



Prioritization Principles



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Enhanced Integrated Framework (EIF)
for trade-related assistance for Least Developed Countries (LDCs)

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1.0 INTRODUCTION

1.1 The Gambia Competition Commission (GCC) was established by an Act of the National Assembly (Competition Act 2007) and its powers and duties are set out in the Act. The Commission is vested with the power to conduct formal investigations of certain restrictive practices, namely:

- (a) Collusive agreements including bid rigging.
- (b) Abuse of dominant position.
- (c) Monopolies and mergers that substantially lessen competition.

1.2 The Commission has remedial powers to remove restrictive practices or to mitigate their effects. In the case of collusive agreements, the Commission has the power to penalize deliberate or negligent breaches through fines.

1.3 The Executive Secretary is also empowered to conduct studies outside the framework of formal investigations of restrictive practices, under Part III (15)(k) of the Act. These are different from formal investigations of restrictive practices, but such studies can result in recommendations to conduct formal investigations.

1.4 This document sets out how the GCC expects to allocate resources and particularly how it will decide into which matters to launch investigations and enquiries. The GCC cannot investigate every matter brought to its attention. To attempt to do so would waste its resources and result in ineffective enforcement, because it would not be able to progress its investigations if too many were active at one time. It is in the interests of consumers and all participants in the Gambian economy that the GCC should focus its resources to allow it to progress cases.

1.5 Instead of attempting to catch all forms of anti-competitive activities, the GCC will principally focus its resources on those that have an appreciable adverse effect on competition.

1.6 In seeking to target both our resources and enforcement strategy, the GCC needs to consider a range of factors including impact on consumer, strategic significance and cost.

1.7 In this document are set out the principles that will guide the GCC in allocating its resources, and particularly in deciding to launch enquiries and investigations.

1.8 The factors listed in the principles below are for illustrative purposes only and in no way should be construed as exhaustive. The GCC may have to consider at any given point in time appropriate factors other than those enumerated in these principles. It will continue to keep these principles under review.

2.0 PRIORITIZATION PRINCIPLES

2.1 The Competition Act 2007 Part III (15)(a)(b) empowers the GCC to launch investigations of suspected breaches of the Act. However, the GCC has limited resources, thus making it imperative to prioritise the Commission's work.

The main principles guiding the prioritisation of the GCC's work are outlined below.

2.2 When deciding on launching a new investigation under the Act, the Commission will consider the timing and resource requirements of those investigations and other work going on across the GCC. As part of this, we will assess the resources required going forward to complete the investigation, the cost of intervention, and the potential impact in terms of the benefits on the economy and consumers. The Executive Secretary may also at a particular point in time in an investigation process, consider whether it warrants the continued commitment of resources and decide on the way forward accordingly.

2.3 Where appropriate, the GCC may also take into account other relevant factors. Account will also be taken of whether we have a duty to act under any Memorandum of Understanding that the GCC may have signed with any sector regulator.

2.4 In considering the priority to give to different areas of GCC activity, three broad classes of criteria are taken into account:

- (a) Impact on consumers and the economy.
- (b) Costs.
- (c) Competition concerns, especially cartels.

2.5 In considering these criteria, the GCC is not considering whether investigation is justified, but rather the priority to accord to one possible investigation over another.

Impact on consumers and the economy

2.6 The GCC is mindful that it is funded from public sources. Consequently, it will only act when the broad economic impact of intervention justifies its actions.

2.7 In considering impact it will assess qualitatively the likely harm that the GCC could address through action. Thus, impact includes the likelihood that a problem exists, the likelihood that the GCC will be able effectively to take action against it as well as its scale and the nature of its economic effects.

2.8 The expected economic impact on innovation, efficiency, and competitiveness on the Gambian economy.

2.9 What would be the likely direct effect on consumer welfare in the market or sector where the intervention takes place? Consumer welfare includes better value for consumers in terms of price, quality and range of service, immediately and over time.

2.10 What would be the likely indirect effect on consumer welfare? This principle captures further improvement to consumer welfare and consumer confidence that results from changes in consumer, business or government policy which is prompted by GCC's intervention/action. It thus captures deterrence, improved awareness for consumers, business and government.

Costs

2.11 What are the resource implications to the GCC of doing the work? This includes:

- (a) Whether the resource requirements of the work are proportionate to the benefits from doing the work, and
- (b) The period over which the resources will be needed.

Competition concerns

2.12 The GCC is completely committed to a level playing field and healthy competition. Thus, a violation of any of the practices outlined in the Act as restricted will be duly investigated.

Intentional or negligent breach of the prohibition on collusive agreements

2.13 The Act treats collusive agreements, described in Part VI (25) and bid rigging agreements described in Part VI(26) differently from all of the other restrictive practices it defines. They are simply prohibited, and if found, are null and void. Also, intentional or negligent breaches under Part IX 49(7) of the Act can be penalized, with a fine of up to 10% of turnover of the enterprise during the period of the breach of the prohibition up to a maximum period of three years.

2.14 This difference of approach reflects the uniquely damaging effects of price-fixing for competition. The GCC regards deliberate price-fixing as the most serious offence under competition law.

2.15 Accordingly, the GCC believes it should not exercise discretion over whether to investigate, when there are reasonable grounds to suspect that a collusive agreement has been deliberately or negligently entered into. It will always investigate any such concerns if it believes that there is a reasonable prospect of obtaining sufficient evidence.

2.16 Thus, most of the criteria set out in this document, such as the size of the overall detriment and the cost of investigation, will not be accorded any weight when deciding whether to pursue such hard-core cartels.

2.17 No consideration of 'impact for deliberate or negligent collusive agreements

Again, it is noted that none of the criteria described under 'Impact' would stop the investigation of a suspected deliberate or negligent breach of the prohibition on collusive agreements (a 'hard core cartel') if the Commission has credible evidence of such a breach.



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