

## COMPARATIVE STUDY BETWEEN PRIVATISATION AND POST-PRIVATISATION MONITORING IN NIGERIA AND BULGARIA\*

### Abstract

*Nigeria, like most countries embarked on privatisation with the mindset of attaining specific goals and objectives. Such goals are mostly geared towards injecting efficiency and increasing output in the production of goods and delivery of services by enterprises. For the objectives of privatisation to be achieved however, there must be a structure for monitoring the process both during the exercise and post-privatisation. This article is a comparative study on the monitoring regimes in Nigeria and Bulgaria both during privatisation and post-privatisation. The study examined the robust provisions of the Bulgarian Privatisation and Post-privatisation Control Act, 2002 (PPCA) with regards monitoring in juxtaposition with the provisions of the Public Enterprises (Privatisation and Commercialisation) Act 1999 (the Act). It was recommended that lessons be learnt from the Bulgarian regime, and the Act be consistently reviewed as issues arise for determination.*

**Keywords:** Privatisation, Post-privatisation, liberalisation, globalisation, monitoring, efficiency.

### 1. Introduction

Nations of the world liberalised their economies in the wake of globalisation and its attendant consequences. Liberalisation entails the divesting of state-owned enterprises by injecting private capital majorly through Privatisation as it is believed to revive ailing public enterprises.<sup>1</sup> Nigeria, like its global counterparts embraced the Privatisation concept in order to limit state dominance of the country's market; steer and encourage competition and to maximally benefit from the advantages of the liberalisation of the market. One of the ways of ensuring that Privatisation objectives are attained is by putting a tight monitoring structure in place both during and after Privatisation. Post-Privatisation monitoring is as important as monitoring the Privatisation process. This paper undertakes a comparative study of Post-privatisation monitoring in Bulgaria and Nigeria with a view to gauging the strengths and weaknesses of both nations' regimes with the intended objective of learning from each other's experience.

### 2. Privatisation and Post-Privatisation Monitoring in Nigeria

In Nigeria, there are two bodies responsible or vested with the power and authority over the privatisation exercise. These agencies are the National Council on Privatisation and the Bureau of Enterprises.

#### The National Council on Privatisation

The National Council on Privatisation (NCP) is the apex body in charge of the privatisation exercise in Nigeria. It is created by virtue of s9(1) of the Public Enterprises (Privatisation and Commercialisation) Act, 1999 (the Act). The NCP is made up of 13 members consisting of a Chairman, who is the Vice-President of the Federal Republic of Nigeria; a Vice-chairman who is the Minister of Finance; the Attorney-General and Minister of Justice of the Federation; the Minister of Industries; the Minister in charge of National Planning; the Secretary to the Government of the Federation; the Central Bank Governor; the Special Adviser to the Head of State, Commander-in-Chief of the Armed Forces on Economic Affairs; and the Director-General of the Bureau of Public Enterprises.<sup>2</sup> The Act<sup>3</sup> further provides that the NCP may draft the overseeing Minister of an affected public enterprise to be present at important meetings of the NCP and every member of the council, except an ex-officio member, shall hold office for a period of four years in the first instance, and may be re-appointed for a further term of four years and no more, on such terms and conditions as may be specified in his letter of appointment.<sup>4</sup>

The powers and functions of the NCP as outlined by the Act<sup>5</sup> includes the ascertaining of the fiscal, political, and the social objectives or ideals of the privatisation of public enterprises; approving policy guidelines on privatisation; approving procedural strategies and standards for evaluation of public enterprises for privatisation and choice of strategic investors; approving state-owned enterprises to be privatised; approving the legal, institutional, and supervisory framework for the privatisation of state-owned enterprises to be privatised; determining how best the stocks of a listed state-owned enterprise should be offered for sale. That is, whether the

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<sup>1</sup> Habiba Musa, 'Imperatives for a Privatisation and Post-privatisation Monitoring Regulatory Regime in Nigeria' [2017] 10(2) *ABU Journal of Private & Comparative Law*.

<sup>2</sup> S9(2) of the Act.

<sup>3</sup> S9(3) Ibid.

<sup>4</sup> s10 Ibid.

<sup>5</sup> s11.

shares of a listed public enterprise should be by public issue or by private issue or otherwise, and advice the government as to which shall be best suited for the enterprise to be privatised; determining the timing most appropriate within which the privatisation of a public enterprise is to be carried out; approving the share price and the rates of other assets of state-owned enterprises slated for privatisation; reviewing periodically, the consequence of the privatisation exercise on the socio-economic sphere of the country and deciding on suitable remedies; approving the employment of privatisation consultants and advisers and their remuneration; appointing committees, when necessary, consisting of persons from both the private and public sectors, with the necessary technical capability to advise on the privatisation of particular public enterprises; approving the budget of the NCP; approving the budget of the BPE; supervising the workings of the BPE and giving instructions on the implementation of the privatisation programme; receiving and considering for approval, the audited account of the Bureau of Public Enterprises; presenting annually to the President of the Federal Republic of Nigeria, a report on the activities of the NCP and of the BPE; receiving consistent and intermittent reportage from the BPE on the execution of the privatisation programme and giving adequate instructions; and performing other functions as may be necessary and expedient in achieving the privatisation objectives.<sup>6</sup>

The powers of the NCP with regards privatisation is absolute and all encompassing<sup>7</sup> and this is dangerous because it is a notorious fact that were powers are vested with such absoluteness on a person or body, such powers could be abused or used arbitrary, to the satisfaction of persons wielding such powers. Most importantly, the Act did not at all take cognizance of the relevance of monitoring the privatisation process and also post-privatisation monitoring as the Act contained no provision with regards monitoring as part of the functions of the NCP.

### ***The Bureau of Public Enterprises***

The Bureau of Public Enterprises<sup>8</sup> The Bureau of Public Enterprises (hereinafter referred to as the BPE) is established by virtue of s12 of the Act. The BPE is a corporate body with perpetual succession and a common seal and it can sue and be sued in its corporate name. The BPE consists of a Director-General who is appointed by the President on the commendation of the Chairman of the NCP and who must not be lower than the rank of a Permanent Secretary in the civil service of the federation, on such terms and conditions as are contained in the appointment letter. The Director-General is the Chief Executive of the BPE and the Secretary to the Council. The Director-General's tenure of office is four years in the first instance, renewable for another four years and not more; a Management Committee to be in charge of the implementation of the policies of the NCP and the running of the BPE. The Management Committee consists of the Director-General and departmental heads; and such number of other persons employed by the BPE as employees for the effective performance of its functions. Such employees could be employed by way of transfer or secondment from any of the public service of the Federation.<sup>9</sup> The employment of staff of the BPE is a pensionable one and as such, employees of the BPE are entitled to pensions, gratuities, and other retirement benefits enjoyed by persons holding equivalent or correspondent ranks in the civil services of the Federation. However, notwithstanding the aforementioned, the BPE could engage or employ an individual to an office on terms that exclude the grant of a pension, gratuity, and other retirement benefits. It is worthy to note here that any power or authority exercisable by the Minister under the Pensions Act, or any other authority thereunder, is exercised by the National Council on Privatisation.<sup>10</sup> Aside from providing secretariat services to the Council,<sup>11</sup> the BPE performs the following services:

- (a) Implementing the policies of the NCP on privatisation;
- (b) Preparing SOEs slated for privatisation by the NCP;
- (c) Advising the NCP on additional SOEs that needs to be privatised;
- (d) Advising the NCP on the capital streamlining or reshuffling needs of SOEs to be privatised;
- (e) Carrying out actions necessary for the effective issue of shares and sale of assets of the SOEs to be privatised;
- (f) Making recommendations to the NCP on the nomination and appointment of key players to the privatisation exercise. These key players are consultants, advisers, investment bankers, issuing houses, stock brokers, solicitors, trustees, accountants, and other professionals engaged for the purposes of privatisation;
- (g) Advice the NCP on the allotment arrangement for the sale of the shares of privatised SOEs.

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<sup>6</sup> s11 of the Act.

<sup>7</sup> Habiba Musa and M.Y. Zakari, 'Monitoring the Monitor: A Case Study of the National Council on Privatisation' *Journal of Public and Constitutional Practice, Unijos* [2017] (10) 334.

<sup>8</sup> Part III of the Act contains provisions relating to the Bureau of Public Enterprises.

<sup>9</sup> s17 of the Act.

<sup>10</sup> s18 Ibid. The only exception here is the power to make regulations under s23 of the Pensions Act.

<sup>11</sup> s15(a) of the Act provides that the Bureau shall provide secretariat support to the Council.

- (h) Superintend the sale of the shares of the SOEs to be privatised in conformity with the principles given by the NCP;
- (i) Safeguarding the successful implementation of the exercise, paying particular attention to the need for balance and meaningful engagement of Nigerians and foreigners alike in accordance with applicable laws of Nigeria;
- (j) Performing every other role with respect to privatisation as the NCP may assign to it.

The BPE like the NCP has no privatisation and post-privatisation monitoring functions expressly provided for by the Act. However, the BPE set up a post-privatisation monitoring unit (PPMU) to monitor activities of commercialised enterprises<sup>12</sup> for a period of five years, in exercise of its powers. It is worthy to note that the PPMU functions as an adhoc body.

### **3. Privatisation and Post-Privatisation Monitoring in Bulgaria**

In Bulgaria, as with most countries, the rationale behind post-privatisation monitoring is for the government to reserve the tool or means with which to intervene in the activities of privatised enterprises.<sup>13</sup> Consequent upon this, the Privatisation and Post-Privatisation Control Act<sup>14</sup> (the PPCA) was enacted to regulate the terms and procedure for privatisation and post-privatisation control.<sup>15</sup> The PPCA defined privatisation to mean a transfer or transmission through sale to Bulgarian natural or juristic persons of an interest held by the State and/or a municipality,<sup>16</sup> and such natural or juristic persons are eligible to participate in the privatisation exercise on equal terms so long as they are not listed under the Act on information concerning non-performing loans, and the participants in the process shall also submit an affirmation on the sources of the funds they invested in the exercise.<sup>17</sup> The Act was enacted to create an environment for transparent and economically viable privatisation exercise, giving an equal treatment to all investors participating in the exercise, and ensuring the accomplishment of the privatisation programme and implementation of post-privatisation control.<sup>18</sup> The PPCA established the Privatisation and Post-Privatisation Control Agency<sup>19</sup> (hereinafter referred to as the Privatisation Agency) as an administrative body with the Council of Ministers charged with the responsibility of implementing the privatisation exercise in Bulgaria and exercising post-privatisation control.<sup>20</sup> The Agency's functions are therefore, two-fold: the Agency's functions with regards privatisation and its functions with regards post-privatisation monitoring.

#### **Privatisation Functions of the Privatisation Agency**

The Agency's mandate with regards privatisation is the organisation and implementation of the process of privatisation as provided for by the PPCA. In discharging its mandate, the Agency is required to perform the following functions:<sup>21</sup>

- 1) Collection of necessary information concerning all privatisable items of property within its competence;
- 2) Carrying out effective privatisation marketing undertakings;
- 3) Commissioning investment intermediaries selected by a competitive procedure in situations where shares are to be offered for sale by public offering, to perform activities required for the flotation of shares, and commissioning experts to conduct activities with regards privatisation and post-privatisation control which may include a representation by counsel and preparation of appraisals;<sup>22</sup>
- 4) Preparing and concluding all privatisation transactions.

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<sup>12</sup> See generally, s14(e-j) of the Act for the functions of the BPE with regards commercialisation.

<sup>13</sup> Assenka Yonkova and others, *Evaluation of the Post-Privatization Monitoring System in Bulgaria* (CASE Research Foundation and Institute for Market Economics 2000) 5.

<sup>14</sup> The Privatisation and Post-Privatisation Control Act was first promulgated by virtue of State Gazette No. 28 of 2002 and ever since then, the Act continued to undergo one form of modification, amendment, supplementation and alteration until its most recent amendment in 2018 by State Gazette No. 64.

<sup>15</sup> Article 1 (1) PPCA.

<sup>16</sup> Article 1 (2).

<sup>17</sup> Article 7.

<sup>18</sup> Article 2.

<sup>19</sup> Article 22a (1).

<sup>20</sup> Article 22a (2).

<sup>21</sup> Article 22b.

<sup>22</sup> Article 5.

### **Post-Privatisation Functions of the Agency**

With regards post-privatisation, the Agency is empowered to exercise control over privatisation contracts as concluded by authorised government establishments.<sup>23</sup> Specifically, the PPCA empowered the Agency to undertake the following post-privatisation functions:<sup>24</sup>

- 1) Taking necessary steps or actions to claim and collect the forfeitures, interest, and compensations provided for in the contracts, draw back guarantees, claimed amounts from trustee accounts and other actions applicable in situation of default;
- 2) Regulating and receiving all payments or proceeds accruable under or from privatisation contracts, including proceeds accruable from the privatisation exercise concluded in accordance with the procedure provided for by the Transformation and Privatisation of State-Owned Enterprises Act,<sup>25</sup> as repealed;
- 3) Collecting or gathering information in case of receipt of tip-offs on default on privatisation contracts;
- 4) Verifying compliance with the responsibilities and obligations assumed under privatisation contracts at the location of the privatised items of property;
- 5) Granting permits, consent and approval on behalf of the seller where so is provided for in the privatisation contracts;
- 6) The Agency also has the right to take steps to revoke or rescind privatisation contracts under which the state's ownership has been transferred to private ownership where there are grounds for such rescission;
- 7) Issuing certificates of payments made and, where applicable, performing other functions assumed under privatisation contracts;
- 8) Concluding arrangements and agreements to reschedule liabilities assumed under privatisation contracts in the cases provided for by the PPCA;
- 9) Lodge claims for liabilities in cash or expressed in cash, undertaken by virtue of contracts for privatisation, for the failure to implement which no forfeit or compensation is envisaged in the corresponding contract for privatisation;
- 10) Lodge claims related to or stemming from concluded contracts for privatisation or escrow account agreements, bank guarantees and other transaction documents, and can be a defendant under such claims before a court or an arbitration court.<sup>26</sup>

The Agency is comprised of a Supervisory Board (PSB) and an Executive Board (PEB).<sup>27</sup> The Supervisory Board consists of seven members elected by the National Assembly upon nomination by parliamentary groups, and such a nominee must be a degree holder.<sup>28</sup> Members, constituting the PSB shall designate a Chairperson from among their number<sup>29</sup> who shall be responsible for convening and presiding over meetings of the Board, determining the agenda of such meetings, and requiring statistics from relevant authorities and officials in relation with the Board's functions.<sup>30</sup> The Supervisory Board:

- 1) Controls the operation of the Agency;
- 2) Prepares and present to the National Assembly, semi-annual and annual reports on the implementation of privatisation and post-privatisation control process;
- 3) Adopts the draft rules of organisation of the Privatisation and Post-privatisation Control Agency;
- 4) Approves the draft budget, as well as the report on the employment of the annual operational plan of the Agency;
- 5) Approve privatisation transactions concluded through competitive bidding after a public invitation to tender or through public auction, with regard to the legal conformity of the said transactions and to the compliance thereof with the strategies as given by the PPCA and as approved by the National Assembly;
- 6) Endorse general terms and conditions for the appointment and remuneration of the staff of the Agency;

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<sup>23</sup> Article 22b (3).

<sup>24</sup> Article 22b (4).

<sup>25</sup> Promulgated in the State Gazette No. 38, 1992.

<sup>26</sup> Article 22b (4).

<sup>27</sup> Article 22a (5).

<sup>28</sup> Article 22c (1).

<sup>29</sup> Article 22c (3).

<sup>30</sup> Article 22c (4).

- 7) Adopts the quarterly and annual reports of the Executive Board on the operation of the Agency; approve the motion of the Agency to be tabled before the Council of Ministers in line with the provisions of the PPCA with regards the adoption and promulgation of a list of commercial corporations in which the State holds interest for privatisation;<sup>31</sup> and;
- 8) Gives directions to the Executive Board as to the application of the PPCA and other subsidiary legislation.<sup>32</sup>

A member of the PSB shall be removed from office by the National Assembly where:

- 1) Such member has contravened the provision of the PPCA or of a subsidiary legislation pursuant to the Act;
- 2) Such a member has been effectively charged with, and convicted of a premeditated indictable offence;
- 3) Such member is unable to perform his or her duties for a period exceeding six months;
- 4) An act constituting a conflict of interest was perpetrated by the member.<sup>33</sup>

The Executive Board of the Agency (PEB) on the other hand, consists of three members, the Executive Director and two Deputy Executive Directors, who must be holders of a university degree, appointed by the Council of Ministers.<sup>34</sup> The Executive Board is required to submit to the Supervisory Board, quarterly and annual reports on the activities and operations of the Agency.<sup>35</sup> The Executive Director of the PEB represents the Agency and organises and directs the operations of the PEB.<sup>36</sup> A member of the PEB shall be dismissed by the Council of Ministers<sup>37</sup> on the same terms enumerated earlier on the dismissal of a member of PSB. Chapter Four of the PPCA contains provisions relating to conflict of interest. Article 23(1) provided that:

For the duration of the incumbency thereof and within one year thereafter, no member of the Supervisory Board or of the Executive Board of the Privatisation and Post-Privatisation Control Agency, nor any municipal councilor or member of a management or supervisory body of the specialised privatisation-implementing bodies of the municipal councils, nor any family member thereof, shall have the right to acquire any property or participating interests or shares in any commercial corporation privatised by a transaction prepared and concluded with the participation of the said person, save upon entry in centralised public auctions.

Article 23(2) further provided that:

For the duration of the incumbency thereof, and within one year thereafter, no member of the Supervisory Board or of the Executive Board of the Privatisation and Post-Privatisation Control Agency, nor any family thereof, shall have the right to acquire any property or participating interests or shares in any commercial corporation wherein the State holds an interest, save upon entry in centralised public auctions, nor be a member of management and supervisory bodies of any privatised commercial corporations subject to post-privatisation control.

Provisions relating to conflict of interest cover not only members of the Supervisory and Executive Boards but also those engaged or commissioned<sup>38</sup> to participate in the privatisation exercise in one capacity or the other. Article 24 of the PPCA provides:

No person other than such covered under Article 23 herein, who has been commissioned by the Privatisation and Post-Privatisation Control Agency or by the Municipal Councils to conduct auctions and competitive bidding, to prepare legal status analyses, privatisation appraisals and other activities under Article 5 (2) herein, nor any family member thereof, shall have the right to acquire any property or participating interests or shares in the relevant privatised item of property within one year after the conclusion of the privatisation transaction, save upon entry in centralised public auctions.

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<sup>31</sup> Article 11.

<sup>32</sup> Article 22e.

<sup>33</sup> Article 22c (2).

<sup>34</sup> Article 22d (1).

<sup>35</sup> Article 22d (4).

<sup>36</sup> Article 22d (3).

<sup>37</sup> Article 22d (2).

<sup>38</sup> Chapter five of the PPCA provided those who could be commissioned to participate in the privatisation transaction to include qualified lawyers (Article 26(1)) and independent valuers (Article 26(2)).

The PPCA provided that where a member of the Supervisory Board or the Executive Board of the Agency, or a member commissioned to act or participate in the privatisation exercise or post-privatisation control under Article 24 holds a commercial, financial or any other interests in an enterprise bidding for state-owned enterprise, such a person is obligated to disclose such circumstance and to discontinue in partaking in the negotiation and decision-making on the accomplishment of the privatisation exercise.<sup>39</sup> The PPCA provided a system of reportage of privatisation activities by the privatising agencies. A legal status analysis of the enterprise to be privatised is prepared by qualified lawyers commissioned by the Agency, the veracity of the information contained in the legal status analysis is required to be certified by the privatising corporation through its nominated or appointed representatives.<sup>40</sup> Municipal councils may also instruct the drafting or preparation of privatisation assessments to be undertaken by independent valuers on the properties of the privatising corporation.<sup>41</sup> The PPCA<sup>42</sup> also provided that both the legal status analyses and privatisation appraisals prepared by lawyers commissioned by the Agency and independent valuers respectively, do not constitute official secrets and as such, shall be lodged and registered in the public register<sup>43</sup> except for documents, facts and circumstances constituting trade secrets of the privatising enterprise.<sup>44</sup> Public registers containing information on the privatisation and post-privatisation control activities are to be uploaded on the internet for easy accessibility<sup>45</sup> by the general public.

#### **4. Comparison between the Nigerian and Bulgarian Regimes**

The Bulgarian Act is very detailed on the exercise of privatisation and post-privatisation control. Comparing the Bulgarian Privatisation and Post-Privatisation Control Act with the Nigerian Public Enterprises (Privatisation and Commercialisation) Act,<sup>46</sup> it would be seen that the PPCA, unlike its Nigerian counterpart, is very elaborate and precise on privatisation content and post-privatisation control. For example, the PPCA provided that where a corporation is to be privatised by a definite mode or method as contained in the list of corporations, such a corporation shall be disposed of or privatised by that method.<sup>47</sup> This is contrary to the position of the Public Enterprises (Privatisation and Commercialisation) Act (Nigerian Act). The Nigerian Act provided that shares of an enterprise slated for privatisation could be by public offer or private placement.<sup>48</sup> where it is to be by public issue, the offer is to be made at the capital market. The Nigerian Act further empowered the National Council on Privatisation in s2(3) to dispose of the shares of an enterprise on a willing seller and a willing buyer basis or by any other means that the NCP may deem necessary, where the council deems that the offer for sale through a public offer or private placement would be inappropriate. This provision of the Act is very susceptible to abuse as the Nigerian privatising agencies could use this as a means for favouring one party over the other. A typical example is the privatisation procedure of the Aluminium Smelter Company of Nigeria in which the preferred bid of the bid process was frustrated out of the contract in a bid to pave way for RUSAL.<sup>49</sup>

Another important point to note with the Bulgarian PPCA is that all documents relating to privatisation and post-privatisation control are to be uploaded on the internet to allow for easy accessibility of the contents of the documents by the general public. This is especially laudable as this would not only promote transparency in the process, but would also build the public's trust and confidence in the system. The particulars registrable in the public registers include the terms and conditions offered by all potential buyers<sup>50</sup> especially as it concerns the properties sold or properties of the privatising corporation that are subject to the sale, the buyers or those to whom the corporation was privatised to, price paid by the buyer, the time limit for payment and terms by which the payment is to be made, the agreed amount of investments to be made by the buyer in the privatised corporation and the aggregate number of jobs to be created by the new owners of the corporation.<sup>51</sup> This is particularly important as an investor, whose main aim for vying for and acquiring the enterprise is for the purpose of asset-stripping the privatised enterprise would find it almost impossible to achieve that. More so, the constant beam of

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<sup>39</sup> Article 25.

<sup>40</sup> Article 26 (1).

<sup>41</sup> Article 26 (2) & (3).

<sup>42</sup> Article 26 (4).

<sup>43</sup> To buttress this point, Article 29 (1) of the PPCA empowered the privatising authorities, and the post-privatisation control authorities to create and maintain public registers on the privatisation process and on post-privatisation control that would be uploaded on the internet to promote accessibility to all.

<sup>44</sup> Article 26 (4).

<sup>45</sup> Article 29 (1).

<sup>46</sup> Cap. P38, LFN 2004.

<sup>47</sup> Article 38.

<sup>48</sup> Cap. P38 LFN s2 (1) & (2).

<sup>49</sup> See Habiba Musa (n 1) 153

<sup>50</sup> PPCA, Article 29(2).

<sup>51</sup> PPCA, Article 30.

the public, especially that of the host community, on the expectations from the new owners would serve as a check on the activities of the entities acquiring State's properties.

Article 34a of the PPCA provides that the Agency shall exercise its powers to ensure compliance with the obligations assumed<sup>52</sup> where under a privatisation contract, a responsibility was assumed for additional obligations especially with regards to investments. Such obligations or investments must be itemised by category, amount and deadlines, and the privatisation contract must stipulate a punishment or penalty in case of a violation or non-performance of the responsibility for making investments.<sup>53</sup> Article 32b (4) provided that in such instances of default on the duties imposed under the privatisation contract, such contract shall be revocable. Article 32b (1)<sup>54</sup> provided for the rescheduling of obligations undertaken in privatisation contracts through the execution of another written contract so long as such rescheduling is aimed towards attaining the objectives of the privatisation programme.<sup>55</sup> Such rescheduling however, is subject to the approval of the Council of Ministers.<sup>56</sup> Linking this to the Nigerian situation, the moribund state in which most of the privatised enterprises are in now would not have been so if the Nigerian Act had adopted the Bulgarian approach. For monitoring to be effective, there must be an active and positive regulatory system or mechanism in place.

## 5. Conclusion

Monitoring privatisation is a *sine qua non* for a successful privatisation exercise. The Bulgarian PPCA is very elaborate and deliberate in its Privatisation and post-privatisation monitoring unlike the situation with the Nigerian Act. The Public Enterprises (Privatisation and Commercialisation) Act paid little or no attention at all to monitoring in the privatisation exercise. Although it is appreciated that the BPE, in the exercise of its mandates, constituted a Post-privatisation Monitoring Unit, that monitors commercialised enterprises for five years, monitoring is too relevant to be embarked upon as an *ad hoc* function as currently carried out by the BPE. Privatisation and post-privatisation monitoring activities must be implemented through a positive and proactive legislation. Such legislation must seek to address issues as they arise, and this can only be achieved through a constant review, amendment, or supplementation of the law governing the exercise. Bulgaria, for example, has had over twenty reviews, amendments and supplementals to its Privatisation and Post-Privatisation Control Act, enacted in 2002, with the recent amendment done in 2018. Nigeria, on the otherhand, has only revised its principal legislation on privatisation only once since 1988, when the Privatisation and Commercialisation Act of 1988 was repealed and replaced with the Public Enterprises (Privatisation and Commercialisation) Act 1999. Looking at the provisions of the Nigeria's Public Enterprises (Privatisation and Commercialisation) Act 1999 (the Act) and the Bulgarian Privatisation and Post-Privatisation Control Act<sup>57</sup> (the PPCA), a lot needs to be done on the part of the Nigerian Act especially with regards post-privatisation monitoring and control. The Act provided for an over-bloated NCP whose members are key political office holders that may be influenced by other factors besides patriotism in carrying out their functions. This is besides the BPE which is an entire parastatal on its own with a budget that will make a mockery of the privatisation objective<sup>58</sup> of raising funds for socially oriented programmes of the Nigerian State.

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<sup>52</sup> PPCA Article 22b (4) par.4.

<sup>53</sup> Ibid Article 34a

<sup>54</sup> PPCA 2015.

<sup>55</sup> Ibid Article 32b (2).

<sup>56</sup> Article 32b (1).

<sup>57</sup> The Privatisation and Post-Privatisation Control Act was first promulgated by virtue of State Gazette No. 28 of 2002 and ever since then, the Act continued to undergo one form of modification, amendment, supplementation and alteration until its most recent amendment in 2015 by State Gazette No. 61 of 2015.

<sup>58</sup> Objectives of Privatisation as given by the Federal Government of Nigeria as contained in the Privatisation Handbook , (3<sup>rd</sup> ed. 2001) page 52, includes the need to raise funds for socially oriented programmes in such areas as poverty eradication, health, education, and infrastructure.