

**REPORT ON THE INVESTIGATION OF VIOLATIONS OF THE
COMPETITION ACT BY MEDICAL INSURANCE UNDERWRITERS IN
THE GAMBIA**

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TERMS USED IN THE REPORT

Agreement is defined in the Act as an agreement between enterprises which is implemented or intended to be implemented in The Gambia, irrespective of the form in which it is made, and includes an oral agreement and a concerted practice.

Concerted practice, according to the Act, means a practice involving contacts or communications between competitors falling short of an actual agreement but nonetheless restricting competition between them.

Document as defined in the Act includes information recorded in written, electronic or any other form.

Price as defined in the Act includes a charge of any description.

Horizontal agreement is defined in the Act as an agreement between enterprises each of which operates, for the purpose of the agreement, in the same market and would thus normally be competitors in that market.

LIST OF ACRONYMS/ABBREVIATIONS

CEAC - Capital Express Assurance Company Ltd.

CIC- Capital Insurance Company Ltd.

GAIC - Great Alliance Insurance Company Ltd.

GCC - Gambia Competition Commission

GDP- Gross Domestic Product

GMDA - The Gambia Medical and Dental Association

GNIC - Gambia National Insurance Company Ltd.

IAG - Insurance Association of The Gambia

IGI - Gamstar Insurance Company Ltd.

IIC - International Insurance Company Ltd.

LGIC - London gate Insurance Company Ltd.

MOU - Memorandum of Understanding

NVIC - New Vision Insurance Company Ltd.

PIC - Prime Insurance Company Ltd.

SIC - Sunshine Insurance Company Ltd.

TGL - Takaful Gambia Ltd.

EXECUTIVE SUMMARY

INTRODUCTION

As the statutory body empowered by the Competition Act 2007 to promote competition in the supply of goods and services and prohibiting collusive agreements and bid rigging, the Gambia Competition Commission (GCC) tasked its Secretariat to carry out an investigation into allegation of (i) price fixing and market sharing (ii) cartelization and (iii) restraining of competition in the medical insurance scheme by some insurance companies in The Gambia, which are prohibitions falling within provisions of sections 25 and 26 of the Competition Act.

INVESTIGATION PROCESS

To establish whether provisions of the Act have been violated by providers of medical insurance in The Gambia, the Secretariat staff (1) analyzed an 8-page Memorandum of Understanding (MOU) between six authorized underwriters of medical insurance; a memo forwarding the same to the Managing Directors of the six companies who constitute the Insurance Association of The Gambia's (IAG) medical underwriters committee, and a copy of a letter from the IAG Executive Secretary to the President of The Gambia Medical and Dental Association (GMDA) regarding the publication of a list of medical clinics to be approved, recognized and patronized by the medical insurance scheme; (2) reviewed medical insurance tenders to government and/or government sub-vented bodies for the period 2008 – 2011 and other related information/data furnished by the said companies; and (3) interviewed key officials of the six insurance companies which are signatories to the MOU.

FINDINGS

The investigation found, among other things, that:

- Six members of the IAG are engaged in price fixing and market sharing in the medical insurance business.

- These members are involved in the cartelization of the medical insurance business.
- They are restraining any form of competition in the medical insurance underwriting business and consequently appropriating any benefits that would otherwise have accrued to the insuring public from free and unfettered competition in the business.

CONCLUSION

All of these practices constitute breaches of sections 25 and 26 of the Competition Act, 2007.

Collusion between the parties concerned is a deliberate act to cartelize the medical insurance business which has the object or effect of preventing, restricting or distorting competition by limiting consumer choices, providing low quality services, and compelling consumers to pay excessive prices for medical insurance. Therefore, appropriate punitive measures should be taken against the six violators of the Act to send a signal to all other service providers to respect the provisions of the Act regarding fair play and probity.

RECOMMENDATIONS

On the basis of the seriousness of the actions of the six offenders, the Secretariat recommends to the Commission that:

1. A hearing be convened as prescribed in the Act to allow offenders to justify their collusive behaviour.
2. All the parties to the MOU furnish all relevant documentation at this hearing.
3. Each of the violators be fined for each of the provisions of the Act they violated.
4. The MOU be annulled immediately.
5. The Secretariat monitors and supervises the underwriting of medical insurance by the six over a twelve month period from date of conclusion of the case, to ensure compliance with the Commission's decision and directives.

1. INTRODUCTION

Established in 2009 to enforce the Competition Act 2007, the Gambia Competition Commission (GCC), directed its Secretariat to investigate possible anti-competitive behavior in the medical insurance business, based on allegations of price fixing and market sharing, cartelization, restraining of competition in the medical insurance scheme and abuse of dominance and/or monopoly power by some insurance companies in The Gambia.

2. PURPOSE OF THE INVESTIGATION

The investigation was undertaken to determine whether underwriters of medical insurance in The Gambia are:

- (a) engaged in price fixing and market sharing;
- (b) restricting any form of competition by their action(s); and/or
- (c) involved in cartelization.

3. INVESTIGATION PROCESS

The process of investigation involved:

- Analysis of an 8-page Memorandum of Understanding (MOU) between six members of the Insurance Association of The Gambia (IAG), the only authorized underwriters of medical insurance by the Commissioner of Insurance; (See annex for list)
- Analysis of a memo forwarding the MOU to the Managing Directors of the six insurance companies which constitute the medical underwriters committee of IAG;
- Analysis of a copy of a letter dated 19 September, 2011 from the Executive Secretary of the IAG to the President of The Gambia Medical and Dental Association (GMDA) requesting and urging prompt response to an earlier request for completion and submission of hospital evaluation returns by private hospital and clinics to facilitate the publication of a list of medical facilities to be approved,

recognized and patronized by the medical insurance underwriter to the complete exclusion of all other 'non-compliant' clinics;

- Analysis of medical insurance tenders to government and/or government sub-vented bodies for the period 2008 - 2011;
- Analysis of information/data provided the GCC by the six companies; and
- Interviews with the six signatories to the MOU to ascertain their reasons for such an agreement.

3. MARKET DEFINITION

Medical insurance is one of the products of the insurance business which organisations or businesses purchase to cover the health of their members or employees.

The investigation is confined to the territory of The Gambia which is the relevant geographic market and limited to insurance companies registered and operating within this area which underwrite medical insurance. The underwriting of medical insurance in The Gambia is the relevant product market. There are no close substitutes to medical insurance as this cannot be subsidised or substituted by other forms of insurance policies.

4. THE INSURANCE INDUSTRY AND MEDICAL INSURANCE IN THE GAMBIA

The insurance business is regulated by the Central Bank of The Gambia which was given such powers by the Insurance Act of 2003, promulgated with the object of ensuring that insurance services are rationalized and affordable to consumers in The Gambia.

With the coming into effect of the Competition Act in 2007, nine licensed insurance companies were in existence. Since, the number has grown and presently stands at eleven, with Takaful Gambia Ltd. (TG) and Capital Express Assurance Company (CEAC), being the latest players to join the industry, both licensed in 2008. The former is the only insurance company operating on Islamic (Sharia) principles. Of the eleven

companies, two offer only general insurance (non-life) products such as fire, motor, marine and aviation. International Insurance Company (IIC) is the only company that offers composite insurance (both life and non-life). CEAC offers only life insurance. (See annex for list of companies operating in the country).

In August 1987, the only three companies operating in country at the time, namely, Gambia National Insurance Co. Ltd. (GNIC), Senegambia Insurance Co. Ltd. (SIC), and Capital Insurance Co. Ltd. (CIC) founded the Insurance Association of The Gambia (IAG). Of the three, only GNIC is still in operation.

Of the eleven insurance companies in The Gambia, only the following six provide medical insurance and constitute the Medical Underwriters Committee of the IAG:

- Great Alliance Insurance Company (GAIC)
- International Insurance Company (IIC)
- Gambia National Insurance Company (GNIC)
- Takaful Gambia Limited (TG)
- Capital Express Assurance Company (CEAC)
- IGI Gamstar Insurance Company (IGI)

The insurance sector is small in terms of assets with about D457 million as in 2010, and contributes less than 1% of GDP. GAIC has the highest asset value of about D98 million, constituting 21% of total industry assets. IIC, GNIC, IGI, GAIC, TG and CEAC together control 75% of total assets (See Table 1). In terms of market share, based on underwriting premium collected, GAIC enjoys the largest proportion which is about 22%. As the only underwriters of medical insurance, IIC, GNIC, IGI, GAIC, TG and CEAC have a total market share of 65%. (See Table 2 and Figure 2)

Table 1: Insurance Companies operating in The Gambia, 2012

	Companies	Asset size (D'000)	% ownership	
			Local	Foreign
1	Gambia National Insurance Company (GNIC)	65,350	77	23
2	Gamstar Insurance Company (GIC)	59,174	40	60
3	Global Security Insurance Company (GSIC)	28,220	77	23
4	Great Alliance Insurance Company (GAIC)	98,153	52	48
5	International Insurance Company (IIC)	50,387	6	94
6	London Gate Insurance Company (LGIC)	28,075	65	35
7	New Vision Insurance company (NVIC)	36,773	100	0
8	Prime Insurance Company (PIC)	29,846	40	60
9	Sunshine Insurance Company (SIC)	27,675	100	0
10	Capital Express Assurance (CEA)	16,021	0	100
11	Takaful Insurance Company (TIC)	17,283	100	0
	TOTAL ASSETS	456,957		

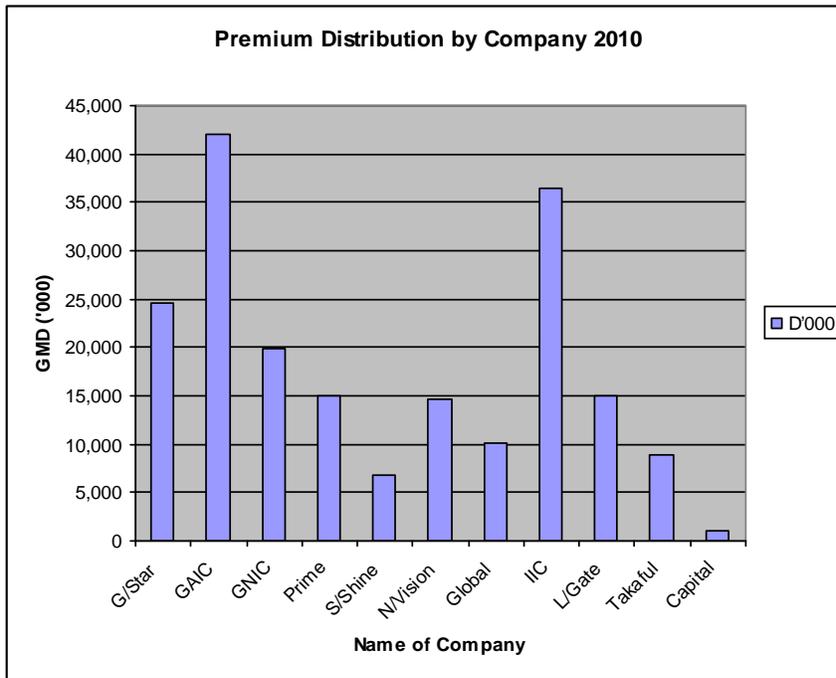
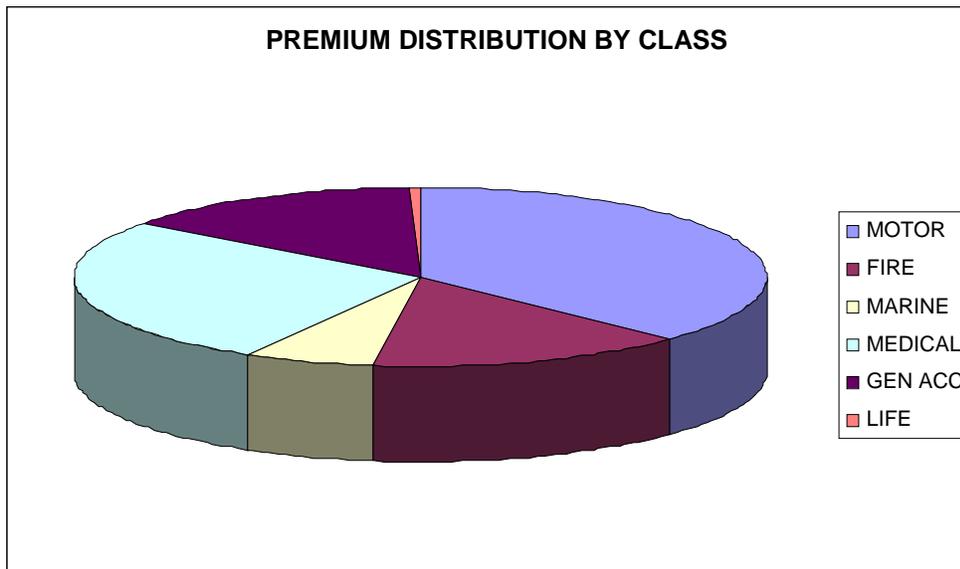


Table 2: Gross Written Premium (Company wise Market Share) for 2010

Company	Premium share (D'000)	Market Share (%)
IGI Gamstar Company Ltd.	24,573	13
Great Alliance Insurance Company Ltd.	41,977	22
Gambia National Insurance Company Ltd.	19,861	10
Prime Insurance Company Ltd.	15,020	8
Sunshine Insurance Company Ltd.	6,764	3
New Vision Insurance Company Ltd.	14,581	8
Global Security Insurance Company Ltd.	10,044	5
International Insurance Company Ltd.	36,515	19
London Gate Insurance Company Ltd.	14,982	8
Takaful Gambia Ltd.	8,962	5
Capital Express Assurance Company Ltd.	1,084	1
Total	194,363	100

Figure 1: Premium Distribution by Class

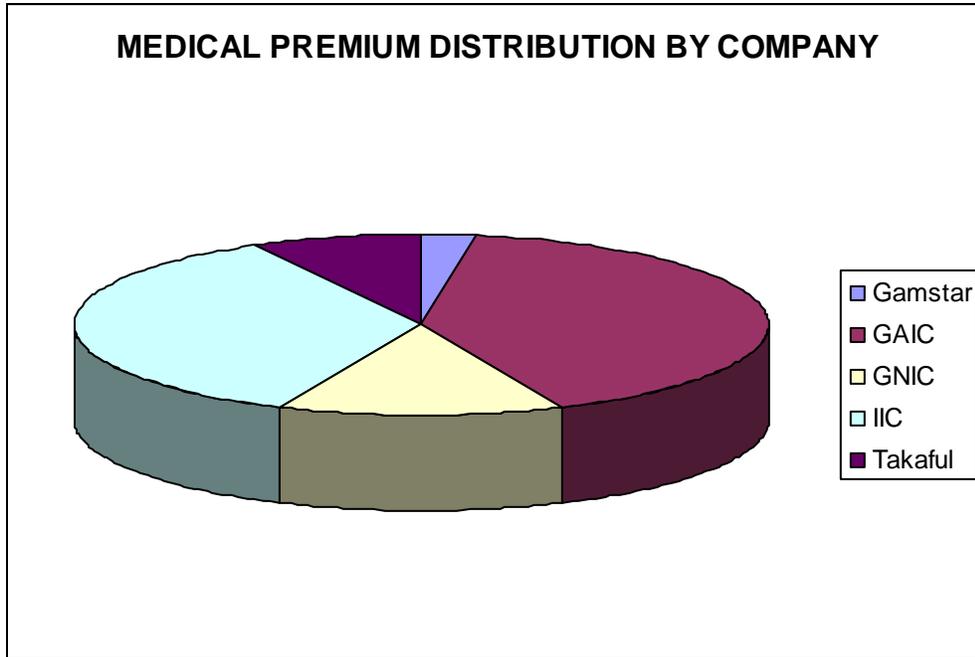


Medical insurance is the second largest contributor in terms of premium after Motor, contributing about D50 million, representing 26% of gross industry premiums for 2010 (See Figure 1). While Motor Insurance and Fire Insurance are services provided by all insurers, Medical Insurance which is offered by only six companies (IGI, GAIC, IIC, GNIC, TG and CEAC), forms a large chunk of their total premium. In 2010, medical insurance alone constituted about 53%, 52%, 37%, 49% and 5% of the total premium underwritten by GAIC, IIC, GNIC, TG and IGI respectively. (See Table 3). GAIC has the largest market share in this area with 44%, followed by IIC with a little over 38% and GNIC comes in third with 14%. (See Figure 2)

Table 3: Gross Premium Distribution by Class and by Company for 2010 (in millions)

	Motor	Fire & General	Marine	Medical	General accident	Life	TOTAL PREMIUM
	D million	D million	D million	D million	D million	D million	
IGI	9.34	4.61	5.50	1.31	3.83	NA	24.5
GAIC	11.36	8.03	0.69	22.12	NA	NA	41.9
GNIC	8.24	0.31	0.097	7.32	3.90	NA	19.8
PIC	5.96	1.92	4.54	NA	2.61	NA	15.0
SIC	5.48	0.61	NA	NA	0.68	NA	6.7
NVIC	8.19	3.36	0.017	NA	3.02	NA	14.5
GIC	5.43	1.91	0.22	NA	2.43	NA	10.0
IIC	9.38	2.73	0.063	19.09	5.26	NA	36.5
L/Gate	5.94	4.29	0.18		4.70		14.9
CEA	NA	NA	NA	NA	NA	1.08	1.10
TG				4.38			8.9
Premium per class as % of Total Premium	37.31	14.93	6.06	26.82	14.26	0.58	194,363

Figure 2: Medical Premium Distributed by Company



5. FINDINGS

The investigation found the existence of an MOU signed by six insurance companies, namely:

- Great Alliance Insurance Company Ltd.
- International Insurance Company Ltd.
- Gambia National Insurance Company Ltd.
- Takaful Gambia Ltd.
- Capital Express Assurance Company Ltd.

The MOU commits the six companies to the following, *inter alia*:

- Harmonization of medical insurance cover and premium;
- Co-insurance co-operation.

The MOU violates three sections of the Act, namely, Section 25 (1)(2)(a)(b); Section 26 (1)(2)(a)(b) and Section 29 which expressly prohibit “collusive”, “price fixing”, “market sharing” and “bid rigging” arrangements by enterprises and service providers in The Gambia.

On the prohibition of collusive agreements, Section 25 subsection (1) of the Act states that “A provision of an agreement by virtue of which it is a collusive agreement as defined by subsection (2) is prohibited and void”. Section 25 subsection (2) states: An agreement is a collusive agreement if (a) it is a horizontal agreement; and (b) it has the object or effect of preventing, restricting or distorting competition, by in any way (i) fixing the selling or purchase price of goods or services, or (ii) sharing markets or sources of supply.

On bid rigging agreements Section 26 subsection (2) states: “An agreement is a bid rigging if it is a horizontal agreement between enterprises whereby (a) one of the parties to the agreement agrees not to submit a bid or tender in response to a call or request for bids or tenders; or (b) the parties to the agreement agree on the price, terms or conditions of a bid or tender to be submitted in response to a call or request for bids or tenders”.

The six insurance companies by subscribing to this MOU are guilty of colluding to fix the cover and premium of the medical insurance scheme. By predetermining the cover and premium for each category of the medical insurance scheme, competition among themselves is eliminated. This action is a horizontal agreement in that it has the object or effect of preventing competition, a prohibition by Section 25 (1) of the Act. This agreement is not only a collusive act, but also a mechanism for operating and policing the scheme.

The six companies are guilty of instituting ways of market sharing which is prohibited by Section 25 (2)(b)(ii) of the Act. According to the MOU, “IAG will coordinate meetings for

members to agree on a lead company who shall take 40% of the business and the remainder to be shared amongst the others". Although co-insuring is accepted in the insurance business, the MOU has violated the Act by predetermining fixed percentages of transactions to be shared among the lead insurer and others.

GAIC and IIC, the two biggest players in the medical insurance business, control 44% and 38%, respectively, of the market and whose shares far exceed the 30% threshold prescribed by the Act regarding monopoly. The three biggest medical insurers together, namely GAIC, IIC and GNIC, control 96% of the medical insurance business which is well above the 70% threshold set by the Act.

Conditioning or preventing the six signatories to the MOU not to buy any tender document or security in respect of bidding for a particular business is considered a violation of section 26 (2)(a) of the Act. Prohibiting members from tendering for bids that request security, in effect, prevents an individual member from exercising an independent decision on a call for tenders for services in this domain. It prevents a potential client from freely determining the content of his/her tender.

The MOU clearly outlines the intention of the parties to control the operations of the Medical Insurance Scheme to the exclusion of all other potential competitors by setting criteria for eligibility as a service provider in this area. It sets punitive measures for non-compliance with the provisions of the MOU which have the effect or object of deterring members from making an independent decision contrary to the MOU. This is clear manifestation of monopolization of the market.

Analysis of the MOU revealed that the six members of the medical insurance business in recent years have been unfairly denying their customers valuable services and the benefit of choice and competition and often force them to pay for alternative services at their own cost.

By imposing a ceiling on medical cover, insurance companies are blatantly exploiting their monopoly position as consumers have no other source of cover. Without such ceiling some companies might have offered identical level of cover or a higher cover at much reduced prices. The cover for medical insurance should be left open and determined by the degree of seriousness of the patient's condition and market forces and not based on rates predetermined by fiat as is case presently.

Consumers are losing a lot of value for money for the services provided. A consumer who is refused a service at particular clinics or hospitals incurs extra cost and inconvenience moving to another clinic because of lack of alternatives and does so out of frustration. The problem is compounded by the fact that consumers cannot visit their doctors or clinics of choice.

Since the medical scheme market is a monopoly, these companies enjoy their monopolistic power by setting unfair prices to the disadvantage of consumers who have no other option. The six insurance companies have, in essence, cartelized the medical insurance business. In competition law, a cartel is *"an arrangement between competing firms designed to limit or eliminate competition between them, with the objective of increasing prices and profits of the participating companies and without producing any objective countervailing benefits. In practice, this is generally done by fixing prices, limiting output, sharing markets, allocating customers or territories, bid rigging or a combination of these specific types of restriction. Cartels are harmful to consumers and society as a whole due to the fact that the participating companies charge higher prices (and earn higher profits) than would otherwise prevail in a competitive market"*.

In sum, the investigation has irrefutably established that in the medical insurance business in The Gambia:

- The six signatories to the MOU are the only approved underwriters of medical insurance;

- These six underwriters are involved in cartelization of the medical insurance scheme;
- They are also engaged in price fixing and market sharing;
- The said companies are restricting any form of competition in the medical underwriting business and consequently totally appropriating any benefits that would otherwise have accrued to the insuring public from free and unfettered competition in the business;
- The six underwriters, by supplying 100% of medical insurance in the country, are operating in a monopoly and abusing this position.
- The provisions of the MOU have the object or effect of preventing and distorting competition in the medical insurance market by limiting consumer choices, encouraging low quality services while discouraging innovation and enterprise, consumers paying excessive prices and having little value for their money; and limiting the potential for the economic growth of the country.
- The six companies have admitted culpability but insist that the agreement was necessary to (1) bring sanity to the medical insurance business, (2) to curb the abuses of the scheme, and (3) it happens in other countries, so The Gambia cannot be an exception.

6. CONCLUSION

A thorough review and analysis of the various documents obtained by the Commission's Secretariat has provided incontrovertible evidence that the six companies violated the provisions of the Competition Act. The MOU is a horizontal agreement which explicitly indicates the intention of the six insurance companies to fix prices and cover of medical insurance, to exclude others from being underwriters of medical insurance and exploiting the business to their mutual advantage and to the disadvantage of consumers. There is ample evidence that the parties have implemented this agreement.

From the documents provided by the respective insurance companies and their admissions, there is indisputable evidence of cartelization in the medical insurance scheme in The Gambia by the six.

The facts gathered from the investigation have revealed that the medical insurance business has all the features of a cartel and it is evident, therefore, that the market is cartelized with the objective of depriving consumers the benefits of competition.

The Commission's Secretariat totally rejects the reasons advanced by the six violators of the provisions of the Competition Act in defense of their illegal action and contends and concludes that their MOU serves to benefit them to the detriment of consumers.

7. RECOMMENDATIONS

Due to the gravity of the offences, the Secretariat recommends to the Commission that:

6. It convenes a hearing as soon as possible to afford any of the parties to defend its involvement in the collusive agreement.
7. It orders all parties to the MOU to furnish all relevant documentation such as the MOU, letters and financial statements, during the hearing.
8. It imposes appropriate penalties on all the parties as a deterrent to such practices in future.
9. It fines each of the six for each of the provisions of the Act violated.
10. It nullifies and invalidates the MOU and orders the parties to terminate the MOU immediately.
11. The Secretariat continuously monitors and supervises the operations of the parties in the underwriting of medical insurance over a twelve month period from date of conclusion of the case, to ensure that they have complied with the decision and directives of the Commission.

ANNEX 1: LIST OF INSURANCE COMPANIES OPERATING IN THE GAMBIA

1. Great Alliance Insurance Company Ltd.
2. International Insurance Company Ltd.
3. Gambia National Insurance Company Ltd.
4. IGI Gamstar Insurance Company Ltd.
5. New Vision Insurance Company Ltd.
6. Prime Insurance Company Ltd.
7. Sunshine Insurance Company Ltd.
8. London Gate Insurance Company Ltd.
9. Global Security Insurance Company Ltd.
10. Takaful Gambia Ltd.
11. Capital Express Assurance Company Ltd.