by the Federal Government in August of the same year.

An important recommendation of this committee was the imposition of ad valorem import taxes of between 33 percent and 150 percent on non-essential goods. For the rest of the 1960s, customs duties on a number of items were raised. This protectionist policy only helped to worsen the competitiveness of the Nigerian agricultural sector, since market prices of imported substitutes were made artificially high in order to accommodate the inefficiencies of local producers.

The civil war that raged between 1967 and January 1970 increased the aggregate demand and due to supply shortages prices escalated. As part of the measures to reduce inflation, tariff rates on several imported items, particularly those associated with agriculture, reconstruction, road development and manufacturing, were substantially reduced. The oil boom that started in 1973 also inspired more import tariff reductions.

In the period between 1976 and 1979, controlling rising prices, especially food prices, was central to the national trade policy. Thus, import taxes on food and items associated with agricultural production and processing were cut sizably. Examples of items that witnessed reduced import tariff rates in 1976 included groundnut oil, cotton seed oil and all cooking oils, from 33.33 percent to 20 percent, and sardines from 10 percent to five percent. ***These measures would have helped to increase competitiveness in the agricultural sector in the longer term, if domestic agricultural policy had focused on increased productivity and efficiency as a way of competing with the relatively lower priced imports that flooded the markets***.

In another rather counter-intuitive change in trade policy, imports were liberalised in 1980 by the civilian government and this probably contributed to the balance of payments difficulties during 1981-1983. The foreign exchange problem and the burgeoning external debt led to the adoption of the Economic Stabilisation (Temporary Provisions) Act in April 1982. Under the Act, several commodities were banned from importation and some 29 other goods were placed under specific import licenses that were previously under the open general licence system. This was influenced by the decision to control imports. In the 1983 budget, about 150 commodities were placed under specific licence requirements.

Also, industrial raw materials and other complementary inputs that were formerly under open general licence were now treated under the specific import licence system. Some imported items were not only re-classified, new customs rates were also imposed on them. ***This return of protectionism was another trade policy reversal that distorted the agricultural markets and encouraged inefficiencies that made domestic production less competitive.***

The civilian administration was overthrown by the military on December 31, 1983. The principal objectives of trade policies then were to protect local industries and encourage greater use of local inputs. Import tariffs were rationalised and Schedule II of the Customs Tariff (Consolidation) Act of 1973, which permitted the importation of several commodities duty-free, was abrogated, with the result that only 20 items could now be imported duty-free. There was a related development. The approved user scheme (AUS) and the general concessionary rates of duty (GCD) were abolished.

Following this, raw materials and intermediate goods imported by manufacturers that previously attracted very low duty rates had ad valorem rates of between 10 percent and 75 percent imposed on them. As a supplement to this, all goods imported into the country were placed under specific licence. These restrictive import measures created supply shortages of manufactured goods and raw materials that fuelled inflation. These measures were maintained until 1985, though with minor adjustments. ***This administration strengthened restrictive trade policies of the immediate past and thus weakened competitiveness in the agricultural sector.***

***From the mid-1980s to the mid-1990s, there was a wave of trade liberalism which should have motivated increased productivity and efficiency of domestic production and thus increased competitiveness, if effective agricultural policies had been put in place***. In 1986, just before introducing the SAP, the Federal Government reviewed existing import taxes and introduced new ones. Of particular significance was the import levy of 30 percent imposed on all imported items, with the exception of raw materials and other related inputs that are basic to export production.

With the introduction of the SAP, 30 percent import duty was abolished. Predictably, duties on imported items (except capital goods) were reduced considerably, generally by between five percent and 60 percent points. By contrast, duty rates on imported capital goods were raised from 5-10 percent to 10-20 percent. On the import list, the number of commodities prohibited previously was 26. This was reduced to 16, however, covering manufactured goods. A number of export promotion incentives were enunciated in the SAP policy document.

For instance, export taxes were abolished in the 1987 budget. Concomitant with this was a comprehensive review of customs tariff in line with the philosophy of the SAP. The increased use of local raw materials by manufacturers was thus stressed. A duty draw-back/suspension scheme in which exporters/producers could import raw materials, spare parts and related inputs for export manufactures duty-free was approved by the government. Other charges, including indirect taxes on these inputs, were also eliminated. Import control measures under the adjustment programme were generally less restrictive than those implemented before it.

In consonance with economic liberalism, in 1989, several items were removed from the import prohibition directory, though high import tariffs were placed on them. Up to 1978, the local currency was fixed and a system of independent exchange rate (i.e., the naira exchange rate was independently fixed against the US dollar and the British pound sterling) was in use. But, from 1978, the exchange rate was based on a basket of currencies of Nigeria's major trading partners. In 1986, the wave of trade exchange rate liberalisation leads to the adoption of a system of floating exchange rate by September 1986. The naira was over-valued during the oil boom of the 1970s, which artificially cheapened imports, making local substitutes less competitive, with increased imports as a direct consequence.

Thus, over the past two decades, inconsistency in shifting between open and protectionist trade policies have characterised the Nigerian agricultural policy. Such changes hinder the ability of stakeholders to develop long-term strategies. While protectionist trade policy has been viewed as the only option for developing the agri-sector, there has been a lack of effective domestic agricultural policy strategy to take advantage of the protection and enhance the domestic agricultural sector's efficiency.

## Major Crops in Nigeria

There is a wide range of climate variations in Nigeria, which necessitates it to produce a variety of cash crops. Food crops include cassava, yams, corn, coco-yams, cow-peas, beans, sweet potatoes, millet, plantains, bananas, rice, sorghum and a variety of fruits and vegetables. Crops such as cocoa, citrus, cotton, groundnuts (peanuts), palm oil, palm kernel, benniseed and rubber can be identified as being the leading cash crops. Cattle herding, fishing, poultry and lumbering also contributed more than two percent to the GDP in the 1980s. Millions of cattle, sheep, goats, pigs, donkeys, horses and camels, mostly owned by rural dwellers, compared to commercial companies, are found in Nigeria. Fisheries output ranged from 600,000 to 700,000 tonnes annually in the 1970s. Estimates indicate that the output had fallen to 120,000 tonnes of fish per year by 1990. This was partly due to environmental degradation and water pollution in Ogoniland and the Delta region, in general, by the oil companies[3].

Fertiliser policies in Nigeria were also not consistent from a historical perspective, as they changed from time to time in response to problems of leakages and arbitrage. However, two distinct periods can be identified, the pre-liberalisation of the fertiliser distribution process between 1990 and 1996 and the liberalisation period between 1996 and 2005. The government, through its agencies, had the monopoly for fertiliser procurement and distribution before liberalisation and it can be argued that the amount of fertiliser procurement under the government monopoly era was based on the port, transport, warehousing and blending capacity, along with budgetary considerations and not on a free market demand[4].

There are many players in the supply of fertiliser in Nigeria, through local manufacturing or importation, although shortages of the commodity are not uncommon. Some of the challenges often confronted by farmers are high prices, low quality and non-availability of fertiliser at the time required. As such, the commodity is subsidised, with the government's stated reason for fertiliser subsidies being that farmers cannot afford a free market fertiliser price.

## Major Agricultural Imports and Exports

Food crops such as cassava, yam, sorghum, millet, maize, groundnut, palm fruit; cash crops, such as palm oil, rubber, cocoa, cotton, gum Arabic and Shea butter; poultry, goats, lamb, pigs, and cows; fishery products; and forestry products constitute Nigeria's major agricultural output.

The major agricultural imports of Nigeria are wheat, rice, sugar, palm oil, milk, meat and fish. The aforementioned imports have made Nigeria a net importer of foods. The needs of Nigerian agri-industries are met by the regular supply of these goods. They also guarantee food for Nigeria's households: 66 percent of the total expenditure represents non-poor households, while 78 percent represents poor households.

Agricultural produce accounted for 37.8 percent share of total Nigeria's non-oil exports in 2006, of which the cocoa beans, fish; shrimps, rubber and cotton are Nigeria's main agricultural exports.

## Agricultural Contribution to Economic Activities

In the Nigerian economy, agriculture plays a vital role. It accounted for about 47.02 percent of the GDP in the year 2006. 70 percent of the country's labour force is being employed by this sector, despite the dominance of oil. More than 60 percent of national poverty comes from agriculture, because most of the workers from this sector live below the poverty line, thus the sector is crucial in national poverty reduction efforts. The export structure of the agriculture makes agriculture very important for diversification of the economy.

## Political Economy and Social Stratification Issues Affecting Agriculture

Nigeria's agricultural sector is an important element in the government's poverty reduction efforts, because it employs 70 percent of the labour force and accounts for over a quarter, 47.02 percent, of the GDP in 2007. As a result of reliance on the vagaries of the weather and insufficient investment, agriculture sector has remained generally underdeveloped. Naturally, agriculture is largely a private sector activity. The government provides support to the sector in terms

| Table 59: Nigeria's Visible Trade (Naira Million) – Agricultural Produce | |
|---|---|
| | **Year 2006** |
| | % Share of Total Non-Oil Exports |
| **Agricultural Produce** | **37.8** |
| - Cocoa Bean | 13.9 |
| - Rubber | 5.4 |
| - Fish/Shrimp | 6.9 |
| - Cotton | 3.4 |
| - Others | 8.2 |

*Source: CBN Annual Reports and Statistics of Accounts 2006.*

of the supply of inputs; provision of extension services; stabilisation of market prices for certain goods through a strategic reserve programme; and provision of financial assistance at a limited level. For reasons of food security and to encourage value-added exports, import bans have been placed on several agricultural goods, although, export taxes apply to some agricultural products.

Butter; cheese and curd; edible vegetables and certain roots and tubers, edible fruits and nuts and vegetable oil; margarine; prepared or preserved meat products; sugar confectionery; food preparations containing chocolate; pasta; pastry; and rice are the most protected products (subject to a tariff of 100 percent). More so, wheat flour, sorghum, live or dead birds, frozen poultry and poultry products, cassava and cassava products, and fruit juice in retail packs, have been prohibited from importation on food self-sufficiency, safeguard, or health grounds.

For purposes of domestic food security and of local processing, the export of certain agricultural goods, according to Nigeria's Export Prohibition Act, is prohibited. Raw hides and skin, timber (rough or saw), unprocessed rubber latex and rubber lumps, rice, yams, maize and beans are the agricultural products banned from export. Animals and related products are subjected to sanitary certificate, while the vegetable goods are subjected to phyto-sanitary certificate.

The reasons for the dismal performance of agricultural sector are inadequate infrastructure which weakens the bridge between producer and marketing centres; inaccessibility of fertilisers at affordable prices; widespread usage of rudimentary farm implements; shortage of farm workers due to urbanisation; a complicated land tenure system, which creates a poor environment for investment, especially for mechanised farming; weak linkages between research, extension services and producers; inefficiency in ensuring stable prices to farmers; limited access to credit by farmers, especially small-scale farmers, due to, *inter alia*, collateral concerns and unpredictable weather conditions; soil degradation; and the prevalence of tropical plant and animal diseases.

Inadequate management of exchange rate policy overtime and the related poor price incentive for diversification into agricultural exports; the "Dutch disease" effect of oil exploitation; taxation of agricultural exports; poor knowledge of potential markets; telecommunication problems; high tariff and restrictive SPS standards imposed by some trading partners; and fluctuating world prices of major cash crops *have been affecting the development of agricultural exports*. The afore-mentioned factors have resulted in low incomes in the agricultural sector and also accounts for the bulk of Nigeria's poor, since the sector employs some 70 percent of the labour force. Significant attention must be given to the development of agricultural sector in order to reduce poverty in Nigeria.

## Industrial Policy

The transformation of the Nigerian economy from its rural and agrarian form to a modern and competitively industrialised one is the main policy objective of the Federal Ministry of Industry. To achieve this, the Nigerian government must encourage the private sector to play a pivotal role; provide services for the training and development of indigenous skills and manpower; and provide financial support.

Nigeria's current industrial policy thrust is anchored on a guided de-regulation of the economy and government's disengagement from activities which are private sector-oriented, leaving government to play the role of facilitator, concentrating on the provision of incentives policy and infrastructure that are necessary to enhance the private sector's role as the engine of growth. The industrial policy is intended to:

> "Generate productive employment and raise productivity; increase export of locally manufactured goods; create a wider geographical dispersal of industries; improve the technological skills and capability available in the country; increase the local content of industrial output by looking inward for the supply of basic and intermediate inputs; attract direct foreign investment; [and] increase private sector participation".

The Nigerian Enterprises Promotion Acts, which hitherto regulated the extent and limits of foreign participation in diverse sectors of the economy, were repealed in 1995. The principal laws regulating foreign investments now are the Nigerian Investment Promotion Commission Decree and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree, both enacted in 1995.

Given the need to stabilise the banking and finance sectors and promote confidence in these vital institutions, the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks decrees of 1994 were put in place. The Investment and Securities Decree was also promulgated to update and consolidate capital market laws and regulations into a single code.

Under the Privatisation and Commercialisation Law of 1988, the government successfully sold its holdings in industrial enterprises and financial institutions and such divestments were made by way of "Offers for Sale" on the floors of the Exchange, so that ultimate shareholdings in such enterprises could be widespread. However, the government retained full control of the public utility service corporations.

The 1997 Budget proposed the repeal of all existing laws that inhibit competition in certain sectors of the Nigeria economy. Consequently, with the promulgation of the Public Enterprises Promotion and Commercialisation Decree in 1998, private sector investors (including non-Nigerians) will now be free to participate in and compete with government-owned public utility service corporations in the areas of telecommunications, electricity generation, exploration of petroleum, export refineries, coal and bitumen exploration, hotel and tourism.

As a policy objective, the liberalisation and deregulation of the exchange control regime is designed to facilitate and enhance trading activities. Items on the import prohibition list have been drastically reduced, with the government opting to utilise tariff structures to protect end-user product pricing of local industries and discourage frivolous imports. In 1998, the import prohibition list was reduced to 11 items, namely, maize, sorghum, millet, wheat flour, vegetable oils (excluding linseed and castor oils used as industrial raw materials), barites and bentonites, gypsum, mosquito repellent coils, domestic articles and wares made of plastic materials (excluding babies' feeding bottles), rethreaded/used tyres and gaming machines.

# Trade Policy

## Nigeria's Current Trade Policy

From the structural adjustment era in 1986, there was a significant shift in Nigerian Trade Policy direction towards greater trade liberalisation. The adoption of the SAP in 1986 by the Nigerian Government marked this shift. The main engine of development strategies for the Nigerian government and other developing countries is trade. This is because of the implicit belief that trade can create jobs, expand markets, raise incomes, facilitate competition and disseminate knowledge.

The enhancement of competitiveness of domestic industries, with a view to, *inter alia*, stimulating local value-addition and promoting a diversified export base is the main thrust of trade policy. Creation of conducive environment for increasing capital inflows and the transfer and adoption of appropriate technologies are also being sought by the trade policy.

In order to ensure that the resultant domestic costs of adjustment do not outweigh the benefits, the government pursues the liberalisation of its trade regime in a very measured manner. Re-orientation of attitudes and practices towards modern ways of doing business are reforms which accompany this policy direction. The tariff regimes, which are the instrument of the trade policy, are designed in a manner which allows a certain level of protection of domestic industry and enterprise.

While this is the main trade policy framework to guide economic growth, the trade expansion, employment generation and poverty alleviation dimensions are now subsumed in the NEEDS, NEEDS-II and Seven-Point Agenda of the President.

In the trade policy area, NEEDS seeks to deepen Nigeria's integration with the rest of the world and maximise the benefits of strategic integration. Accordingly, regional integration and trade are the two instruments identified by NEEDS for maximising the benefits of globalisation. The trade policy objective under NEEDS is to lay a solid foundation for fully exploiting Nigeria's potentialities in international trade. While aspiring to the above, NEEDS has by no means overlooked the challenges which have so far hampered the realisation of these potentialities. A number of constraints are identified, namely, the high cost of doing business; inadequate infrastructure; poorly implemented incentives, especially in regard to fiscal and tariff regimes; widespread smuggling, counterfeiting and dumping; lack of standardisation required for products to compete internationally; and unfavourable international trade rules.

Under NEEDS, the trade policy thrust is to drastically reduce the uncertainty and unpredictability of the trade policy regime; harmonise trade practices with those of other ECOWAS countries and hence facilitate full integration; respect obligations under multilateral and regional trading systems; and create a conducive and competitive environment in which Nigerian enterprises can thrive and effectively compete in the global and regional economy.

### Trade-specific Measures Scheduled for Implementation

The measures include the following: the reduction of the uncertainty and unpredictability of the trade regime; reduction of tariff rates, as part of Nigeria's commitments under loan agreements with the IMF; the harmonisation of Nigeria's tariff schedule with the ECOWAS CET; implementation of the ECOWAS protocol on free movement of goods and people; the operationalisation of existing export processing zones (EPZs) and the establishment of new ones; the granting of export-processing status to factories that contribute to non-oil exports; the establishment of an export production village scheme; the negotiation of preferential trade agreements to diversify trade; the provision of incentives to encourage non-oil exports; the implementation of port reforms to ensure timely clearance of goods and eliminate malpractices; the replacement of the pre-shipment inspection scheme with inspection at destination; and the streamlining of the exchange rate regime.

Other envisaged trade-related measures include transforming the Consumer Protection Council into the Nigerian Trade and Competition Commission to handle issues relating to, *inter alia,* anti-trust and competition policy, contingency trade measures and consumer protection; establishing an intellectual property commission and a bankruptcy commission; strengthening the capacity of trade-related institutions, including the Ministry of Commerce; enhancing awareness amongst policy makers and other stakeholders of Nigeria's multilateral and regional obligations and the opportunities that they present; improving the trade infrastructure (including roads); privatising state-owned enterprises; and deregulating some service sub-sectors.

## Privatisation Strategy

### Privatisation Process

The origin of privatisation in Nigeria can be traced to the Privatisation and Commercialisation Decree of 1988, which came as part of the SAP. The Privatisation and Commercialisation Decree of 1988 set the Technical Committee on Privatisation and Commercialisation (TCPC) up to privatise 111 public enterprises and commercialise 34 others. By 1993, according to the submissions of the TCPC, 88 out of the 111 enterprises listed in the decree had been privatised. Based on the recommendation of the TCPC, the Federal Military Government promulgated the Bureau for Public Enterprises Act of 1993, which repealed the 1998 Act and set up the Bureau for Public Enterprises (BPE), to implement the privatisation programme in Nigeria. This was followed by the Public Enterprise (Privatisation and Commercialisation) Act, 1999, which created the National Council on Privatisation, whose functions included:

- Making policies on privatisation and commercialisation;
- Determining the modalities for privatisation and advising the Government accordingly;
- Determining the timing of privatisation for particular enterprises;
- Approving the prices for shares and the appointment of privatisation advisers;
- Ensuring that commercialised public enterprises are managed in accordance with sound commercial principles and prudent financial practices; and
- Interfacing with public enterprises, together with the supervising ministries, in order to ensure effective monitoring and safeguard of the managerial autonomy of the public enterprises.[5]

The Bureau of Public Enterprises (BPE) was established in terms of the Act as the secretariat of the National Council on Privatisation.

The functions of the bureau include:
- Implementing the council's policy on privatisation and commercialisation;
- Preparing public enterprises approved by the council for privatisation and commercialisation;
- Advising the council on further public enterprises that may be privatised or commercialised;
- Advising the council on capital restructuring needs of the public enterprises to be privatised;
- Ensuring the update of accounts of all commercialised enterprises for financial discipline;
- Making recommendations to the council in the appointment of consultants, advisers, investment bankers, issuing houses, stockbrokers, solicitors, trustees, accountants and other professionals required for the purpose of either privatisation or commercialisation;
- Ensuring the success of the privatisation and commercialisation exercise through effective post-

transactional performance monitoring and evaluation; and
- Providing secretarial support to the council.

The Federal Government in July 1999, adopted a three-phase privatisation programme for 1999-2004 in order to:
- Fully divest public shares in banks, cement companies and oil marketing firms listed on the Nigerian Stock Exchange during the first phase;
- Fully divest state ownership in hotels, vehicle assembly plants and other industrial, agricultural and service enterprises operating in competitive markets, as well as shares in major public enterprises in potentially competitive sub-sectors, such as the telecommunications company (NITEL) and the national power company (NEPA) during the second phase; and
- Partially divest oil refineries during the third phase.

The Federal Government is making use of selected investment advisors to implement its privatisation programme under the supervision of BPE. The divestiture is in two folds: the first has to do with very large PEs, whereby a strategic investor is first selected, followed by the phased sale of shares to Nigerian investors on a broadly distributed basis across the country; the second fold has to do with the other PEs, whereby privatisation is directly offering the state's shares on the stock market to Nigerian investors. The sale of up to 51 percent of the share capital to strategic investors and elimination of the long-term requirement of a residual shareholding by the Federal Government are allowed by the privatisation procedures.

### State-owned Enterprises in Nigeria

Out of the 1,500 public enterprises in Nigeria, the Federal Government owns some 600, while state and local government own the remaining 900. Fifty percent of the GDP and 66 percent of overall employment in 1997 came from the public enterprises. In the early 1970s, when there was an oil boom, many of these public enterprises were established because of the strong belief of the government in power then that public companies were better than the private sector for accelerating national economic development. Despite this positive belief in the public enterprises, the latter's performance has been poor. The Nigerian government has invested over US$100bn in public enterprises, with very low (0.5 percent) and, in many cases, negative returns.

The third phase of the privatisation programme is earmarked for the larger state-owned enterprises, including the National Electric Power Authority (NEPA), the Nigerian Telecommunications Plc. (NITEL), the Nigeria Ports Plc. (NP Plc), the Nigeria Airways, the Nigerian Security Printing and Minting Company Ltd (NSPMC), the Nigeria Railway Corporation (NRC), Petroleum Refineries, the National Insurance Corporation of Nigeria (NICON) and the Federal Airport Authority of Nigeria (FAAN).

### Monopolies and Sectors still to be Reformed

The design and pursuit of reforms in key sub-sectors, such as power (where the National Electricity Power Company [NEPA] is still a monopoly in electricity production), ports and railways (where government entities such as the Nigeria Railway Corporation, the Nigeria Ports Plc., etc., still retain relative monopoly over activities), oil and gas and telecommunications (where the Nigeria Telecommunication Limited [NITEL] still has monopoly over fixed line communication) will be emphasised during the third phase. The development of sectoral policies; structural diagnostic reviews; the review and design of more market-conducive legal and regulatory frame works; and major pre-sale restructuring, including unbundling, are parts of the reforms.

## Investment Policy

The Nigerian government seeks to establish the private sector as the engine of economic growth, with the government providing the enabling environment for private investors, both domestic and foreign, to operate in line with its developmental strategy. To achieve this development strategy, several measures have been put in place.

The Nigerian Investment Promotion Commission (NIPC) Act No.16 of 1995 is the main law governing investment. The NIPC, which succeeded the Industrial Development Co-ordination Committee, was established under the aforementioned law as a federal agency. Provision of necessary assistance and guidance for the establishment and operation of enterprises in Nigeria; initiation and supporting measures that enhance the investment climate in Nigeria; promotion of investment in and outside Nigeria; and assisting incoming and existing investors by providing support services are the main roles of the NIPC. The NIPC, as a centre, facilitates registration of companies, acquisition of business permits and expatriate quotas and a host of incentives.

Investors, both domestic and foreign, under the NIPC Act, can participate in all sectors of the economy, with the exception of the production of arms and ammunition, narcotic drugs and psychotropic substances. Through a subsidiary that must be incorporated in Nigeria, foreign companies are permitted to operate in Nigeria. The Corporate Affairs Commission, under the Companies and Allied Matters Act of 1990 (as amended), regulates and supervises the formation, incorporation and registration of companies in Nigeria.

Nigeria's investment regime offers a plethora of incentives, including tax holidays, reduced taxes, capital allowances, capitalisation of expenditure, accelerated depreciation, import duty rebates, investment tax credits, repatriation of profits and transferability of funds are the measures put in place by the Nigerian government in a bid to boost investment. Further investment opportunities are being created through the current privatisation programme, in addition to the aforementioned incentives. The latter can be negotiated on a case-by-case basis with both federal and local authorities.

With Foreign Direct Investment (FDI) of US$12bn in 2007 and US$20bn in 2008, Nigeria is 19th in the World's ranking and among the 20th strongest economies. Nigerian FDI inflow was estimated to fall from US$1.7tr in 2008 to below US$1.2tr in 2009 (UNCTAD WIR, 2009).

The major attractive domains for FDI in Nigeria remain oil and gas, agriculture, manufacturing, finance and insurance, telecommunication, transport and storage and wholesale trade sectors of the economy.

Several factors are hindering FDI inflows into Nigeria and various measures are being undertaken to address such factors and create favourable investment environment. Such factors include inadequate infrastructure, corruption, unstable regulatory and institutional environment as well as high crime rate and other security concerns. Measures being undertaken include rehabilitation of Socio-Economic Infrastructure, particularly electricity, telecommunications, railway/roads/airports and human infrastructure. These also include the establishment of the Anti-Corruption Commission, through the Anti-Corruption and other Offences Act of 2000. Most importantly, a new regulatory and institutional environment, administered by the NIPC, has gone a long way in addressing these challenges.[6]

Nigeria has some MNC dominance in major sectors of the economy, including manufacturing, construction, petrochemicals and telecommunication. However, it is largely in the oil production and extraction industry where there can be concerns. Being the largest African producer of crude petroleum and the eighth-largest exporter of crude oil in the world, Nigeria earns over 95 percent of its export revenue from the oil and gas sector.[7]

The major MNCs in today's Nigeria include the Anglo-Dutch Royal Shell (''Shell''), which is the largest oil producer in Nigeria, producing more than 40 percent of Nigeria's total output. Corporations such as Exxon-Mobil, Chevron/Texaco, Ashland, Sun Oil, Conoco, Total, Agip International, Statoil and South Africa's Sasol (partnership with the Nigerian National Petroleum Corporation [NNPC]) also constitute some of the MNCs in the oil industry. The operational strategy for the MNCs is largely that there would be a parent company in Europe or the United States and a subsidiary incorporated as a Nigerian corporation, which then engages in joint venture partnerships with the Federal Government of Nigeria, through the NNPC. The MNC maintains managerial control of the enterprise.

## Public Sector Reforms

The public sector reform agenda focuses on the following:

- Restoration of professionalism in the Civil Service;
- Rationalisation, restructuring and strengthening of institutions;
- Privatisation and liberalisation in the sector;
- Tackling corruption and improve transparency in government accounts;
- Reduction in waste and improvement in efficiency of government expenditures; and
- Enhance economic co-ordination.

In line with NEEDS, between 2004 and 2006, a number of institutional and structural measures have been put in place to ensure the achievement of desired objectives. These measures include:

- Open and competitive tender arrangements for government contracts;
- Establishment of a due process mechanism to vet and eliminate 'fat' from government contracts;
- Massive anti-corruption campaigns involving all public officials, including the President;
- Public sector reforms to reduce, if not completely eliminate, opportunities for corruption, especially through the Comprehensive monetisation of benefits to public officers; and
- A committed focus on privatisation and auctions of Government licences (leading, for example, to the liberalisation of the telecommunications sectors).

## Labour Policy

To enhance job opportunities in the country, the Nigerian Federal Executive Council (FEC) has approved a new national employment policy. The new policy aims to create more jobs and give full play to the current workforce. The policy, worked out by the Ministry of Labour and Productivity, also encourages individuals and groups to create their own jobs, provide opportunity for continued training and create social work environment that is gender-sensitive. The new policy also seeks to endorse strategies for job promotion. They include promotion of micro small-scale sector jobs, inducement of more employment in the agricultural sector, promotion of labour-intensive businesses, linking education and training to labour market requirements and strengthening labour market information.

## Consumer Protection Policy

The UN Guidelines (UN General Assembly Res. 39/248 of 1985) and the Extension to the UN Guidelines called upon the governments of the member states to immediately adopt necessary measures to implement the UN Guidelines, the Extensions thereof and other policy, legal and administrative measures to ensure the protection of the consumers.

The Nigeria government, under the then leadership of President (General) Ibrahim Badamosi Babangida, in complying with the guidelines of the UN General Assembly, which it ratified as a member, enacted the Consumer Protection Council Act No. 66 of 1992 on November 23, 1992 to protect Nigerian consumers from this social malaise. The Council was not established until 1999, seven years after the Act was enacted.

In Nigeria, today, there is no single codified document where the rights of consumers are contained, as against the producer/manufacturer or suppliers of goods and services. What one is likely to see are several legal enactments establishing certain institutions charged with the responsibilities of determining or regulating specific areas of consumable goods. Prominent among these consumer legislations are:

- The Consumer Protection Council Act No.66 of 1992;
- The Weights and Measures Acts 1974;
- The National Agency for Foods & Drugs Administration and Control (NAFDAC) Act No. 15 of 1993;
- The Food and Drugs Act 1974;
- The Counterfeit and Fake Drugs and Unwholesome Processed Foods (miscellaneous Provision) Act 1999;
- Nigerian Civil Aviation Authority (NCAA) Act No.49 of 1999;
- Department of Petroleum Resources (DPR);
- Standard Organisation of Nigeria (SON) Act;
- Federal Environmental Protection Agency (FEPA) Act;
- Nigerian Electricity Regulatory Council (NERC) Act; and
- Trade Malpractices Act 1992.

Apart from these legislations, two other areas of substantive laws, through which the rights of consumers can be enforced in Nigeria, are through the Law of Contract, where a privity of contract exist and through the Law of Tort, mostly negligence.

Despite this statutory protection framework, the level of practical protection has remained rather low. This is because the laws are yet to take care of some vital aspects of consumer protection. Two of such areas are compensation for the victim of a defective product or service and the right to satisfaction of basic needs. With the exception of the Consumer Protection Council Act, all the other existing consumer-related legislations are criminal law-based, which are aimed at punishing the offender and not to compensate the victim.

***Consumer Protection Council***

The functions of the Council shall be to:

(a) Provide speedy redress to consumer complaints through negotiations, mediation and conciliations;

(b) Seek ways and means of removing or eliminating from the market hazardous products and causing offenders to replace such products with safer and more appropriate alternatives;

(c) Publish, from time to time, list of products whose consumption and sale have been banned, withdrawn, severally restricted or not approved by the Federal Government or foreign governments;

(d) Cause an offending company, firm, trade, association or individual to protect, compensate, provide relief and safeguards to injured consumers or communities from adverse effects of technologies that are inherently harmful, injurious, violent or highly hazardous;

(e) Organise and undertake campaigns and other forms of activities as will lead to increased public consumer awareness;
(f) Encourage trade, industry and professional associations to develop and enforce in their various fields quality standards designed to safeguard the interest of consumers;
(g) Issue guidelines to manufacturers, importers, dealers and wholesalers in relation to their obligation under this Decree;
(h) Encourage the formation of voluntary consumer groups or associations for consumer well-being;
(i) Ensure that consumers' interests receive due consideration at appropriate forum and to provide redress to obnoxious practices or the unscrupulous exploitation of consumers by companies, firms, trade association or individual;
(j) Encourage the adoption of appropriate measures to ensure that products are safe for either intended or normally safe use; and
(k) Perform such other functions as may be imposed on the Council pursuant to this Decree.

**In the exercise of it's the functions under this Act, the Council shall have power to:**
(a) Apply to court to prevent the circulation of any product which constitutes an imminent public hazard;
(b) Compel a manufacturer to certify that all safety standards are met in their products;
(c) Cause, as it deems necessary, quality tests to be conducted on a consumer product;
(d) Demand production of label showing date and place of manufacture of a commodity as well as certification of compliance;
(e) Compel a manufacturer, dealer and service company, where appropriate, to give public notice of any health hazards inherent in their products; and
(f) Ban the sale, distribution and advertisement of products which do not comply with safety or health regulations.

The CPC Act stipulates that there shall be established a State Consumer Protection Committee to assist the Council in each State of the Federation, a State Committee which shall, subject to the general supervision of the Council, receive, investigate and act on complaints from consumers.

The State Committee shall, subject to the control of the Council:
(a) Receive, inquire into the causes and circumstances of injury, loss or damage suffered or caused by a company, firm, trade, association or individual;
(b) Negotiate with the parties concerned and endeavour to bring about a settlement; and
(c) Where appropriate, recommend to the Council the payment of compensation by the offending person to the injured consumer.

As at the time of writing this paper, only seven of the 36 state governments of Nigeria had constituted their respective state consumer protection committees.

## *Sector-specific Regulators/Consumer Protection Bureau*

Apart from the Consumer Protection Council, which is the apex Government Consumer Protection Agency, there are others sector-specific regulator consumer protection units. These sector regulators, as part of their mandate to discharge their duties to the public in an efficient manner, established consumer protection units/bureau within their agency.

### *Nigerian Communication Commission (NCC) – Consumer Affairs Bureau*

The Consumer Affairs Bureau of the Nigerian Communications Commission (NCC) was established in September 2001, to **inform, educate** and **protect** all the consumers of telecommunications services in Nigeria. Its Mission is to serve as the industry's watchdog, charged with educating, informing and protecting consumers in a professional and courteous manner.

The Commission has been very active and innovative over the years in protecting and promoting the interest of consumers of communication services. The Commission remains the only agency of the Government to provide a regular platform to encourage the consumers to publicly voice their complaints in fulfilment of its mandate for consumer protection and empowerment through the following initiatives:

- The Telecom Consumer Parliament (TCP): **-** It is a platform created by the Commission to bring together stakeholders in the industry (i.e., the Telecom Regulator, Operators and Consumers) to openly discuss problems affecting the Consumers of Telecommunication services. This novel approach in dealing with consumer issues has been acknowledged by the ITU as an innovative and effective mechanism for resolving the complaints of consumers. It is held every month across the six geopolitical zones of the country.
- Customer Care Centre: - This centre is established within the Commission to collate and respond

promptly to consumer enquiries and complaints through e-mails, formal letters, telephone calls, etc. Many consumers have had their complaints resolved through this medium.

- Support for Consumer Advocacy Groups: - The Commission is supportive of the activities of several Consumer Advocacy Groups. This is novel approach in the history of consumer care in Nigeria.
- Collaboration with Consumer Protection Council (CPC): The Commission has signed an MOU with the CPC aimed at collaborating to further ensure protection of Consumers in relation to telecom service delivery.

***National Agency for Food and Drug Administration and Control (NAFDAC)***

The National Agency for Food and Drug Administration and Control (NAFDAC), established by Decree No. 15 of 1993, as amended is a Parastatal of the Federal Ministry of Health, with the mandate to regulate and control quality standards for foods, drugs, cosmetics, medical devices, chemicals, detergents and packaged water imported, manufactured locally and distributed in Nigeria.

The management under the then dynamic leadership of Dora Akunyili (now Honourable Minister of Information and Communication) has made intensive efforts to positively touch the lives of stakeholders (consumers and dealers) through public enlightenment campaigns, education and persuasions.

***The Standards Organisation of Nigeria (SON)***

To help fulfil its responsibility to protect the consumers of Nigeria, the Standards Organisation of Nigeria (SON) has launched the SON Conformity Assessment Programme (SONCAP).

The aim of the SONCAP is to identify those goods which pose the highest risk to consumers in Nigeria and ensure that their claims of safety are verified before they are exported to Nigeria. This will help ensure that Nigerian consumers are protected from unsafe and sub-standard goods as well as ensuring that Nigerian manufacturers are not subjected to unfair competition from such goods.

Since September 01, 2005, the SONCAP had become mandatory for products within its scope. These products are known as Regulated Products and failure by exporters to comply with the SONCAP in relation to these products may result in the rejection of goods or additional testing and delays at Nigerian ports. The SONCAP is independent of and additional to any existing import processes such as PSI.

The presentation of SONCAP Certification, which consists of a Product Certificate and a SONCAP Certificate, will be the means through which the SONCAP will be enforced. Both of these items are mandatory clearance documents for Regulated Products, in addition to any PSI documentation.

***The Nigerian Civil Aviation Authority (NCAA) – Consumer Protection Unit***

The Nigerian Civil Aviation Authority (NCAA) is the Economic and Technical regulator for the Aviation Industry. Its existence is backed by local and international legal status.

The NCAA was established by decree 49 of 1999, with, among others, the statutory responsibilities of regulating, monitoring and *promoting of the safety*, security and reliability of air navigation in the Nigerian Civil Aviation sub-sector, in line with the International Civil Aviation Organisation (ICAO) Standard and Recommended Practices (SARPs). The Authority effectively commenced operations on January 01, 2000.

This unit of the NCAA assists in resolving individual complaints of passengers with airlines when passengers are unable to resolve their complaints with the airlines themselves. When passengers comment on airline services, most airlines do listen. They analyse and keep track of complaints and compliments they receive and use the information to determine what the public wants and to identify problem areas that need special attention. They also try to resolve individual complaints.

As with other businesses, airlines have a lot of discretion in how they respond to problems. While you have some rights as a passenger, your demands for monetary compensation would be subject to negotiation and the kind of action you get depends largely on the way you go about your complaints. The procedure for complaints and compensation is for the passengers to start with the airline before he/she calls or writes to the NCAA or some other agency for help with an air travel problem and give the airline the chance to resolve it.

As a rule, airlines have troubleshooters at the airports who can take care of most problems on the spot. They will arrange meals and hotel rooms for stranded passengers, write cheques for denied boarding compensation, arrange luggage repairs and settle other routine claims or complaints that involve relatively small amounts of money.

## Implementation of Consumer Protection Act. No. 66 of 1992

Nigeria, in 1992, in complying with the guidelines of the UN General Assembly, which it ratified as a member, enacted the Consumer Protection Council Act (CPC Act No.66 of 1992) to Protect Nigerian consumers from social malaise. The CPC Act provides for the establishment of the Consumer Protection Council at the Federal level and State Consumer Protection Committee in each State of the Federation to assist the Council.

It is of great concern that while the Council (Consumer Protection Council) at the Federal level was established and inaugurated in 1999 (though seven years after the Act was enacted!), only seven States, namely, Imo, Enugu, Cross-River, Ondo, Niger, Kano and Lagos have so far established and inaugurated their State Consumer Protection Committees.

Indeed, the major instrument hindrance to 'effective' Consumer Protection in Nigeria is the absence of State Consumer Protection Committee in many (29) of the states in Nigeria and ineffective implementation of the law by the states that have the committee. Consumers in Nigeria have been suffering from series of abuse/sharp practices from the producers/ providers of goods/services due to low level of implementation of the CPC Act and this action is preventing aggrieved consumers in the 29 states from seeking redress and getting compensation for their just claims.

### *Consumer Awareness*

An effective consumer protection regime requires a well-informed consumer capable of making a right choice in the market place. But, because of very low level of awareness of consumers in Nigeria, consumer organisations are not getting the required complaints from consumers to help in seeking redress. So, there are daily un-checked sharp malpractices by many producers/suppliers of goods and services, thereby causing injury to consumers.

This low level of awareness of consumers is another challenge facing consumer movements in Nigeria because, before consumers movements can assist in seeking redress for aggrieved consumers, there must be a complaint from such aggrieved consumer.

There is very low number of '**active**' consumer movements in Nigeria. For the size of Nigeria, with a 144.7-million population (2006 census), 36 states and 774 Local Government Area Councils, Nigeria requires at least four 'active' consumer movements per state, together with the Government State Consumer Protection Committee for effective consumer protection regime in Nigeria, but reverse is the case at present. One of the reasons for this is the low level of awareness of consumers about their rights and privileges. Though there is no official record on the number of Non-governmental Consumer Organisations in Nigeria at present, only three, apart from the Government Consumer Protection Council (CPC), are members of the Consumers International (CI), the global body of Consumer Organisations around the world. The three are:

i. Consumers Empowerment Organisation of Nigeria (CEON);
ii. Consumer Awareness Organisation of Nigeria (CAON); and
iii. Consumer Protection Organisation of Nigeria (CPON).

### *Consumer Organisations and Competition*

There is need for strong and independent consumer organisations for the development and effective implementation of consumer policy in Nigeria. Consumer organisations not only provide expertise firsthand knowledge about the situation of consumers, business behaviour and the effect of policy but also are an essential counterbalance to the representatives of business organisations.

Consumer organisations also play major roles in market surveillance as they are in position to signal and point-out business behaviour which are harmful to consumers. Therefore, for consumer organisations in Nigeria, to be able to perform their roles effectively, the government must give them the means to act effectively, both in terms of resources and in terms of expertise capacity building. So, a well-oiled consumer policy must contain provision for support and development of consumer organisations. Indeed, the United Nations Guidelines for Consumer Protection of 1985 provides for member nations to encourage the formation of voluntary consumer organisations for the purpose of consumer's welfare.

A well-developed consumer policy is one of the key means of achieving competition and economic growth, through consumer confidence and creation of a level playing field for consumers and businesses. It is worthy of note also that, in a well-functioning market, consumer is a king. Consumers who are not satisfied with a product or service will reject that product or service for another competitive product or services. This is what increases competition and competitiveness. Therefore, competition policy helps to meet this objective by prohibiting business behaviour that unduly restricts markets.

# *Progress Made Towards Operationalising Competition Regimes*

## Introduction

As a prerequisite to the Nigerian competition regimes, the government has started with sector-specific regulatory regimes, with the aim of encouraging competition in some specific sectors of the economy. Some of the sectors with regulatory regimes/laws are: communication, power, oil and gas, financial services, transport, health, tourism and education.

Also, the government has put in place some development policies that promote competition in the nation's economy. These policies includes: the National Economic Empowerment and Development Strategy – NEEDS, NEEDSII, the Seven-Point Agenda of the President Yar'Adua and Vision 20:2020 Framework.

## Various Bills Prepared

In the year 2000, the Federal Government, through the Bureau of Public Enterprises (BPE), set-up a competition and anti-trust reform steering committee to look into the needs for competition/anti-trust policy and reforms for Nigeria. The committee came up with the draft policy and the draft bill called the "Federal Competition Bill", which was presented to the National Assembly in 2002.

In the immediate past tenure of the National Assembly, two different bills on Competition/Anti-Trust were reportedly passed by the National Assembly. The bills are:

- "A Bill for an Act to Provide for the Protection of Trade and Commerce against Restraint and Monopoly and for Connected Purposes, 2001" – sponsored by an honourable member of the House of the Representatives; and
- **National Anti-trust (Prohibitions, Enforcement, etc.) Bill, 2004 "An** Act to regulate and prohibit unfair competition and unreasonable combinations in restraint of commerce, industry and trade, including monopolies, trusts and interlocking directorates, for the purposes of maintaining and strengthening the free enterprise system, ensuring unrestrained competition and establishing a level playing field in business in the Federation and to make provision for other matters relating thereto". This was sponsored by Hon. Halims Agoda and others.

Efforts to reconcile/harmonise the two versions of the bills have not been successful to date.

Elsewhere, within the government circles, there was a parallel move to introduce what is referred to as the Federal Trade and Competition Commission (FTCC). This initiative was pioneered by the then Minister of Commerce (Engr. Mustapha Bello, the current Director General of the Nigerian Investment Promotion Commission). The idea was to bring together some existing parastatals under his Ministry, like the Consumer Protection Council, the Weight and Measures Department, etc., under one Commission which would also be empowered to regulate other issues such as competition and unfair trade practices, anti-dumping, etc.

A proposal was sent to the Ministry of Justice to draft a Bill to this effect. This Bill went to the National Assembly in 2006, but was thrown out by the Senate in the first reading for reasons bordering mainly on lack of understanding of the subject of competition law.

## Efforts to Have a Competition Law

Just recently, precisely on April 22, 2009, the President, Alhaji Umar Musa Yar'adua, presented before the Federal Executive Council (FEC) for deliberation and approval a Bill entitled "**Competition and Consumer Protection Bil**l". The bill seeks to promote the welfare and interests of consumers and provide them with competitive prices and choices. The bill also seeks to regulate monopolies, merger and acquisitions and all forms of business combinations and prohibit restrictive business practices which prevent, restrict or distort competition or constitute the abuse of a dominant player in the market.

Approval of the Bill was deferred till another date to enable Council Members sort out the grey areas in the bill and for proper harmonisation with the existing sector-specific regulatory laws. It was expected that the bill would be approved and forwarded to the National Assembly latest by June 2009 for enactment into law, which, however, would not happen for unspecified reasons.

## Other Measures

President Yar'Adua's government, through its various policies, has been creating a level playing field for all businesses in the country, by persuading investors that his government believes in competition. The government has been upholding the principle of free entry and free exit into major sectors as an incentive for private sector to demonstrate enterprise and vision in transforming Nigeria into an economic powerhouse.

The impact of pro-competition policies of the government is already being felt in the cement and steel sectors, among other sectors. For instance, a regime of selective import licensing limited to just about five companies used to prevail **in the cement industry** in the past. This kept the supply low and prices high in a country with growing demand for cement construction projects. The present Yar'Adua government abolished the monopoly-inducing selective licences and began issuing licences to firms that were able to demonstrate the capacity required by the government to import cement. The result of this new cement import regime is that new players like Bua, TopCem, Magen-Roi and Minaj have entered the cement industry, thereby increasing cement supplies and resulting in moderate prices.

**In the steel sector**, the import duty concessions granted some steel firms by the immediate past Obasanjo government virtually paralysed operation of many steel industries, as the few that enjoyed duty concessions monopolised the market with huge profit. With the termination of duty concessions regimes by the President Yar'Adua government, the situation in the steel sector has since improved, with fair competition in the market.

**In the agricultural sector**, the present government is promoting competition by anchoring its wider economic agenda on the private sector. In its bid of enhancing the output from farming activities, improving storage facilities and creating a vibrant infrastructure for agribusiness, the government is spearheading various initiatives that invite enthusiastic private sector participation. A US$1.33bn support fund was recently released for the agricultural sector, mainly for large farmers and agro-processors. This fund is structured to maximise the chances that it would actually impact on the farming system, since its disbursement is managed by some selected banks at a maximum interest rate of nine percent.

**In the cotton and textile sector**, the government has announced a comprehensive programme to revive the textile sector. Operators in this sector are set to benefit from a US$0.67bn cotton and textile management fund which is designed to improve the ailing textile value-chain from the cotton field to the factory. The new deal for the cotton and textile sector aims to empower the textile industry to meet local needs and export to the vast markets in West and Central Africa.

**In the gas and power sector**, the government is giving priority to significantly increasing domestic consumption of the nation's vast gas resources. The aim is to secure stable and regular gas supply for power plants, home and factories. Lower energy costs are expected to result in lower costs of production, which would trigger multipliers across the economy and make Nigeria products more competitive. As a mark of its commitment to this policy objective, the Federal Government voted US$1.5bn in the 2009 budget for the network of pipelines that will deliver the gas to the end-users. It is expected that successful completion of the gas-fired independent power plants will considerably enhance the quantum and stability of power supply in the country. This is a good enabling environment to encourage private investors to invest in the nation's economy.

## Challenges to Passage of a Competition Law

From all indications, it is very clear that the Federal Executives are sincere about having a competition law for Nigeria. This is substantiated by the efforts of the President, Alhaji Umar Musa Yar'adua, when he presented a Bill on Competition and Consumer Protection to the Federal Executive Council in April 2009 for approval and eventual sending to the National Assembly for enactment into Law.

But, it is a doubt if the National Assembly can match the commitment of the Federal Executive Council in giving the Bill an accelerated passage.

Details on the new challenges/constraints that are likely to prevent passage of competition law in Nigeria are treated in section four of this report.

Apart from the proposed Competition and Consumer protection Law, there are other laws/policies the government has to address anti-competitive issues in the markets. Some of these laws/policies are:

- Nigerian Electricity Regulatory Council (NERC) Act;
- Nigerian Communication Commission (NCC) Act;
- National Transport Sector Policy (NTSP);
- Central Bank of Nigeria Act;
- Securities Exchange Commission (SEC) Act;
- National Insurance Commission (NAICOM) Act;
- Standard Organisation of Nigeria (SON) Act;
- National Electric Regulatory Commission (NERC);
- National Broadcasting Commission Act;
- Trade Malpractices Act 1992;
- The National Agency for Foods and Drugs Administration and Control (NAFDAC) Act No. 15 of 1993;
- Nigerian Civil Aviation Authority (NCAA) Act No. 49 of 1999;
- The Weights and Measures Acts 1974;
- The Consumer Protection Council Act No. 66 of 1992;
- The Railway Reform Bill;
- The Ports and Harbour Reform Bill;
- The National Transport Commission Bill;
- The Road Sector Reform Bill;
- The Postal Bill; and
- The Inland Waterways Authority Bill.

# Political Economy Constraints in Implementing Competition Regime

## An Economy in Transition

The key to understanding the political economy constraints in formulating or implementing a competition law/policy in Nigeria lies in understanding the historical evolution; the government bureaucracy; and the composition and relative power of the different actors in the economic space.

The Nigerian economy is a typical transitional economy marked by a shift from government control to private sector control. Over the years, the government has been the major driver of the economy, with vast interest in virtually all the major sectors of the economy, with most of these sectors shielded away from private participation by means of statute (i.e., statutory monopolies). In fact, in the early and 70s, the government embarked on a programme of nationalisation and indigenisation of erstwhile foreign businesses. The sate maintained a substantial interest in banking and financial services, petroleum, telecommunications, broadcasting, manufacturing, agro-allied, construction, etc., creating a monopoly in most of these sectors.

The political economy constraints to competition policy in Nigeria are situated within the context of this transition. Two major factors define this transition process: the liberalisation/deregulation of some sectors hitherto dominated by state monopolies; and the privatisation of the state monopolies. These two factors have largely redefined the economic space, mainly because the sectors mostly affected by the transition are the core sectors that command the highest resources.

The liberalisation and privatisation agenda has come under sever criticisms from different quarters for different reasons, ranging from faulty conceptual and legal framework to poor and non-transparent implementation and outright corruption, leading to what is commonly known as 'state capture' in policy circle[8]. The problem seems to be more with the privatised entities as evidence shows that most of these enterprises have suffered worse inefficiencies than they saw under government control[9].

However, one fundamental flaw most authors have not dwelt on is the absence of a policy and legal framework for ensuring competition in the emerging economy. This perhaps underscores the pervasive ignorance or lack of importance attached to the subject matter.

Though we are not aware of any strong argument against introducing a competition law in Nigeria (except the occasional quips here and there that Nigeria is not yet ripe for competition law, usually by persons who are not well informed on the scope of competition policy and law), it would not be unexpected if the process is opposed on the grounds that it would be a furtherance of the free market agenda. There is a popular aversion to market reforms for the obvious reasons that such reforms (either in their formulation or implementation) have done more harm than good to the poverty situation in the country. This makes it imperative to properly situate competition policy as pro-poor, in the sense that it is aimed at curbing the excesses of the free market and to deliver economic efficiency and consumer welfare.

## Uncoordinated Efforts

It is interesting however, to note that the architects of the current phase (1999-date) of the privatisation exercise did not lose sight of the importance of this multi-sectoral policy and legal approach to competition regulation. Hence, in 2001, the body in charge of the privatisation process the National Council on Privatisation (NCP)[10] inaugurated a Competition/Antitrust Reforms Steering Committee, with the mandate to initiate the process of drafting a competition policy and bill for the country. The

Committee did a lot of work organising workshops and consultations nationwide, with a lot of foreign donor support. The project involved some foreign consultants. At the end of the process, the Committee came up with a draft policy and a bill which were submitted to the Federal Executive Council for approval in 2002. Sadly, nothing more has been heard on this Policy/Bill[11].

Besides the question of political will, this lack of co-ordination can be attributed to other reasons. One is the turf fighting among the various ministries and agencies as to who should be the 'father' of the new Commission. A new Commission like this is seen as an opportunity for new appointments and other perquisites of office that come with it. But beyond this, this lack of co-ordination is an indictment on the political will of the government to realise the objective of setting up a competition commission.

A committed government would have pushed the Bill through the National Assembly before now. Another approach would have been to give a specific mandate to a ministry or an agency, or better still, to form an inter-ministerial and multi- stakeholder committee to midwife the process.[12] This approach would also take into cognisance the efforts at the National Assembly, in the form of Members Bills, and harmonise all the versions.

## Business Actors and Vested Interests

It is easier to regulate economic activities in the formal sectors than the informal sectors of the economy. The major challenge here is that most economic activities in Nigeria are still within the informal sector. It is estimated about 70 percent of business activities in the country are carried out in the informal sector. The amorphous nature of this sector, therefore, makes it less amenable to regulation of whatever kind, including tax regulation. Within this sector are activities like agriculture, retail trade, intra-city land transportation, small-scale manufacturing of items like garments, shoes and leather works, etc. From casual observation, one could say that these sectors have traditionally had a culture of competition, as the operators in any given market are many; and entry or exit is not an issue[13].

The informal sector can rarely be said to be in a transition as used to depict the entire Nigerian economy. This sector has always been active. Therefore, if any opposition is envisaged, this is the most unlikely sector to raise the opposition, especially when the policy is clearly set out for how it benefits the average consumer and the economy in general. In fact, this sector, if appropriately mobilised, could form a major voice in support of the process, because most of the operators here rely on the services of the industries where there is prevalence of concentration and anti-competitive conducts like energy, telecom, banking, cement, rice, sugar, etc.

Moving away from the informal sector, the formal sector of the Nigerian economy is made up of different industries/sub-sectors, but the most important ones are those industries/sectors that emerged as a result of the liberalisation/privatisation programme. The others could be conveniently classified as small and medium and small-scale enterprises. The major sectors include oil and gas, telecommunication, energy, banking and financial services, broadcasting, construction, manufacturing and distributive trade.

It is obvious that the focus of the efforts (especially that of the NCP) to institutionalise competition was targeted at the enterprises in these sectors. As observed earlier, these sectors were formally dominated by government monopolies[14]. The major targets were telecom and energy, two sectors which were run as monopolies for several years. Therefore, the draft report submitted by the NCP Committee observed in its preamble that:

> *"…the committee was abundantly aware that competition legislation should now have been promulgated before the major public enterprises and utilities are privatized so that the owners of such privatized companies have the ground rules from the onset"* [15]

According to the Committee, the Draft Policy was intended to provide guidance for the ongoing privatisation and constitute a policy statement on the intent of the government. In a further display of the appreciation of the subject matter, the Committee

> *"…also felt that the larger utilities being privatised could create private entities that must be compelled to play to a set of broad rules, in the absence of the yet-to-be enunciated law."* [16]

Continuing, the Committee also felt:

> *"…the urgent need to ensure that these new companies are not allowed to abuse their dominant market positions, while enjoying an effective monopoly or near-monopoly status."* [17]

The trend in most of these sectors today is towards concentration. In the telecom sector, the GSM operators (initially four in number, including the then government-owned national carrier, NITEL/MTEL), were given exclusive licences and generous tax holidays for five years. Inasmuch as this may in itself not be a wrong policy decision considering overall efficiency, there still remains the question whether in issuing such licences there was an attempt to do a competition impact assessment to measure the relative loss *vis-à-vis* the expected gain from this policy. Though there is some kind of competition, especially in the telecom sector, today[18] the market structure is still *oligopolistic.* The GSM operators (now four operational and one licensee yet to commence operation) still dominate the scene sometimes, to the disadvantage of the CDMA networks, who until recently were not allowed national coverage. The general perception is that the sector would do with more competition[19] .

Apart from telecom, other sectors with remarkable market concentration include cement, sugar, fertiliser, banking and financial services, etc. In the first three, the concentration is a consequence of government policy of encouraging local production. As an incentive for local investment, the government gives import licences to any investor who demonstrates reasonable investment in local production. The purpose of the import licence is to enable the investor import the shortfall in domestic demand, pending the time domestic production would meet up with the demand. This policy has led to artificial increase in the prices of these commodities and there have been allegations and counter allegations of malpractices among the licensees.[20]

In the banking industry, following the consolidation exercise in 2005, there are only 25 banks in Nigeria today, as against the over 90 banks in existence before then. Some of the strong arguments in favour of the consolidation are that the banks would become more efficient, buoyant and able to drive the real sectors of the economy. It was also aimed at eliminating what the Central Bank Governor referred to as 'cowboy banking' – a situation where banks do nothing else but buying and selling either currencies or other commodities with depositors' money. The policy was a reaction against the persistent bank failure and depositors' loss of confidence in the banking system. Post consolidation, most of these problems still persist, there is high interest rate, spurious bank charges, etc[21]. Moreover, a few of the consolidated banks control a large share of the market, leaving them with dominant power. This scenario is also applicable to the insurance sub-sector.

**The few examples above have been cited to locate the likely places from where to expect vested interests against competition policy.** We may stretch the analysis to show that most of these firms across these highly concentrated sectors are owned by the same persons who are either politicians or wield considerable political influence. In fact, the initial attempt by the NCP to establish a competition regime saw the setting up of a Steering Committee having some of the major business executives as members. The then Managing Director of Cadbury Nigeria Plc was the Chairman, while that of the Dangote Group was a member. Though at the moment there has been no noticeable attempt to truncate the process of establishing a competition law/policy regime or any major arguments against it (at least in the public arena), there is need to effectively manage this factor.

**The labour movement** is another focal point to be considered. Competition policy traditionally exempts collective bargaining from the scope of its application. This trend is followed in the draft Nigerian Competition Bill. However, if this group is not well informed and carried along, there would always be room for deliberate or inadvertent misinformation, leading to opposition. This is more so given labour's traditional aversion to market reforms. But, from a more positive perspective, the labour movement can be a good ally in actualising competition policy in Nigeria. Once again, it depends on how well this is managed. The labour movement in Nigeria, like in most other countries, is a very powerful political force that can make or mar any public policy.

**Public Awareness:** Having tried to identify the major actors (public and private) and their likely disposition to competition policy, **there is another major challenge bordering on lack of appreciation of competition policy among the actors, both public and private**. In fact, this is the most likely reason why there is yet no orchestrated campaign for or against the process. It also accounts for the reason why political and policy discourse on the subject is almost non-existent. Apart from the initial round of workshops and consultations carried out by the NCP/BPE 2002, and the recent 1st NRG meeting organised by CUTS 7Up4 Project, there has, to the best of this writers knowledge, rarely been any policy dialogue in the country where competition policy has featured prominently, even in trade policy circles, where this writer works.[22]

The trend is the same among academics and professionals like lawyers and economics. What this translates to is the dearth of expertise in this field. The few experts in this field are domiciled outside the country or have given their time and attention to more 'relevant' issues. We must, however, single out the efforts of Nnamdi Dimgba, an international expert on competition law who has been in the forefront of the advocacy for competition law in Nigeria. He has written and presented several articles and papers on the need for Competition Law in Nigeria[23].

Mention must also be made of the efforts of Section on Business Law of the Nigerian Bar Association

(NBA). The Section on Business Law in its last two Annual Conferences (2008 and 2009) featured the indefatigable Dr Dimgba, who gave the international audience perspectives on different issues in competition law in Nigeria. The NBA Section on Business Law could be a good forum for propagating the values of a competition policy in Nigeria, especially if one considers the traditional role the International Bar Association (IBA) has played in the development of competition law/policy globally. Already, one of the few legal experts has been consistent in lending his voice to the urgent need for competition law in Nigeria shown by the number of articles and papers.

Public awareness and opinion must converge with political opinion in order to result into policy outputs. The political space in Nigeria is not ideologically driven, at least at the moment. Political expediency, which in itself is a conglomeration of different factors, is the driver of the legislative process. **There is, therefore, the need to take the awareness campaign to the door steps of the politicians, especially the legislators**. This would make them see the need to support the formulation process and the expedited passage of the legislation, when presented before them. Failure to capture this space is fatal, because they are more likely to be captured by any group that is not favourably disposed to the idea. Once again, political expediency is the driver here.

**The role of the mass media** is very critical in creating the desired awareness. However, if the media must be of any help here, the media practitioners would need to be trained on the essence and benefits of the policy. Like other segments of the society, they are equally caught up in the web of ignorance and like the labour movement, if the press falls prey to deliberate or inadvertent misinformation, it may spell doom for the entire process.[24]

## Making Competition Policy Work

This last bit is devoted to examining the policy imperatives that would make competition policy saleable and workable in Nigeria. The policy concerns addressed by competition policy are not static. From the Sherman Acts response to public outcry against monopoly in the name of *trusts* to the European Economic Community's Common Market goals, the objectives keep varying from country to country. A more recent development is the competition policy in South Africa, which has one of the objectives as the economic empowerment of the historically marginalised black population. According to Simon Roberts:

> *"The new South African competition law forms an important part of reforms designed to both address the historical economic structure and encourage broad-based economic growth. The government has recently developed the 'Microeconomic Reform Strategy' in which the role of competition policy is identified as central to the efficient outcomes of markets. Competition policy is seen as important in increasing competitive market pressures, leading to firms becoming more efficient and internationally competitive. It is also viewed as important for the improved participation of black-owned companies in the economy."*[25]

Any attempt at formulating competition policy in a developing country like Nigeria must, therefore, take into cognisance the peculiarities and development challenges of the country. Competition policy could be used to achieve a broad range of socio-political objectives, besides the traditional economic efficiency objectives. Some relevant factors to be considered include:

- The level of income distribution in the economy. From a political economy point of view and as demonstrated by the South African example, competition policy can serve as a tool for redistributive justice. Emphasis needs to be given to opening opportunities for enterprise development, especially the small and medium-scale industries and general consumer welfare. The policy could be a tool to deepen democratic values by enthroning a culture of consumer sovereignty and dismantling hegemonic concentration of economic (and by implication, political) power in the hands of few individuals.

- The prevalence of concentration in core sectors. The policy should be designed to first combat anti-competitive conduct of mega firms in the telecom, energy, oil and gas, aviation, banking and financial services sectors[26] . This is an easy way of winning popular acceptance.

- The increasing pressure of multilateral, bilateral and regional trade agreement on domestic economies is another consideration. There is, therefore, need to align the policy with existing obligations and to weigh future obligations against the provisions of the policy.

- The need to achieve economies of scale and optimum performance in some sectors of the economy, especially in a situation of low capital formation, as we have in the developing countries. The US had to relax its antitrust law enforcement at a point in history to achieve this objective. The argument was that the antitrust legislations denied their local firms the competitive advantage arising from large scale needed for international competitiveness. Citing examples from the Asian Tigers, Simon Robert has this to say:

*"If dynamic factors and externality effects are taken into account, then it would be more appropriate to apply a concept of optimal rather than competition... In this case, competition policy should be seen as part of industrial policy, following the examples of Japan and South Korea... The active rivalry of firms and the impact on their investment and production decisions are encouraged as an integral part of working towards identified industrial development goals…"*[27]

- For Nigeria, a competition policy could be explored as a tool of transparency in the extractive industries, especially the oil and gas sector, in furtherance of the objectives of the Nigerian Extractive Industries Transparency Initiative (NEITI).
- The policy should also be mindful of the perennial capacity problem of developing countries in setting up the institutional framework for competition regulation.

In an attempt to address some of these issues, the Draft Policy produced by the NCP stated the goals of the proposed legislation as follows:

- Prevent the concentration of economic and political power in the hands of a few large organisations;
- Promote maximisation of consumer welfare using market principles and efficiency criteria;
- Encourage local control of business and protect against effects of labour dislocation;
- Nurture small businesses and create an economy characterised by many sellers competing with each other;
- Ensure access to many more people previously denied an equal opportunity to participate in the economy;
- Prevent restrictive practices and abuse of dominance, on the account of ownership concentration; and
- Stimulate growth, innovation and expansion of economic opportunities.

It is recommended that these goals should form the basis of any attempt at institutionalising competition in Nigeria.

# *Interface Between Sector Regulation and Competition in Select Sectors*

## Introduction

In short, where competitive markets can work, they should not be subject to economic regulation, but only to normal competition law.[28]

It is often thought that competition and regulation cannot co-exist. This thinking is now thrown overboard, as evidence and practice from all over the world have shown that competition and regulation does and should co-exist. Competition and regulation adopt different approaches to solving the problem of market efficiency. Competition rules seek to address mainly issues relating to market conduct, except in the case of mergers, where the issue of structure becomes important. Regulation on the other hand is mainly focused on structural issues.

The basic assumption of a free market economy is the ability of the market to achieve productive and allocative efficiencies, but experience has shown that markets can fail to achieve dynamic and inter-temporal efficiencies without some form of regulation. The seeming conflict between competition and regulation arises out of the fact that, while competition rules seek to protect the process of competition, regulation is perceived as protecting the operators in the market. This perception of regulation has, however, shifted over the years to a more progressive perception, where regulation is seen as serving the overall goal of efficiency, with emphasis on specific sectors and being complimentary to the economy-wide approach of competition policy and rules.

Industry regulation, therefore, sets out positive prescriptions bordering on standards and availability of services, appropriate technology and, in some cases, pricing. On the other hand, competition rules set out negative prescriptions against conducts such as restrictive practices and abuse of dominants position (which may extend to merger regulations)[29].

It is worthy to note that the basic assumptions that informed heavy regulation of monopolies is fast caving in to the emergence of new technologies, which has made it possible to separate the different components of network utilities and also introducing alternative technologies that render network utilities redundant. An example is in the telecommunications industry, where the emergence of wireless telephony has made it easy for a service provider to reach the consumer without having recourse to existing network infrastructure. There is, therefore, decreasing emphasis on access to network infrastructure, especially in the telecommunication industry and some segments of the electricity industry. This challenge, however, remains important for developing countries, owing to their low level of capital investment and institutional reforms in these sectors.

Nigeria is a country without a Competition Legislation/Authority. However, there are a number of sector regulators, with some having the mandate to apply competition rules in their respective sectors. These include the Nigerian Communications Commission (NCC), the Securities and Exchange Commission (SEC), the National Energy Regulatory Commission (NERC), the Central Bank of Nigeria (CBN), etc.

### Provisions of the Federal Competition and Consumer Protection Bill

As observed above, there are a number of bills in Nigeria on Competition, but for the purpose of this work, we shall be making reference to the latest executive bill entitled Federal Competition and Consumer Protection Bill[30].

There are three general provisions that define the relationship between the sector regulators and the competition regulator and an entire part devoted to addressing the issue. The first relates to the purpose and application of the Bill. It provides that "[t]his Act applies to public utilities but the Commission shall[,] before it exercises any functions in relation to such utilities, consult with the body responsible for the regulation of the given utility."[31] The second relates to the constitution of the Commission and it provides that "[t]he Commission may co-op representatives of sector regulatory agencies to participate in its proceedings as it deems fit…"[32] The third appears under the functions and powers of the Commission and it provides that the Commission shall "give and receive advice from other regulatory authorities or agencies within the relevant industry or sector on consumer protection and competition matters".[33] The approach adopted by the Bill in resolving the issue of likely conflict forms the basis of the entire Part XIV. It starts by acknowledging the likelihood of conflict between the provisions of this bill and the laws providing for sector regulators and provides that the Commission may, from time to time, by a ruling, declare that industries specified in the ruling shall be treated as regulated industries. The Bill goes further to stipulate the conditions the Commission must be satisfied with in designating an industry as regulated and these include:

a. The industries to which the ruling relates are or will be subject to regulations made by a government agency with authority to regulate the activities of persons operating in such industries or the terms under which goods or services are supplied in such industries; and

b. It is necessary or desirable for such industries to be designated as regulated industries in the interest of users, consumers or, as the case may be, suppliers.

Any such ruling is designed in a manner necessary to minimise confusion as to the powers of the Commission and those of other regulatory agencies[34] .

It is obvious from the foregoing, especially with reference to Section 88 (2), that the Bill accords supremacy to the Competition Commission over the sector regulators. Firstly, it is the responsibility of the Commission to designate sectors as regulated. Secondly, in all matters relating to competition, the provisions of the Competition Act override any other legislation.

Perhaps, it would serve better in understanding the orientation of the Bill if we consider that the earlier provisions highlighted above envisage some kind of co-operation and consultation between the Commission and the sector regulators in enforcing the rules of competition in those sectors. Though the sector regulators have the primary responsibility of regulating their industries, including enforcing rules of competition where necessary, the Bill envisages an oversight role for the Competition Commission.

The concept of sector regulation is gaining more prominence in Nigeria, owing largely to the market liberalisation agenda of the government. Within the last ten years, fundamental restructuring has taken place in major sectors like telecoms, financial services, power, oil and gas, etc., all aimed at increasing private participation, thereby raising the need for better articulated and coherent regulatory framework for each of these sectors. As observed earlier, the policy makers did not lose sight of the need to introduce competition (or at least contestability) in most of these sectors. Hence, provisions were specifically targeted at achieving this goal in some of the restructured economic sectors.

## Securities Regulation

Securities regulation in Nigeria is governed by the Investment and Securities Acts (ISA), with the regulatory body as the Securities and Exchange Commission (SEC). The ISA was first enacted in 1999, but a more recent version came into place in 2007 and it introduced fundamental changes, especially in the regulation of mergers and acquisitions. Under the 1999 Act, much emphasis was not placed on competition considerations in merger regulation. The Act merely provided in Section 100 that the SEC would approve a merger on the condition that the merger shall not substantially lessen competition. This provision was further enshrined in the Rules and Regulations, under Rule 229 (2).[35]

However, there has been nothing to show that the SEC has ever applied these provisions in reviewing applications for mergers. Rather, the SEC has focused on the seemingly traditional role of reviewing the fairness or otherwise of a particular transaction with reference to the position of the respective parties.[36]

The revised ISA (2007) has gone further to make more elaborate provisions for merger regulations, introducing elaborate provisions on competition considerations in Sections 121 and 128. The wording of Section 121 makes it mandatory for the SEC in consideration of a merger to **initially** determine whether or not the merger is likely to substantially prevent or lessen competition, by assessing the factors set out under the provision[37] . The Act goes further in Sub-section 2 to list the factors to be considered in determining whether a proposed merger would substantially lessen or prevent competition. The Act also empowers the SEC to equally consider other technological efficiency gains and public interest in applying the competition test[38] .

The provisions of Section 128 are indeed far reaching in granting competition regulatory powers to SEC. It provides that where SEC "…*determines that the business practice of a company substantially prevents or lessens competition, the Commission may in the public interest order the break-up of the company into separate entities in* *such a way that its operations do not cause a substantial restraint of competition in its line of business or in the market.*" Surprisingly, the wording of this provision is not tied to the merger review process, which means that the SEC can apply this measure outside of the process of a merger review.

The point sought to be made here is that the ISA 2007 marks the introduction of multi-sector approach to competition regulation in Nigeria[39], with the SEC as the *pro tem* competition regulator. This has been described as a deliberate attempt to introduce competition law in Nigeria piecemeal, pending when the Government would eventually enact a competition law for the country. In fact, the provisions of the merger control under the ISA 2007 were modelled after the provisions of the Competition Law of South Africa and first appeared in the Federal Competition and Consumer Protection Bill.[40] Commenting on these provisions in the ISA 2007, Dr Nnamdi Dimgba has this to say:

> *It is accepted that the elaborate provisions in ISA 2007 are well-intended, motivation being to reduce the deficit created in the Nigerian legal system by the absence of a competition law regime. Firstly, the creation of elaborate provisions on competition and the conferment of competition powers on SEC by the panel of experts who reviewed the ISA 1999 and came up with the 1SA 2007 was a reaction of the persistent failure of the Nigerian state to enact a full[-]fledged competition law in Nigeria. The panel had sought to use the opportunity afforded them to revise the ISA to bring in elaborate competition law provisions into the Nigerian legal system. The thinking was that when the competition bill is enacted and a proper competition body set up, SEC would hand off jurisdiction on all competition issues to the new competition body. A second thinking is that by having SEC familiarise itself with competition law and be forced to develop capacity in this area, upon the creation of a new competition body (whenever it is established), hopefully the capacity developed within SEC in terms of manpower and expertise would form the foundation staff of the new competition body and thus assure it of an effective early start.*[41]

It still remains arguable whether the approach of piecemeal introduction of competition regulation is the best approach for the country, especially given that the provision relates only to one aspect of competition regulation, viz., mergers and acquisitions. Perhaps, a more pertinent question should be whether the SEC has the capacity to develop the necessary rules and to enforce these provisions.

Interviews were held with some high level officials in the Mergers and Acquisitions Department and the Legal Unit of the SEC. It was obvious from our interactions that competition considerations have never been important in merger reviews under the old Act. One of the officials attributed the reason to the lack of detailed information on market size of the parties to the merger to enable the Commission do an assessment. However, it is obvious from the Act and the Rules and Regulations under that dispensation that guidelines were never provided for the application of any competition impact assessment in merger reviews. It was also discovered that the Commission has started working on developing modalities for the implementation of the provisions of the 2007 Act.

But, one striking reality, as has also been observed by another commentator, is whether the Commission has the requisite technical capacity to apply these provisions relating to competition regulation? Though the Commission can be said to have a good team in the M&A Department (and they seem eager to face the new challenge), none of the staff there is an expert on competition regulation. It then goes to say that for the Commission to fulfil the dream of the framers of the new ISA there is need for an urgent programme of capacity building in that direction.

Coming back to the question as to what should be the relation between the Securities and Exchange Commission and the proposed Competition Commission, the issue seems to have been resolved *ab initio* by the relevant provisions of the Federal Competition and Consumer Protection Bill, which has vested the Competition Commission with supremacy over other regulators in matters relating to competition. This supremacy, it has been observed, was envisaged by the framers of the ISA, who, according to the learned author quoted earlier, intended that the responsibility of ensuring compliance with competition regulations in a merger transaction would eventually be transferred to the Competition Commission, when established, with the expertise and experience developed by SEC equally forming the foundation of the new Commission.

## Telecommunications

The telecommunications industry in Nigeria is regulated by the Nigerian Communications Commission (NCC) Act 2003. Up until 1992, telecommunication services in Nigeria were solely provided by NITEL, which was a public monopoly. Like in most utility sectors in Nigeria, competition was out of the question, except of course in equipment supply market. The first attempt at liberalising the telecoms sector started with the enactment of the precursor to the current Act, the Nigerian Communications Act No. 75 of 1992, which also has the aim of introducing competition into the sector. However, it was not until 1995 that the country attempted to put in place a comprehensive National Telecommunications Policy which was eventually published in 1998. Needless to say that the Policy was near obsolete at the time it was published. Hence, at the inception of the Civilian Government in 1999, the government put in place a process to review the policy and come up with a more contemporary policy that would address the emerging issues and technology in the sector. The work of this Committee led to the Nigerian Telecommunications Policy (2000) and the enactment of the Nigerian Communications Act of 2003.

Both the Policy and the Act provide the framework for the regulation of the Telecoms sector in Nigeria, with the Nigerian Communications Commission (NCC) as the sector regulator. One striking feature of both the documents is that they recognise the importance of competition in such an emerging market. **One of the short term objectives of the Policy, as stated in Section 2.1 (paragraph vii), is** "*to promote competition to meet growing demand through the full liberalisation of the telecommunications market*". In addition, Chapter 4 of the Policy is entirely devoted to "Competition Policy". It focused on four major areas which are: Licensing, Interconnection, Assignment of Frequency and other Scarce Resources, Prevention of Anti-Competitive Practices and Ownership.

It is correct, therefore, to say that competition regulation is an integral part of the functions of the NCC. These policy objectives were translated into law in the Act which made standard provisions on competition regulation and vests the NCC with the power to enforce the same. Chapter Six of the Act, entitled "Economic Regulation – General Competition Practices, Interconnection and Access", makes both general and specific provisions relating to practices and structures that have the effect of "substantially lessening competition in any aspect of the Nigerian telecommunications market".[42]

Apart from prohibiting such conducts as price fixing, boycotts, market-sharing, exclusive dealing arrangements, etc., the Act further provides against the abuse of dominant position.[43] To actualise the intent of these general provisions on competition, the Act further contains provision relating to interconnection[44] and access to network facilities[45]. The Commission has developed a Competition Practice Regulation in 2007 in which the modalities for the enforcement of these provisions have been spelt out in details.

On the issue of interface, the NCC Act has what can be described as an emphatic provision which vests the Commission with exclusive power to enforce competition law and regulation in the communications sector in Nigeria. The exact wording of Section 90 is reproduced below:

*"Notwithstanding the provisions of any other written law, the Commission shall have exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws and regulations, whether of a general or specific nature, as it relates to the Nigerian communications market."*

This provision is emphatic indeed and needs no further inquiry as to the intent of the framers. It is worth noting that, at the time this Act was enacted, the move was already on to draft a competition policy/law for Nigeria.

The conclusion, therefore, is that the framers of the NCC Act envisaged the eventual establishment of a sector-wide competition regulator and sought to exclude the operations in the telecoms sector from the ambit of the coming regulator. Whatever the rational for this could be, one important point is that the method adopted is ineffective. It is a trite principle of law that an earlier statute overrides the provisions of a later statute. Consequently, if the proposed Federal Competition and Consumer Protection Bill has vested the Competition Commission under it with overriding powers in competition regulation, as we have shown above, this will go to nullify Section 90 of the NCC Act when it is eventually enacted.

## Electricity

The electricity supply industry in Nigeria has been controlled as a government monopoly, run by the National Electric Power Authority (NEPA) up until 1998, when the move was initiated to liberalise the sector. Perhaps, no other sector in the Nigerian economy has been a source of national embarrassment like the electricity sector. The sector suffered from long years of neglect, leading to the breaking down of already obsolete equipment.

It was, therefore, obvious to the incoming civilian administration in 1999 that for any economic restructuring and reform efforts to be meaningful, the problem of power needed to be tackled. By 2001, the country had produced a National Electric Power Reform Policy. The Policy states that "[t]he overwhelming objective is to ensure that Nigeria has an ESI (Electricity Supply Industry) that can meet the needs of its citizens in the 21st Century. This will require a fundamental reform at all levels of the industry. A technically and commercially efficient ESI is critical for achieving Nigeria's growth and development goals."[46]

The practical approach adopted in achieving this started with the unbundling and subsequent privatisation/concessioning of the existing government monopoly (NEPA) and the licensing of independent power generating companies. **Among the short-to-medium term objectives of the Policy is the need** "*to promote competition to meet growing demand through the full liberalisation of the electricity market*" and "*to review and update electricity laws in conformity with the need to introduce private sector operation and competition into the sector*".[47] The Policy goes ahead to observe that "only the network elements of electricity transmission and distribution are natural monopolies. Both generation and the sales/marketing of electricity are potentially competitive activities".[48]

In describing the roles of the different policy and regulatory institutions, the Policy document recognises the role of the then proposed Nigerian Electricity Regulatory Commission in ensuring that competition prevails in different segments of the market. The Policy is detailed in prescribing the transitional arrangement from monopoly to liberalisation and recommends the phased introduction of competition in the different segments of the market at different stages of the transition.

Similarly, with the enactment of the Electricity Power Sector Reform Act 2005, the Policy recommendations relating to competition were enshrined in Part VII of the Act. Section 82(1) provides that: [t]he Commission shall have a continuing responsibility [t]o monitor the Nigerian electricity supply industry in regard to its potential for additional competition and to report on this subject each year to the Minister…" The Commission also has the responsibility to check abuse of dominant position, including the setting of prices and tariffs and regulation of mergers and acquisitions.[49]

The orientation of the Policy vis-à-vis the issue of regulation and competition interface in the sector is encapsulated in the following lines:

> *"It is likely that for some interim period, active competition will not fully develop throughout the market, leaving one or more dominant operators with the power to control pricing. In these circumstances, it is appropriate for the Nigerian Electricity Regulatory Commission to establish tariff regulation requirements for such dominant operators which will ensure that service prices are cost-oriented, that consumers' and competitors' interests are protected, and that the industry develops in the most efficient manner possible."*[50]

It is obvious that the expected end of regulation in the ESI (Electricity Supply Industry) in Nigeria, as enshrined in the policy and Act, places a high premium on competition. However, the Act seems not to have envisaged the emergence of a multi-sector competition regulator. Hence, no attempt was made, as was done in the NCC Act, to define the relationship between the NERC and the competition authority, when eventually formed. It is, therefore, safe to conclude that the NERC would not have any problem with the overriding provision of the proposed Competition Bill, especially when the Bill has recognised the need to carry along sector-specific regulators when dealing with matters in those sectors.

In a personal interview with one of the officials in the Legal and Regulatory Department, he disclosed that the NERC is yet to come up with the necessary regulations to give effect to the provisions of the Act relating to competition. He further opined that the reform is still at the infant stage, where issues of competition have not yet started arising.

Some comments must be made about the electricity sector reform in Nigeria. After putting in place the policy, legal and institutional framework, there seems to be lack of political will on the part of the Government to make the unbundling of the NEPA (now PHCN-Power Holding Company of Nigeria) operational. The reform process is well behind schedule. The independent power generators are yet to come on stream and the effort of the Government to invest in integrated power projects have been subject of controversies.

## Conclusion

It is obvious that from the above analysis that the Federal Competition and Consumer Protection Bill recognises the jurisdiction of the sector regulators in respect of competition matters, but envisages an oversight (superior) role for the competition commission. It, however, encourages collaboration with the sector regulators when the Commission is dealing with competition issues in the particular sector. On the face of it, this seems a good approach, except for the provision of the NCC Act, which has been highlighted above (which will, in any case, become null once the new Bill is enacted). It is indeed a good idea to have sector regulators enforce competition rules, especially in the absence of a sector-wide competition regulator.

However, with the advent of a competition commission, it is expected that the sector-specific experience and capacities in competition regulation, where they exist, should form the foundation of the new Commission. Furthermore, as service and technical standards become more defined and improve in the respective sectors and the market is further free from information asymmetries and externalities, there should be reduced emphasis on regulation, as the logic behind this proposition is that regulation is a stopgap measure basically aimed at addressing the failure of the market to meet the socio-economic needs of the population in terms of availability and access to services of good standard at reasonably affordable prices, while competition is the expected destination.

One thinks that it would make more economic sense to gun for 'regulatory convergence' where the roles of the sector regulators are gradually streamlined and collapsed into the competition authority. This would allow for concentration of specialised capacity of different forms in the competition authority and provide for more co-ordinated approach to economy-wide regulation.

# *Alleged Cases of Anti-competitive Behaviour*

There is no doubt that different sectors of the Nigerian economy experience some kind of practices that would be generally regarded as anti-competitive under the scrutiny of competition law. These practices can be gleaned mostly from reports in the mass media. Unfortunately, owing to the absence of a competition regime and a thorough understanding of the subject in Nigeria, most of the cases are reported under different concerns such as consumer welfare, product availability, high cost of products, poor services, etc.

This Section, therefore, sets out to capture some of these reports concerning some sectors of the economy.

## Curbing the Cement Cartel

The above is the title of a news report in one of the Nigerian *dailies*.[51] This and other similar news reports and opinion articles say a lot about the general perception of the cement market in Nigeria.

As a country investing heavily in building and infrastructure as part of its overall development initiative, Nigeria has a robust building and construction industry which makes the country a net consumer of cement. Cement is the primary input in the building construction industry and its availability and right pricing is critical to the development aspirations of the country. Local demand for cement stood at 18 million metric tonnes for the year 2009. There has been a remarkable trend of increasing demand over the years.

What is the cause of the crisis surrounding the availability and pricing of this product in Nigeria? This can be answered by looking at the evolution and structure of the market. In the years following independence and in furtherance of government's import substitution policy, the government invested heavily in the setting up of cement factories across the nation – a venture which was made particularly viable by the abundant availability of raw materials (basically limestone) in those locations. According to one commentator, who quoted figures from the Cement Manufacturers Association of Nigeria, "…in 1986, local production at 3.5mmt accounted for 81.4 percent of the total supply of cement into the country while import at 800,000mt accounted for 18.6 percent. But by 2000, local production at 2.285 mmt had declined to 40.66 percent and import increased to 3.34 mmt representing 59.34 percent of total supply…"[52]

It has been alleged by industry stakeholders that the decline in local production is the direct consequence of the government's policy which liberalised the importation of bagged cement in the mid to late 80s, thereby putting a lot of pressure on the local factories, leading to their demise.

In a bid to find a solution to the problems of declining local capacity, low quality imported cement and high cost of the product, the government adopted a policy of import substitution in the industry. In furtherance of this policy, the importation of cement was banned out right, as one of the incentives to encourage private investment in local production. When it became obvious that the local manufacturers could not meet the soaring demand, the government decided to issue import licences to the manufacturers to import bulk cement for bagging locally. This, the government reasoned, would encourage backward integration and keep investment going in expansion of local production capacity.

Unfortunately, the market is still heavily import–dependent, with local capacity developing slowly. According to official projections, out of the estimated demand of 18 million metric tons for 2009, local production was to account for nine million metric tonnes, leaving the balance of nine million metric tonnes (or 50 percent) to importation.

A look at the structure of the market today shows that there are 13 local manufacturers who are also importers. Together, they control over 80 percent (about 15 metric tons) of the total demand. One firm among these manufacturers/importers controls about 60 percent of the market. The scarcity and soaring price of the product has led to a lot of public outcry. According to news report, "…investigations revealed that at a time a 50kg bag of cement is being sold in the country for N2, 000 the same product costs N600 in a neighbouring country, Benin Republic, while the same product sells for N612 in Lebanon. In Cairo, it is US$5, Greece US$5.50 and Syria US$7".[53] Another analyst has observed that: "[T]he irony of the cement price controversy is the fact that the current world market price per MT stood at US$60. By this price regime, a bag of cement locally should be at about N420 hence one MT gives 20 bags. But in the port city Lagos, cement price hovers around N2200 and above. The situation is same across the nation."[54]

The prevailing perception, as evidenced by official statements from the government and stakeholders in the building construction industry, is that the local manufacturers–cum- importers have constituted themselves into a very powerful cartel in the sector, determining the output and the price. Following mounting public outcry against the activities of this 'cartel', the government once again, in 2008, came up with another policy to provide a stopgap solution to the scarcity and high cost of cement. The government issued additional six import licences to new importers to bring in bagged cement on a one-off basis for a specified period of time to help stabilise the market. As usual, the Government stated that the licensees have all demonstrated considerable investment in local manufacturing capacity. The target, according to the government, was to bring down the price of bagged cement from over N2000/50kg to about N1000-N1, 200/50kg bag.

This policy never really succeeded in bringing down the price, as was to be acknowledged by the Minister of Commerce and Industry in a meeting he had had with the executive members of the Cement Manufacturers' Association of Nigeria. In the meeting, the Minister outright accused the manufacturers, who he said controlled over 80% of the market, as being responsible for the prohibitive price of the product in Nigeria. Justifying the Government intervention in the market, another commentator observed that: "[A]lthough the nation can hardly be said to have enjoyed a steady, cheap supply of cement for a long time, the last two years have been particularly excruciating for consumers. In the first quarter of 2007, the price of a 50 kg bag of cement hovered between N1, 200 and N2, 000. In the early months of 2008, it further shot up to between 2,400 and 2,700. However, as that year progressed, the cost dropped to about N1, 500. But, for a product whose actual cost of production is put at less than N500, that reduction was still considered as unfair, hence Federal Government's decision to intervene".[55]

As it were, the government seems to have run out of ideas and political will on how to tackle the problem of availability and right pricing of petroleum products in Nigeria, as every move is reportedly sabotaged by the 'powerful cartel'. This scenario raises a lot of issues, not just on the need for a competition policy and law in Nigeria but also on the need to have the country's trade and industrial policy properly aligned to the competition policy.

## Downstream Petroleum Sub-sector: *In the Throes of a Hurting Cartel?*

The word 'cartel' has assumed prominence in political economy discourse in Nigeria. One of the sectors/sub-sectors where this word is dropped every now and then is the downstream sub-sector of the oil and gas sector. This sub-sector is characterised by refining, distribution and marketing of petroleum products.[56] It has been variously alleged that the sub-sector is under the control of a powerful cartel which determines the availability and, to an extent, the pricing of the product.

Unfortunately, in spite of the enormous potential for local refining, this sub-sector of the Nigerian economy is import-driven. According to a statement by the Minister of State in charge of Petroleum, it is estimated that:

> *"The daily average consumption of the three main products range… PMS, 32 million litres; AGO, 12 million litres and household kerosene (HHK), eight million litres. The four refineries have a maximum nominal installed capacity to process 445,000 barrels of crude oil per day. This is about one-third of daily national consumption,"*[57]

The Minister went ahead to observe that due to the poor state of the refineries in recent times, the country imports over 85 percent of the fuel consumed locally.

The debate rages on in this sub-sector that touches the nerve fibres of the social, political and economic life of this country. The government has attempted over the past few years to deregulate the downstream sector of the oil and gas sector, but has always been met with stiff resistance from labour and the organised civil society. The current effort is not an exception. Interestingly, the debate has shifted from the pro/anti-deregulation divide to a more constructive approach. The concern among the anti-deregulation elements seems to be on the process (how), as against the deregulation in itself.

It is important to point out at this point that the problem in this sub-sector is primarily a consequence of a number of factors, which include faulty government policies, corruption, inefficient government agencies and, most importantly, rent-seeking by vested business interests. The kind of anti-competitive practices in this sub-sector cannot be solved without addressing the above mentioned issues.

However, one major issue that has raised considerable concern both for the government and for ordinary Nigerian is the perceived manipulation of the market by the operators. Historically, the downstream sub-sector was dominated by the state-owned National Petroleum Corporation (NNPC), which ran the four refineries when the refineries were still producing at reasonable capacity. Even at that time, the output of the refineries did not fully meet the local demand. This made it imperative for the NNPC to resort to importation to bridge the gap. The NNPC set up the Pipelines and Products Marketing Company (PPMC), which was vested with the responsibility of importation and distribution of refined petroleum products in the country. Under this regime, the 'major' and 'independent' petroleum marketers obtained their products from the PPMC, which has a network of pipelines and depots scattered over the country for ease of distribution. Instructively, the NNPC/PPMC at this point was not involved in direct marketing of these products to the end-users.

Years of changing government policies in the sub-sector led to the 'liberalisation' of importation of petroleum products. Import licences were granted to private operators and this made it possible for the major petroleum marketing companies to import refined products directly. This is exactly where the 'cartel' issue originated from. With the continued deterioration of the local refineries, the gap between demand and supply kept widening, making it difficult for the NNPC to fill. This made the licensed importers more important in the market. The major marketers are organised under an umbrella industry association called the Major Oil Marketers Association of Nigeria (MOMAN).[58]

Usually, the major marketers have a network of service stations scattered over the country from where they sell directly to the public. In addition to the major marketers, another important group is the owners of independent service stations. This group is not importer but only engaged in selling of the products to the end-users. They are equally organised under an industry association known as Independent Petroleum Marketers Association of Nigeria (IPMAN).

At the moment, there are a number of private operators in the sub-sector. The major marketers have licences to import. The major method of distribution is through pipelines, which are largely vandalised and rendered moribund now, thereby leaving trucking as the major mode of distribution. Under the extant arrangement, the marketers import products at the international market value and sell at the government-regulated pump price to the end-users. The shortfall between the landing cost of importation and the pump price is reimbursed to the importers by the government as a subsidy. Similarly, when products are moved from the landing ports, located mostly in the coastal cities of the south, to other parts of the country, especially the North, the additional cost is offset via a government fund as a way of maintaining uniform pump prices throughout the federation.

There are two government agencies that run this system. The first one is the Petroleum Products Pricing Regulatory Agency (PPRA) and the second one is the Petroleum Equalisation Fund (PEF).

It is commonly believed that the private operators adopt a number of tactics to manipulate the pricing of the products. The PPRA is charged with the duty of setting an appropriate pump price for the products. It does this through a periodic review which takes into account the price of the products in the international market plus the landing and other incidental costs of importation. Also, the PPRA is in charge of the disbursement of government subsidies to the private importers of the products.

On its own, the PEF is charged with the responsibility of verifying claims for 'bridging'[59] and making payments, as appropriate. One of the ways, it is alleged, a cartel operates is by hoarding the products or refusing to import products in order to create artificial scarcity and force the government to review the pump prices. Furthermore, this 'cartel' was accused of buying products from the NPC on official rates only to sell at market value to either the smaller service station owners or the end-users, while still claiming the normal subsidy or bridging fund, as the case may be.

According to a news report, a government official questioned why the "…NNPC will import and a cartel will go to NNPC and buy at ex-depot price and sell at market price. The President has recognised that there is no reason why NNPC can import products and allocate it to the few Nigerians at a loss". The report quoted the official as saying: "He [the President] has done what other previous administrations were not able to do. He has recognised that a government agency like the NNPC should not be used to dispense patronage [to] the detriment of the government."[60]

The current attempt by the government to fully deregulate the sub-sector, as usual, has led to acute scarcity of the products and brought to fore once again accusations and counter-accusations of market abuses and distortions. According to government officials, including the President, the numerous scarcity and distortions in the market are caused by the activities of a powerful cartel which the Government is set to break up.[61] Similarly, the Senate President has also expressed similar sentiments in an address to security men undergoing training.[62]

Curiously, the marketers have also fired back at the NNPC, accusing it of monopolising the importation of refined petroleum products into the country, a task which they alleged the Corporation has not been able to discharge effectively. It is worthy to note that some 10 years ago, the NNPC stepped into the business of direct marketing of petroleum products by establishing a number of "Mega Stations" across the country. The private importers also cite a lot of reasons for their inability to import to bridge the supply gap. They cited the delay of the government in disbursing the subsidies on their previous imports, which has affected their credit sanding with the banks, therefore making it difficult for them to fund their operation. It is true that the country seems to be returning to the former era where the NNPC was the sole importer of refined petroleum products, but this seems to be a strategic move on the part of the government to ensure that the private operators do not hold the country to ransom wittingly or unwittingly.

In pursuit of this agenda, the NNPC has aggressively pursued the expansion of its distribution and marketing capacities. The Corporation has entered into strategic alliances with some private operators who either own depot facilities or service stations. This has seen some privately-owned stations converting to "NNPC Mega Stations" across the major cities in the country. This has further meant the increase in the market share of the NNPC in importation and distribution.

An important twist to this controversy was the recent allegation in a major newspaper that some officials in the NNPC are being paid by some international oil trading firms who supply the bulk of the nation's consumption to ensure that the local refineries never function.[63] It is generally agreed among major stakeholders, including organised labour,[64] that the resuscitation of the local refineries will go a long way in easing import dependence, which seems to be the major reason for the perennial scarcity and price-hike. This is a classical example of the kind of alleged practices – usually connivance between government officials and private business interests – that distort the market in the sub-sector. According to one commentator "[S]uch allegations are rife in the country, and there is strong circumstantial evidence to support them".[65]

A further issue of concern to our inquiry on anti-competitive practices in this sub-sector is the prevalence of tied-selling, usually during product scarcities. The practice among some of the major marketers is that a person seeking to buy the product (usually PMS) is forced to buy some other products manufactured or sold by the same dealer. The tied product is usually engine oil or other lubricants, which the buyer may not need or for which the buyer has preferred brands. Reacting to this incident in the just easing fuel crisis, a highly placed official of one of the states in the South-South zone was reported to have said: "I received the report that Oando filling station located around Abuloma Roundabout was selling fuel to only those customers who agreed to buy Oando engine oil. This is not acceptable to us; it is wrong to force customers to buy the engine oil before fuel can be dispensed to them. We are already investigating the station and the manager. After our investigation, we will arraign the manager, [name withheld] in the court. This on its own will serve as a deterrent to other dubious oil marketers".[66]

However, laudable this initiative to prosecute the manager may be, one does not fail to wonder under which law and for which offence the manager would be charged (maybe, for hoarding products). This exactly brings us to the very burning issue. If the Government of Nigeria is really interested in an efficient and market-driven downstream sub-sector of the petroleum industry (and indeed in all sectors of the economy), why has it been difficult to put in place the appropriate policy and legal framework for the actualisation of this?[67]

Though it has been observed earlier that the problem in this sub-sector is due largely to government policies and other factors external to the market, it is obvious that the absence of a competition law in the country and the lack of such provisions in the existing sector regulating agencies is a serious gap in the development of this all important sector of the Nigerian economy. We can only look forward to the enactment of the PIB, which is expected to address most of these problems.

## 'Signals of Conflict' from Pay-TV Operators

With the deregulation/liberalisation of broadcasting in the Nigerian market, starting from 1992, there have been appreciable developments in the sector. The first one was the emergence of privately-owned radio and television stations in the country, giving the viewing public more choices and, in most cases, better services and programming than the government-run stations. The second development was the emergence of pay-tv operators offering a bouquet of usually foreign stations.

The trail blazer in satellite pay-tv broadcast in Nigeria was Multichoice DSTV, which is a direct-to-home (DTH) service provider. Until 2006, the company, which has its origin in South Africa, dominated the scene and was accused of monopolistic practices, especially on the broadcast right of the English Premier League (EPL), and contributing to the collapse of competitors who ventured into the market. In addition to this DTH provider, there were also some cable pay-tv operators who obtained their programmes via satellite operators and re-transmitted to the local viewers for a fee. The scenario has changed considerably today. There are at least four DTH pay-tv operators[68] in the country today and a numbers of cable TV operators.

Nevertheless, analysts are questioning whether the Nigerian consumers are getting the real value for their money or, in the words of one analyst, they "...are actually paying for the mere excitement they get viewing foreign channels…" as against "…real viewing value commensurate to the subscription fees paid."[69] Some of the concerns raised by this analyst include the high subscription fees, compared to what is obtainable in Europe and America – the practice of customers having to pay for calls to the customer care centres, as against the global practice where these calls are made on toll free lines. He eventually concludes by submitting that: "[S]ome of the inadequacies in Pay-TV market in the country can only be handled if the Pay-TV operators are prompted appropriately by regulatory authorities like the Ministry of Information and Communications, National Broadcasting Commission, Consumer Protection Council[,etc.]"

The above reflects the regulatory environment of the pay-tv market in Nigeria. A recent conflict in the market has further exposed the poor regulatory framework, especially the absence of a competition law in the country. This is the conflict between HiTv, one of the DTH service providers and the Association of Cable-TV Operators of Nigeria (ACON).

HiTv came into the pay-tv market in Nigeria at a time when DSTV held sway. HiTv came in with an ambitious business plan, which was greeted with much applause, especially given the fact that many a consumers were already grumbling against the high subscription cost and other deficiencies with DSTV services. HiTv was, therefore, well received and even the government was not left out in this excitement, as shown by the then Minister of Information, Frank Nweke, Jnr at the formal launching of HiTv. The Minister was reported as having described the existing system before the advent of HiTV as "ridiculous, exploitative and unacceptable", adding that Nigerians paid the highest rate of subscription for pay-tv than any other place in the world.[70]

HiTv's fame in the market rose when it succeeded in yanking off the broadcast rights of the EPL from Multichoice. That feat positioned the operator as the prime soccer action provider.[71] This EPL right is the cause of the current conflict between HITV and ACON. According to industry watchers, it is the 'normal' practice for a holder of the right to such a prime content as the EPL to sub-lease this right to cable-TV operators. This is more so, given that the criteria for bidding for this right excludes cable-TV operators from bidding for it, hence one of the ways a right holder can maximise viewership is to sub-lease the right to cable-TV operators.

In the current conflict, the pay-tv operators are accusing HITV of monopolising the EPL by refusing to grant them (the cable-operators) access to re-broadcast the EPL. According to news reports, ACON alleges that HiTv found it particularly easy to win the broadcast rights because it (HITV) "promised the property owners that it was going to allow the teeming cable TV operators in Nigeria access to re-broadcast the league game and thereby make the content more popular." Unfortunately, according to them, HITV has refused to fulfil that promise. HiTv, on its part, has accused the cable-TV operators of preferring to pirate contents, rather than meet the terms for access, as stipulated by HITV since 2007. According to HITV, the cable-TV operators do not want to do business in a structured way. According to HITV, the terms for grant of the re-broadcast rights are: three months advance payment on projected number of subscribers; bank guarantee for a year's payment and non-piracy of channels or content on their platform. The cable-TV operators have maintained that they are willing to pay for the rights and condemned what they tagged as unreasonable terms aimed at frustrating their businesses.

After several attempts by the industry regulator, the National Broadcasting Commission (NBC), to mediate in the matter failed to yield any result and HiTv allegedly pulled out of arbitration panel that was set up to handle the matter, the National Copyright Commission (NCC) has stepped into the arena to try to resolve the matter. It was also reported that HiTv was prevailed upon to reduce the fess, which it agreed to and that ACON has committed to pay retro-actively any fees mutually agreed to, beginning from the inception of the season in 2009.

While this conflict is going on, HiTv sued CTL, the largest cable-TV operator and the leader of the ACON. HiTv is alleging that CTL has been pirating its (HITV's) contents, especially soccer. The case is in still in the court.

Having failed to have their demands met, in spite of the intervention of the regulatory bodies, ACON, led by the biggest cable-TV operator in Nigeria, CTL, has sued HITV, demanding that the court compels HITV to grant the cable operators the re-broadcast right at reasonable conditions.

Besides the conflict with the cable TV operators, HiTv has also stirred a hornet's nest in its relationship with its subscribers, especially the commercial viewing centre operators. HiTv has requested that this category of subscribers should pay a special fee of US$133.023 in addition to the normal subscription fee of US$39.907. As would be expected, this group of subscribers is kicking against this marketing policy of the company. Even though the company has reduced the fee to US$99.768, but the policy seems to have done a lot of damage to the standing of the company in the Nigeria market.

Of all the reasons adduced by some aggrieved subscribers,[72] the recurrent indictment on the company is the poor quality of its content and services, generally. It has become obvious that most people only tolerate the company because of the EPL and nothing more.

Readers of some of the news reports and articles on the issue posted comments with more than 90 percent condemning the attitude and service of HiTv and expressing their readiness to move back to DSTV, even without the EPL.

One of the readers wrote: "HiTv is a BIG JOKE!! I thought they came into the market to eliminate monopoly, but now they've monopolised all football matches and they don't even have the capacity to broadcast. Theyare benefiting from the fact that we cannot live without football. They should carry out a soul search and conduct a survey amongst their customers on their quality of service and let's see what comes out of it. Correct TV INDEED!!!!"

Another reader wrote: "HiTv is running and not looking back; running behind them is Daarsat…" (Daarsat is a new entrant into the market).

These three cases are only representative. A lot of other cases can be cited, but with much difficulty in getting published material on them. For example, the market for bread, sachet water, etc., are typical examples where prices are fixed by the manufacturers in concert usually under an 'association'. Usually, both the manufacturers and majority of the consumers do not think anything wrong with this, except when the prices are fixed at exceptionally high levels that one hears grumblings from members of the public. Also, the markets for sugar and fertilisers, which are mostly imported, witness a considerable cartel-like concentration.

It has now become a ritual that at regular intervals (2-3 years), the bread makers review their prices upwards to reflect the ever-increasing cost of production and make an announcement to that effect. Unfortunately, one or two attempts by the producers of sachet water to increase their prices on a national scale (from US$0.03 to US$0.06 a sachet) did not succeed, partly due to public outrage and partly, maybe, because some members could not stick to the agreed price in a bid to survive. However, these producers have succeeded in getting away with the increase in a place like Abuja. Hence, a sachet of table water sells for US$0.06 in Abuja, as against US$0.03 in other part of the country.

# Cross-sectional Perceptions on Competition

## Introduction

This section of the CRR analyses perceptions regarding the state of the competition regime in Nigeria and identifies areas requiring immediate attention. Assessment of perception of three groups of stakeholders (business, government/regulatory authority and civil society/consumers) on competition policy and law issues in Nigeria has been carried out. Questionnaires were administered among the three groups of stakeholders in six cities of Nigeria. 34 percent of the respondents are from the business group, 33 percent are from the civil society/consumers, while 33 percent are from government/regulatory agencies.

Responses to this questionnaire survey was analysed under the following categories:

- Stakeholder awareness;
- Prevalence of anti-competitive practices;
- Level of competition;
- Enforcement;
- Role of media; and
- Other issues.

## Stakeholder Awareness

26 percent of the respondents answered YES there are ***rules, regulations or laws to check anti-competitive practices in Nigeria***. 31 percent answered NO, while 43 percent answered DON'T KNOW.

Of the 26 percent who answered **YES**, 31 percent are business, 52 percent are Government and 17 percent are consumers. Also, of the 31 percent who answered **NO,** 32 percent are business, 32 percent are Government, while 36 percent are consumers. Of the 43 percent who answered **DON'T KNOW,** 38 percent are business, 24 percent are Government and 38 percent are consumers.

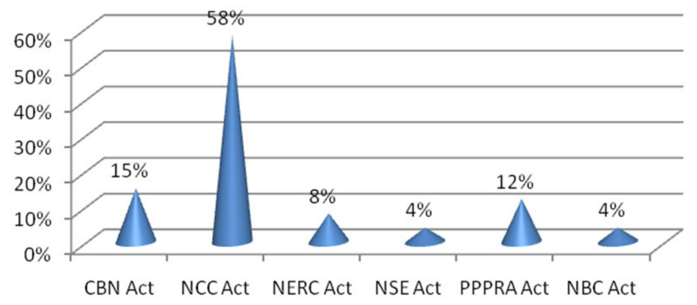
This shows a very low level of awareness among consumers of the existence of competition laws. Further, it is striking to note that a large section of the government officials expressed their ignorance of relevant laws in Nigeria.

Respondents who are aware of relevant laws or regulations listed the following:

- The Central Bank of Nigeria (CBN) Act (15 percent);
- The Nigeria Communication Commission (NCC) Act (58 percent);
- The National Electricity Regulatory Commission (NERC) Act (eight percent);
- The Nigeria Stock Exchange (NSE) Act (four percent);
- The Petroleum Products Pricing Regulatory (PPPRA) Act (12 percent); and
- The National Broadcasting Commission (NBC) Act (four percent).

78 percent of the respondents answered YES there are ***Consumer Protection Laws in Nigeria***. Four percent answered NO, while 18 percent answered DON'T KNOW.

**Figure 23: Level of Awareness of the Existence of Competition Laws and Agencies**



Of the 78 percent of respondents who answered **YES**, 33 percent are business, 40 percent are government and 27 percent are consumers. Also, of the four percent who answered **NO,** 25 percent are business, 25 percent are Government, while 50 percent are consumers. Of the 18 percent who answered DON'T KNOW, 44 percent are business, six percent are government and 50 percent are consumers.

Respondents who are aware of Consumer Protection laws in Nigeria listed the following as laws they are aware of:

- The Consumer Protection Council (CPC) Act (23 percent);
- The Standard Organisation of Nigeria (SON) Act (14 percent);
- The National Agency for Foods and Drugs Administration and Control (NAFDAC) Act (49 percent);
- The National Broadcasting Commission (NBC) Act (two percent);
- The Nigeria Communication Commission (NCC) Act (eight percent); and
- The Nigeria Electricity Regulatory Commission (NERC) Act (three percent).

The above data reveals a fairly low level of awareness among consumers about the Consumer Protection Act of Nigeria and the existence of Consumer Protection Council (CPC) even after being operational for over 10 years in the country. For CPC to evolve as a more effective consumer protection agency – it needs to engage more closely to consumers and build its visibility across the country. It also seems that CPC's existence is also not well known among some government officials which is fairly alarming.

Twenty percent of the respondents answered YES competition issues are understood in the country, while 80 percent answered NO. Also, of the 20 percent who answered YES, 22 percent are business, 50 percent are Government and 28 percent are consumers. Of the 80 percent who answered NO, 38percent are business, 29 percent are government and 33 percent are consumers.

Following are reasons given for NO awareness of competition issues in Nigeria by the 80 percent of the total respondents:

- Lack of political will (39 percent);
- Inactive competition authority (14 percent); and
- Lack of publicity about competition issues (47 percent).

It is evident from the above analysis that lack of government's attention to competition issues has contributed to very little interest and understanding on the subject across stakeholders in Nigeria.

## Prevalence of Anti-Competitive Practices

About the extent to which anti-competitive practices are encountered in Nigeria, 49 percent of the respondents said VERY FREQUENTLY, 38 percent said QUITE FREQUENTLY, 12 percent said INFREQUENTLY and one percent said NOT AT ALL.

Of the 49 percent who responded 'Very Frequently', 39 percent are business, 34 percent are Government and 27 percent are consumers. Also, of the 38 percent

**Figure 24: Level of Awareness of the Existence of Consumer Protection Law and Agency**

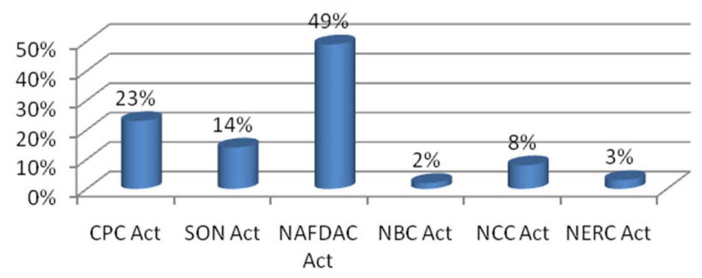



**Figure 25: Level of Awareness of Competition Issues in Nigeria**

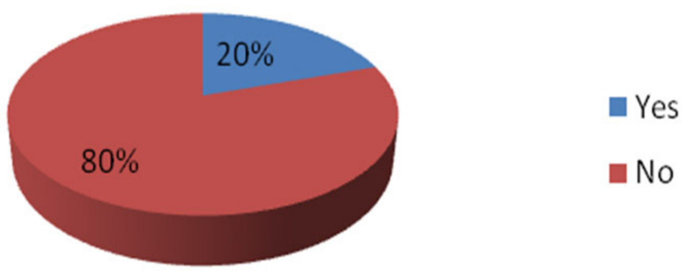
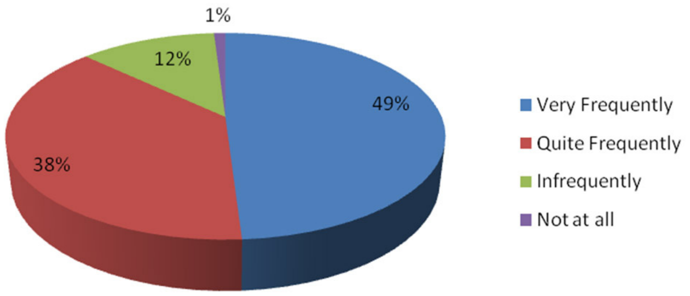



**Figure 26: Overall Prevalence of Anti-competitive Practices in Nigeria**



who responded 'Quite Frequently', 29 percent are business, 32 percent are government and 39 percent are consumers. And, of the 12 percent who responded 'Infrequently', 36 percent are business, 36 percent also are government and 28 percent are consumers. The only one percent who responded 'Not at all' is a consumer.

**Table 60: Most Frequent Anti-Competitive Practices in Nigeria**

| Anti-Competitive Behaviour | % |
|---|---|
| Price Fixing | 27 |
| Price Discrimination | 19 |
| Tied-selling | 14 |
| Entry Barrier | 11 |
| Bid Rigging | 9 |
| Predatory Pricing | 6 |
| Anti-competitive M&A | 6 |
| Exclusive Dealing | 4 |
| Market Sharing | 2 |
| Resale Price Maintenance | 1 |
| Concerted Refusal to Deal | 1 |
| **Total** | **100** |

**Figure 27: Most Frequent Anti-Competitive Practices in Nigeria**

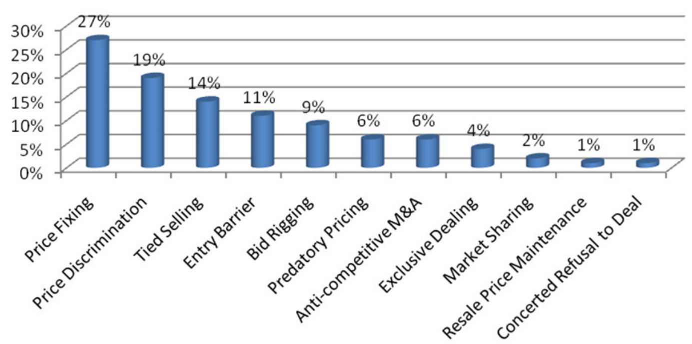
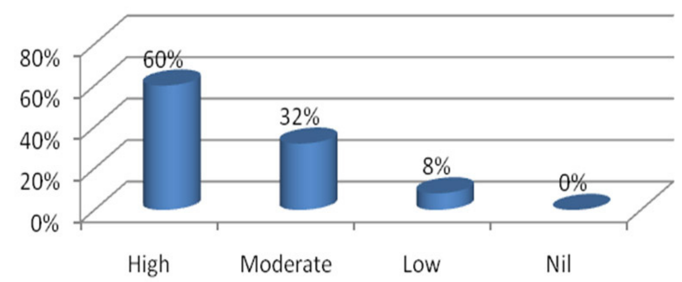



**Figure 28: Level of Competition in the Nigerian Markets**




An interesting finding here is the response from the business community of Nigeria that they often encounter competitive practices.

## Perception about level of Competition

60 percent of the respondents perceived the level of competition in Nigeria to be HIGH, 32 percent perceived it to be MODERATE, while eight percent perceived it to be LOW. None of the respondents perceived it to be NIL.

Of the 60 percent of the respondents who perceived the level of competition in Nigeria to be HIGH, 43 percent are business, 37 percent are government and 20 percent are consumers. Also, of the 32 percent who perceived the level to be MODERATE, 21 percent are business, 27 percent are government and 52 percent are consumers. Of the eight percent who perceived the level to be LOW, 29 percent are business, 26 percent are government and 43 percent are consumers.

While majority of consumers felt that there was scope for more competition in Nigerian markets – the feeling in business community was that there was already a fairly good level of competition in some of the markets. This is a very interesting trend – conveying that a relatively moderate/high level of competition in markets has not led to reduction in prices for consumers, who would like to see more competition. If this outcome is juxtaposed with the findings of the most prevalent anti-competitive practices (Figure 27), one can deduce the possibility of collusive agreements between players as one possible reason behind competition (in terms of large number of players) not leading to reduced prices in certain Nigerian markets (like telecom, retail and commuter transport – as shown below).

## Enforcement

Seven percent (seven percent) responded YES ALWAYS; 29 percent responded YES SOMETIMES; 23 percent responded NO; and 41 percent DON'T KNOW.

Of the 23 percent stakeholders who responded NO, 29 percent responded that LAW IS NOT ENFORCED, 10 percent responded that AGENCY NOT STRONG ENOUGH, 23 percent responded DUE TO CORRUPTION, while 38 percent responded due to STRONG LOBBIES.

Figure 28i: Telecom Sector in Nigeria

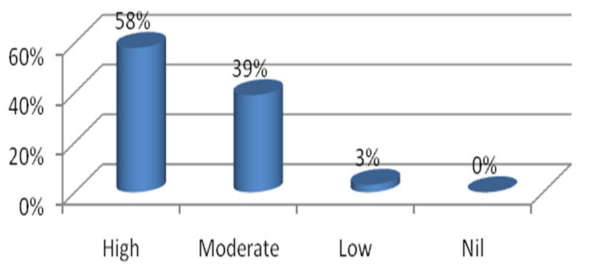



Figure 28ii: Power Sector in Nigeria

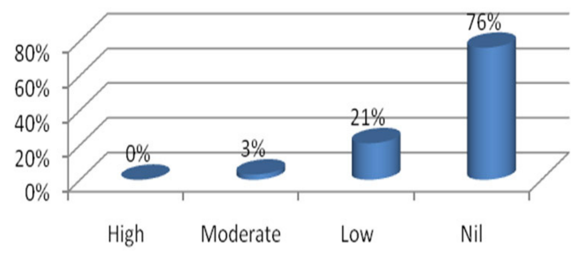



Figure 28iii: Retail (Consumer Goods) Sector in Nigeria

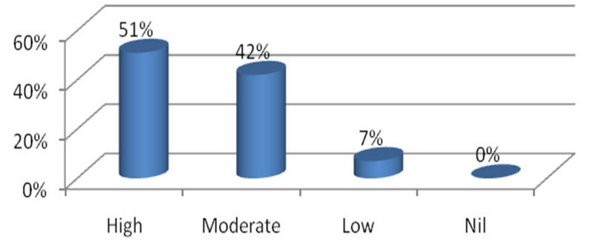
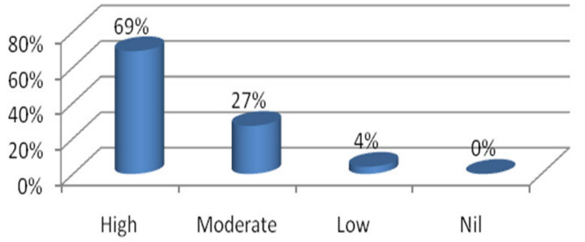



Figure 28iv: Commuter Transport (Bus and Taxi Sector) in Nigeria




On the overall, above data points towards a weak regime *vis-à-vis* the enforcement of relevant laws/ regulations. It is also noteworthy that political economy issues are alleged to be contributing factors behind such weak enforcement of these legislations.

## Role of Media

24 percent of respondents responded that competition issues are reported VERY OFTEN in the media, while 55 percent responded that such reporting is done SOMETIMES, 20 percent reported that it is done RARELY, while one percent responded reported that they are NOT AT ALL.

Figure 29: Frequency of Reporting Competition Issues in the Media

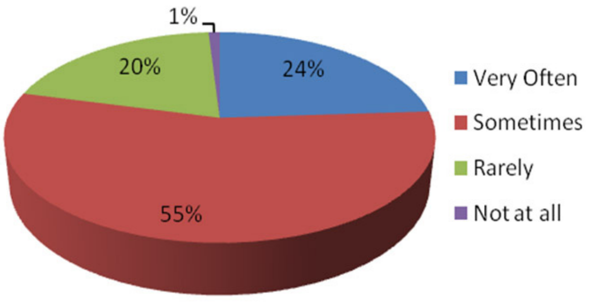



**Table 61: Medium Where Competition Issues Are Reported?**

| Media Type | Frequency |
|---|---|
| Television | Medium |
| Newspapers | High |
| Radio | Medium |
| Others – Magazine | Low |

The mediums of report of competition issues or violations, as stated by the respondents, are: Television, Newspapers, Radio and Magazines. But, response is HIGH for Newspapers, compared to Television and Radio. Only very few respondents mentioned Magazines.

On whether journalists understood competition issues well, 33 percent responded YES they did, while 59 percent responded they did TO A CERTAIN EXTENT, and eight percent responded they did NOT AT ALL.

It is heartening to note that Nigerian journalists are perceived to have some understanding about competition issues. This is in line with the observation that competition and related news are often covered in the print media; and sometimes in electronic media (radio) as well.

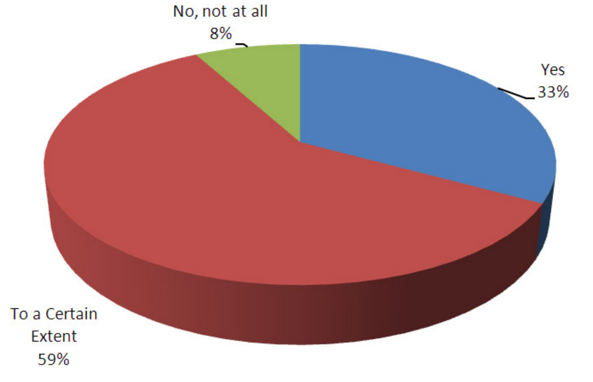



Figure 30: Understanding of Competition Issues Among Journalists

## Other Issues

There is common perception among stakeholders of the existence of natural monopolies in POWER & ENERGY (Electricity) and OIL & GAS sectors.

A large majority of respondents indicated existence of state owned monopolies in Nigeria and most of them alleged these monopolies to be indulging in anti-competitive practices.

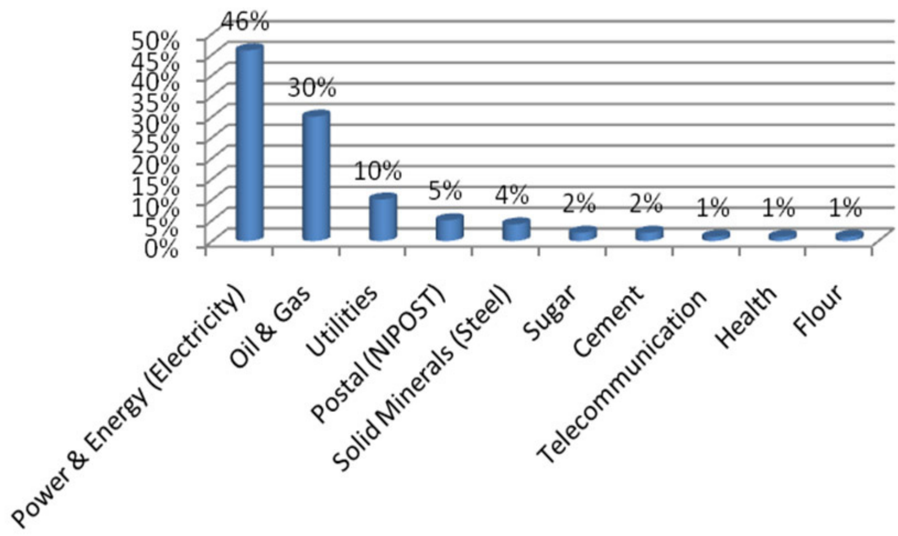



Figure 31: Sector with Existence of Natural Monopoly

# *Sectoral Analysis of Competition in Select Key Sectors*

<table>
<tr><th colspan="3">Table 62: Sectoral Analysis of Competition in Nigerian Mobile Telecom</th></tr>
<tr><td>Liberalised? YES</td><td colspan="2">Which Law (Date) NCC Act 2003</td></tr>
<tr><td>Competitor's Name<br>- MTN<br>- Glo<br>- Zain<br>- Etisalat<br>- M-Tel</td><td>Subsidiary of?<br>-MTN Group<br>- Glo Mobile<br>- Zain Mobile<br>- Etisalat<br>- NITEL</td><td>Approx Market Share<br>- 40.54%<br>- 28.11%<br>- 30.20%<br>- 0.7%<br>- 0.45%</td></tr>
<tr><td colspan="3">Sector- Specific Restraints</td></tr>
<tr><td colspan="3">Essential Inputs/Services<br>• Infrastructure<br>• High demand<br>• Frequency problem<br>• Regulatory institution (NCC)<br>• Inadequate base station<br>• Large market<br>• Economic sabotage<br>• Interconnectivity problem<br>• Quality of Service-Due to the problem of capacity constraint</td></tr>
</table>

## Highlights of Nigeria Mobile TELECOM Sector

- Nigerian telecoms came into mainstream in 2001, when the deregulation of the sub-sector of the economy gave way to private involvement.
- The telecommunication system was opened up with the issuance of Global System for Mobile Communication (GSM) unified licence in 2001.
- Nigerian Mobile telecommunication market has been referred as the fastest growing market in Africa.
- The deregulation ushered in players like MTN, Glo Mobile, Zain, Etisalat, Visafone, Multilinks, Starcomm and Zoom, formerly Reltel. The telecom regulator in Nigeria is the Nigerian Telecommunication Commission (NCC), established under the NCC Act 2003.
- The market is divided into urban, semi-urban and rural market. Tele-density in the semi-urban market is about 45 percent, while in the urban market it is about 65 percent and the rural market is less than 15 percent.
- Product Segmentation is GSM and CDMA.
- MTN, Zain, Glo and Etisalat control the GSM market.
- Visafone, Multilinks, Starcomm and Zoom, formerly Reltel, are CDMA product segment.
- The market share of MTN is 40.54 percent; Zain 30.20 percent; Glo Mobile 28.11; Etisalat 0.7 percent; and M-Tel 0.45 percent.
- In CDMA market Visafone leads, followed by Multilinks, Starcomms and Zoom.
- Nigeria has maintained its lead as Africa's largest telecom market, with active subscribers of about 65 million.
- The opening up of the market to competition in all segments of the industry has resulted in major drop in prices for telecommunications services, but interconnectivity is still a problem.

| Table 63: Sectoral Analysis of Competition in Nigerian Cement Industry | | | |
|---|---|---|---|
| Liberalised? YES | Which Law (Date):<br>Privatisation and Commercialisation Decree of 1988<br>Bureau for Public Enterprises Act of 1993<br>Public Enterprise (Privatisation and Commercialisation) Act, 1999 | | |
| Competitors Name<br>- WAPCO Lafarge<br>- Ashaka Cement<br>- CCNN and BCC | Subsidiary of?<br>-WAPCO Lafarge group<br>- Ashaka group<br>- Dangote group | Approx Market Share<br>- 55%<br>- 31%<br>- 14% | |
| **Price fixed by/for which Products?**<br>- Manufacturers and Importers of Cement | By the State<br>NO | Free<br>Competition<br>YES | Cartel<br>YES |
| **Sector- Specific Restraints** | | | |
| Essential Inputs/Services | - There is the problem of demand vs. supply inequality. Supply has not been able to meet the ever-growing demand.<br>- Local production has remained at 50 percent of installed capacity, with an annual growth rate of three percent.<br>- Lack of sufficient funding to carry out operations on a large scale.<br>- Gas and Power shortages that have hampered production for years.<br>- High haulage costs due to lack of basic transport infrastructure such as rail and good roads. | | |

## Highlights of Nigerian Cement Industry

- There is the problem of demand vs. supply inequality. Supply has not been able to meet the ever-growing demand.
- Local production has remained at 50 percent of installed capacity, with an annual growth rate of three percent.
- It has been alleged by industry stakeholders that the decline in local production is the direct consequence of government's policy which liberalised the importation of bagged cement in the mid to late 80s, thereby putting a lot of pressure on the local factories, leading to their demise.
- Local demand for cement stood at 18 million metric tons for the year 2009. There has been a remarkable trend of increasing demand over the years.
- In 2008, the Nigerian cement industry had an estimated market size of US$2.4bn, or in aggregate consumption terms, 13.4 million tonnes, of which 46 percent (6.2 million tonnes) is produced in Nigeria.
- The Dangote Group is by far the biggest player in Nigerian cement production, but several other major entities dominate their respective regions.
- Lafarge WAPCO dominates the south-west markets, with the exception of Lagos.
- Ashaka Cement controls the sales in the north-eastern region of the country.
- Both Benue Cement Company (BCC) and Obajana Cement Company have their sales concentrated in the north and central markets (both part of the wider Dangote Group).
- UNICEM Cement Company has its sales concentrated in the South-East.
- Cement Company of Northern Nigeria (CCNN) is strategically positioned to serve the north-western markets.
- This regional segmentation of the cement market in the country is largely due to high haulage costs, given the lack of basic transport infrastructure such as rail and good roads.
- The prevailing perception, as evidenced in official statements from the government and stakeholders in the building construction industry, is that the local manufacturers-cum-importers have constituted themselves into a very powerful cartel in the sector, determining output and price.

| Table 64: Sectoral Analysis of Competition in Nigerian Electricity Sector | | | |
|---|---|---|---|
| Liberalised? YES | Which Law (Date):<br>The Electric Power Sector Reform Act of 2005 | | |
| Monopoly? NO | Which sub-sector is liberalised? Electricity Power | | |
| Incumbent Firm: NEPA | Privatised? YES (Partial) | | |
| Name: Power Holding Company of Nigeria (PHCN). | Concession: NO | Sale: YES | Share State/Private? |
| Competitors Name<br>- Generation companies<br>(6 IPPs and PHCN)<br>- 11 Distribution companies<br>- 1 Transmission company | Subsidiary of?<br>- PHCN<br><br>- PHCN<br>- PHCN | Approx Market Share<br>- Not yet privatised<br><br>- Not yet privatised<br>- 100% (sole transmission company) | |
| **Price fixed by/for which Products?**<br>- PHCN for electricity tariff<br>- PHCN for electricity connection and other accessories. | By the State<br><br>NO | Free<br>Competition<br>NO | <br>Cartel<br>YES |
| **Sector- Specific Restraints** | | | |
| Essential Inputs/Services | Lack of timely routine maintenance had caused significant deterioration in plant output and is a key explanatory factor in the lingering electric power crisis. | | |

## Highlights of Nigeria Electricity Power Sector

- Nigeria's public power company, Power Holding Company of Nigeria, has an installed generating capacity of about 6GW, but actual available output is less than 2.5GW.
- Power black-outs are frequent.
- New generation capacity-build-up under the National Integrated Power Project (NIPP) would result in more than 10GW by 2010.
- Available public capacity is supplemented by private captive generation, serving industrial clusters and specific companies in the Cement, Steel and Oil and Gas sectors of the economy.
- A set of newly licensed independent power producers (IPP) would add more than 10GW, if all come on stream before 2010-12.
- The ESR Act focuses on nurturing a wholesale market, starting with a single buyer of electricity produced by PHCN and the IPPs for onward sale to 11 distribution companies that would also be offered for sale. Eventually, the 'single-buyer' model would be discarded for a 'bilateral contract' model, with suppliers and buyers free to contract between themselves.

# Assessment of the Implication of Natural Monopolies on Competition

*The new conventional wisdom is that network utilities should be unbundled, with the potentially competitive network services under separate ownership from the natural monopoly network, so that the network owner has no incentive to favour its own service provider*[73] .

## Introduction

'Natural monopolies' is a term used to describe those sectors of the economy in which services are most cost–effective, when rendered by a single firm. Cost-effectiveness in this market is predicated upon the large economics of scale relative to the market. Natural monopolies occur in sectors where capital cost (usually network infrastructure) far outweighs the cost of running the industry. This factor makes it difficult to replicate such infrastructure or several of it because it would not be economically viable to do so.[74] This raises a serious entry barrier.

Certain utilities have traditionally been termed natural monopolies, from electricity to water, telecommunications, gas supply, etc. However, a combination of factors, the most important of which are advances in technology and the unsatisfactory economic performance of the monopolies, has resulted in a shift in the classification of certain utilities as natural monopolies. Fundamentally, services or processes that have remained inseparable can now be separated and provided by different operators. This marked the beginning of the era of liberalisation aimed at restructuring these sectors.

Of all the network utilities, telecommunications seem to have lost every vestige of natural monopoly, as advances in technology, especially the wireless technology, has simplified the network requirements. Service providers are increasingly able to build their private transmission backbones, fired in most cases by the exponential rate of demand for telecommunication services, a trend which existing 'monopolies' often find difficult to meet without significant fresh investments in infrastructure.

The case of Nigeria, like most other developing countries, is peculiar. With a long history of government control of the public utilities, monopoly was the 'normal' market structure in all utility services. They include electricity supply, telecommunications, water supply, etc. In fact, these monopolies were created by statutes such that the question of private investment and, therefore, competition was ruled out. It was also the vogue then for the government to provide these utilities as social services at subsidised rates. However, with the emergence of economic liberalisation policies came the era of deregulation of these sectors, to allow for private participation; privatisation of government interest in most of the utilities; and creation of independent regulatory agencies.

Under government control, these sectors suffered chronic inefficiencies and infrastructural decay, owing to a number of factors, which include mismanagement and political interference, lack of sustained investment in maintenance and capacity development, etc.

After many years of reform, the market structure for most utilities has significantly moved away from the monopoly status to market competition or contestability, in tandem with the global trend. As discussed earlier, it is increasingly difficult in terms of economic justifiability to maintain real natural monopolies in most sectors. Vertically integrated utilities can now be unbundled into separate components, each running 'independent' of the other, thanks to technological advances. We shall therefore examine the transformation of these utilities in Nigeria and the gradual enthronement of competition in the relevant segments of the market, as well as identify the last vestiges of natural monopoly and policy orientation towards such, in terms of regulation.

## Telecom Sector

As observed above, the most important factor in natural monopolies is the use of a single network infrastructure to deliver services to numerous consumers. The very nature of the infrastructure required makes it economically inefficient (relative to cost of service) to have more than one of such infrastructure in a given location. The telecoms sector in Nigeria was run by NITEL, as government monopoly. NITEL was the national carrier controlling the national switching network, which mainly consists of three parallel networks for telephone, telex switching and cellular services.

Digital exchanges were deployed in … and, subsequently, integrated services digital network (ISDN) was subsequently introduced in these new digital exchanges. The national transmission backbone consisted of analogue and digital terrestrial radio relay systems, optical fibre, cable and satellite communication systems.[75] The West African Submarine Cable/SAT-3, linking Western Africa and Southern Africa to Europe, also came on board, with NITEL as the national carrier having exclusive control in Nigeria.

NITEL started losing its monopoly status when the government decided to deregulate this sector in 1992. New operators were licensed in fixed telephony, internet services providers and payphone and Vsat providers. But, for many years, these private operators depended on interconnection with NITEL to function effectively. The liberalisation continued until the return to democracy in 1999.

One of the priority areas of the new government was the liberalisation of the telecoms and other utilities. At the end of the restructuring exercise, the only 'monopoly' element remaining in the operations was the transmission backbone. With the introduction of GSM services in 2002, the new operators initially relied on NITEL backbone for interconnection. At this time also, NITEL had been broken up into two separate units, by creating the Mobile Telecommunications Ltd (M-TEL) as the mobile services arm. M-TEL also got a licence in the GSM sub-sector. Regulation started assuming central importance with the emergence of the GSM operators, who were supposed to compete with M-TEL/NITEL and, at the same time, had to rely on NITEL for transmission backbone.

The Nigerian Telecommunications Policy and the Nigerian Communications Commission Act played very important roles in managing this market restructuring. Also in 2002, the Government decided to licence another national carrier to complement and compete with the incumbent (NITEL). This licence was won by GLOBACOM. Embedded in this licence was a GSM, thereby increasing the number of GSM operators to four.

The skyrocketing demand, especially in the GSM segment of the market, led to considerable pressure on the existing NITEL optic fibre backbone, impacting negatively on the quality of service of the new operators. This led to massive investment by the GSM service providers in private transmission backbones. The first to be commissioned in January 2003 was the MTN transmission backbone, reputed in 2004 to be the longest transmission backbone of any mobile operator in Africa. The microwave transmission backbone traverses about 120 towns, covering about 3,400 km.[76]

This was followed by the second phase covering about 4,500 km. ECONET Wireless followed suit and GLOBACOM went in for massive investments in this regard, including the ongoing fibre optic submarine project linking Nigeria to the UK mean to compete with NITELS monopoly over the SAT-3.[77]

It is correct, therefore, to assert that the last vestiges of NITEL monopoly in the telecoms sector in Nigeria are about to be interred. This would happen effectively with the expected commissioning of the GLOBACOM fibre optic submarine cable-1 before the middle of the year.

## Electricity Supply

Electric power is a major driver of industrialisation and growth in any country in the world, but unfortunately, in Nigeria, it has remained the most embarrassing sector for the government and the entire citizenry.

Electricity has remained one of the most typical natural monopolies, even as attempts by scholars employing latest insights from technological and economic knowledge have dealt the conception a near fatal blow. There was a time, as observed by Frank A. Felder, when natural monopoly and electricity supply were dealt with as co-joined twins. According to him, "[T]he separation of these twins began in the 1980s with the liberalisation of electricity markets, which was based in part on the belief among some economists that the generation portion of the industry was no longer a natural monopoly".[78]

Following the conventional wisdom, electricity supply industry today can be broken into generation, transmission and distribution. These three distinct activities can run independently, thereby confining the concept of 'vertical integration', as it relates to the electricity supply industry, into the archives of economic history. The idea being that separation of the network element from the generation and distribution element would create opportunities for competition. It is little wonder then that when the Nigerian government sought to reform the electric power sector, this model, otherwise known as 'unbundling', was adopted.

Unfortunately, the reform of this sector has not been vigorously implemented, leading to poor results.[79] Before the restructuring effort, electricity supply in Nigeria was run as a statutory monopoly under the National Electric Power Authority (NEPA). The NEPA operated as a vertically integrated monopoly engaged in generation, transmission and distribution of electricity nationwide. This formed the national electricity grid.[80] The story of inefficiency in the power sector in Nigeria is simply legendary. Over time, lack of investment in system infrastructure maintenance and expansion led to serious decay in the industry, coupled with the endemic corruption and rent-seeking. The result was an economically inefficient supplier maintaining a harmful monopoly where consumers pay for service which, most times, they have not enjoyed.

By 2001, the activities of the reform committee set up to advice the government on the sector yielded the National Electric Power Policy. An Electric Power Sector Reform Bill was also forwarded to the National Assembly, but this Bill was not enacted into law until 2005. The enactment of the Act led to the establishment of the Nigerian Electricity Regulatory Commission (NERC) as the sector regulator charged with the responsibility of economic and competition regulation in the sector.

Even though the reform has suffered severe hiccups, it would be good to examine what can be called 'the vision of competition' expounded in both the Policy and the Act. The reform envisages five important components of restructuring and these include: industry structure, competition issues, rural electrification fund and consumer assistance fund. In setting out the objectives of the reform, the Policy made it abundantly clear that competition was fundamental to the establishment of the dream electricity supply industry.[81] Paragraph 3.0 particularly recognised that "only the network elements of electricity transmission and distribution are natural monopolies. Both generation and the sales/marketing of electricity are potentially competitive activities".

The Policy prescribed three phases for the reform, viz: (i) Unbundling of NEPA into six Gencos (generating companies), 11 Discos (distribution companies), one Transco (transmission company) and set up of Special Purpose Entity, Passage of new Electricity Act establishment of the National Electricity Regulatory Commission; Design of Multi-year Tariff Order (MYTO); (ii) In the transition, use of IPP, ROT and EPP under contractor financing to reduce supply gap **BUT** without escrow arrangements or government guarantees and subject to open, transparent and competitive tenders; and (iii) The final phase of the transition focuses on privatisation of government interest with Sale of Discos (representing of up to 85 percent of all Disco sales), paving the way for the full-scale introduction of competition.[82]

In the short-to-medium term, the Policy envisages that there will be a number of competing generating companies arising from the unbundling of NEPA and the licensing of private generating companies. Hence, the policy made provisions to guide the Generation and the Bulk Power Market, Distribution, Dispatch and System Planning, Distribution and Sales (Marketing) and Ownership and Cross-Ownership issues. All these are with a view to ensuring competition in the medium term. But, the level of competition achievable at this level is *wholesale competition.*

Looking at the long run, the Policy envisages a balanced market marked by elimination of generating deficits and the availability of a capacity reserve margin, among other factors. This stage heralds the introduction of further competition in the distribution and marketing segments, otherwise described as *retail competition.*

It is of particular interest to note that following this 'new conventional wisdom', the reform has left only the transmission company (Transco) as a 'natural monopoly'. Other segments of the market have been positioned for competition. Further safeguards were put in place to ensure that the Transco is run on open-access and regulated transmission tariff basis for all operators. It would neither buy nor sell electricity or be able to own or have any ownership stake in generation, distribution or sales.

The Policy further advocates an ownership structure for the Transco which may be either 100 percent publicly-owned or may be privately and publicly–owned, provided there is a limit to private shareholding to guarantee the independence of the Transco[83] . There is even expected to be some form of competition in the transmission segments, because the Policy envisages the operation of small off grid small distribution companies that would have their own generation capacity. The implication is that there is a window for competition between these off-grid distributors and the Transco.

As observed earlier, this reform initiative has progressed rather slowly. The unbundling of the NEPA has been actualised in principle, even though the units have not attained the envisaged autonomy. This unbundling also brought about the establishment of the Special Purpose Entity, called the Power Holding Company of Nigeria (PHCN), to take over the functions of the defunct NEPA and serve as a 'holding company' under which the unbundled units would be nurtured as they await government divestment.

Also, a number of IPPs have been licensed, with a number of them making modest progress in setting up their plants. However, the unbundled entities seem not to have found their feet. The entire industry is still heavily controlled by the government, through the Ministry of Power and Steel, and the PHCN still runs like a vertically integrated monopoly, just like its predecessor, NEPA.

It is safe to conclude, therefore, that while the vision of the electric power sector reform initiative is to introduce a combination of regulation and competition into the electricity supply industry in Nigeria, we see the issue of natural monopoly occurring in one segment of the market, i.e. transmission. It is equally obvious that the reform neither considers it practicable nor necessary to introduce competition into this segment, except to the extent that off grid distributors can also provide transmission services. This is really in keeping with the global trend.

Unlike in the telecoms industry, where reliance on common network infrastructure is fast decreasing, the same cannot be said of the electricity sector. Hence, we may have to live with the concept of natural monopoly in the transmission segment of the industry, at least for now.

# *Assessment of Competition in the Agricultural Sector*

## Introduction

Agriculture is a major sector in the Nigerian economy. In recent years, the sector has witnessed some encouraging performance, which needs to be sustained. Agriculture's share of GDP increased consistently from 42.14 percent in 2002 to 47.02 percent in 2006. The GDP growth rate of the sector at constant prices increased from 3.8 percent in 2001 to 7.2 percent in 2006. This is relative to the overall GDP growth rate, which increased from 4.7 to 5.6 percent within the same period, an indication that the agricultural sector has become a major growth driver in the Nigerian economy.

Thus, the Nigerian agricultural sector has witnessed significant and consistent improvements in performance in the past 5 years. These improvements in performance may, however, not be sustainable, if the level of competitiveness within the sector is not increased and sustained. For example, the major driver of agricultural sector growth in the past five years has been the crop sector and most of the increases in this sub-sector have been due to acreage expansion, rather than productivity increases.

This Section will focus on understanding the competition issues in the Nigerian agricultural sector.

In order to do this, we will analyse the sector's production characteristics of major crops and trade patterns of major agricultural commodities in terms of cultivated acreage, quantities produced, crop yields, revenues generated, major agricultural imports, major agricultural exports, total value of imports and total value of exports, as they relate to the competitiveness of the sector. We will also examine the purpose and instruments of agricultural policy in Nigeria over the years and how these have impacted on competition within the sector. The study will also examine the competition characteristics of rice and cassava value chain as specific cases of major agricultural products in Nigeria.

## Agricultural Production Levels and Trade Patterns

Nigeria currently has about 10 crops that can be classified as major crops, given the area cultivated to such crops and the number of faming households involved in the cultivation. These crops are: cowpeas, maize, sorghum, rice, cassava, millet, yam, cocoa, palm oil and groundnut.

### Production Characteristics of Major Crops

The analysis in Table 45 shows that between the 1961-65 period and the 2006-2007 period, area was cultivated substantially for cassava, maize, rice paddy, cowpea, yam, while marginal to fair increases were experienced for groundnut, cocoa, millet, sorghum and oil palm fruit.

Between the same periods, substantial yield increases were experienced for cowpeas, millet and maize, while some increases were experienced for cassava, rice, sorghum, yam, cocoa, ground nut and oil palm fruit.

Thus, Agricultural policy in Nigeria has helped over the last decade to more than double yields of cowpeas, millet and maize, even though they are still far from their potential yields. More efforts need be put into further increasing the yield of these three crops and other major crops so as to continue to increase the competitiveness of the agricultural sector.

It is important to note that most of the major crops experienced over 100 percent increase in production in two-and-a-half decades (cassava, cowpeas, maize, rice, yam, cocoa, sorghum and groundnut). However, these increases in output have been driven mainly by increased acreage cultivated and, to a lesser extent, by increases in yield or productivity. There is a need to improve the competitiveness of the sector by improving yields substantially from the current very low rates. This will not only increase output, it will also increase profitability and make the sector more competitive.

| Table 65: Patterns in Crop Production and Trade Characteristics between 1961-65 and 2006-07 | | | |
|---|---|---|---|
| | *Substantial increase (above 100% increase )* | *Marginal increase (0-100% increase)* | *Decline* |
| *Area Cultivated* | Cassava, maize, rice paddy, cowpea, yam | Groundnut, cocoa, millet, sorghum, oil palm fruit | None |
| *Yield* | cowpeas, millet, maize | Cassava, rice sorghum and yam, cocoa, ground nut, oil palm fruit | |
| *Production* | cassava, cowpeas, maize, rice, yam, cocoa, sorghum, groundnut | Oil palm, millet | |
| *Revenue* | | | |
| *Export Quantity* | *None* | *None* | Cocoa beans, cotton seed, cotton lint, palm kernel, natural rubber and soy bean, ***cake of ground nut, palm oil*** |
| *Import Quantity* | Wheat, barley, cotton lint, flour of wheat, groundnut oil, natural honey, natural rubber, oil of vegetable, paste of tomatoes | Coffee extracts, kolanuts | *none* |
| *Export Value* | | | Palm oil, natural rubber, cotton seed, cake of ground nuts, cotton lint, groundnut oil, ground nuts |
| *Import Value* | | | |
| *Source: Computed from FAO Data.* | | | |

Table 65 shows the classification of states in Nigeria by yields for major crops, while Table 65 shows classification of states by land area cultivated to major crops (2005-2006).

The analysis classified the yield range and range of area cultivated for each crop into four groups: high, medium, low and very low. Those in the 75th percentile and above are categorised as high and those between the 50th and 75th percentile are medium. Those in the 25th- 50th percentile are classified as low, while those below 25th percentile are classified very low yield states or states with very low area cultivated.

Thus, according to the Table, to be more competitive, Nigeria should encourage the allocation of more agricultural resources to the production of cassava in Abia, Anambra, Ekiti, Imo, Ogun, Ondo, Osun and Lagos; cowpeas in Delta, Niger and FCT; groundnut in Borno, Kwara and Delta; maize in Delta, Kadunaand Lagos; millet in Benue, Kaduna, Kano and Nassarawa; rice in Abia, Akwa-Ibom, Anambra, Ebonyi, Edo, Enugu, Gombe, Kaduna, Kwaraand Nassarawa; and yam in Nassarawa, Abia, Anambra, Benue, Delta, Ekiti, Imo, Kogi, Kwara, Ondo, Osun, Plateau and Taraba.

When we compare the results in Tables 66 and 67, we can have some insights into the extent of resource misallocation that has left the Nigerian agricultural sector less competitive. For efficiency in resource allocation, more land should be allocated to particular crops in states with highest yields. According to the Tables 66 and 67, while **cassava** yields are highest in Abia, Anambra, Ekiti, Imo, Ogun, Ondo, Osun and Lagos Abia, the area planted for cassava is highest in four totally different states, Benue, Enugu, Kaduna and Taraba**.** This is a serious evidence of resource misallocation and inefficiency, which has made Nigerian agriculture less competitive.

For cowpeas, yields are highest in Niger, FCT and Delta, while area planted is highest in Zamfara and Borno, another evidence of misallocation, which

| Table 66: Classification of States by Yield Categories for Selected Crops (2005-2006) | | | | |
|---|---|---|---|---|
| **Crop** | **High** | **Medium** | **Low** | **Very Low** |
| Cassava | 14.2 – 18.1 (ton/ha) | 10.2 – 14.2 (ton/ha) | 6.2 – 10.2 (ton/ha) | 2.3 - 6.2 (ton/ha) |
| | Abia, Anambra, Ekiti, Imo, Ogun, Ondo, Osun, Lagos | Bayelsa, Benue, Cross River, Delta, Ebonyi, Edo, Enugu, Kwara, Nassarawa, Niger, Oyo, Plateau, Rivers, Taraba | Adamawa, Akwa-Ibom, Bauchi, Kaduna, FCT | Gombe, Sokoto, Yobe |
| Cowpea | 2.3 – 3.0 (ton/ha) | 1.6 – 2.3 (ton/ha) | 0.9 – 1.6 (ton/ha) | 0.3 – 0.9 (ton/ha) |
| | Niger Delta | FCT | Adamawa, Akwa-Ibom, Borno, Cross river, Enugu, Kogi, Lagos | Abia, Bauchi, Benue, Edo, Ekiti, Gombe, Imo, Jigawa, Kaduna,Kano, Katsina, Kebbi, Kwara, Nassarawa, Ogun, Ondo, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe, Zamfara |
| Groundnut | 1.9 – 2.4 (ton/ha) | 1.5 – 1.9 (ton/ha) | 1.0 – 1.5 (ton/ha) | 0.5 – 1.0 (ton/ha) |
| | Borno, Kwara, Delta | Benue, Cross river, Kaduna, Kogi, Lagos, Niger, Oyo | Abia, Adamawa, Bauchi, Edo, Gombe, Kebbi, Nassarawa, Plateau, Taraba, Yobe, FCT | Ebonyi, Enugu, Imo, Jigawa, Kano, Katsina, Ondo, Rivers, Sokoto, Zamfara |
| Maize | 2.4 – 2.9 (ton/ha) | 1.9 – 2.4 (ton/ha) | 1.3 – 1.9 (ton/ha) | 0.8 – 1.3 (ton/ha) |
| | Delta, Kaduna, Lagos | Anambra, Edo, Ekiti, Imo, Kogi, Niger, Ondo, Plateau, Sokoto | Abia, Akwa-Ibom, Bauchi, Benue, Borno, Cross river, Ebonyi, Enugu, Gombe, Jigawa, Kano, Kwara, Nassarawa, Ogun, Osun, Oyo, Rivers, Taraba | Adamawa, Bayelsa, Katsina, Kebbi, Yobe, Zamfara, FCT |
| Millet | 1.4 – 1.7 (ton/ha) | 1.2 – 1.4 (ton/ha) | 0.9 – 1.2 (ton/ha) | 0.7 – 0.9 (ton/ha) |
| | Benue, Kaduna, Kano, Nassarawa | Gombe, Kebbi | Bauchi, Borno, Katsina, Kogi, Kwara, Niger, Oyo, Plateau, Sokoto Taraba, Yobe, Zamfara, FCT | Adamawa, Jigawa |
| Rice | 2.3 – 2.8 (ton/ha) | 1.7 – 2.3 (ton/ha) | 1.1 – 1.7 (ton/ha) | 0.5 – 1.1 (ton/ha) |
| | Abia, Akwa-Ibom, Anambra, Ebonyi, Edo, Enugu, Gombe, Kaduna, Kwara, Nassarawa. | Adamawa, Benue, Borno, Delta, Ekiti, Jigawa, Kano, Kebbi, Kogi, Lagos, Niger, Ondo, Plateau, Taraba | Bauchi, Katsina, Ogun, Osun, Sokoto, Yobe, Zamfara | Cross river, Imo, FCT |
| Yam | 15.7 – 19.2 (ton/ha) | 12.3 – 15.7 (ton/ha) | 8.9 – 12.3 (ton/ha) | 5.4 – 8.9 (ton/ha) |
| | Nassarawa | Abia, Anambra, Benue, Delta, Ekiti, Imo, Kogi, Kwara, Ondo, Osun, Plateau, Taraba | Bayelsa, Cross river, Ebonyi, Edo, Enugu, Kaduna, Niger, Oyo, Rivers | Adamawa, Akwa-Ibom, Lagos, Ogun, FCT |
| *Source: Computed from National Bureau of Statistics Data.* | | | | |

leads to less competitiveness. For groundnut yields are highest in Borno, Kwara and Delta, while area planted is highest in Kano, Kaduna and Niger. In the case of maize, yields are highest in maize in Delta, Kaduna and Lagos, while area cultivated is highest in Borno, Kaduna, Niger and Taraba. Here the only high productivity state that falls among the highest cultivators is Kaduna state, another evidence of misallocation. For millet, yields are highest in Benue, Kaduna and Kanoand Nassarawa, while area cultivated is highest in Sokoto, Borno, Jigawa, Kaduna and Yobe. Again, Kaduna state is the only state among the largest cultivators that has comparative advantage.

Rice yields are highest in Abia, Akwa-Ibom, Anambra, Ebonyi, Edo, Enugu, Gombe, Kaduna, Kwara and Nassarawa, while area cultivated is highest in Kaduna, Niger and Taraba. For yam, yields are highest in Nassarawa, Abia, Anambra, Benue, Delta, Ekiti, Imo, Kogi, Kwara, Ondo, Osun, Plateau and Taraba, while area cultivated is highest in Benue, Enugu, Niger, Taraba Cross River and Kaduna. It is important to note that area cultivated is low in Nassarawa, which has the highest yield for yam in Nigeria.

Thus, our discussions of Tables 65 and 66 reveal a serious case of resource misallocation that could only result in lower competitiveness of the Nigerian agricultural sector. Most of the states that have comparative advantage in particular are not among the highest cultivators of such crops in Nigeria.

## Trade Patterns

Nigeria's traditional export crops are cocoa beans, cake of cocoa seed, cotton seed, cotton lint, sheanut, palm kernel, palm oil, natural rubber and soy bean. Table 65 shows that in the period between 1961-65 and 2006-07, all major export crops experienced declines in quantities traded.

Furthermore, all major import quantities increased substantially during the period. This includes wheat, barley, coffee extracts, cotton lint, flour of wheat, groundnut oil, kolanuts, natural honey, natural rubber, oil of vegetable and paste of tomatoes.

Thus as shown in Table 65, in the past two-and-a-half decades, exportation of all crops has declined, while importation of all crops has increased substantially. A possible explanation for these observed trade patterns is that even though production has increased substantially in the crop sector, the output increases have not been achieved in a competitive way. Consequently, exports have declined and imports have increased.

To increase exports and reduce imports, the Nigerian agricultural sector will need to operate more competitively. This would require concerted policy efforts, especially since available data shows that not much difference has occurred in the structure of competition in the sector over the past decade, in spite of numerous agricultural policy directions and programmes.

## Assessment of Competition Characteristics in Rice Sector

This section discusses the structure of the rice market at the level of rice producers. We examine issues relating to number of producers, size of plots, distribution of plots, productivity, role of co-operatives and role of State-owned Enterprises (SOEs). According to Table 49, population of farmers in Nigeria is 1,395,869, out of which 162,336.4 (or about 11.6 percent) are females.

Table 70 shows that while most rice produced in Nigeria is lowland rice, irrigated rice is likely to be more profitable and thus more competitive than rain fed rice. According to Table 71, the North Central zone is the largest producer of rice in Nigeria, accounting for 47 percent of the total rice output. This is followed by Northwest (23 percent), Northeast (15 percent), Southeast (10 percent) and the least, the Southwest (five percent). Kaduna state is the largest rice producing state in the country, accounting for about 22 percent of the country's rice output, followed by Niger State (16 percent), Benue State (10 percent) and Taraba State (seven percent).

Most rice farmers in Nigeria are small-scale farmers who produce rice in farm holdings ranging from one to two ha per capita in the South and three to five hectares in the Northern part. Yields in the sector are currently very low, averagely 1.7 tonnes/hectares, where best practice could have up to seven tons per hectare.

The major constraints to increased area cultivated by rice farmers are the high unit cost of production of paddy rice and relatively low market price for milled rice, due to competition from international market.

The sector which is highly labour-intensive is characterised by low labour productivity, which contributes to the relatively high unit cost of production. Labour cost accounts for about 81 percent

| Table 67: Classification of States by Area Categories for Selected Crops (2005-2006) (Area is in thousand Hectares) | | | | |
|---|---|---|---|---|
| **Crop** | **High ('000 ha)** | **Medium High ('000 ha)** | **Medium Low ('000 ha)** | **Low ('000 ha)** |
| Cassava | 200.7 – 267.2 | 134.2 – 200.7 | 67.6 – 134.2 | 1.1 – 67.6 |
| | Benue, Enugu, Kaduna, Taraba | Akwa-Ibom, Cross river, Delta, Imo, Kogi, Oyo, Rivers | Anambra, Nassarawa, Ogun, Ondo | Abia, Adamawa, Bauchi, Bayelsa, Ebonyi, Edo, Ekiti, Gombe, Kwara, Lagos, Niger, Osun, Plateau, Sokoto, Yobe, FCT |
| Cowpea | 308.7 – 411.6 | 205.8 – 308.7 | 102.9 – 205.8 | 0.02 – 102.9 |
| | Zamfara | Borno | Bauchi, Gombe, Jigawa,Kaduna, Katsina, Niger, Sokoto, Yobe | Abia, Adamawa, Akwa-aibom, Benue, Cross river, Delta, Edo, Ekiti, Enugu, Imo, Kano, Kebbi, Kogi, Kwara, Lagos, Nassarawa, Ogun, Ondo, Oyo, Plateau, Rivers, Taraba, FCT |
| Groundnut | 300.6 – 400.8 | 200.5 – 300.6 | 100.3 – 200.5 | 0.1 – 100.3 |
| | Kano | Kaduna, Niger | Bauchi, Benue, Borno, Katsina, Taraba, Zamfara | Abia, Adamawa, Cross river, Delta, Ebonyi, Edo, Enugu, Gombe, Imo, Jigawa, Kebbi, Kogi, Kwara, Lagos, Nassarawa, Ondo, Oyo, Plateau, Rivers, Sokoto, Yobe, FCT |
| Maize | 258.3 – 344.2 | 172.5 – 258.3 | 86.6 – 172.5 | 0.74 – 86.6 |
| | Borno, Kaduna, Niger, Taraba | Oyo. | Adamawa, Bauchi, Benue, Gombe, Katsina, Kogi, Plateau | Abia, Akwa-Ibom, Anambra, Bayelsa, Cross river, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Jigawa, Kano, Kebbi, Kwara, Lagos, Nassarawa, Ogun, Ondo, Osun, Rivers, Sokoto, Yobe, Zamfara, FCT |
| Millet | 463.5 – 617.4 | 309.6 – 463.5 | 155.6 – 309.6 | 1.7 – 155.6 |
| | Sokoto | Borno, Jigawa, Kaduna, Yobe | Bauchi, Gombe, Kano, Katsina, Kebbi, Niger, Zamfara | Adamawa, Benue, Kogi, Kwara, Nassarawa, Oyo, Plateau, Taraba, FCT |
| Rice | 208.5 – 278 | 139.1 – 208.5 | 69.6 – 139.1 | 0.12 – 69.6 |
| | Kaduna, Niger | Taraba | Benue, Borno, Ebonyi | Abia, Adamawa, Akwa-Ibom, Anambra, Bauchi, Cross river, Delta, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nassarawa, Ogun, Ondo, Osun, Plateau, Sokoto, Yobe, Zamfara, FCT |
| Yam | 183.1 – 243.7 | 122.5 – 183.1 | 61.9 – 122.5 | 1.3 – 61.9 |
| | Benue, Enugu, Niger, Taraba | Cross river, Kaduna | Delta, Ebonyi, Ekiti, Kogi, Nassarawa, Ondo, Oyo, Rivers | Abia, Adamawa, Akwa-Ibom, Anambra, Bayelsa, Edo, Enugu, Gombe, Kwara, Lagos, Ogun, Osun, Plateau, FCT |
| *Source: Computed from National Bureau of Statistics Data.* | | | | |

| Table 68: LAND FARMER RATIO (Hectares/farmer) 2005-2006 | |
|---|---|
| Range | land/farmers Ratio 2005/2006 |
| 0-0.5 | Abia, Akwa-Ibom, Imo, Bayelsa |
| 0.5-1.0 | Ebonyi, Edo, Plateau, F.C.T, Jigawa, Kano, Katsina, Osun, Anambra |
| 1.0-1.5 | Enugu, Rivers, Yobe, Bauchi, Gombe, Kaduna, Kebbi, Kwara, Ogun, Sokoto |
| 1.5-2.0 | Zamfara, Ekiti, Kogi, Ondo, Oyo, Nasarawa, Borno, Cross River, Delta |
| 2.0-2.5 | Kogi, Benue, Cross River |
| 2.5 - 3.5 | Niger |
| 5.05 -5.5 | Taraba |
| 7.50-8.00 | Lagos |

*Source: Computed from National Bureau of Statistics Data.*

| Table 69: RICE: Number of Producers in Nigeria | | |
|---|---|---|
| | **Rice** | **All crops** |
| **Female population** | 162,336.4 | 1,886,000 |
| **Male population** | 1,233,553 | 14,331,000 |
| **Total population** | 1,395,869 | 16217000 |
| **Proportion of females** | **11.63** | **13.1** |

*Source: Computed from National Bureau of Statistics Data.*

of cost of production. A major portion of this high labour cost (about 30 percent) is accounted for by birds scarring, since birds are a threat to crop production.

Rice par-boilers are classified as: **household par-boilers** - 1 (80-100kg) bag per week; **commercial par-boilers** - 3-4 bags per week; and **large-scale commercial** - 10-15 bags per week. Drying is basically in the shade and the sun. In Bauchi state, about 10 percent of par-boilers are household par-boilers and 90 percent are commercial par-boilers. Sixty-seven percent of women par-boilers belong to co-operative unions which facilitate loan sourcing. Women form over 95 percent of par-boilers. Firewood is the major source of energy.

Three methods of rice processing can be identified in Nigeria. These are the ***traditional or hand-pounding, the small-mill processing and the large-mill processing enterprises.*** The hand-pounding traditional method of processing rice paddy is still used by some village rice farmers, especially in Northern Nigeria. A major feature of the traditional system is that it is very slow and labour-intensive. Furthermore, the final product often contains high percentage of broken grains and foreign bodies. This method is gradually dying away, with the availability of small milling machines.

The small rice mills are the most predominant of the three rice-processing methods. Estimates indicate that there are over 3500 small/medium-scale rice mills scattered all over Nigeria, but most are concentrated in Lafia (Nasarawa State), Abakaliki (Ebonyin State) and Bida (Niger State). About 85 percent of Nigerian rice is processed through small mills. This method of processing involves the use of mechanised milling units, with a maximum and minimum capacity of 600 and 200-300 tonnes per day, respectively. The use of the rubber roller technology (a modernised technology) is not common among the rice millers. At the moment, most small rice mills operate below their installed capacity, due to unavailability of sufficient rice paddy for processing. Most millers, especially small scale, do not use/mount some important parts of their milling machine because they claim time waste, examples are polisher and destroyer.

About a decade ago, few large mills existed in Nigeria, most of which were owned by the government or quasi-government parastatals. The Badeggi, Uzo-Uwani and the Agbede rice mills are typical examples of large mills in Nigeria. These mills combine rice milling with rice polishing and, in most cases, they possess separate par-boiling equipment. Most of these mills broke down as a result of lack of spare parts and the general poor maintenance culture of government-owned assets.

| Table 70: Features of Rice Production Systems in Nigeria | | | | |
|---|---|---|---|---|
| **Production System** | **Major States covered** | **Estimated share of** | **Average yield /ha national area** | **Share of rice production (%)** |
| Rain fed Upland | Ogun, Ondo, Abia, mo, Osun, Ekiti, Oyo, Edo, Delta, Niger, Kwara, Kogi, Sokoto, Kebbi, Kaduna, FCT and Benue | 30% | 1.7 | 17 |
| Rain fed Lowland | Adamawa, Ondo, Ebonyi, Ekiti, Delta, Edo, Rivers, Bayelsa, Cross River, Akwa Ibom, Lagos, all major river valleys, e.g. shallow swamps of Niger basin, Kaduna, basin, and inland swamps of Abakiliki and Ogoja areas | 47% | 2.2 | 53 |
| Irrigated | Adamawa, Niger, Sokoto, Kebbi, Borno, Benue, Kogi, Anambra, Enugu, Ebonyi, Cross River, Kano, Lagos, Kwara, Akwa-Ibom | 17% | 3.5 | 27 |
| Deep Water Floating | Flooded areas Rima valley– Kebbi and deep flood areas of Illishi, Delta State | 5% | 1.3 | 3 |
| Mangrove Swamp | Ondo, Delta, Edo, Rivers Bayelsa, Cross River, Akwa Ibom | 1% | 2.0 | 1 |

*Source: Computed from National Bureau of Statistics Data.*

| Table 71: Distribution of Rice Output by Production Zones | | |
|---|---|---|
| | Zones | Percentage |
| 1 | Northwest | 23% |
| 2 | Northeast | 15% |
| 3 | North central | 47% |
| 4 | Southeast | 10% |
| 5 | Southwest | 5% |
| | Nigeria | 100% |

*Source: Computed from National Bureau of Statistics Data.*

In more recent times, government policy has encouraged the establishment of large-scale rice processors through public private partnership arrangements. The Federal Government has put into place a programme to increase the milling capacity of rice in Nigeria, by encouraging the establishment of the following:

- Large-scale rice processing factories with a combined installed capacity of 730,000 tonnes per annum. The country presently has less than 10 privately-owned large-scale rice processing mills.
- 100 medium scale fully automated plants with milling capacity of 176,000 tonnes per year for the nation. This project is still in its inception.
- 22 semi-automated rice milling clusters across the country with additional installed capacity of 1,089,000 metric tons of rice milling capacity when completed. This project is still in its inception.

## Farmers' Organisations

Each state in Nigeria has a rice farmers association, which is under the umbrella of the national association. RIFAN helps facilitate the accessibility of rice farmers to fertilisers, credit and other complementary inputs by serving as intermediaries, guarantors and supervisors. Most state RIFANs relate actively with the state government agencies for agriculture, such as the Ministry of Agriculture, ADPs and so on, to ensure increased access of members to the markets. The main purpose of formation of these associations is to enhance rice production, easy access to and distribution of rice inputs. In 2007, 10 trucks of fertilisers were distributed to 10 RIFAN's in Bauchi state.

Most small-scale rice farmers source finance from friends/relatives, informal contributions (e.g., *esusu)* and money lenders, while large-scale rice producers source their funds from banks, ***mainly through co-operatives***. Access to formal financing is usually through the formation of groups. Most par-boilers and millers are small scale and would require more finance and training to expend operations and increase competitiveness. Women have less access than men for lack of collateral.

Co-operative organisations and farmer groups such as Rice Farmer's Association of Nigeria perform main functions that relate to facilitation of the access to finance, input procurement, rice paddy processing and rice marketing. Most rice farmers in Nigeria are organised into farmer groups such as RIFAN. Rice farmers are also part of credit and multipurpose co-operatives which act as facilitating organisations in the area of credit access. In Bauchi State of Nigeria, 67 percent of women involved in rice par-boiling belong to co-operative organisations.

A number of state-owned enterprises (SOEs) help facilitate production and marketing activities in the rice sector. These include: the Nigerian Agricultural Seed Council (NASC), which is a Government-owned enterprise responsible for the supply of foundation rice seeds to the rice sector. Other major SOEs are the Nigerian Agricultural Credit and Rural Development Bank [NACRDB, the Nigerian Agricultural Insurance Company (NIAC), River Basin Development Authorities (RBDA) and the National Cereals Research Institute (NCRI)]. While the NACRDB is charged with the responsibility of providing loans to farmers and other agricultural value chain operators at low interest rates and less collateral requirements, the NAIC is responsible for insuring against all kinds of agricultural risks faced by farmers and other agricultural value chain operators.

The River Basin Development Authorities are responsible for the development of irrigation infrastructure all over the country and this service has resulted in the expansion in the cultivation of irrigated rice in Nigeria. The NCRI is responsible for the development of improved rice seeds and improved cropping practices for rice farming. Even though these SOEs were established to increase competitiveness in the agricultural sector, by increasing productivity and reducing unit cost of production, most of them have, so far, had less than desired impact on productivity and cost of production in the rice sector.

## Market Structure of Suppliers of Inputs (upstream)

### Rice Seed Supply

The rice seed market is characterised by few suppliers. Rice seed in Nigeria is supplied mainly by government agencies, previous harvest and local private firms. The NASC is under the control of the Federal Ministry of Agriculture, but is a fully autonomous Government parastatal. It is the national organisation solely responsible for the production and sale of foundation rice seeds. It obtains its breeder seeds from research institutes, e.g., for rice, NCRI, WARDA, IITA. It sends it out to its out-growers to produce foundation seeds, buys back the foundation seeds and sells to state ADPs across the nation and other private seed companies, which then produce certified seeds for onward distribution to farmers, through their respective marketing channels.

The rice seed market in Nigeria is still highly imperfect in terms of structure. About 40 percent of rice farmers get their seed mainly from previous harvest, 25 percent mainly from government agency sources, 20 percent from local private suppliers and 15 percent from the National Agricultural Seed Company.

Premier Seeds, based in Zaria, Nigeria, is the largest and most dominant private seed company in Nigeria. The company is responsible for about 80 percent of certified seed production in Nigeria. It produces about 3000 tonnes of seed per year. The company produces rice of different varieties to service different ecological zone requirements in Nigeria. Other seeds produced by the company are maize (hybrid and pollinated), soyabeans, sorghum, cowpeas, groundnut and vegetables. Some other fairly large seed companies and their outputs are: Maslasha Seeds, Gusau, (120 MT/annum), Nageri Seeds, Zaria, (10MT/annum), Savannah Seeds, Jos, (10MT/annum); Alheri seeds, Zaria 10MT/annum; Champion Seeds, Zaria 5 MT/annum; and Dalgreen Seeds, 5 MT/annum.

Seed price is still considered to be too high by most farmers who would like to see a reduction. Most farmers (about 61 percent) are of the opinion that anti-competitive practices exist moderately in the rice market. Collective price fixing, price discrimination and retail price maintenance are named as the three most common anti-competitive practices in the rice market.

A major problem in rice seed supply is that most farmers do not obtain rice seeds from certified sources, because they think that the prices, which they have no control over, are too high. Secondly, the number of rice farmers involved in the multiplication and distribution of certified rice seeds are very few and need to be expanded.

## Fertiliser Suppliers to Rice Farmers

The most important agents for fertiliser distribution in Nigeria are government agencies and local private sector operators. 67 percent of farmers claim that the government is one of the two largest suppliers of fertiliser, while 24 percent claim that local private sector operators are major suppliers.

The major government agency that distributes fertiliser in Nigeria is the State Agricultural Development Projects (ADPs). In addition to the ADP system, fertiliser distribution is also carried out in some states through fertiliser procurement and distribution division of the Ministry of Agriculture. The fertilisers are allocated to states at 25 percent subsidy from the Federal Government, who are the major importers. The states add a certain level of subsidy, depending on the state fertiliser policy before distributing to users through its agencies. This system of distribution has, however, been flawed severely, because of the fact that a substantial proportion of the fertiliser is purchased by highly connected middlemen, even before it gets to the ADPs.

Since most small farmers do not have ready funds to purchase fertilisers, even when it is available in the ADPs, the larger proportion of the stock in the ADPs usually finds its way into the hands of middlemen, who, in many cases, pretend to be real farmers. In a number of cases, farmers' associations do not get information about the time of sale of fertilisers by the government agencies on time for them to prepare to buy.

Most private sector agencies that distribute fertiliser to farmers are end-users of farm products and do so with a form of contractual arrangement with the farmers. Farmers receive fertiliser supplies from these end-users and pay back after harvest. Examples of such private sector operators are Notore Fertiliser Company (the major chemical fertiliser production company in Nigeria currently), OLAM (a multinational rice value chain operator based in Benue State), Veetee Rice Mills Ltd (a large-scale rice processing mill in Ogun State) and Premier Seed (the largest seed production and distribution company in Nigeria). A sizeable amount of fertiliser distribution is in the open market, through middlemen, who corner the subsidised fertilisers meant for real practicing small farmers. There is currently no documentary evidence for the numbers of fertiliser distributors in Nigeria or the proportion of fertiliser distribution accounted for by various distribution outlets. According to the account of farmers interviewed during this assessment, about 76 percent of fertiliser received by them comes through government agencies, while the remaining comes through private sector operators.

Generally, the fertiliser market is currently characterised by very few sellers, relatively high prices and inadequate accessibility by practicing small holder farmers. Price discrimination, collective pricing and resale price maintenance, in that order, were identified by rice farmers as the three most common anti-competitive practices in the fertiliser market. 47 percent of farmers claimed price discrimination is the most prevalent one. Thirty-three named price-fixing and 13 percent said resale price maintenance is the most common one.

## Market Structure of Traders (Milled Rice Marketing)

Many millers buy paddy, mill it and also sell the product. In Bauchi, 70-75 percent of sellers are also farmers. Rice, either milled or paddy, is usually owned by sellers and small-scale farmers and traders transport to the market through motorcycles and sometimes trucks. Large scale producers use trucks.

Branding of rice before selling is not common. Rice is however packaged in 80-100kg bags.

Rice price is determined by quality of par-boiling and milling. Value is added by less stones and impurities, wholesomeness of grains and brightness of colour of grains. This latter quality depends on how well par-boiling was done. There are large-scale rice traders that buy from long distance areas. Rice trade particularly flows from North to South, since the North produces over 70 percent of Nigerian Rice.

Few suppliers purchase back rice products from farmers at harvest. So, there is very little contract farming arrangement. The three major buyers of rice paddy from farmers are domestic distributors, agro-food industries and government agencies. In a survey, about 52 percent of farmers indicated that they sell rice paddy to private domestic distributors, 23 percent are patronised by agro-food industries and 19 percent by government agencies. The three most important anti-competitive practices in the marketing of rice paddy were identified by rice farmers as: price discrimination, collective price fixing and resale price maintenance

## Assessment of Competition Characteristics in Cassava Sector

The status of competition in the cassava sub-sector is not very different from what we have in the case of rice. This section will only emphasize on few specific areas of special importance and interest in the assessment of competition status of the cassava sector.

## Market Structure of Producers of Cassava

75 percent of cassava farmers in Nigeria plant less than five hectares. Ownership structure of cassava farms is mainly individual ownership, with very few cases of co-operative ownership. Other forms of ownership are very rare in this sub-sector. Most cassava farmers do not grow cassava alone. They also cultivate other crops such as maize, rice, etc. The average yield of cassava is about 9 tonnes per hectare, when potential yields could be as high as 25 tonnes per hectare.

## Market Structure of Suppliers of Inputs (upstream)

### *Cassava Seed*

The cassava seed supply market is not as developed as the rice seed market. Most cassava farmers (87 percent) get their seeds from previous harvest. Only a small proportion of farmers (12 percent) get supplies from local suppliers.

Improved cassava seed (stem cuttings) is usually obtained from the Government agency responsible for providing the foundation stock for multiplication. This agency is the Root and Tuber Crop Expansion Project (RTEP), with headquarters located at Ijebu Ode. From this point, stem cuttings are distributed to state government agencies and State ADPs for multiplication and distribution. In most states, a number of cassava farmers are engaged by the ADPs as seed multiplication out-growers. There are also a few private cassava seed multiplication firms whose major occupation is to multiply cassava seeds. The Ogun State Ministry of Agriculture, for example, does most of its cassava seed multiplication with a private firm located in Ibadan. The ADPs, in turn, engage out-growers who multiply the cassava seeds and return to the ADPs for distribution.

Thus, the cassava seed market could be described as highly non-competitive, because there are very few sellers. According to 81 percent of farmers interviewed, suppliers of certified cassava seed (stem cuts) are relatively few. There is need to increase competition in the sector by increasing the numbers of improved seedlings suppliers.

Most farmers claim that cassava seedlings are moderately available, especially because they rely mainly on previous harvest to plant. 89 percent of farmers claim that prices of cassava seeds purchased from certified sources are too high. This may be a good reason why most rely on previous harvest. Most farmers believe that the quality of the cassava seedlings they use is high and so have not much incentive to purchase seedlings from supply companies at exorbitant prices.

The three most important sources of seed are private local suppliers (indicated by 38 percent of farmers), previous harvest (indicated by 36 percent of farmers) and state government sources (indicated by 11 percent of farmers). 72 percent of farmers were of the opinion that seed/stock supply is characterised by very low anti-competitive practices. This may be due to the fact that most farmers still plant from previous harvest. Majority of farmers feel that small farmers are the ones mostly affected by anti-competitive practices in cassava seed industry.

## Fertiliser Supply to Cassava Farmers

The structure of the fertiliser supply system for the cassava value chain does not differ substantially from what operates in the rice sector, as discussed earlier. The only difference is that demand for fertiliser is lower in the cassava value chain, compared with the rice value chain. Government sources account for about 70 percent of supplies of fertilisers to cassava farmers. Some farmers allege that price discrimination is often encountered.

# *Conclusions*

This country research report was mainly focused on select basic themes, which include progress made towards operationalising the competition laws in Nigeria; political economy constraints in implementing competition regimes; interface between competition and sector regulation; some select existing anti-competitive practices in the Nigeria economy; in-depth analysis of competition in the three select key sectors of Nigeria economy (telecoms, cement and electricity) and findings of perception survey. The research also examined the status of competition in the agricultural sector in Nigeria.

The study revealed some key issues/challenges for competition reforms in Nigeria. These include lack of understanding of benefits of an effective competition regime among politicians; low level of awareness among government and business segments about competition issues; need for capacity building of key stakeholders on competition policy issues; perceived lack of consensus between the different government departments and the competition agency about competition issues; strong 'turf battle' between different government agencies to host the competition commission; and strong lobbies/vested interests and corruption being seen as impeding factors.

The study also reveal a serious case of resource misallocation that could only result in lowering the competitiveness of the Nigerian agricultural sector. Most of the states that have comparative advantage in particular crop are not among the highest cultivators of such crops in Nigeria.

It was found that the states with the highest yield of particular crops are not those that allocate the largest amount of land area to the crop, implying that higher yields do not necessarily imply larger land allocation. This indicates that Nigeria is not yet fully exploiting its comparative advantage in the production of most crops. If national resources were to be spent more judiciously, states with highest yields in particular crops should allocate more resources to the production of such crops. This would improve competitiveness in the agricultural sector.

A major question examined in this paper is whether or not agricultural and trade policies have favoured increased competition in the agricultural sector in Nigeria. Investigations revealed that agricultural policies from the 1960s to the late 1990s focused on ensuring self-sufficiency and the improvement of the level of technical and economic efficiency in food production, but laid less emphasis on improvement in the sector's competitiveness. This lack of emphasis on competition in the sector may have led to limited impact of policy and lack of sustainability, which was found to be the major weakness of agricultural sector policy in the four decades in reference.

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# Endnotes

1 National Planning Commission: NEEDS (2004).

2 For example, it is generally acknowledged that the foundation of lofty education attainments of the Western part of the country was laid at this time, with the introduction of the free education policy of the Late Obafemi Awolowo.

3 http://www.nationsencyclopedia.com/economies/Africa/Nigeria-AGRICULTURE.html

4 Nagy J.G. and Edun O., 'Assessment of Nigerian Government Fertiliser Policy and Suggested Market-friendly Policies', 2002.

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7 Journal of African Law, 52, 1 (2008), 89–113.

8 See generally, Sam Amadi: Privatisation and Public Good-the Rule of Law Challenge (2008). Centre for Public Policy Research, Lagos.

9 A good example is the national carrier NITEL/MTEL which was sold to TRANSCORP. The current administration has been able to review the sale and TRANSCORP has relinquished 51 percent equity to enable the government source for another core investor.

10 The NCP is chaired by the Vice President of the Federation and has the mandate to oversee the privatisation process. The Bureau of Public Enterprises (BPE) is the Secretariat (implementing agency) of the NCP.

11 In a personal interview with the General Counsel in charge of this issue at the BPE, in September 2008, he said that the BPE has done further work on the Bill and resubmitted it to the Federal Executive Council for approval. He assured that the Council would approve it soon. This writer raised this issue once again in a public policy dialogue/book presentation on privatisation and public good this February and the General Counsel once again assured us that the Bill is awaiting the approval of the FEC.

12 This last approach has shown to be very effective, especially when the secretariat of the committee is vibrant and proactive. This system has worked so well in Nigeria's engagement in the EPA process, where a Technical Committee made up of government MDAs, private sector, labour and civil society representatives is hosted by one of the members, National Association of Nigerian Traders (NANTS) which has the technical capacity and funds to mobilise the other members.

13 There is a prevalence of associations or unions in most of these businesses, but the aim is mainly members' welfare. These business activities are rarely restricted to members, except in situations where a particular association/union owns or occupies a specific location in which case membership may be mandatory for carrying on business activities in that location. An exception is in the intra-city transportation, where the associations try to harass non-members, but there are usually two or more associations/unions an intending operator could register with.

14 Except manufacturing, oil and gas and construction sectors have enjoyed long history of private capital, having been dominated by multinational corporations. The banking and financial services sectors have also enjoyed a considerable long history of foreign investment. The government maintained substantial shareholding in the most prominent banks until the early 1990s.

15 National Council on Privation: Draft Competition Policy 2002.

16 *Ibid.*

*17 Ibid.*

18 This is marked by the increasing popularity of the CDMA network operators, who have latched on to the dissatisfaction with the expenses and poor services of the GSM operators and are making great impact in the market.

19 This would be further explored in Sections 5 and 6.

20 More on this in Section 6.

21 The CBN recently, in consultation with the Bankers Committee, announced a maximum consolidated interest rate of 22 percent, but it has been reported that most banks are yet to comply. This is a good case of sector regulation where there is lack of competition.

22 In an informal discussion a few days ago with a high level World Bank Official in Nigeria and his visiting counterpart form Washington, I sought to know whether the World Bank has done anything (like a study) on competition policy in Nigeria and the response was no, except for the technical support they give to the BPE in the privatisation, and more recently, infrastructure concessioning process. Pressed further on the possibility of doing a country research on competition policy-growth-poverty linkages, the country officials were of the view that it would be a good idea, but reiterated that competition policy is not a priority area for the organisation for now, both locally and internationally.

23 Nnamdi Dimgba: *The Urgent Need for Anti-trust Law; The Need and the Challenges to the Establishment of a Competition Law Regime in Nigeria; The Regulation of Competition through Merger Control: The Case under the Investment and Securities Act 2007; Antitrust in Nigeria: A Review of the Merger Provisions of the Federal Competition Bill, etc. (all articles available online)*

24 The usual approach would be to organise media trainings/workshops over a period of time.

25 The role of Competition Policy in Economic Development: The South African Experience. Trade and Industrial Policy Strategies (TIPS) Working Paper, 2004.

26 Random opinion sampling shows that most Nigerians perceive the industry regulators in these areas as lenient towards the operators, to the detriment of the consumers and the economy in general.

27 Supra.

28 David Newberry: The Relationship between Regulation and Competition Policy for Network Industries.

29 *Ibid.*

30 This Bill is a product of the harmonisation of the BPE and the Ministry of Justice Bills and is slated for discussion by the Federal Executive Council.

31 Section 2(2).

32 Section 4(9).

33 Section 9(1)m.

34 Section 87(1).

35 (2) Approval for mergers, acquisition or combination shall be given if, and only if, the Commission finds that—

(*a*) such acquisition, whether directly or indirectly, of the whole or any part of the equity or other share capital or of the assets of another company, is not likely to cause substantial restraint of competition or tend to create monopoly in any line of business enterprise; and

(*b*) the use of such shares by voting or granting proxies or otherwise shall not cause substantial restraint of competition or tend to create monopoly in any line of business enterprise.

36 See Nnamdi Dimgba: "The Regulation of Competition through Merger Control and ISA 2007". *Paper presented at the NBA Section on Business Law Conference, Abuja, April 16, 2009.*

37 Section 121 (1)a.

38 Sections 121(1)b (i,ii); 121(3).

39 Other sector regulations like Communications and Electricity have provisions on competition, as would be seen later in this Chapter.

40 For a general analysis on the Merger Control under the ISA 2007, see Dr Nnamdi Dimgba, *supra.*

41 Supra.

42 Section 91.

43 Section 92. Also see Regulation 26 of the Competition Practice Regulation, 2007, which extends the regulation of dominance to include *a priori* regulation of mergers and acquisitions.

44 Sections 96-100.

45 Sections 101-103.

46 National Council on Privatisation: Electric Power Sector Reform Policy 2001.Page 4, Paragraph 2.0.

47 Supra, Paragraph 2.1 (g&h).

48 Paragraph 3.0.

49 Section 82(5)-(7).

50 National Electric Power Policy 2001, page 27.

51 *Daily Independent*, March 03, 2009.

52 Ayodele Samuel, "Danger of Cement Import Substitution", *Leadership*, September 12, 2009.

53 "FG Set to Crash Cement Price", *Leadership, June 13, 2008.*

54 "Can Yar'Adua Win the Cement War?" *Daily Champion*, March 27, 2008.

55 "The Long Wait for Cement", *This day (Editorial)*, March 22, 2008.

56 The products under reference here are: the premium motor spirit (PMS), automated gas oil (AGO) and household kerosene (HHK).

57 "Investors Jittery over Oil Sector Reform Bill in Nigeria." www.somalipress.com

58 The companies include African Petroleum Plc, Chevron Nigeria, Conoil, Mobil, Oando and Total Nigeria, which are responsible for about 50% of total petrol importation into the country.

59 This refer to the practice where the PEF pays to the oil marketers, the differential between the landing cost of fuel products in the port cities and the cost of transporting these products to the farther cities in the country. This payment is designed to ensure the uniformity of price across the nation, even though prices are hardly uniform in practice.

60 This allegation was made with particular reference to the AGO, which has since been fully deregulated so that the NNPC sells to the marketers at the prevailing market price and the marketers, in turn, sell at a margin to the end users. See the news article: "NNPC now to Sell Diesel at Market Price", *This day* May 15, 2009.

61 The President was reported as describing the threat of this cartel as the "greatest institutional corruption in the history of the nation." The report went ahead to say that, "[T]he President of Nigeria blames the frequent fuel shortages in the country on this cartel. He believes his reforms will effectively break the cartel". See, O. A. Akwani: Nigeria: The Price of Fuel at the Pumps- Why Deregulation is the Wrong Way. Available at www.imdiversity.com.

62 "Mark tasks security agencies on cartels, NNPC chief urges support for reforms" November 20, 2009.

63 *This day*, October 24, 2009.

64 Labour has been the staunchest critic of the deregulation agenda. The major grouse of labour is that deregulation built on import dependency is skewed. Therefore, they demand that the local refineries be brought back on stream and new refineries built before the implementation of full deregulation.

65 Op. Cit

66 "Fuel: One Product, Several Price" in Nigerian Compass, December 25, 2009.

67 The government has proposed a far reaching reform agenda in the oil and gas industry and this has been articulated in the Petroleum Industry Bill (PIB). The PIB has been undergoing legislative process in the National Assembly and much to the disappointment of stakeholders, the process seems to be taking too much time, especially in the light of the urgency of some of the reform proposals for the continued survival of the industry.

68 Multi-choice DSTV, HiTV, MyTV and the latest entrant DAARSAT.

69 I. Obi:" Nigeria's Pay-Tv Operatrs – Are They Offering Value for Money".

70 "HITV, ACON Lock Horns in Court over EPL Broadcast Right" *Vanguard,* 20th October, 2009.

71 Even though, some analyst were worried at the high cost HiTV paid for the broadcast rights, compared to what is obtainable for the same rights in other parts of the world.

72 This is gleaned from readers comment on some of the news reports/articles above.

73 David Newbery. The Relationship between Regulation and Competition Policy for Network Industries (2006). Available at www.

74 Or, in some cases, other extraneous factors like right of way may be a hindrance.

75 Nigerian Telecom Policy 2001.

76 MTN was reported to have invested about $120mn in the infrastructure.

77 See Trends in Communication Markets in Nigeria, 2004. Published by the NCC and available at www.ncc

78 Review Article on the Book: *The End of a Natural Monopoly: Deregulation and Competition in the Electric Power Industry*, edited by PETER Z. GROSSMAN AND DANIEL H. COLE (JAI/Elsevier Science, 2003). Available at www.

79 The electricity power sector continues to be in the news for the wrong reasons. Few months ago, the Senate of the Federal Republic of Nigeria launched an investigation into the efforts of the immediate past civilian administration of Chief Olusegun Obasanjo to construct power generating plants in different part of the country and it has been widely reported that a whooping sum of about US$16bn was spent in the National Integrated Power Project, with little or nothing to show for it.

80 The generating component of the grid was made up of three hydro and six thermal generating stations, with an installed capacity of 5906 mega watts. The transmission and distribution network was made up of 5000 km of 330 kV lines, 6000km of 132 KV lines, 32330/132 KV sub-stations and 91 of 132/ 33KV sub-stations. There were also 1790 distribution transformers and 680 injection substations.

81 National Council on Privatisation: National Electric Power Policy 2001. Paragraphs 2.0, 2.1 and 3.0.

82 National Council on Privatisation: Overview of Nigeria's Power Sector Reform. Presentation at Investors Forum Frankfurt, November 2002.

83 Furthermore, the Distribution and Generation Companies (Discos and Gencos) would not own share in the Transco, neither would they cross own shares between them. This requirement does not apply to the off-grid operators.

## *About the 7Up4 Project*

After having successfully implemented research based advocacy and capacity building projects on competition policy and law issues in Eastern and Southern Africa (ESA), CUTS shifted its attention towards West Africa, where not much information was available with regard to the state of competition in markets and their implications for the economy and consumers. A set of seven countries comprising three Anglophone Countries *(The Gambia, Ghana and Nigeria)* and four Francophone countries (*Burkina Faso, Mali, Senegal and Togo*) were selected for this endeavour. The contour of this initiative was based on the *7Up Model* institutionalised by CUTS, and this project was referred to as the ***7Up4*** project.

The Department for International Development (DFID), UK; International Development Research Centre (IDRC), Canada; and the Ministry for Foreign Affairs (MoFA), Sweden provided the necessary financial support to implement this project. As the name suggests ***(Strengthening Constituencies for Effective Competition Regimes in Select West African Countries)***, a main objective of this project was to develop the capacity of multiple stakeholders to raise the ante on the need for effective competition regimes in these countries. It was clear from experiences gathered by CUTS in other parts of the continent and elsewhere in the developing world, that competition reform was a means to achieving developmental outcomes in developing countries. The challenge was to develop an environment for the appreciation of this linkage among stakeholders and to enhance the capacity of both state and non-state actors, so that they can join forces to catalyse the process. The 7Up4 project was designed by CUTS to help address this challenge.

Baseline information about the state of competition, and constraints affecting evolution of level-playing field in select markets has been developed from the research undertaken in this project. Dialogues with national stakeholders have also been instrumental in initiating a discourse on the need for effective competition regimes in the countries. However, it is essential to sustain this discourse so that the competition reform process can be taken forward. It is noted, that in spite of having kick-started the process of competition reforms earlier than in many of the other countries in eastern and southern Africa, not much progress was achieved in west African countries (including the 7Up4 countries) in terms of their effective enforcement. The 7Up4 project has been able to rekindle discussions on the benefits from an effective domestic competition regime, and it is necessary to sustain these discussions.

It seems that the environment for sustaining such discussions is emerging now, as the regional authorities Economic Community of West African States (ECOWAS) and West African Economic and Monetary Union (WAEMU) begin to play much greater role in the process of competition reforms in the region. There is already some progress towards enforcing a regional competition policy at the ECOWAS Commission, which along with the WAEMU remains crucial institutions for pursuing member states for implementing domestic competition laws.

CUTS remains interested to catalyse the process towards effective competition regimes forward in the countries/region, and would continue to rally support from national governments/agencies, regional authorities and the international community for this purpose. Country-specific 'Roadmap for Competition Reforms', developed under this project would guide this process forward.

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