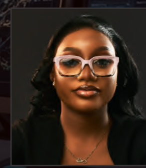
GAMCO AT A CROSSROAD:
ASSESSING THE LEGAL READINESS OF NIGERIA'S TRANSMISSION COMMERCIALISATION VEHICLE

AUTHORS



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INTRODUCTION

Nigeria's electricity transmission sector has, for decades, been plagued by chronic underfunding, institutional fragmentation, poor governance, and operational inefficiencies. As a result, the country frequently generates more electricity than its transmission infrastructure can deliver to consumers. Nigeria possesses a generation capacity estimated at over 13,000 megawatts, yet barely over 5,000 megawatts of that is transmitted to consumers. Operating in a persistent state of disrepair that has not been remedied despite substantial investment in electricity generation, Nigeria's transmission network has consistently been identified as the single most significant constraint to the country's poor electricity supply. It is on this premise that the Federal Government has established the Grid Asset Management Company Limited ("GAMCO"). This article examines the legality of the establishment of GAMCO, its operational framework, and the legal basis for the exercise of its mandate.

BACKGROUND

On 4 March 2026, President Bola Tinubu presented a memo to the Federal Executive Council proposing the establishment of GAMCO. The Federal Executive Council approved the proposal at that meeting, and an eleven-member inter-ministerial committee was promptly constituted to design GAMCO's operational and legal framework. The committee is chaired by the Chief of Staff to the President, Femi Gbajabiamila, and includes the Attorney-General of the Federation, the Ministers of Power, Finance, Works, and Petroleum, and other senior officials.

The critical reason attributed to reduced megawatts getting consumers is inadequate transmissi on infrastructures and the misstatement of existing transmission assets, kneading to stranded power and inefficiency of the national electricity grid. GAMCO is established to curb these inefficiencies and eliminate transmission bottlenecks by ensuring adequate management of grid assets, developing efficient infrastructures, unlocking stranded power generation capacity and attracting investments. Its pilot phase targets three National Integrated Power Project plants: Omotosho (513 megawatts), Olorunsogo (754 megawatts), and Ihovbor (508 megawatts), all currently operating well below their installed capacity due to transmission evacuation constraints. GAMCO is projected to recover at least 1,600 megawatts within 18 to 24 months and will oversee the construction of a new 330kV double-circuit transmission line along the Benin-Lagos corridor, one of the most congested routes in the national grid.

The commercial logic is straightforward. The government argues that rehabilitating existing assets is significantly more efficient than building new generation capacity, which would take up to seven years and cost several billions of dollars. Structurally, GAMCO will be fully owned by the Federal Government through the Ministry of Finance. It will operate as a commercially structured entity incorporated under the Companies and Allied Matters Act 2020, designed to mobilise private capital through ring-fenced project financing structures. That structure is precisely the architecture contemplated by the Infrastructure Concession Regulatory Commission Act (ICRC Act) and the National Policy on Public-Private Partnerships. Once a State-owned enterprise partners with private capital to develop or manage public infrastructure, the ICRC framework applies as a matter of law, not discretion. GAMCO therefore requires a properly approved ICRC public-private partnership framework as much as it requires a licence from the Nigerian Electricity Regulatory Commission.

It is also important to note at the outset what the Federal Executive Council approval of 4 March 2026 means. The Federal Executive Council (FEC) is not a legislative body. Section 148(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) defines its role as a council responsible for advising the President on matters of policy and exercises such other functions as may be conferred on it by the Constitution or any other law. It has no capacity to suspend, override, or substitute existing primary legislation or regulatory frameworks. The FEC approval of GAMCO is accordingly a political authorisation to proceed, not a legal foundation on which GAMCO can operate.

1. THE EXISTING STATUTORY FRAMEWORK

The Electricity Act 2023 ("the Act") was signed into law on 8 June 2023. It repeals the Electric Power Sector Reform Act 2005 and consolidates the legal framework for the Nigerian Electricity Supply Industry. The Act decentralizes the electricity market in Nigeria and makes comprehensive provision for the establishment, functions, and licensing of every institution engaged in the generation, transmission, distribution, supply, trading, and system operation of electricity.

Three institutions are directly relevant to the assessment of GAMCO's legal position.

THE TRANSMISSION COMPANY OF NIGERIA

The Transmission Company of Nigeria Plc ("TCN") holds a transmission service provider licence under the Electricity Act. Section 66(1) of the Act provides that, subject to the provisions of sections 15(1) and (2) of the Act and such terms and conditions as are contained in the licence issued to the transmission service provider, the transmission licence shall authorise the licensee to construct, maintain and operate an efficient, coordinated, economical and integrated smart grid interconnection in Nigeria and other neighbouring countries, and to provide non-discriminatory and open access to its transmission system for use by any successor generating company, independent power producer, consumers, licensees, or other generators upon payment of appropriate transmission charges. These are precisely the functions that GAMCO's pilot phase proposes to perform along the Benin-Lagos corridor.

The government's position is that GAMCO complements rather than replaces TCN. On the proposed structure, TCN will grant GAMCO the right to develop, finance, and operate a greenfield 330kV double-circuit transmission line along the corridor. That position raises an immediate legal disparity. Section 66(2) of the Act vests in NERC, not in TCN, the authority to issue independent electricity transmission network licences. The Commission may issue such a licence where there is no existing transmission facility and there is need for extension of the transmission network to increase electricity access, or where there are existing transmission facilities that require reinforcement to connect new power generating facilities. The proposed Benin-Lagos corridor line falls squarely within that provision. TCN cannot grant another entity the authority to develop and operate transmission infrastructure that falls within NERC's licensing jurisdiction. The right to develop that corridor must be grounded in an independent electricity transmission network licence or other regulatory instrument issued by NERC under the Act.

THE NIGERIAN INDEPENDENT SYSTEM OPERATOR OF NIGERIA LIMITED (NISO)

Section 15(1) of the Act provides that NERC may, by a written directive to TCN, require TCN to take such steps as are necessary under the Companies and Allied Matters Act 2020 to incorporate an entity, the ISO, which may be a company limited by shares or have such ownership and governance structure as NERC may specify. Upon incorporation, the entity shall immediately apply to NERC and be licensed as an ISO to perform market and system operation functions as stipulated under the Act and such terms and conditions as NERC may direct. Section 17 of the Act states that the functions of the ISO shall be as provided under section 67 of the Act. NERC subsequently issued Order No. NERC/2024/45, formally unbundling TCN and establishing the Nigerian Independent (System Operator ("NISO") and the Transmission Service Provide ('TSP"). The NISO which was incorporated as the Nigerian Independent System Operator of Nigeria Limited was established to perform the function of system operation for the national grid. Section 67(1) of the Act specifies the functions authorised under a system operation licence to include: generation scheduling, commitment and dispatch;

transmission scheduling and generation outage co-ordination; transmission congestion management; international transmission co-ordination; procurement and scheduling of ancillary services and system planning for long-term capacity; administration of the wholesale electricity market, including the administration of settlement payments in accordance with the market rules; and such other activities as may be required for reliable and efficient system operation.

GAMCO's mandate to optimise stranded generation capacity from the three NIPP plants sits squarely within the scheduling, outage co-ordination, and asset management functions that the Act already assigns exclusively to NISO. No provision has been identified in the Act, or in the NERC order establishing NISO that permits GAMCO to assume or share those functions without a separate and distinct regulatory determination.

THE NERC LICENSING POWER FOR INDEPENDENT TRANSMISSION INFRASTRUCTURE

Section 66(2) of the Act empowers NERC to issue an independent electricity transmission network licence where there is no existing transmission facility and there is need for extension of the transmission network to increase electricity access, or where there are existing transmission facilities that require reinforcement to connect new power generating facilities. The proposed 330kV double-circuit transmission line along the Benin-Lagos corridor is precisely the type of infrastructure to which that licensing power applies: either a greenfield extension to increase access or a reinforcement to connect the underperforming National Integrated Power Project ("NIPP") generating facilities. GAMCO cannot legally develop, finance, and operate that line without holding, or operating under, an independent electricity transmission network licence issued by NERC. No such licence for GAMCO has been publicly announced or gazetted.

2. THE ICRC FRAMEWORK AND THE PPP OBLIGATION

The ICRC Act establishes a mandatory framework governing all public-private partnership arrangements involving Federal Government infrastructure assets. It applies to any concession, management contract, or partnership arrangement under which a private party is engaged to develop, finance, operate, or manage public infrastructure or services. GAMCO's structure, as described in the government's proposal, is precisely the type of arrangement the ICRC Act regulates.

GAMCO is not a privatisation vehicle. It is a commercialised state-owned company designed to deploy public-private partnership structures and project finance techniques. The Federal Government retains ownership of both GAMCO and the underlying assets while GAMCO raises private capital through ring-fenced financing structures. That model sits at the heart of the ICRC Act's application. The ICRC Act requires, among other things, that public-private partnership proposals be submitted to the ICRC for review and that the relevant terms be approved before implementation. For arrangements above specified financial thresholds, Federal Executive Council approval of the concession terms managed through the ICRC is also required. An internal executive direction from the inter-ministerial committee to TCN and the Niger Delta Power Holding Company to grant GAMCO rights over the Benin-Lagos corridor and the NIPP plants cannot be said to have satisfied these requirements.

The consequence of proceeding outside the ICRC framework is significant. A concession or management arrangement entered into without mandatory ICRC approval is not merely irregular; it is an arrangement that the affected parties and aggrieved third parties may challenge on grounds of procedural non-compliance with primary legislation. For investors and lenders considering participation in GAMCO's ring-fenced project finance structures, the absence of a properly approved PPP framework is a material legal risk that goes directly to the enforceability and bankability of those structures.

3. THE NDPHC CONCESSION QUESTION

The Federal Government's proposal provides that the Niger Delta Power Holding Company ("NDPHC") will grant GAMCO concession and lease arrangements over the three NIPP plants targeted in the pilot phase. It is important to understand what NDPHC is as a matter of law. Unlike TCN, NDPHC was not established by a standalone statute. It is a corporate entity incorporated under the Companies and Allied Matters Act 2020, jointly owned by the Federal Government and the 36 State Governments. As a company holding corporate assets rather than a statutory agency performing public functions, NDPHC's capacity to grant concessions over the plants it holds is subject to the same regulatory constraints that apply to any change in the operational control of a licensed electricity generation facility.

The plants are subject to the regulatory oversight of NERC. Section 70(1) of the Electricity Act provides that a licensee shall not, except as provided under sections 7(2)(d), 15(2)(a), 67(4), (5) and (8) of the Act, assign or cede its licence or transfer its undertaking, or any part of it, by way of sale, mortgage, charge, pledge, lease, franchise, exchange or otherwise, without the prior consent of the Commission. Section 70(2) of the Act further provides that a licensee shall not, without the prior written consent of the Commission, acquire by purchase or otherwise, affiliate or merge its undertaking with that of any other licensee or person in the business of electricity generation, transmission, system operation, distribution, supply or trading, other than as provided under sections 6(1)(b), 67, 68 and 78 of the Act. Any concession or lease arrangement between NDPHC and GAMCO that alters the operational control of a licensed generation facility engages both provisions directly.

Because NDPHC is a company and not a statutory agency, any concession it grants over the NIPP plants is a commercial transaction by a corporate entity over assets that are subject to NERC's licensing jurisdiction. That structural position reinforces rather than weakens the argument for mandatory NERC consent. It is not possible to characterise the arrangement as an internal government reorganisation that falls outside the Act's licensing provisions. NDPHC is a company. The plants are licensed. The concession requires the prior consent of the Commission under Section 70(1) before it takes effect. If GAMCO begins operations under a concession arrangement that has not obtained that consent, its activities at the NIPP plants are legally vulnerable to challenge by any aggrieved party, including existing licensees whose commercial interests are affected by GAMCO's entry into the market.

4. THE INTER-MINISTERIAL COMMITTEE'S OWN ACKNOWLEDGEMENT

The terms of reference of the eleven-member inter-ministerial committee include a mandate to assess the implications of the existing electricity legislation and any proposed regulatory amendments on asset ownership, management, and regulatory oversight, to identify any conflicts or inconsistencies between the proposed GAMCO framework and current legal and regulatory instruments, and to determine whether the establishment and operationalisation of GAMCO require amendments to primary legislation, subsidiary regulations, or executive directives.

The last question has not yet been answered. GAMCO has been approved by the Federal Executive Council and an incorporation committee has been constituted, but the legal architecture that would give GAMCO the authority to perform its functions has not been put in place. The committee's work is ongoing, and its findings have not been published. GAMCO is accordingly in the position of a vehicle that has been approved for deployment before the regulatory road on which it is to travel has been built.

This sequence is not unusual in Nigerian public sector reform. Executive action often precedes legislative or regulatory follow-through. The difficulty is that the Act imposes strict licensing requirements and confers enforcement powers on NERC that cannot be displaced by executive fiat, and the ICRC Act imposes mandatory PPP process requirements that apply independently of any executive preference. A company incorporated under CAMA 2020 and approved by the Federal Executive Council does not thereby acquire the authority to develop and operate transmission infrastructure, manage NIPP assets, or perform system functions that the Act has assigned to licensed institutions.

5. WHAT MUST CHANGE BEFORE GAMCO IS LEGALLY SOUND

Four steps are required before GAMCO can operate on a sound legal footing.

An Enabling Statutory Instrument or Legislative Amendment

GAMCO currently has no statutory foundation. Its existence relies solely on a Federal Executive Council approval and will rest merely on incorporation under CAMA 2020. That is insufficient for an entity proposing to exercise functions that the Act vests exclusively on licensed institutions. Either a dedicated enabling instrument issued under the authority of the Act, or an amendment to the Act itself, is required to define GAMCO's mandate, delimit its relationship with

TCN, NISO, and NERC, and establish the legal basis on which it may perform transmission and asset management functions.

NERC Licensing or a Formal Regulatory Determination
Any entity that develops, finances, and operates a transmission line in Nigeria must hold an independent electricity transmission network licence from NERC under Section 66(2) of the Act, or must operate under a formal regulatory determination that provides an equivalent legal basis. GAMCO must either apply for and obtain that licence from NERC before commencing its pilot phase, or the inter-ministerial committee must propose, and the relevant authority must enact, a regulatory framework that authorises GAMCO's activities as a matter of sector law rather than executive preference. A direction from TCN, however commercially structured, is not a substitute for NERC's statutory licensing authority.

ICRC Approval of the PPP Framework
GAMCO's public-private partnership structure requires review and approval by the ICRC under the ICRC Act before it can be implemented. The ring-fenced project finance arrangements through which GAMCO proposes to mobilise private capital must be structured within an approved PPP framework. Until that approval is obtained, those structures lack the procedural foundation that lenders and investors will require for any credible bankability assessment.

NERC Consent to the NDPHC Concession
The proposed concession arrangement between NDPHC and GAMCO for the three NIPP plants must obtain the prior consent of the Commission under Section 70(1) of the Act before it takes effect. The consequence of proceeding without that consent is that GAMCO's operations at the pilot phase will be stripped of its legality and be susceptible to legal challenge by aggrieved parties.

CONCLUSION
GAMCO is a structurally innovative response to a genuine and long-standing problem ij the Nigerian power sector. The transmission deficit is the central constraint on Nigeria's electricity supply, and the case for a commercially structured vehicle to mobilise private capital for targeted infrastructure investment is coherent. None of that is in dispute.

What is in dispute however, is whether GAMCO can, in its current form perform its mandate. It is a commercialised state-owned enterprise designed to deploy public-private partnership and project finance techniques, not a privatisation vehicle. That distinction matters because it clarifies the legal frameworks that apply. The TCN, NISO, and NERC already hold the statutory authority over the functions GAMCO proposes to perform. The ICRC Act applies to its PPP structure as a matter of its legal structure. The approval of the Federal Executive Council on the 4th of March 2026 does not displace any of the existing legal requirements and frameworks GAMCO must follow and abide by for it to have a proper legal foundation. GAMCO requires primary legislative recognition or a formal regulatory instrument under the Act, an independent electricity transmission network licence or equivalent regulatory determination from NERC, a properly approved ICRC PPP framework, and the prior consent of the Commission to the NDPHC concession arrangement under Section 70(1) of the Act, before it can operate on a legally defensible basis. The inter-ministerial committee has been tasked with answering exactly these questions. Until it does, and until the necessary legal foundations are put in place, GAMCO remains, in legal terms, a well-conceived vehicle without the road on which to travel.