

PRIVATISATION AND DEREGULATION IN NIGERIA – A PAPER DELIVERED AT THE WORKSHOP ORGANISED FOR THE OCCASION OF THE VISIT OF THE CANADIAN MINISTER FOR INTERNATIONAL TRADE AND HIS DELEGATION IN LAGOS, 21ST NOVEMBER 2002.

PART I

Introduction

The wind of privatisation that has swept across many developing nations in recent times has not left Africa untouched. Nigeria, Africa's most populous nation, has also embarked on an aggressive and fast-paced privatisation programme. The country has gradually realised that privatisation appears to be the most viable and economically realistic means of guaranteeing the government's desire for rapid and irreversible progress towards surmounting the myriad problems that have beset our public utilities over the last two decades.

Those who have been following the progress of the exercise will testify to government's evident commitment to the privatisation programme in its pursuit of the proper and unhindered completion, despite the stiff opposition it has faced. The Bureau of Public Enterprises (BPE) - the secretariat of the National Council Privatisation and the body charged with the responsibility of administering the privatisation programme under the aegis of the Public Enterprises (Privatisation and Commercialisation) Act 1999- carved up the privatisation into three phases.

Phases I and II, which involved the privatisation of commercial and merchant banks such as FSB International Bank and NAL Merchant Bank, quoted cement companies such as West African Portland Cement Co. and Benue Cement Company, downstream oil companies such as Unipetrol Nigeria Plc., National Oil and Chemical Marketing Co. (NOLCHEM) and African Petroleum, amongst others, have been almost completed.

Phase III is ear-marked for the larger state-owned enterprises including the National Electric Power Authority (NEPA), Nigerian Telecommunications Plc. (NITEL), Nigeria Ports Plc. (NP Plc), Nigeria Airways, the Nigerian Security Printing and Minting Company Ltd (NSPMC), Nigeria Railway Corporation (NRC) and Petroleum Refineries, among others. The BPE is currently in the process of short listing and selecting successful consortia for the privatisation of other companies in this phase, such as NP Plc., the National Insurance Corporation of Nigeria (NICON), the Federal Airport

Authority of Nigeria (FAAN) and the NSPMC (otherwise known as the Mint).

Privatisation and deregulation is a reality in Nigeria today as a direct result of successive thrusts from the private sector which in turn has influenced government policy of deregulating major sectors of the economy over the years. The present policy must be contrasted with erstwhile nationalistic policies enforced in the 70's and early 80's which greatly restricted the infusion into our economy and passage of foreign capital, superior technology and proven managerial skills.

Perhaps the single most significant occurrence in the nation's liberalisation process was the deregulation of its financial sector, particularly with the repeal in 1995 of the Exchange Control Act, the principal legislation then regulating foreign currency related transactions. The Act was replaced by the Foreign Exchange (Monitoring & Miscellaneous Provisions) Decree of 1995, which permits any individual or corporate body to invest in any Nigerian enterprise or security with foreign currency or capital imported into Nigeria through an Authorised Dealer (a bank or other non-banking organization so licensed by the Central Bank of Nigeria) either through telegraphic transfer, cheques or other negotiable instrument.

This financial deregulation was coupled with other activities in the nation's economy, such as the establishment of export processing zones which allow manufacturing concerns to produce in those zones and export their products tax free for a given period, tax holidays and reliefs being granted companies with high capital investments and on the global platform, Nigeria's ratification and subsequent membership of the WTO as a mark of the nation's commitment to liberalisation and free trade.

These incentives have boosted the deregulation of other key sectors of the economy such as telecommunications, energy, transport and power generation, thereby paving the way for the privatisation initiative.

We now turn to taking a closer look at the deregulation and subsequent or proposed privatisation of some of these key sectors.

Telecommunications

The sector is dominated by Nigerian Telecommunications Limited (NITEL), which came into being in 1985 as a result of the merger of the Telecommunications Division of the erstwhile Department of Posts and Telecommunications (P & T), the body in charge of the nation's internal network on the one hand and a limited

liability company called the Nigerian External Telecommunications (NET) Limited, which was responsible for external telecommunication services and thus providing a gateway to the outside world, on the other hand.

NITEL was set up to reverse the defects which characterised telecommunications development from Independence up until 1984, such as yawning shortfalls between targets and their realisation due primarily to poor management, lack of accountability and transparency and a shockingly low level of indigenous technical expertise. Its main objective was to “harmonise the co-ordination of the external and internal telecommunications services, rationalise investments in telecommunications development and provide easy-access, efficient and affordable services.”

Although there has been modest development in the telecoms industry since the formation of NITEL in 1985, it is still seriously lagging behind in terms of its teledensity (currently, Nigeria has only 700,000 telephone lines out of which only 400,000 are connected for its highly mobile population estimated at over 120 million) and services. In order to tackle these shortcomings, the industry was deregulated notably through the establishment of the Nigerian Communications Commission (NCC) by Decree No. 75 of 1992 whose main objectives include creating a regulatory environment for the supply of telecommunications facilities and services, facilitating the entry of private entrepreneurs into the market and promoting fair competition and efficient market conduct among all players in the industry.

The NCC has since approved almost 200 operating licenses for private providers of various telecommunications services, including internet services providers, which of course has in turn generated a high demand for telecommunications equipment, accessories, consultancy and technical partnerships. In addition, NITEL has since approved eight private firms to be connected to its switching systems so as to provide more lines (with greater efficiency and service) and thus act as a buffer for the grossly inadequate NITEL services.

Despite all these efforts, it was quite clear that there was a dire need for government to be more pro-active about improving telecommunications and so in 2000, the NCC awarded licenses for Global System of Mobile Communications (GSM) to NITEL by auction to two preferred bidders – Econet Wireless Nigeria Limited and MTN Nigeria Limited. The licenses were ‘bought’ at almost US\$240million dollars, the highest amounts ever paid for such licenses in the world. The GSM technology has completely overshadowed NITEL’s land lines, as the demand is high for them due to efficiency, despite the astronomical tariffs its consumers are subjected to.

These cumulative events eventually spurred the NCC, through the Bureau of Public Enterprises (its secretariat) to seek to privatise NITEL by requesting for core investors to acquire controlling interest in the entity and manage its day to

day activities. The proposed privatisation commenced quite significantly with an auction process whereby it was sold to Investors International (London) Limited (IILL), a U.K. based investor at US\$1.37 billion. IILL paid up the mandatory 10% deposit, but was unable to make up the balance by the end of several deadline periods, thereby derailing the process. The BPE is currently reviewing the best option for the privatisation of NITEL, the most preferred appearing to be sale by auction of a fixed percent to a core investor who will act as manager, coupled with an initial public offer (IPO) of the remainder to the general public.

In the meantime, the NCC has awarded a second national carrier license to Globacom Nigeria Limited, the only company out of three who expressed an interest that was able to come up with the US\$20 million 10% deposit of the auction price requested by the NCC. Government was of the belief that a second national carrier would offer much needed competition to NITEL. Plans for commencement of operations by the second carrier are currently underway.

Power Generation

The amalgamation of the Electricity Corporation of Nigeria (ECN) and Niger Dams Authority (NDA) in April 1992 resulted in the establishment of the National Electric Power Authority (NEPA) by Decree No. 24 of 1972, to provide and maintain an economic and co-ordinate system of electricity supply all over the nation. It began operations with 4 major power stations: Ijora, Delta and Afam Thermal Stations and Kainji Hydro power station serving well over 2 million customers nationwide, which contributed to the country's unprecedented industrial and technological growth.

Today, NEPA has a consumer base of over 5 million, its total installed generating capacity has increased from 532.6MW in 1972 to 5,958Mw in 1998 and the nation's peak demand has increased from 390 MW in 1972 to 2,446MW in 1998. A principal beneficiary of NEPA'S extended electricity programme is the Republic of Niger by an agreement with Niger's electricity monopoly NIGERLEC. NEPA also produces and transports electricity energy to the Republic of Benin and Togo.

These achievements can however only be said to be pyrrhic at best, as NEPA's capacity for electricity generation leaves much to be desired. Vandalisation of its installations, low water supply at the hydro stations, inadequate gas supply, high cost of maintenance and ever-increasing consumer debts have greatly eroded its potential. As a result, the present administration ear-marked the utility for privatisation.

The BPE announced last year that NEPA would be one of the many state-owned utilities to be privatised. However, this announcement was met with fierce opposition from the National Union of Electricity employees (NUEE). In fact, the Union threatened to embark on a nationwide strike in protest of the recently

sworn in Management Board of NEPA. The privatization has been postponed until 2003, by which time government hopes to have rallied the support of the workers.

Railways

The Nigeria Railway Corporation (NRC) was established in 1912 by the amalgamation of the Lagos Government Railway and the Baro-Kano Railway. It originally operated within the Nigerian Government Railway Department, subsequently becoming an autonomous public corporation through the Nigerian Railway Corporation Act of 1955, as amended in the Laws of the Federation of Nigeria 1990. Its main objective was to offer optimal services for the carriage of persons and goods to the population.

The NRC is the oldest public utility in the country (being over 100 years old) and, like the other entities mentioned above, 100% wholly owned by the Federal Government. It has been an ailing utility for over 3 decades now and has dismally failed in its objectives, hence the need to clear the path for capital investment and managerial efficiency. As at May 2002, NRC had only 67 functional locomotives, 218 coaches and 1,313 wagons, viewed against local demand for higher volume of passenger and freight services.

The Government has recently approved a 25 year Strategic Vision for the railway system, which consists of emergency rehabilitation and modernisation of the existing railway system and the expansion of NRC's network over a 25 year period. Construction of new general rail lines and of strategically located lines such as the Ajaokuta-Warri standard gauge, as well as the completion of abandoned rail projects is also part of Government's projections.

The Federal Government proposes to privatise the NRC by granting a 15-25 year concession to interested investors based either on vertical integration with competitive access or separation of infrastructure and operations with open access to other train operators or finally, by vertical integration concessions with no access to other operators. However, before the 'vision' is implemented, government hopes to have developed a new national transport policy and reviewed the legal and regulatory framework of the sector, which will invariably involve reviewing the NRC Act (*supra*) and probably drafting a new one.

Postal Services

When the Telecommunications Department was split from the Postal Department to form NITEL IN 1985, the Postal Division was reconstituted into another organization known as Nigerian Postal Services (NIPOST). In like manner to the state-owned enterprises mentioned above, NIPOST has been ailing for many years now, which prompted the government to consider it for privatisation. It

would however appear that commercialization of NIPOST is the preferred choice of the BPE for ensuring the turn around of this entity.

PART II

The Privatisation Process

The Nigerian privatisation programme, like many of its kind that have been successfully implemented in other developing countries such as Argentina, Bangladesh, Ethiopia, India, Sri Lanka and Uganda, is the standard process applied by the World Bank in all the cases of privatisation process in which the latter has been involved and it consists of the following broad steps:

- ❑ Announcement of planned privatisation transactions
- ❑ Selection of privatisation advisers
- ❑ Selection of core group/strategic investors and initial public offer (IPO), where necessary.

The first phase of the process is the primary responsibility of the BPE. The second, i.e. selection of privatisation advisers, begins with local and international requests from the BPE for Expressions of Interest (EOIs) from consultants (coming together as a consortium) usually consisting of financial advisers, solicitors, auditors, accountants, valuers and advertising agencies (within a specified deadline) for the purpose of providing advisory services for the privatisation of targeted enterprises. Upon receipt of the EOIs within the stipulated period, there is a selection process undertaken by the BPE wherein the preferred consortia of advisers are short listed and Requests For Proposals (RFPs) are sent to those firms.

The RFP contains background information on the enterprises to be privatised and is a term of reference that lays the ground rules for each transaction. The short-listed firms are then asked to submit separate technical and financial proposals to the BPE. The technical proposal describes the methodology for the proposed privatisation while the financial proposal quotes the fees and expenses the consultants expect to receive for services rendered.

The selection of core, group or strategic investors is usually done by auction, where, at an appointed date, the BPE invites interested investors to its Secretariat and informs them of the reserve price for the enterprise to be privatised. The investors then proceed to a Bidding room where the auction is conducted and the highest bidder acquires *de facto* ownership of the enterprise. The sale process is completed by payment of the full bid price by the successful investor.

Practical Considerations of the Privatisation Process

The favoured process for privatisation in Nigeria appears to be the auction, which has been used in most of the privatised entities and also for the award of GSM licenses, allegedly due to the fact that it has been tried and tested in other parts of the world, has been found to be the most transparent method available and the least susceptible to manipulation.

The disadvantages of the auction process are manifold. The highest bidder may not necessarily be the person best suited to acquiring control of and taking on management of the enterprise in question, as it may not possess the requisite expertise and know-how to successfully turn around the enterprise, this being the kernel of privatisation.

There is also the very real and ever present danger of over-pricing of the enterprises slated for privatisation. This can occur during the valuation process, where due to the haste with which the exercise in Nigeria is being conducted, the possibility of the enterprises not being properly valued is very high. In the event that the proper benchmark for the enterprise is not reached, then invariably, the reserve price eventually fixed for the auction process will be erroneous.

In addition, the bidding process is prone to exponential and sometimes irrational price offers, primarily driven by the investors' desire to win the bid. Thus, the investor, more often than not, pays more than was anticipated for the target company. The cost of turning around these enterprises therefore leads to increased cost of the service to be provided by the 'new and improved' enterprise, whereby the consumer ultimately has to bear the unprecedented cost for the service. The argument against this contention however may be that the services being provided are of a higher quality and efficiency than that which formerly obtained.

Privatisation, viewed from different standpoints, has different and often irreconcilable connotations. From the government's perspective, privatisation is the best option for the revival of Nigeria's ailing public enterprises. On the other hand, employees of such public enterprises have taken a belligerent stance against the process, as can be seen from the NEPA example (*supra*), borne out of their intuitive but perhaps perception that the exercise will lead to their loss of employment.

However, local perception of the exercise is two fold. The largely more ignorant public see the exercise as lacking credibility and an attempt by government officials to purchase the said enterprises for themselves. The enlightened public, who are religiously following the exercise, see it as a panacea to the inefficiency of these public enterprises, while in the same breath, expressing reservations about some of the perceived shortcomings in the methodology adopted by the BPE.

Conclusion

In a country where averagely 70 kobo in every naira of the Federal grant is absorbed by the urban bureaucracy that is meant to deliver it, the implementation of the policy of privatisation and deregulation must be a necessity. The question is: what processes are being employed to achieve the set objectives?

The transparency of the bid process, particularly the auction process, should be contrasted with the relative lack of integrity of the discretionary processes which were employed in the past. The perspective of the consultant who submits the EOIs/RFPs and the core investor who proffers the bid, in my opinion has been comprehensively altered in a positive way.

While the ideological arguments between proponents of privatisation/deregulation and proponents of nationalization/regulation will doubtless continue, the impact on the corporate entities of a deregulated economy is profound. The re-orientation in the approach to doing business in a deregulated economy vis-à-vis a regulated one will necessarily involve minimal reliance on close interaction with government personnel (with its attendant ill effects) as a means of securing permits or approvals.

The changes in the structure of Boards of Directors, together with stricter observance of corporate governance principles, in newly privatized public companies reflect this phenomenon. There was a time when a non-executive seat in a company boardroom was invariably occupied by a Nigerian individual with 'clout'.

Such person need not necessarily have had any shareholding qualification or corporate experience to bring to bear but he was often characterized by the generic term of being 'a man of influence' and was thus rewarded with a series of networking perks. The work of the non-executive was hardly onerous, a dozen half day meetings a year to doze through, but from his perspective, the position oozed with prestige and produced a useful fee in addition to the perks.

This sort of individual is increasingly less relevant in the present era, where shareholding blocks, fully subscribed and paid, now represent the only qualification for boardroom representation. In turn, this has given way to renewed corporate responsibility driven by the need to make corporate decisions which ensure that shareholder values are preserved, not eroded and where the companies' fortunes are determined by market forces not government patronage or ad hoc forbearance in the enforcement of legislation.

The composition of new entities must be guided by these considerations; the new investor must understand the palpable difference in the deregulated terrain and

must adjust accordingly in his choice of partner, his directors, his personnel and his line of business.

Distinguished ladies and gentlemen, I thank you for listening.

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