

## **PRIVATISATION – THE JOURNEY THUS FAR.**

The Public Enterprises (Privatisation & Commercialisation) Decree 1999 is currently the enabling legislation for the privatization and / or commercialization of public sector corporations in Nigeria. This Decree repealed and replaced the Privatisation and Commercialisation Decree No. 1 of 1984 (later re-enacted as Chapter 369, Laws of the Federation of Nigeria, 1990).

Under the 1984 Decree, well over forty enterprises in which the Federal Government of Nigeria had equity interest were either fully or partially privatized or commercialized. The aim of privatizing these public sector enterprises is to rid them of the inefficiencies normally associated with Government involvement in commercial undertakings; while commercialisation should enable them to survive and compete (on a commercial basis) with other organizations offering comparable services. In short, enhancement of the performance of the affected public enterprises is of paramount importance.

The current (1999) Decree establishes the National Council on Privatisation (NCP), headed by the Vice-President of Nigeria, as the supervisory organ for the exercise. Another specially created body, the Bureau of Public Enterprises (BPE) is the secretariat and implementation body of the programme. Government has notified the public of its intention to amend certain parts of the Decree for the purpose of removing legal and other regulatory impediments hindering achievement of the Decree's objectives.

The 1999 Decree basically revitalized the two-phase privatization programme envisaged under the original (1984) Decree. Completion of the first phase has been achieved through the full privatization of seven public sector (7)

enterprises since 1999, including downstream (oil marketing) companies such as Unipetrol, African Petroleum (AP), and National Oil and Chemical Co. Ltd. (NOLCHEM); industrial concerns such as Benue Cement Company (BCC) and Ashaka Cement Company; and banks such as FSB International Bank Ltd. And NAL Merchant Bank Ltd. By the BPE's own admission, it takes an average of one (1) year to complete the privatization of a Nigerian public sector enterprise.

The second phase of the privatization programme will involve the partial privatization of some enterprises and full privatization of others. Enterprises in the partial privatization category are the public utilities/parastatals such as Nigeria Telecommunications Plc. (NITEL), the National Electric Power Authority (NEPA), the nation's Refineries, the Steel Rolling Mills and Aluminum smelting plants, Mining companies, Media, Insurance, Transport and Aviation (such as Nigerian Airways and Nigerdock dockyards) and the Paper milling/manufacturing enterprises. Enterprises scheduled for full privatization include the balance of the cement companies, certain banks and financial organizations, Agro-Allied enterprises, the Motor-vehicle assembly plants and some hotels.

The privatization process of all these enterprises has already begun, albeit rather slowly. Government intends to bring a single strategic investor into each of the affected enterprises, which has the capacity to manage the partially (or fully) privatized enterprise. Therefore, the exercise should result in each privatized enterprise being held by both the strategic investor and Nigerians.

Observers of the programme are of the opinion that the first phase, i.e. privatization of the downstream oil marketing

companies and cement industries was a fairly straightforward exercise, at least in part because these enterprises were not established for the purpose of operating as monopolies in their respective areas of economic activity. On the other hand, some of the enterprises scheduled for partial privatization in the second phase, e.g. NITEL and NEPA enjoyed monopoly status for a substantial period of time, although recent developments, such as the establishments of independent power projects and the award of telecommunications licenses to private operators had eroded their monopoly status. It is however widely acknowledged that the years of Government interference, mismanagement and the absence of credible competition have taken their toll and created elephantine organizations, be-devilled by overstaffing, corruption and sheer inefficiency.

Indeed merely assessing the net worth of these organizations as a prelude to their privatization has proven to be a daunting task to the BPE and its professional advisers. The difficulty faced by intending investors in these enterprises has therefore been how best to ensure that Government irreversibly hands over the reins of control of these organizations to their new management and desists from further interference on grounds of public policy or otherwise. An intending investor would be wise to seek substantial assurances in this regard from Government through the B.P.E. In practice, the B.P.E enters into Share Purchase Agreements with successful investors. It is possible to obtain copies of specimen Sale and Purchase Agreements from professional organizations with ongoing involvement in the privatization process.

Certain laws passed over time to entrench the monopoly status of the enterprises to be privatized would operate so as

repealed or modified to bring them into line with the privatization process. It should also be noted that certain interest groups who have benefited from the affected public enterprises in one way or the other, usually through their links with Government, have mixed feelings over the ongoing exercise. They occasionally argue that truly effective and commercial industry reforms cannot be carried out in a developing society such as Nigeria. However, these arguments do lose sight of the fact that the country needs urgently to reform its productive sector in order to keep up with global developments, hence the wind of privatization and commercialization is only natural in the circumstances of Nigeria.

The Nigerian Government has accorded priority to the successful conclusion of its privatization programme, hence ancillary issues should also be considered, such as the exact degree of control that should be ceded to investors who have purchased shares within the affected enterprises. Especially intriguing is the comparison of the benefits of a single technically competent strategic investor holding a bulk of shares in the privatized enterprise, against enduring national interest which calls for a situation in which Nigerian nationals hold enough shares in the privatized enterprises to guarantee their continued say in their own destiny.

Other strategic options open to the Nigerian Government, such as conversion of public enterprises into joint ventures with strategic partners, liquidation of irredeemably mismanaged enterprises and engagement in potentially costly and time-consuming turn around programmes involve serious legal issues, financial arrangements and labour/employment considerations. In a bid to analyze at least one critical aspect of those options and generally assist

Reforms in September 2001, and mandated it to review and advise Government on pension schemes in public enterprises affected by the privatization exercise.

Upon assumption of office in May 1999, the present Government had set May 2003 as the deadline for completion of the privatization process. Achievement or otherwise will depend, to a great extent, upon the pace at which the B.P.E can conclude the privatization of the rest with monopolies such as NEPA and NITEL.

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