PRELIMINARY COUNTRY PAPER (PCP) – THE GAMBIA

STRENGTHENING CONSTITUENCIES FOR EFFECTIVE COMPETITION REGIMES IN SELECT WEST AFRICAN COUNTRIES

A PRO-PAG CUTS PARTNERSHIP

2008

Figure 1: ADMINISTRATIVE DIVISIONS OF THE GAMBIA

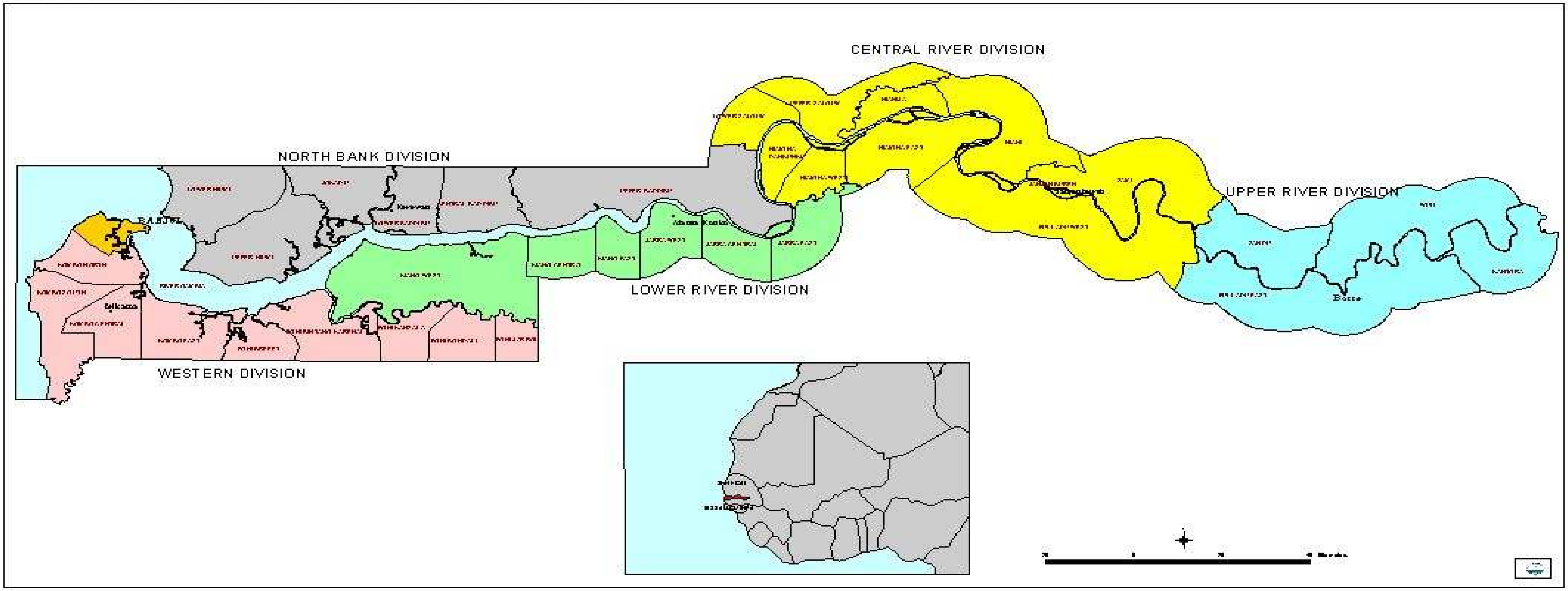


Table of contents

Acronyms and Abbreviations

CCOSPAG – Competition and Consumer Advocacy Group
CET – Common External Tariffs
CSO – Civil Society Organizations
CUTS – Consumer Unity and Trust Society
DOSFEA-Department of state for Economic Affairs
ECOWAS – Economic Community of West African States
EPA – Economic Partnership Agreements
EU – European Union
FAO – Framework of Agreement
GGC – Gambia Groundnut Corporation
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
HIPC- The Enhanced Heavily Indebted Poor Countries
IMF-International Monetary Fund
ITU – International Telecommunication Union
MDG – Millennium Development Goals
NAMs-National Assembly Members
NAWEC-National Water & Electricity Company
PRSPs-Poverty Reduction Strategy papers
PSD – Programme for Sustained Development
PURA – Public Utilities and Regulatory Authority
REC- Regional Economic Communities
SPS - Sanitary and Phyto-Sanitary Regulations
TNBs – Tariffication and Non-Tariff Barriers
UNDP-United National Development Fund

1. Background:

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, except on the Atlantic seafront. 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 size 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 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 of US$360.00 in 2003. The Gambia is in the middle ranking of the widely used indicators of business climate and competitiveness. In the 2007 World Bank 'Doing Business Indicators', The Gambia is ranked 113th out of 175th countries, performing better than most of its West African neighbours, (except Ghana and Nigeria), in terms of ease of dealing with licenses and permits, and for enforcing contracts and on labour regulations. On average, the economy registered a 6.4% 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% of the population and agricultural production is largely dependent on rain-fed agriculture. 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 or poor technology, low and declining soil fertility as well as structural and cultural problems, such as women's limitation to access land, lack of rural credit facilities, insufficient access to appropriate technology and inadequate farm inputs and marketing constraints (UNDP country report 2004). The agriculture sector continued to decline and migratory patterns are indicative of population movements towards the urban and peri-urban areas, thereby compounding the problems of unemployment. The sector contributes about 27% of GDP but has enormous scope for development. The 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 and they do not eat what they produce! That being the case, the country is hard hit by the current food crisis that has gripped the world.

The Gambia's industrial sector is struggling to emerge due to numerous structural and financial constraints but the country can boast of a vibrant service sector. The industrial sector is small contributing approximately 10.7% of GDP. The services sector is dominated by the hotel industry, and a significant informal sub-sector, and their aggregate contribution is about 62.9 % of GDP. After a decade of economic recovery initiatives, there is evidence to show that the living standards of the average Gambian has not improved. As a matter of fact, the rapidly increasing population pressure, inadequate health care, nutrition and sanitation are all contributing to the worsening levels of poverty. Declining productivity and real incomes have led to a general decline in quality of life. Though the country has implemented various programmes aimed at making significant inroads in poverty reduction (since 1994 when The Gambia launched its first Strategy for Poverty Alleviation), poverty paradoxically, 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 a high Gini coefficient that increased from 0.180 in 1993 to 0.466 in 1998[1]. Today, 58% of the population is considered poor (PRSP II). The Gambia reached HIPC completion point (January 2008) and is now eligible for debt relief.

Table X: Selected Economic Indicators: 1983-2008

Year	1983	1993	2003	2008
GDP at market prices				20,460,347,000 Dalasis
Real GDP Growth (%)			*6.7%	
Inflation rate			*17.6%	
Monetary Unit	Dalasi			
Exchange Rate (January 2009)				$1=26 €1=36 £1=38
Population			1.4 million	1.5 million
Prevalence of Poverty			58%	
HDI Index Ranking			155 out of 177 (2006)	
Main Exports			Groundnuts and groundnut products, Fish and fish preparations, Horticultural Products,	
% GDP Agriculture				*27
% GDP Industry				*10.1
% GDP Services				*62.9
Per capita income			US$360	
Tourist arrivals (thousands)			150,000 (2007)	
Adult Literacy rate (%)		*23	*37	
Total debt stock (% of GDP)			*27.3%	
Debt service/exports (%)				¤23.3%
Access to Electricity				*<25% (2006)
Access to Clean Water		*23	*50	*80
Number of Phone Lines				

SOURCE: *PRSP II; ¤GAMBIA AT A GLANCE

[1] First National Millennium Development Goals Report 2003, Republic of The Gambia

The Gambia gained independence from the United Kingdom 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, favoring 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.

2. <u>Social and economic policies affecting competition</u>:

2.1. The 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 expansionary policies, relying heavily on domestic and external borrowing. Following the First and Second Five Year Development Plans of the 1970's, the Government adopted some Structural Adjustment Programmes (SAP) in 1983 with assistance from World Bank, the International Monetary Fund 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 to promote a productive sector led growth underpinned by a realistic market-determined exchange rate regime. The ERP to a certain extent succeeded in stabilizing the economy, but failed to deliver sustainable growth (Vision 2020). A successor Programme for Sustainable Development was later introduced (in 1990) to consolidate the gains of the adjustment and usher in a private sector led growth. Some of the other enabling features that private sector institutions need for trading in the transactional environment include: an economic policy environment that is supportive of investment; a non-distortionary policy framework; low transaction costs and reduction of red tape; encouragement of free markets; rule of law and contract enforcement.

The birth of the second Republic in 1996 saw the adoption of Vision 2020, an agenda for socio-economic reform and development. The Vision 2020 strategy outlines the Gambia 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 a 'vibrant private sector' led growth. The structural adjustment programmes of the 1990s paved the way for the liberalization of the economy and established the Gambia government's commitment to free market policies and a vibrant private sector-led growth as enshrined in the Vision 2020 blueprint. However, The Gambia has tended to impose higher import duties on manufacture imports than on primary agriculture imports. This tended to suggest that there are some imports substituting activities that were being protected.

2.2. The Poverty reduction Strategy Paper:

The second Poverty Reduction and Strategy Paper (PRSP II) covering an implementation period of 5 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 macro-economic reforms that stimulate private sector growth, improved public sector management and an increased priority for human development. This second generation PRSP 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 Organizations (CSOs) to play an active role in economic growth and poverty reduction
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 programs for a broad-based, export-oriented growth strategy led by the private sector and supported by government and development partners. Government support will be particularly critical in terms of the fiscal and monetary policies adopted during the medium term, underpinned by favourable, pro-poor agreements with the International Monetary Fund. Comprehensive public sector reforms will also be essential to ensure that the state sector is able to create and maintain an enabling environment for long-term economic growth and poverty reduction.

2.3. Civil Society organisations and their development initiatives:

At the national level, the PRSP and the Millennium Development Goals (MDGs) have created the opportunity for enlarging pro-poor policy choices through bringing a more integrated and holistic perspective to macroeconomic policy instruments like Poverty Reduction Strategy Papers. At the global level too, the MDGs allow development partners to arrive at a consensus around aid priorities and ensure coordination among donors. Civil Society organizations like Pro-PAG, Action Aid The Gambia, the Child Protection Alliance (CPA), Catholic Relief Services (CRS), The Education for All Campaign Network have been complementing Gambia government efforts in achieving its development agenda through evidenced-based advocacy, capacity building and community empowerment approaches.

The urgent need to address poverty in The Gambia and around the world and the opportunity provided by the MDGs and the PRSP have made them the rallying cry of local and global partnership and 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, joblessness, diseases, lack of shelter, gender inequality and environmental degradation. This aggregate dimension should give a revitalized TANGO (The Association of Non-Governmental Organizations) a much greater clout for developing issues-based advocacy platforms for development. The recent emergence of the Consumer and Competition Advocacy Group (CCOSPAG) will help articulate the issue of consumer welfare in The Gambia.

2.4. The Agricultural Sector:

The agricultural sector is a priority area for investment in line with the Vision 2020 objectives and the Millennium Development Goals' 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 et cetera (PRSP II, 2007).

The overall objective of agricultural development strategy of The Gambia is to promote pro-poor growth and employment in the rural sector through private sector development. Specific policies and initiatives are broadly based on a mixture of import substitution to ensure food security, and export promotion through private sector development. 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, deemed to have potential to diversity agricultural exports are also being promoted. The promotion of groundnuts production, the country's main agricultural export, remains an important strategic undertaking for the sector. The Gambia's agricultural policy tries to target the problem of low yields, through improved inputs and extension. Groundnut production for instance is highly sensitive to rainfall, seed availability, fertilizer use, pests, pricing policy etc. 60% of the marketable groundnut crop is exported primarily to the European Union market. The formal markets are regulated through a Framework of Agreement (FOA) concluded in 1999 between the authorities and the stakeholders. 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 2004/5 season by the introduction of a government managed licensing scheme for operators.

2.4.1. Horticulture

The Horticulture Sector is rapidly emerging as one of the key sectors and growth areas of the Gambian economy. The sector currently contributes about 4% to GDP on average and employs over 65% 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 offers great potential for the export trade and generates foreign exchange earnings for the Gambia (PRSP II). The Horticulture Sector also contributes to import substitution with strong linkages to other sectors notably, the tourism industry.

2.4.2. Potentials and Challenges

The potential for horticultural development in the Gambia through export of fresh produce is enormous. There is increasing demand for tropical and off-season fresh fruits and vegetables in the lucrative European Markets. Local markets for horticultural produce remain under-exploited in the Gambia. Tourist hotels and restaurants offer mainly imported canned vegetables and fruits, canned fruit juices and conserves. There is practically very little institutional support for horticultural exporters. Export promotion which should be handled by Government Institutions does not exist

2.4.3. Fertilizers

The government directly supplies most of fertilizers in the country. The price of fertilizer is subsidized by between 30 and 35 percent (PRSP II). Instead of outsourcing to the private sector, the authorities directly source and distribute the fertilizers. Such heavy government interventions have undermined the ability of the private sector to develop private distribution networks and sell inputs on flexible terms, for example on the basis of informal credit arrangements or in exchange for crop. Many countries in West Africa no longer subsidize fertilizers. A gradual and transparent process of withdrawal would allow the private sector to develop its capacity to supply the market. 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 fertilizer to an unreasonable level.

2.5. Industrial and Investment Policy

2.5.1. Industrial Policy:

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

Electricity supply continues to be the most pressing need of the industrial sector. There is considerable loss of productivity due to frequent and unpredictable power outages. Prospects for the industrial sector are promising in light of recent developments in the energy sector, which provided additional generating capacity for NAWEC. The Rural Electrification Project currently underway by NAWEC provides the potential for fulfilling power supplies in the rural areas. Efforts should be intensified to enhance the generating capacity for electricity supply for the Greater Banjul Area.

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 the production from a plant of an efficient scale
- Lack of access to medium and long term finances
- Lack of core skills needed for the manufacturing industry

- The constraints inhibiting both domestic and foreign investment such as unreliable and high cost of electricity, high nominal corporate tax rate (35%);
- The poor functioning of the commercial courts and other administrative barriers to investment, and limited development incentives.

Taking due cognizance of the above factors, PRSP II Priorities and Strategies for the Industrial Sector are geared towards improving small-scale industries extension programmes with emphasis on finance, product development and business information; the implementation of a national export promotion strategy for fisheries, horticulture and tourism; the promotion of air access through incentives and cheaper air freights to make Gambian products more competitive in the International markets; the improvement of the environment for export orientation (private-public partnership, economic infrastructure improvements, trade policy, etc); Stronger role for the Divestiture Agency and the divesture of NAWEC; the harmonization and the improvement of the consistency of the GIPFZA Act with the tax code under the finance and Audit Act; the enforcement of the bankruptcy law and to train judges to deal with commercial law cases.

2.5.2. Investment policy:

PRSP II emphasizes private sector investment in the productive sectors and the Gambia government is trying to unleash that potential. The Gambia has liberalized the economy and thereby permitted participation of all economic agents in the economic growth process. Despite liberalization, investment in The Gambia is low. Gross Investment (GI) stood at 18% of GDP in 2004. 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 emergence of Independent Power Plants (IPP).

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). This particular act provides the legal ground for transfer of funds. Other laws affecting business and investment 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 also set up The Gambia Investment Promotion and Free Zones Agency (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 heaven and to:

- Provide an attractive business environment and incentives for business activity 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;
- Co-ordinate, encourage, promote and facilitate investments in The Gambia; and
- Advise the Government on investment policy and related matters.

According to the act, 'the Agency shall be exempt from corporate tax and import duties and such other taxes and duties as may be agreed upon between the Agency and the Secretary of State responsible for finance. The Act provides for various facilities and incentives, and the protection of investments. The launching of the Gambia Gateway Project funded by the World Bank in 2002 was equally a step in the right direction.

Foreign investment is visible in all sectors of the economy. Almost all the commercial banks operating in The Gambia have majority foreign ownership. The tourism sector is dominated by Scandinavian, British, French, Spanish, Italian, German, Dutch and Lebanese investments. There are also some recent investments in the tourism sector by the Kuwaiti firm, M.A. Kharafi & Sons, which bought the five-star Kairaba Beach Hotel and built the country's first Sheraton-flagged hotel and conference center. This was the venue of the African Union Summit in June/July 2006 - the biggest event of its kind ever hosted by The Gambia. There has been a recent inflow of Libyan investment in the tourism sector in the form of hotels and amusement centers.

The trading sector has a heavy presence of Lebanese, Mauritanian and Senegalese businesses. Kuwaiti-owned M.A. Kharafi is the biggest foreign investor in The Gambia at the moment. It has secured contracts for extending the runway and refurbishing the terminal building at Banjul International Airport as well as upgrading most of The Gambia's trunk roads network.

There are a small number of U.S. firms invested in The Gambia, and most projects are still in the early stages. A private U.S. investor has opened a new casino and hotel in the tourism area and is continuing to finance a cattle cross-breeding project. The American corporation Seaboard has partnered with a Gambian business to build a flourmill in The Gambia. Also in 2005, a Maryland-based firm, BTI Holdings, launched a scheme to promote a prefab-housing development project in collaboration with the Gambian Social Security Housing and Finance Corporation.

Since its establishment in 2002, GIPFZA has processed special investment certificates for 62 foreign-owned businesses, 42 of which are now fully established and operational. They operate in various sectors such as agriculture, fisheries, manufacturing, ICT, tourism and services. They have created nearly 3000 direct jobs. By the end of 2006, total actual investment of all projects in GIPFZA is estimated at $90.82 million.

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 defense industries which are closed to private sector participation.

The Gambia Investment Promotion Act and the Gambian legal code provide the mechanisms and legal framework for dispute settlement, either through negotiation or arbitration. Appeals against decisions of district tribunals (or the industrial tribunal in the case of labor disputes) may be lodged with the lower courts, the High Court and the Supreme Court, which is the highest court of appeal in the country.

The Gambia is a member of the International Center for the Settlement of Investment Disputes (ICSID). The government has accepted all court rulings on investment disputes and has been willing to discuss and honor out-of-court settlements. The last major dispute with foreign investors was with the Swiss group Alimenta over the assets of the Gambia Groundnut Corporation in 1998. This groundnut processing plant at Denton Bridge is the biggest industrial complex in the country and the government takeover sparked off a protracted legal battle. The government eventually settled out of court and paid Alimenta compensation of $11.2 million.

The protection of intellectual property rights 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.

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

2.6. Trade Policy

Since the introduction of the Economic Recovery Programme in the mid 1980s, the Gambia 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, USA, Asian Countries and the 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 agreement (EPA) as a strategy to expand its link with the EU, while finding ways and means to mitigate the negative impact of the EPA. The Gambia needs to pursue an export-oriented strategy. There is also a need to improve trade related services in order to complement this development strategy. Reforms should be directed at ensuring uniformity in nominal rates and reducing average rates. Tariff concessions based on different end-uses should also be phased out to reduce tariff dispersion and the bias implied by current tariff rates, which range from 0 percent (duty free) to 18 percent for "luxury goods". The Gambia has committed itself to the full implementation to the ECOWAS Common External Tariffs to facilitate intra regional trade as a means of regional integration. The Gambia started the implementation of the ECOWAS Trade Liberalization Scheme (ETLS) and seven companies have already qualified as ETLS certified companies, although only two are currently exporting their products to the regional market.

The recommendations provided below are intended to enhance development and diversification of trade related services in The Gambia and to develop links to other sectors of the economy. According to the PRSP Action Plan, the country should endeavor to:

- Finalize the formulation of a comprehensive national trade policy, which will help integrate trade into the national development planning.
- Design a uniform import tariff system. Little domestic production takes place and tariffs are low on most items. However, this has to be carefully designed so as not to protect inefficient domestic production.
- Develop a "Tariffication" of non-tariff barriers (NTBs, i.e., substituting exemptions from imports duties with non-prohibitive tariffs; or replacing the ban on imports, with equivalent tariffs). 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 in order to conform to the Uruguay Round on Sanitary and Phyto-sanitary Agreement. Government should ensure smooth and effective functioning of the Standards Board in order to conform to the Uruguay Round Agreement on sanitary and phytosanitary regulation.
- Promote regional trade for an enlarged ECOWAS market. Studies are needed to establish how and to what extent the Common External Tariff (CET) will affect The Gambia's trade performance.
- Encourage integration with Multilateral Trading System

The Gambia's trade policy score, as assessed by the Heritage Foundation, declined in 2006 from 3.5 to 4.5 (with 1 as "very low levels of protectionism" and 5 as "very high levels of protectionism") because of increasing evidence of non-tariff barriers and fraud, and delays in customs administration. According to the Foundation, non-tariff barriers to trade include an "inefficient and sometimes corrupt customs process, restrictive licensing arrangements, and sanitary and phyto-sanitary prohibitions on a few products."

In 2003, The Gambia qualified for special trade status with the United States under the African Growth and Opportunities Act (AGOA). This eligibility has been renewed every year since. The country's application for a textile visa is under review. One reason the country has yet to reap the full benefits of AGOA is the lack of direct air or sea links with the U.S. In the second half of 2006, North American Airlines, using Banjul Airport's status as a "last point of departure" with the FAA, instituted a direct service between Banjul and Baltimore. However, the flight was suspended in mid-January 2007 due to what management described as low passenger levels, among other reasons.

It is important to note that agriculture is the most tariff protected sector of the Gambian economy. The average tariff that is applied is as high as 14.4% on average[2]. The fisheries sub-sector is protected by tariffs averaging 17.6%. To compound it all, most of the cash crops and food crops are protected by the maximum tariff of 18%. A 1.05% processing fee is collected on all imports and a 0.5% ECOWAS levy is applied on imports of non-ECOWAS origin. Besides customs tariffs, other duties and taxes apply. They include: sales tax and exercise duties.

2.6.1. Foreign Trade Zones/Free Ports

The establishment of free zones is an integral part of the Gambia Gateway Project, and the 2001 Free Zones Act provides the necessary legal framework. The Act provides for free zones to be established in separate selected areas to which special customs territory status shall be conferred. The Act also provides for the establishment of single factory free zones for which GIPFZA will supervise administration. Such free zone status was granted to two companies dealing in the important groundnut (peanut) sector: Gambia Agricultural Marketing Company (GAMCO) and Premier Agro, which has now closed down.

[2] World Trade Organization: Trade Policy Review The Gambia, Report by the Secretariat (January 2004)

The main objective of the project is to transform The Gambia into a major gateway to the West African coast through significant improvements of its port and airport, and through onshore facilities to support export-related manufacturing. An area measuring 164 hectares at Banjul International Airport has been designated a Free Economic Zone (FEZ). The first phase of this $6 million project was completed in December 2005. An area of almost 9 hectares has been fully developed with factory space, access roads and electricity and is ready for occupation. There are also some bonded warehouses at the Banjul port which have not yet been designated as FEZs.

2.6.2. ECOWAS and Competition rules

The Economic Community of West African States (ECOWAS) agreed on a draft of harmonized supplementary laws adopting rules on competition and investment following a string of consultations in 2007. That resulted in the enactment of three Acts assented to by the ECOWAS Authority and Heads of State and Government at the 35th Ordinary Session held on the 19th December 2008 in Abuja, Federal republic of Nigeria. The basis has therefore been laid for harmonizing the rules that govern competition and investment operations within the Regional Economic Community (REC).

The objectives of the Acts are to promote and maintain competition in order to enhance economic efficiency in production and trade in the sub-region. The Acts also aims to prohibit anti-competitive business conduct that restricts or distorts competition at the regional level. Once the implementation of the Acts starts with the establishment of a Competition Authority, it will ensure that the interests and welfare of the consumers are protected. The other provisions of the Acts include the prohibition of all agreements between enterprises, decisions by associations of enterprises and concerted practices which distort or eliminate competition within the ECOWAS Common Market and thus affect trade between ECOWAS Member States. These prohibited practices include price fixing, limitation or control of production, limitation or control of market or investment, and sharing markets. The Acts make provisions for exemptions where these transactions are in the public interest and outline the modalities for the enforcement of decisions taken by the Competition Authority and the Community Court of Justice in article 11.

Coming after the enactment of the national Competition Acts, it will be necessary to harmonize the provisions of the ECOWAS Competition Acts with those of member states.

2.7. Procurement Policy:

The Gambia Public Procurement Act was enacted in 2001, leading to the setting up of the Gambia Public Procurement Authority as an autonomous agency. But operations started in earnest in 2003. The objectives of the Act applying to Central Government Agencies, Local Government Authorities and Public Enterprises are to provide a system for ensuring:

- Transparent, efficient and economic public procurement;
- Accountability in public procurement;
- A fair opportunity to all prospective suppliers of goods, **works and consultancy services;**
- The prevention of fraud, corruption and other malpractices in public procurement; and

- Improvements in social and economic capacity in The Gambia, including providing opportunities for local small enterprises and individuals to participate in an economic manner as suppliers, contractors and subcontractors in public procurement

Organizational Review of the framework for public procurement has been conducted with a view to modernizing it to reflect best international and national practices. Standard bidding documents have been designed and adopted and the Authority embarked on a series of capacity building interventions.

Various mechanisms are used to discourage anticompetitive practices. They include the establishment of a new procurement guideline and a procurement code in replacement of the centralized public tender boards; the decentralization of public procurement to the level of the spending agencies; the supervisory and facilitation role bestowed on the Gambia Public Procurement Authority to ensure the enforcement of the new procurement procedures and to conduct final reviews of procurements over a pre-set threshold. Every procurement organization is required by law to establish a contracts committee responsible for approving the invitation to bids, conducting the opening of bids and submitting recommendations based on its evaluation of the bid to the Secretary of State concerned. This applies to any contract above a value of D3500 for goods and services or D10, 000 for works. All these measures are contributing to enhance competition between suppliers of goods and services to government.

2.8. Labour Policy:

The structure of the Gambia labour market is somehow distorted by the large size of the informal market, estimated at over ninety percent (90%) of the working population (NTA 2007 P.3). This situation has lead to the recognition of the informal sector as a key factor in terms of employment creation and economic development for poverty reduction.

The Gambia's total economically active population is now over 450,000. About 75 percent are engaged in agriculture; 19 percent in industry, commerce and services; and 7 percent in government. The Gambia suffers from high unemployment and underemployment, compounded by a shortage of skilled workers and trained professionals. Many of the skilled workers in the construction and mechanical industries are foreigners from neighboring countries. These workers are required by law to pay an annual registration fee of about \$54 and a work permit fee of about \$11.

The Labor Act of 1990 and its regulations provide the legal framework for labor relations in The Gambia. The Department of State for Trade, Industry and Employment enforces the act. It covers most conditions of employment, including dismissals, recruitment and hiring, registration and training, protection of wages, registration of trade unions and employees' organizations, and industrial relations in general. The Act also contains procedures for the settlement of disputes, including an industrial tribunal. Minimum wages and working hours are established through six joint industrial councils: commerce, artisans, transport, port operations, agriculture and fisheries. Private-sector employees receive between 14 and 30 days of paid annual leave, depending on length of service.

Labor and trade unions exist but are not very active. Most workers are not unionized. The most active unions are for dock workers and workers in the transport sector. The Gambia Workers Confederation, formed in 1985, coordinates union activities. The confederation is a member of the International Labor Organization (ILO). The confederation is not political but is increasingly active in negotiations on pay and employment conditions.

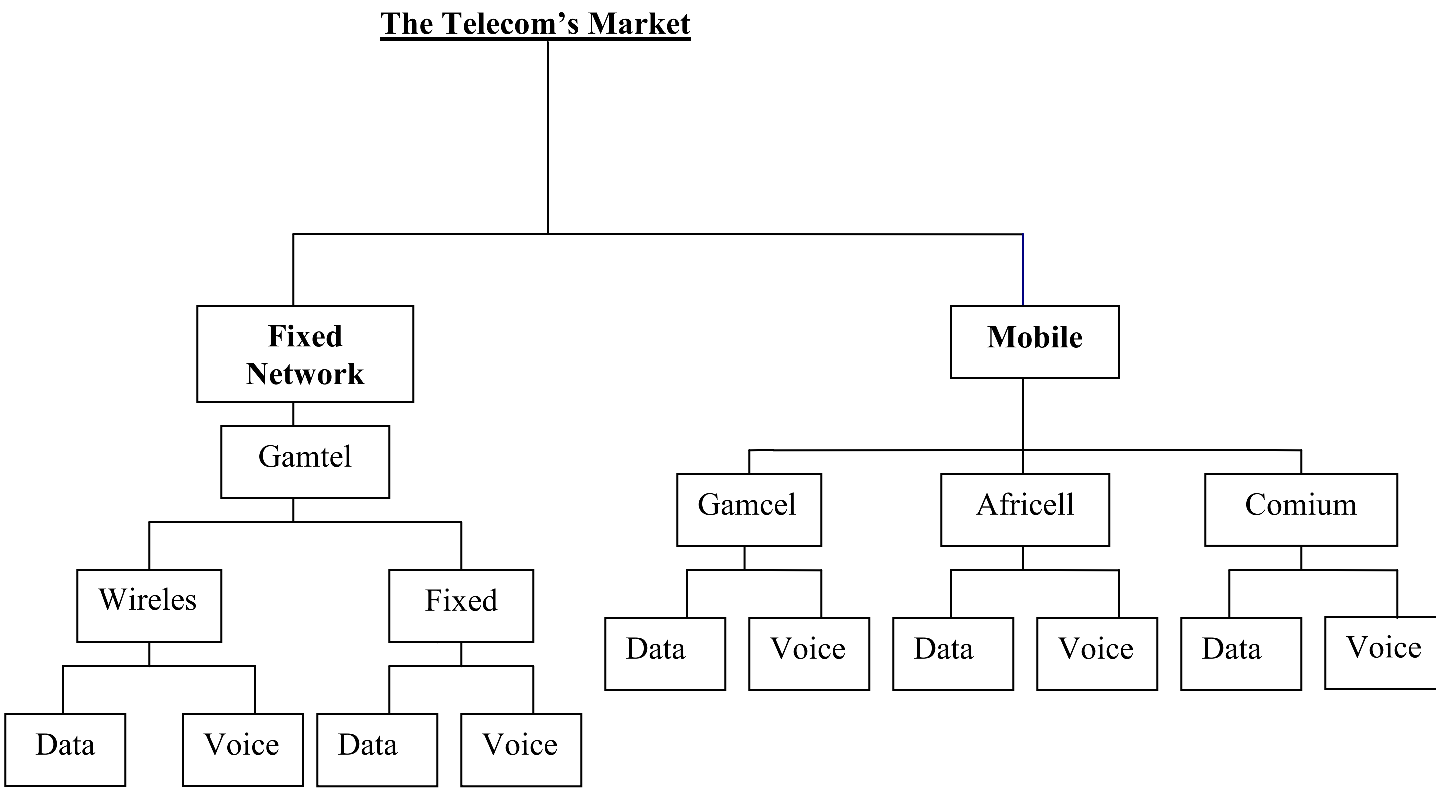
After being criticized for not implementing the ILO conventions banning the worst forms of child labor, the Gambian government took steps to pass new legislation updating the labor code to conform to the signed agreements. The Children's Act of 2005 raised the minimum labor age from 14 to 16 and holds corporate entities accountable for exploitative labor practices involving children on their premises with executive officers of these entities subject to fines and criminal liability for violations of the Act.

A regulation that set up the Expatriate Quota Board is intended to encourage businesses to hire qualified Gambian staff. For hiring an expatriate, they are required to pay the equivalent of $345 in tax annually. A police regulation in 2005 banned all non-Gambians from driving taxis in the country.

3. <u>Nature of the Market/Competition:</u>

3.1. The Telecommunication Market Structure

The Gambia Telecommunications Company (GAMTEL) was established in March 1984 under the Companies Act of 1955. It was set up as a private Limited Liability Company. GAMTEL took over the provision of national and international telecommunications services from Cable and Wireless and the Government Telecommunications Department. GAMTEL is a legal monopoly in the provision of fixed line telecommunications services. GAMTEL offers telephone, Internet, and to a limited extent telex and telegraph services. In 2001, GAMTEL established a subsidiary GAMCEL to provide GSM cellular Telecom service whilst AFRICELL and COMUIM were licensed to start operations in October 2001 and April 2007 respectively. They provide GSM cellular voice and data services and have since been competing vigorously with GAMCEL. In August 2008 a 3G licence was issued to Q-Cell as the fourth entrant into the mobile market. The new entrant is expected to commence operations in the early part of 2009 PURA have now divided the GSM 1800MHz band (total of 374 channels) equally into four parts of 90 channels each between GAMCEL, COMIUM, AFRICELL and the last 90 channels for any new entrant.



A modern Telecommunications law is yet to be enacted, but a telecommunication policy is in place. The Main objectives of the telecommunications policy are as follows:

- To ensure that reliable basic services are provided to all customers at affordable cost through the Universal Service Obligations;
- To increase the telephone density (or penetration rate) in line with other development objectives and social obligations; and

3.2. The Water and Electricity markets:

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

UHC with the management responsibility of the assets. The monopoly that NAWEC hitherto enjoyed in the generation of electricity is being relaxed with the introduction of an Independent Power Producer with an installed capacity of 25 megawatts. This IPP is responsible for electricity generation, but has to rely on NAWEC for distribution and billing. However, NAWEC still maintain its Kotu Power Station as the major generating power house supported by a number of stand-alone power stations in the major provincial towns. The current maximum available capacity at the Kotu Power Station is 25.3 MW at peak load.

The year 2007 has also seen the establishment of the Regional Electricity Regulatory body in the ECOWAS region. This is also another initiative of the ECOWAS member states with a vision to establish a regional market for electricity where there are clear established rules governing cross-border exchanges of electricity in the region. The initiative also envisages a truly regional electricity transmission network on which such cross-border exchanges will be transported. This initiative depends on the technical input of projects such as the West African Power Pool (WAPP). In the setting up of this body, ECOWAS established a regional body of experts composed of government officials in the energy sector and regulators of electricity. PURA is represented on this body and participated in all its work and deliberations.

3.2.2. Water:

The provision of potable water services rest entirely with NAWEC with majority of its activities centered on the Greater Banjul Area and the 10 Provincial Growth Centres. All water is obtained from underground sources. In the five administrative divisions, potable water service delivery is ad hoc, and is provided by numerous entities using various technologies. The Area Councils have legal responsibility for water supply but resource limitations and technical capacity means that services are primarily delivered through specific donor funded projects and UN funded initiatives.

3.3. Transport

3.3.1. Road Transport:

Road transport in the Gambia is largely dominated by private sector operators. The Gambia Public Transport Corporations (GPTC) has been quite lackluster in recent times and were conspicuously absent from the roads. Road transport accounts for the largest proportion of the movement of goods to all destinations within and without The Gambia. A new initiative launched by the Gambian Head of State during the 2008 anniversary of the coming to power of the APRC regime will undoubtedly influence the state of competition in the transport industry. A new company with a fleet of about 50 new buses has emerged in the road transport sector and will be charging 2-3 dalasis lower than the market price, considered to be too high for the average Gambian to pay, particularly the poor. The seaport, airport and waterway networks have on the contrary been dominated by public transport.

3.3.2. Sea Transport:

The river Gambia is navigable from end to end, particularly so for small vessels. Ocean going vessels can only go mid-way. But river transport is under-utilized and is not as developed as it could be. It is primarily used for the transportation of groundnuts and for ferrying goods and passengers across the banks of the river. The Gambia Ports Authority ferries operate at

Banjul/Barra and at nine (9) provincial stations and support commercial and other economic activities (PRSP II). The Banjul/Barra axis is the busiest, being the route serving passengers heading to the north bank and to Dakar, Senegal. Motorized boats belonging to informal sector operatives ply the same axis, catering for passengers and goods at more competitive rates, but safety standards are appalling. They also offer an alternative to the ferry services to passengers who do not want to spend the night on either side of the river when the ferry services close for the day. The ferry services have the lion's share of the market. Cargo through the port reached 983,511 metric tons in 2005 of which about 91% were imported goods. The import traffic as dominated by traditional commodities like rice, flour, sugar and petroleum products.

3.3.3. Air Transport:

The Gambia Government wants to transform the Banjul International Airport into a hub for collecting and distributing passengers and cargo between Europe, Africa and North America (PRSP II). The airport improvement project is underway to enhance the image and performance of the facility. The airport will have to contend with Dakar which is already functioning like a hub. There are quasi monopolies over certain routes: Senegal, served by Air Senegal only after the collapse of SLOK Air hitherto subjected to certain unfavorable restrictions. Gambia Experience (a British Tour Operator) dominates the London-Banjul route, being the only flight that operates regular flights.

3.4. Financial Markets:

The financial system in The Gambia is comprised of a Central Bank, about ten (10) commercial Banks, insurance companies and a number of foreign exchange bureaus. The Central Bank regulates the financial sector. The foreign exchange operatives still have to contend with informal sector operators who most of the time, determine the exchange rates in the country. The Gambia government, after tolerating their operations for years has now declared them illegal. That notwithstanding, the parallel market continues in a covert manner. The liberalization of the financial market in The Gambia is well established, having been subjected to numerous reforms during the structural adjustment period and the subsequent programme for sustainable development and the Poverty Reduction and Growth Strategy periods. Though the entry barriers have been raised somewhat, a lot of new banks mainly from Nigeria have recently been granted licenses to operate in The Gambia. In the year 2007 alone, four banks: Access Bank, Reliance Bank, The Eco-Bank and The Arab Sahelian Bank started operations in The Gambia. The government recently revealed that another fifteen banks have applied for licenses to enter the market. Two of those banks: Oceanic and Prime are gearing up to begin operations soon. The intensity of competition between banks has led to the development of new products and services that hitherto were non-existent to the great satisfaction of customers. The concern today is whether or not the Central Bank is not already overstretched in its regulatory capacity to deal with the sudden surge of financial institutions.

Most commercial banks in The Gambia now operate foreign currency denominated accounts (FCDs), which were introduced by the Central Bank of The Gambia in 2001 to further facilitate international trade and foreign direct investment.

In 2003, the Gambian government launched a major crackdown on illegal moneychangers operating on the streets and who were speculating on the value of the local currency and consequently caused serious currency depreciation and spiked inflation. Although a few petty moneychangers are still operating illegally in tourist areas, there are now several licensed FOREX bureaus and money transfer agencies, both local and international. Foreign investors are free to use the transfer agencies to both receive and remit funds.

Foreign currency does become scarce during certain periods of the year and this, rather than any other reason, will be responsible for any delays in remitting investment returns such as dividends, return of capital, interest and principal on private foreign debt, lease payments, royalties and management fees. There is no limitation on the inflow or outflow of funds for remittances of profits, debt service, capital, capital gains, returns on intellectual property, or imported inputs.

3.5. The Commodity and Construction Markets:

Rice is one of the major agricultural imports entering The Gambia. The rice market is extremely concentrated in the hands of a few importers (Banna and Sons ; Madi and Sons ; Tajco and occasionally Jaffa and Gambia Ports Authority), and penetrating the market has proven to be difficult, although there are no restrictions attached. Consequently, the operators in theses sectors have an understanding leading to the pitching of prices rather high. The cost of a bag of rice of 50 kilogrammes in the Gambia is far more than the minimum wage paid to the lowest segments of the civil service. The President considers such a price exorbitant and has urged the importers in the commodity sector to be more considerate to the poor otherwise he will have to intervene in a big way in the imports market. It is true that as it stands today, the Gambian market is grossly inefficient making it difficult for goods, services and labour to be correctly valued.

The same remarks are valid for other products like cooking oil, tomato puree, onions and Irish potatoes. But the imported edible oil is now facing strict competition from a local producer of groundnut oil of a better quality. Onions continue to be imported from Spain and Senegal, as the quantity produced locally is grossly inadequate

The construction industry and its different components (cement, steel bars, timber, basalt etc) are imported. GACEM, a private sector company, remains the principal importer of cement and is subjected to a sales tax of 10% while the other importers, albeit occasionally (BIMEX and JIMPEX) and the cement coming from Senegal pay a sales tax of 15**%.** This tends to create distortions in the market by making the playing field uneven. The cost of cement is high in The Gambia, making the total investment outlays for building a house quite exorbitant.

Steel bars are imported from Senegal and China. Basalt for the construction industry is also imported from Senegal.

3.6. Health Services:

The health sector in The Gambia is comprised of referral hospitals, major health centres, minor health centres, outreach stations and health posts run by The Gambia government. The health infrastructure is complemented by an increasing number of private sector health facilities and hospitals. The poor use the public hospitals but most of the private sector companies and the non-governmental organizations have agreements with private sector clinics via their insurance companies. Some non-Governmental organizations are also involved in providing health services to the people.

3.7. Nature of Competition

To protect the interest of investors and consumers, The Gambia Telecommunications industry comprises of a fixed network operator: GAMTEL and three mobile operators: GAMCEL, AFRICELL and COMIUM. The emergence of AFRICELL and later COMIUM brought to an end the monopoly hitherto enjoyed by GAMTEL, the national operator. The company had a total control of the market for a long time before the market was liberalized and selected customers using money as the filter. That is a far cry from the mass access we see today with the democratization of mobile phone usage. Today, the benefits that consumers reap are immense: slashing of product cost, elimination of validity, better services, lower rates, free call et cetera.

The telecommunication market in The Gambia is one of the most highly competitive markets in the sub-region. This is illustrated by the increase in innovative services and pricing schemes including; innovative optimizing (peak, off-peak, and free late night calls) calling charges, and connection charges (SIM card) dropping to as low as D41.00 compared to three years ago when connection charges (SIM card) were as high as D300.00. This explains the pressure exerted by indirect taxes such as sales taxes which are passed on to the final consumers by the operators. Such levies push upward the price paid by the end user of the service. To have a competitive edge over their competitors, all the GSM companies are trying to the best of their abilities to leverage the different cost centres in order to push it downwards to remain or acquire a leadership position.

3.8. The Competition Act:

With the passing of the GIPFZA Act in 2001, the need was felt to introduce a competition law. The Gambia's development partners, notably the World Banks, equally endorsed the idea, seeing it as a sign of commitment towards a free market economy. The drafting of the bill then started in earnest, lingered for a number of years before culminating into the passing of the Act. The Competition Act was consequently assented to by the President on the 5th day of October and gazetted the 19th October, 2007. The overall objective of the Act is to foster a viable competition culture that favours investment, fair trade, growth and poverty reduction. The Commonwealth Secretariat is currently helping in the setting up of the Competition Commission.

3.8.1. 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 anticompetitive arrangements, monopoly situations and mergers with the aim of improving the well-being of consumers and the efficiency of businesses in The Gambia'.
- To give confidence to those wishing to invest in the Gambia
- To 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 Competition Commission. The Act prohibits two forms of restrictive business practices: collusive horizontal arrangements, and bid-rigging agreements, on the grounds that they are inherently anticompetitive. The Commission, when it is set up will be required to demonstrate that the parties implicated have infringed this prohibition, but will not need to show that they have anti-competitive effects. It can open investigations on the suspicion that an enterprise is party to a prohibited practice. The Act also includes disciplines on restrictive business practices are shown to have anticompetitive effects. Practices that are subject to investigation will include:

- Non-collusive horizontal arrangements in which the parties must supply 30 percent of goods or services in the market concerned, and which the Commission has reasonable grounds to believe have anticompetitive effect;
- Monopoly situations, defined as situations in which 30 percent or more of goods and services of a given description are supplied or acquired by one enterprise; a benchmark of 70 percent is applied in the case of three or fewer enterprises;
- vertical agreements in which the Commission has reasonable grounds to believe that one or more parties are in 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.

3.8.2. Exemptions to the rules are:

- Activities of a statutory monopoly;
- Practices or agreements expressly required or authorised by an enactment, or by scheme or instrument made under enactment;
- 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 or rights under, or which exits by virtue of, laws relating to copyright, design rights patents or trade marks, or other intellectual property rights;
- Any practice, conduct or arrangement approved or required under an international agreement to which the State of The Gambia is a party;
- Any agreement or conduct relating to activities within a free zone under the control of GIPFZA; and

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

- Directive to cease to be party to the agreement or to terminate or modify the agreement, or its parts contravening the prohibition; and/or

- Imposition of a financial penalty, where the breach of the prohibition has been committed intentionally or negligently.

Every decision taken, and every determination and directive issued, by the Commission would be subject to appeal. The Commercial Division of the High Court would hear all appeals. It is encouraging to note that the Competition Commission is currently being set up. The Executive Director was recently appointed and has reported for duty at the beginning of January 2009. The other positions are being advertised and the Secretariat should be fully functional by the end of the first quarter 2009. An office space has been identified and the tenancy agreement is being signed.

4. Sectoral Policies and Regulatory Mechanisms:

A Public Utilities Regulatory Act was enacted by the National Assembly in 2001. The Act establishes a multi-sectoral regulatory agency called the Public Utilities Regulatory Authority (PURA) 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 and gas, broadcasting, and postal services. There is a lot of goodwill among the staff, but the institution has to grapple with issues of capacity, resource constraints and high attrition rate of senior staff.

4.1. Telecommunications:

The year 2007 witnessed the entry into the market of a new operator, COMIUM, which brings the number of mobile operators to three. This development led to interconnection issues among telecom operators that warranted the interventions of PURA to resolve them. Since May 2007 all telecommunication service providers – GAMTEL, GAMCEL, AFRICELL and COMIUM have signed interconnection agreements with each other,

PURA embarked on a technical audit exercise in collaboration with the International Telecommunication Union (ITU) in January 2007. This was as a result of the several complaints received by PURA from the subscribers regarding the difficulty in making calls caused by interconnection problems (call drops, congestion, interference and other network related problems) between networks of the different service providers. The findings of the technical audit was dispatched to the network operators requesting them to study the report and come back to the Authority with their reactions to its contents especially as it related to their various networks. This was followed by a consultative meeting to map out way forward to solve these inter network communication difficulties once and for all.

On 21st June 2007, PURA then engaged all operators to appropriately reconfigure the voice channels (uni-directional instead of bi-directional) on their networks to ensure calls made by consumers from one network to another are successfully terminated virtually all the time. One notable achievement in this arena is the improvement in connectivity between GAMTEL and AFRICELL and GAMCEL and AFRICELL.

PURA, in collaboration with International Telecommunication Union (ITU), commissioned a study in 2008 that looked at the interconnection rates among telecom operators. Prior to the launch of this report the industry was characterised by high interconnection rates resulting in low volumes in the inter network traffic. Gambians avoided the high rates by having multiple phones or SIM Cards. The study recommended the lowering of interconnection rates and the Authority implemented the recommendation of the study by lowering the rates from D2.50 to D1.00 with effect from October 2008. The lowering of the rates triggered a lowering of all end user tariffs in the industry. We now have a harmonised tariff of D3.00 per minute among all operators. PURA intends to further lower the interconnection rates by another 50% by April of 2009. It is envisaged that this will further usher in another reduction of the end user tariffs in the country.

PURA has also developed the Tariff Approval Guidelines for the telecommunications market. These Guidelines established the policy objectives and the regulatory principles to be applied for the approval of tariffs to be charged and any changes thereof for services provided by licensed network operators and service providers in The Gambia. In particular, it sets out the operational guidelines and principles to govern the tariff approval process.

Thus, the communications sector witnessed tremendous growth from 7% in 2005 reaching 25% in 2007. This trend is expected to continue in the coming years as a result of the surge in investment expenditure in the sector. Investment by the new operator (COMIUM) and the 50% sale of GAMTEL/GAMCEL by the government to a new investor: the Spectrum Company is projected to push the growth further in 2008. On the 19th of January 2007, the regional Heads of States and Government have taken a decision at the level of ECOWAS for the harmonization of telecommunications in the ECOWAS region and have as a result signed six ICT Supplementary Acts on the various aspects in the sector covering Interconnection, Numbering Universal Access and Frequency Allocation. This commendable move was to ensure that the whole region is doing the same or similar things in this area and to also establish a regional Telecommunication Network where no one country is isolated and can also be assisted in times of disasters. A framework and timetable has been set at the level of ECOWAS for the implementation of these guidelines and the envisaged timeframe is two years.

4.2. Electricity

The Gambia Public Utilities Regulatory Authority (PURA) is charge with the mandate of regulating the activities of public utilities that provide certain services to the public. The public services to be initially regulated by the Authority are Telecommunications; Electricity; Water and Sewerage

However, some of the major constraints facing the Authority (PURA) includes insufficient funding for regulatory activities and the lack of sector specific laws for some of the regulated sectors (telecommunications and the water sector). These legislations 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.

The Electricity Act is the only sector specific legislation thus far. However, attempts are being made to identify the major obstacles that saddled the sector and therefore inhibiting prospects of a higher service delivery. Amongst the regulatory activities conducted was a tour of all the power plants and water treatment facilities in the Greater Banjul Area. NAWEC and the Global Electricity Group (GEG) were also requested to submit to PURA all their codes and standards they have been using. PURA's recommendation to the Department of State for Energy on licence fees to be charged to NAWEC and the Independent Power Producer, Global Electric Group (GEG) has already been approved by Secretary of State.

PURA together with NAWEC and in collaboration with the Department of State for Energy, launched a pilot project in September 2008, to promote the use of CFLs (Compact Fluorescent Lamps). Using a pilot area identified in Kanifing South by NAWEC as having a high transformer load with low voltage output for residents there, an initial reading of the transformer was taken. After that PURA who purchased and supplied 2000 new CFL bulbs of proper quality and standard, changed the old incandescent bulbs and replaced them with the new CFL ones. Thereafter a second reading was taken at the transformer showing a reduced load and indeed better and higher voltage.

In short the overall objective of the pilot exercise was to identify an area of high distribution losses and reduce losses through demand-side management. The Government fully endorses the need to improve electricity distribution whilst consumers also get value for money service. As such a national project of a similar nature will be the next challenge to spread this success story. Detail planning has commenced to ensure this happens for the benefit of all of electricity customers.

PURA also maintain a sustained campaign to raise public awareness on energy efficiency and to the conservation of electricity. Amongst the material developed were: Energy Charts – Excel® spreadsheet for self auditing of electricity consumption, Meter Models, Know Your Meter, Know Your Electricity, Know Your Bill, and Know Your Generator.

4.3 **Water and Sewerage**

PURA, in collaboration with the African Forum of Utility Regulators has initiated a need to reflect on quality service standards to be used in the interaction with water service providers. A draft Minimum Quality of Service Standards for Water and Sanitation has been developed and is currently under consultations with relevant stakeholders.

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.

Plans are also underway to sensitize the citizens of Banjul (the capital) on the health concerns related to the sewerage system in collaboration with Public health and National Environmental Agency.

4.5. The Gambia Divestiture Agency:

The Gambia Divestiture Agency (GDA) was set up in 2001 by an act of the National Assembly to facilitate the implementation of the government's privatization programme for the public enterprise (PE) sector which covers broadly energy, communication, transportation, agriculture, pension funds and housing. According to the institutional set up, GDA is responsible for the technical preparatory work of preparing enterprises for divestiture, serving as a secretariat for the divestiture process and implementing the Gambia Government divestiture program in consultation with Cabinet which is responsible for policy decisions involved in the divestiture programme.

Objective of Divestiture Programme:

The primary focus of the new divestiture programme is to facilitate the structural transformation of the public enterprises to ensure their sustainable improvement and overall impact in the accelerated development of The Gambia. The overriding objective therefore, is to reduce the involvement of government through its withdrawal from activities best suited for operation by the private sector – thereby creating the enabling environment for private sector led growth. Specifically, the reform is aimed at:

- ♦ Enhancing the role of the private sector in the economy - by shifting more of the responsibility for production and delivery of goods and services from the public to the private sector, to create a more level playing field by eliminating preferential treatment, including monopoly rights, and to enable the private sector to enter the areas of activity offered by Public Enterprises (PEs) on an equitable basis;

- ♦ Reducing the demand of the PE sector on the national budget so as to improve the use of The Gambia's scarce resources, and to enhance the returns on those resources by achieving greater efficiency in both Private and PEs through greater responsiveness to market signals and commercial criteria;

- ♦ Reducing the role and rationalising the operations of the PE sector;

The regulators are vulnerable to lobbies and lack independence to ensure a level playing field. They also need strengthening and The Gambia government should not only focus on improving regulatory procedures, but must also see to it that they are enforced when passed.

5. Anti-competitive practices:

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 the 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 of necessity 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 organizations. It is therefore the responsibility of The Gambia government and its regulatory agencies to protect the poor. By creating the Public Utilities Regulatory Authority (PURA) and by passing a Competition Act and setting up a Competition Commission, the Gambia 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 mechanisms and having in its purview the promotion of public interest. The Gambia is presently beset with various constraints: weak institutional environment that hinder the implementation of a regulatory regime; absence of consumer awareness and 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. A level playing business environment that takes on board consumer welfare issues is therefore a function of the competition and regulatory regime in place and the active participation of stakeholders in the regulatory process. More importantly, sector regulators like 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 interest.

5.1. Anti-Competitive Practices: Government policy

Anti-Competitive Practices in The Gambian economy that could be attributed to shortcomings in government policies (the contextual environment) are as follows:

There is a lack of clear policies to curb corruption and the associated distortions due to the desire by private sector operators to maximize profit at the expense of the State and other competitors through revenue leakages.

- 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 more competitive than others.

- The refusal by the Department of State for Communication and Information Technology (DOSCIT) to grant licenses to interested parties to have their own TV stations is undoubtedly restricting competition.

- The non-existence of a Telecoms Act in the industry has given rise to anti-competitive tendencies in the Gambian economy.

- The Government divesture program of key institutions was carried out without going through an international bidding process. This could have led to “arranged privatizations” with a view to dominating the market.

- The existence of government monopolies (like NAWEC) which are poorly run are by nature anti-competitive. In the absence of alternatives, the consumers may not be getting the best value for their money. The Independent Power Producers (IPP) has only been allowed to produce electricity, and are obliged to work with NAWEC – the only company in The Gambia with the distribution infrastructure. Consumers have to put up with whatever conditions laid down by NAWEC.

5.2.Anti-competitive practices due to private sector operators:

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.

5.2.1. Cartels:
In the commodity sectors of rice, onion, Irish potatoes and flour, there exists a series of collusive agreement in the selling price. The main importers concur to fix prices, thus leading to the hike in retail price in the shops.

5.2.2. Vertical Agreements:

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

5.2.3. Bid-rigging:

The rigging of bids is a reality in both State and non-State actor spheres, but it is very difficult to prove. Similarly, organizations are required to request for three pro-forma invoices when sourcing products and services for the organization, but few would adhere strictly to that requirement. Procurement procedures do not always comply with the requirements of due process because of vested interest.

5.2.4. Tied-selling:
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 United Kingdom has been very careful to de-link these two functions as a measure of consumer protection. While some doctors would have high ethical standards and would only prescribe what patients need, there could be lapses with some others. That could result in prescribing medicines which patients may not need and which they must sell or loose money. It would be important for regulatory organs to design safeguard measures and other quality control measures to deal with the situation.

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. But one of the telephone operators, Comium has made its telephone handset incompatible with SIM cards issued by other operators (Africel and Gamcel). This forces customers who may need to interchange SIM cards for convenience purposes to purchase other handsets.

6. Consumer Protection Scenario

The Gambia government is committed to free market policies and a vibrant private sector-led growth. That 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, 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 characterized 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 maximizing welfare and reducing poverty. It is therefore the responsibility of The Gambia government, civil society organization and the regulatory agencies to protect the poor. Consumers are the largest economic group in The Gambia and are affected by all the policy decisions taken in the economy. Yet they are fundamentally disorganized 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 have guarantees 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.

One of the key mandates of PURA is the protection of consumers of the regulated services of telecommunications, electricity, water and sewerage services. In this regard, PURA recently launched an innovative project called the Consumer Parliament. This nationally televised program brought together consumers, service providers and the regulator together to address the concerns of consumers. The event was graced by high level government officials including the Secretaries of State for Finance and Economic Affairs, Trade and Industry, and Communications, Information, and Information Technology respectively. Among the benefits of this planned quarterly event are that :

- It puts operators and the industry regulator in the spotlight enabling consumers to have access to them.
- It 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.
- It 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.
- It enables operators to publicly give account of the ways in which they provide service to their customers. Transparency is very important for issues raised be fully explained in an open and frank manner. It is good for the general state of health of the sectors.

- It assists the regulator to initiate regulatory interventions. A better informed regulator will be able to address problems with a holistic view, having taken on board all the benefits an potential repercussions prior to intervening.
- It 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.
- It promotes the creation of a platform for dialogue and action by all stakeholders for better service delivery in a holistic manner. Dialogue is an important regulatory tool. Consumers will be able to highlight problems they are encountering with their services, Operators will be able to take these issues on board and work on solving them, and give explanations regarding their constraints. The regulator will be able to identify the problems and devise appropriate interventions.

The Public Utilities Regulatory Authority (PURA) is concerned about the adherence to safety standards as exemplified by the drafting of the Health & Safety Guidelines for the operators in the various sectors they regulate. Part of PURA's mandate is to raise national standards in the whole electricity value chain with a view to ensuring that network loses are curtailed and consumers protected. The organization intends to mount a sustained campaign to raise public awareness on energy efficiency and to the conservation of electricity. Amongst the material developed were:

- Energy Charts – Excel® spreadsheet for self auditing of electricity consumption.
- Meter Models
- Know Your Meter
- Know Your Electricity
- Know Your Bill
- Know Your Generator
- Health and Safety Guidelines for Electricity Operators

These will be disseminated through a year long consumer outreach campaign using all media such as newspapers, TV and the radio. PURA has plans to establish a consumer parliament to serve as an avenue where consumers will have the opportunity to place their complaints in an interactive manner to the service providers. PURA also 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 Standards and Consumer Protection Office will soon be presenting two draft bills namely a draft Standards Act and a draft Consumer Protection Act and Rules. These Acts are to ensure that the rights of the ordinary consumers are adequately protected. There is currently no consumer protection law in The Gambia, neither is there an agency that is fully operational. Thus the process of consumer protection is squarely on sector regulators like PURA. The emergence of consumer organizations like the Competition and consumer Advocacy Group (CCOSPAG) that have public interest objectives will ensure the protection of the poor through advocacy. The competition act is meant to promote the free functioning of markets once government restraints on competition have been removed. Government also intends to introduce a Consumer Protection Bill to modernise Gambian Consumer protection legislation.

7. Conclusions:

The Gambia faces formidable challenges in trying to acclimatize competition and consumer welfare regimes in the country to alleviate poverty. Arguably, the country lacks expertise in competition administration. Capacity building and human resource development is necessary to ensure that regulatory agencies can fulfill their mandate effectively. The weak institutional environment that underpins the entire system hinders the implementation of a regulatory regime, hence the need for capacity building initiatives.

Many sectors in The Gambia lack sector- specific laws (telecommunications and water). 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 such as the World Bank are therefore not keen to commit funds to a sector that does not have any legal framework.

The independence of the regulatory authorities is critical for effectiveness. Sector regulators like 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, cognizant 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 anticompetitive practices in Government regulations and policies. Thus the Commission will pave the way for the cause of competition rather than just be the recipient of complaints from firms against each other. 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.

Way Forward:

- The setting up of the Competition Commission
- Finalization of the Competition Policy
- Building the capacity of the National Reference Group
- The strengthening of regulatory institutions: The Divestiture agency, The Central Bank and the Public Utilities Regulatory Authority (PURA), the Competition Commission etc
- The promotion of a strong political will to foster a healthy Competition Culture
- The development of a Consumer Policy
- The encouragement of constructive competition and consumer advocacy engagements with State and non-State actors
- 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.

In concluding, it is fair to ask whether for a small developing country like The Gambia it is necessary to have a regulatory authority for all the sectors with a view to promoting public interest and efficient markets. Implanting a healthy competition culture underpinned by efficient markets and an effective regulatory regime is a complex task, particularly for a developing country like the Gambia. Governance constraints favour the promotion of stakeholder objectives making regulatory governance a formidable challenge. The interest, objectives and power relationships between a multitude of stakeholders (Consumers, Service Providers, Government, Industry, Labour organizations, NGOs etc) within the contextual and the transactional environments will tend to mar the proper functioning of the emerging Competition Commission as is the case with Public Utilities Regulatory Authority (PURA) today.

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 endeavor to improve interactions in the transactional environment for economic growth and poverty alleviation.

8. **Bibliography:**

1. Poverty Reduction Strategy Paper II, 2007
2. PURA Annual Report 2007
3. The Gambia Competition Act, 2007
4. The Gambia Investment Promotion Act
5. Vision 2020: The Gambia Incorporated, May 1996.
6. The Gambia, Country Paper by Jawara Gaye in Competition Regimes in the world, A Civil Society Report, Edited by Pradeep S Mehta, CUTS-C-CIER, CUTS International – 2006
7. PRSP II Annual Progress Report, January to December 2007.
8. The Gambia Divestiture Act 2001.
9. The Gambia Divestiture Agency; Divestiture Handbook
10. The Gambia Public Utilities Regulatory Authority Act 2001.
11. The Challenge of building an Effective Public Private Partnership (The Gambia): A Country Paper contributed by The Gambia Strategy Team.
12. The Gambia at a Glance, 24th September 2008
13. World Trade Organization: Trade Policy Review The Gambia, January 2004, Reports by The Government and the Secretariat.