

## A RETROSPECTIVE EVALUATION OF THE PRIVATIZATION AND COMMERCIALISATION POLICY IN NIGERIA\*

### Abstract

Privatization and Commercialization of Public enterprises are twin socio-economic concepts ascribed with the potentials of rescuing ailing economies, especially of the developing countries, from economic malaise. Whilst privatization is geared towards transferring public enterprises, assets and infrastructure to private hands for better-efficiency, management and productivity, commercialization on the other hand is aimed at making such public enterprises more profit oriented and less burdensome on government. Nigeria embraced these twin concepts from the late 80s leading to the privatization and/or commercialization of such hitherto state owned monopolies in the telecommunications, electricity, petroleum, banking, Air transport, manufacturing, hospitality and other key sectors of the economy. However, whether the major objectives of this exercise were realized has remained a moot point. This paper therefore examined the legal framework that was put in place as well as the key features of the twin policies in retrospect. It found that although the set goals of the Privatization and Commercialization policy are quite attractive, the legal framework for as well as the actual implementation of the policy in Nigeria have not achieved the desired results. It also found that the current regime poses a serious threat to the economic well-being of the citizens and the economic sovereignty of the country. It therefore recommended that the whole regime of Privatization and Commercialization be reviewed so as to ensure, inter alia, better efficiency and productivity of key enterprises, affordability of services, creation of employment and overall economic development of Nigeria.

**Keywords:** Privatization, Commercialization, Retrospective Evaluation, Nigeria

### 1. Introduction

Privatization which as a concept involves the transfer of public assets, infrastructure or service functions to the private sector is a relatively modern phenomenon in public policy and finance.<sup>1</sup> In fact, it is so modern that the word 'privatisation' appeared in Webster's New Collegiate Dictionary for the first time in 1983.<sup>2</sup> Privatization is a factor which has played a serious role in the quest for economic growth of many nations. This is because it has been recognised as a key element in the process of structural economic adjustment and seen as one of the panacea for economic malaise in the face of recent deterioration in the global economic environment. Generally, public sector enterprises have been fingered as avenues for substantial losses and potent source of budget deficits. Privatisation on the other hand is known to promote efficiency, reduce fiscal burden, attract new investment and help in developing and deepening domestic financial market.<sup>3</sup> Thus, in recent history, it has been adopted by many political systems and spread to every region of the world.<sup>4</sup> Privatisation, which now occupies the centre stage in global economic liberalisation is regarded as an avenue for raising productivity and enhancing overall economic growth. This is achieved through increased involvement of the private sector in productive economic activities through the sale of public enterprises to the private sector, with a view to improving economic efficiency.<sup>5</sup> In recent years, the issue of privatization and its practical implication have been a subject of controversy among persons of different strata. In Africa, for instance, it has remained a highly controversial and political risk.<sup>6</sup> This is because while the proponents of privatisation see it as an instrument of economic reform and efficient resource management for rapid economic development, the critics on the other hand argue that privatization inflicts damage on the poor through loss of employment, reduction in income and reduced access to basic social services or increase in prices.<sup>7</sup> In his discourse on the legal as well as public policy dimension of public enterprises and privatization in Nigeria, Ihome describes privatization as follows:

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\*By **M.V.C. OZIOKO, PhD**, Reader and Formerly Head, Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University, P.M.B. 5025, Awka, Anambra State, Nigeria. Email: mvcozioko@gmail.com; mv.ozioke@unizik.edu.ng. Phone Number: +2348039464374; and

\***Chinedu A. ONAH, LL.M.**, Lecturer, Department of Commercial and Property Law, Faculty of Law, Nnamdi Azikiwe University, P.M.B. 5025, Awka, Anambra State, Nigeria. Email: ac.onah@unizik.edu.ng; chineduonah@nigerianbar.ng. Phone Number: +2348064794333.

<sup>1</sup>B Owasanoye & TAT Magba, 'Legal Framework for Privatization of Banks in Nigeria' in I A Ayua & B Owasanoye (eds), *Privatisation of Government Owned Banks and the Issue of Ownership and Control*. Legal and Economic Perspective (Lagos: NIALS, 1996) p. 7-21 at 8.

<sup>2</sup>S H Hanke, 'Privatisation: Theory, Evidences and Implementation' in M L Henley & W W Jourdin Jr. (eds), *Public Enterprises Policy and Performance for Development* (Vol. II), International Law Institutes, 1988 p. 62.

<sup>3</sup>H. A. Salaka 'An Overview of Privatisation in Nigeria and options for its Efficient Implementation' *CBN Economic & Financial Review*, Vol. 37 No.2, pp. 17-30

<sup>4</sup>DoubleGist.com, 'Nigerian Economy – Effects of Privatization and Commercialization Policies' <<http://www.doublegist.com/nigeria-economy-effect-privatization-commercialization-policies/>> accessed on 03/11/2017.

<sup>5</sup>HA Salaka, *op cit*, p. 17

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

In a broad sense, privatisation refers to any of a variety of measures adopted by the government to expose a public enterprise to competition or to bring in private ownership or control or management into a public enterprise and accordingly to reduce the usual weight of public ownership or control or management. However, in a strict sense, privatisation means the transfer of the ownership (and all the incidence of ownership, including management) of a public enterprise to private investors. The meaning has the advantage of helping one to draw a line between privatisation and other varieties of public enterprise reform. It is also in the sense in which the term has been statutorily defined in Nigeria.<sup>8</sup>

## 2. Nature of the Privatization and Commercialization Policy in Nigeria

Unlike many other countries that had in the past embarked upon a programme of public enterprises reform; the Federal Government of Nigeria introduced the privatisation programme along with another programme known as commercialization. Commercialization which is conceived as an alternative to privatization policy seemed to have had much influence on the economic growth and development of the country. Commercialization as a concept helps in the reorganisation of public enterprises so as to operate as profit making commercial ventures, without subvention from government; though the government still retains its full or part ownership of the enterprise. Thus, such commercialized enterprises in the day-to-day administration of their businesses, operate as a private sector. The merits commercialization has is the fact that it reduces the burden of the enterprises on the government. This is because the enterprises stand on their own as profit oriented ventures.<sup>9</sup> One major and very recent example is the transformation of the State owned Nigerian National Petroleum Corporation (NNPC) to a fully private company known as Nigerian National Petroleum Corporation (NNPC) Limited Commercialization was described in the Nigerian Commercialization and Privatization Decree No 25 of 1988 as ‘the organisation of an enterprise wholly or partly owned by the Federal Government in which such commercialised enterprise shall operate as a profit making commercial ventures and without subventions from the Federal Military Government.

The proponents of the privatisation policy had argued that privatization has several benefits such as reduced government bureaucracy, reduced state monopolies and financial structures, increased competitiveness, increase in quality of goods and services, reduction in corruption and control by government, increase staff quality and supervision as well as improved market analysis. According to its proponents, it also leads to untying of government funds for more pressing problems, creation of employment, re-invigoration of the local economy, expansion of local businesses, attraction of direct foreign investments, expansion of capital markets, redistribution of wealth, improvement of technological transfer and enhancement of control trade regulations.<sup>10</sup> The opponents of the policy had argued and continued to argue that Privatisation has a lot of negative implications. This argument is premised on the fact that private firms concentrate on profit making to the detriment of essential public service; thus, they render more expensive services and usually fail to invest in infrastructure. Other arguments against privatisation are that it engenders reduction of public workforce and experience. Also that Privatization replaces state monopolies with private monopolies as often times private firms often find it difficult to render public services such as water, public health and transportation services. The exercise usually creates wealth for the rich while making the poor poorer and reduces public accountability. Private companies therefore replace public corruption with private corruption.<sup>11</sup>

## 3. Evolution of Privatization and Commercialization of Public Enterprises in Nigeria

The twin economic policies of Privatization and commercialization was introduced in Nigeria by the Ibrahim Badamosi Babangida administration<sup>12</sup> in 1988 as part of the Structural Adjustment Programme (SAP) which was a neo-liberal development strategy developed by the IMF and the World Bank to incorporate the national economies of some countries seeking financial assistance from them, into the global economy and market. This was two years after the then President had in his 1986 Budget speech clearly stated that the Federal Government of Nigeria would embark on the transfer of government interest in agricultural, industrial and commercial enterprises to the private sector.<sup>13</sup> Privatization and commercialization in Nigeria was formally introduced by the then Privatization and Commercialization Decree of 1988. According to the Decree, the policy is aimed at the following objectives:

- (i) restructuring and rationalisation of the State Owned Enterprises (SOEs) to lessen the dominance of unproductive investments in the sector;

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<sup>8</sup> E Ihome, *The Incubus: The Story of Public Enterprises in Nigeria* (Lagos: The Helmsman Associates, 1997) p. 60.

<sup>9</sup>Article.ng ‘Privatization and Commercialization in the Nigerian Economy’ <<http://article.ng.com/privatization-commercialization-Nigerian-economy>> accessed on 03/11/2017.

<sup>10</sup>Martins Library, ‘Privatization and Commercialization | Objectives, Benefits, Demerits, Complications, Bias’ <<https://martinslibrary.blogspot.com/2013/12/privatization-and-commercialization.html?m=1>> accessed on 03/11/2017.

<sup>11</sup> *Ibid.*

<sup>12</sup> 1985-1993.

<sup>13</sup> Articles.Ng, *op cit.*

- (ii) re-orientation of SOEs towards a new horizon of performance, improvements, viability and overall efficiency;
- (iii) ensuring positive returns on public sector investments in SOEs,
- (iv) checking of the absolute dependence on the Treasury for funding SOEs and encouraging them to patronize the capital market; and
- (v) initiation of the process of gradual cession to the private sector of such SOEs, which by their nature and type of operations, are best performed by the private sector.

The Decree also set up the Technical Committee on Privatization and Commercialization (TCPC) then chaired by Dr. Hanza Zayyad with a mandate to privatize 111 public enterprises and commercialize 34 public enterprises. Having completed the privatization of 88 of the said 111 enterprises, listed in the Act, the TCPC concluded its assignment and submitted its final report which also contained its recommendations. Following the recommendations of the TCPC, the Federal Government promulgated the Bureau of Public Enterprises Decree (now Act) of 1993 which repealed the 1988 Decree and set up the Bureau for Public Enterprises (BPE) to implement the privatisation programme in Nigeria. On 20<sup>th</sup> July, 1998, the then Head of state of Nigeria, General Abdulsalam Abubakar announced governments intention to privatise its investments in telecommunication, electricity, petroleum refining, petrochemical, coal, bitumen product as well as other listed industries which were left out from the 1988-1993 privatisation exercise. In order to create an adequate legal framework for the said privatization and commercialization of government enterprises, the Federal Government promulgated the Public Enterprises (Privatisation & Commercialisation) Decree of 1999<sup>14</sup> which repealed the Bureau for Public Enterprises Act 1993. The Act created the National Council of Privatisation first chaired by the then Vice President, Alhaji Atiku Abubakar. The said council is vested with plethora of functions. The Act slated some enterprises for full privatization<sup>15</sup> or partial privatization<sup>16</sup> while others were slated for full commercialization<sup>17</sup> and partial commercialization.<sup>18</sup>

The said privatisation exercise which took place in 1999 had three phases. Phase one involved enterprises listed on the Nigerian Stock Exchange covering, among others, commercial and merchant banks, cement and petroleum marketing companies. The second phase included enterprises in hotel, vehicle assembly plants, paper and sugar mills, insurance, aviation and marine services. The third phases involved the privatisation of such utilities like NEPA, NITEL, Nigeria Airways, National Fertiliser Company and, oil and gas companies. Essentially, these broad phases of privatisation shared the same objectives. The Public Enterprises (Privatization and Commercialization) Act of 1999, just like previous legislation of its kind, was enacted to achieve the privatization and commercialization of specific enterprises. It was apparent from the wordings of the Act as well as from surrounding circumstances that the said policies were geared towards economic growth and management efficiency. The statements, which emanated from government, showed that government was more interested in matters of economic growth and management efficiency. Government declared *inter alia*, the following as the objectives of the exercise:

- i. to redefine the role of government in order to allow it concentrate on the essential task of governance which includes the creation of sound legal and macroeconomic frameworks among others;
- ii. to restructure and rationalize the public sector in order to lessen the dominance of unproductive investments in the economy;
- iii. to re-orientate the enterprises slated for privatization and commercialization towards a new horizon of performance improvement; viability and overall efficiency;
- iv. to promote efficiency by fostering well structured markets and competition;
- v. to create more jobs, acquire new knowledge and technology and expose the country to international competition;
- vi. to raise funds for financing socio-economic development in such areas as health, education and infrastructure;
- vii. to ensure positive returns on public sector investments in commercialized enterprises through more efficient management;
- viii. to check the absolute dependence on the Treasury funding by otherwise commercially oriented parastatals and so, encourage their approach to the Nigerian capital market to meet their funding requirements;

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<sup>14</sup> (now Cap P38 LFN 2004).

<sup>15</sup> Public Enterprises (Privatisation and Commercialisation) Act, S. 1(2).

<sup>16</sup> *Ibid*, S. 1(2).

<sup>17</sup> S. 6 (2).

<sup>18</sup> *Ibid*, S. 6(1).

- ix. to initiate the process of gradual cession to the private sector, such public enterprises that are better operated by the private sector;
- x. to reduce the fiscal burden of loss-making in public enterprises which undermine fiscal control and macro-economic stability;
- xi. to mobilize domestic resources for developing and deepening financial development;
- xii. to spread and democratize share ownership with the benefits of positive change in labour attitudes and enhanced productivity; and
- xiii. to promote fairer pricing.<sup>19</sup>

The Act, in Section 2 provides for the mode of privatisation thus:

- (1) Subject to the provisions of Section 11(f) of this Act, an offer for the sale of the shares of a public enterprise shall be by public issue or private placement, as the case may be.
- (2) An offer for the sale of shares by public issue to Nigerians may be made at the capital market.
- (3) Where the shares of an enterprise are not to be offered for sale by public issue of shares or private placement, the Council may approve that the shares be offered for sale through a willing seller and willing buyer basis or through any other means.

It is pertinent to observe that the above provision is different from the provision of Section 6(1) & (2) of the earlier Privatisation and Commercialisation Decree 1988,<sup>20</sup> which required that all shares of an enterprise for privatisation shall be offered for sale in Nigeria capital market and shall be by public issue except if the Federal Government on the advice of the Technical Committee decides that the shares should be sold by private placement. Under the present Act, the government may decide whether to adopt public issue or private placement and for obvious reasons, almost all the privatisations that have been done subsequent to the Act have been done by way of private placement. This is usually to the undue detriment of the average Nigerian who may not have the financial capacity to buy the majority of the shares which are usually offered in bulk. It is pertinent to observe that while the Act made elaborate provision on how allotment by way of public issue is to be undertaken,<sup>21</sup> no such elaborate provisions are made with respect to sale by private placement. The Act creates the National Council on Privatisation under the chairmanship of the Vice President.<sup>22</sup> The Council is vested with far-reaching powers including the power of making policies on privatisation and commercialisation, determining the modalities for privatisation and advising the government accordingly. It also has the responsibility of a determining the timing of privatisation of particular enterprise, approving the prices for shares and appointment of privatisation advisers, ensuring that commercialised public enterprises are managed in accordance with sound commercial principles and prudent financial practices, interfacing with the public enterprises together 'with the supervising ministries, in order to ensure effective monetary and safeguard' of the managerial autonomy of the public enterprises, etc.<sup>23</sup> The Act also established a permanent secretariat for the programme, i.e. the Bureau of Public Enterprises, charged with implementation of the programme.<sup>24</sup> The Public Enterprise (Privatisation and Commercialisation) Act also provides for strategic/core investors who are expected to be experienced groups with capabilities to turn things around, in the face of international competition. The said core investors are also expected to;

- i. Possess the technical know-how in relation to the activities of the enterprise they wish to invest in.
- ii. Possess the financial muscles to weather the storm of competitive international business.
- iii. They must have the management know-how to run a business profitably in a competitive environment where market forces dictate the business environment.<sup>25</sup>

The BPE also made regulations for the procedure for identifying core investors viz;

1. Advertisement placed in local and international journal and magazines.
2. Copies of laws and regulations on privatization supplied to the prospective investors.
3. Interview held with the parties concerned to discuss their bid contents.

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<sup>19</sup>E Onyekpere, 'Challenges for the Privatization Programme; in E Onyekpere, *Readings on Privatisation* (Lagos: SERI, 2003) p. 26.

<sup>20</sup>No. 25 of 1988 later revised as Cap 369, LFN 1990.

<sup>21</sup>*Ibid*, S. 5 of the Act.

<sup>22</sup>*Ibid*, S. 9.

<sup>23</sup>See, *Ibid*, S. 11.

<sup>24</sup>*Ibid*, Ss. 12, 13, 14, 15 & 16.

<sup>25</sup>S. 33 of the Act.

4. Recommendation made to the Federal Government for the selection of the core investors.<sup>26</sup>

#### 4. The Journey so far

The implementation of the privatization and commercialization policy, has over the years been fraught with numerous problems. Apart from the usual institutional and administrative bureaucracy, the corruption is another major factor particularly in the actual valuation of the enterprise concerned. There has also been the problem of structural reorganisation and down-sizing of staff which has led to the continued increase in the unemployment rate.

A recent administration survey carried out the Bureau of Public Enterprises indicates that only about 10% out of 400 privatized firms in Nigeria are properly functioning as at today.<sup>27</sup> A ready example is the electricity power sector which, despite the privatization of almost all of its key components has continued to witness intractable problems of inefficiency and unbearable cost of services upon the citizenry. Furthermore, Privatisation is usually characterised by inchoate or lopsided asset acquisition and share purchase agreements, unenforceable clauses and breach of share purchase agreements, due diligence of large corporation conducted at the data room of the BPE instead of a full financial and physical audit, undervaluation of assets, asset stripping by the private sector firm acquiring the state firm, trade and competition interest between the acquired Government enterprise and the acquiring firm operating and competing in the same market. There is also the problem of lack of capacity of the acquiring private firm and lack of technical knowledge or experience in running the particular industry by the acquiring firm. There have also been cases of inability of the competing firms to meet the financial benchmarks, creation of an industry monopoly, unnecessary retrenchment of public officers by the acquiring firm, dubious or unfair assignment of the properties of the state agencies or subsidiaries or vice versa, favouritism in the selection of core investors, disproportionate size of regulatory agencies as compared to the size of agencies under their respective supervision, e.t.c. These technical complications are direct consequences of several structural defects in the legal policy and implementation frameworks of the exercise.<sup>28</sup> Medupin has observed that in order to ensure transparency, accountability and effective implementation of the process, government should plan and put in place the following arrangements/guidelines

- 1) Availability of application forms printed in sufficient quantities and distributed to every Local Government Areas accompanied with an abridged prospectus outlining the main features of the offer.
- 2) Prescribing a low minimum number of shares for every applicant so as to protect the poor and low income earners.
- 3) Prescribing a limitation on individual shareholding so as to protect the interest of the poor and avoiding oppression of the poor.
- 4) Prescribing the general nature of allotment so as to be in consonance with the federal character provision of the constitution.

It is pertinent to note that there is no provision in the law relating to privatisation giving Nigerian investors any special protection in the enterprises earmarked for privatisation from time to time thereby paving the way for total domination by foreigners who usually have better capacities to buy the enterprise. There is also no legislative framework for the protection of the employment of the staff of those enterprises; thus leaving them at the mercy of the private investors. This has led to serious hardship and suffering on such former staff of the enterprises concerned. It is submitted that the current legal regime which allows foreigners unrestricted access and opportunities to invest in any business in which nationals may invest, poses serious threat to the country's economic sovereignty. It is not in doubt that one distinctive feature of sovereignty is the state's prerogative to determine the country's political or economic course without compelling interference from external influences or dictates.<sup>29</sup> It is therefore suggested that, giving the past experience, there is need to revisit the current regime for privatisation to address the inherent threat posed to the nation's economic sovereignty.

#### 5. Conclusion

It is inferable that privatization and commercialization policy is, in principle, in consonance with Section 16 of the Constitution of the Federal Republic of Niger which, in part, spells out the Fundamental Objectives and Directive Principles of State Policy.<sup>30</sup> The said section provides as follows:

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<sup>26</sup>BPE, 'Nigeria Company Law and Regulations Handbook Vol. 1: Strategic Information, Laws and Regulations', p. 89 <<http://books.google.com.ng/books?id=R0DNCQAAQBAJ&pg+-PA51&=dq+nigerian+company+law+and+regulators+hand+book&source=bl&ots=WYKiqyflAn&sig=&njcig=false>> accessed on 10/11/2017.

<sup>27</sup> Articles.Ng, *op cit*.

<sup>28</sup> *Ibid*.

<sup>29</sup>M T Okorodudu-Fubara, 'State Control and Intervention in Strategic Business and Promotion of Private Investment' in I A Ayua & Bolaji Owasanoye, *op cit*, p. 22.

<sup>30</sup> Chapter II of the 1979 Constitution as well as Chapter II of the 1999 Constitution of Nigeria (as amended).

- 16 (1) The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution:
- (a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;
  - (b) control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
  - (c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;
  - (d) without prejudice to the right of any person to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

It is therefore submitted that the privatisation and commercial policy, *per se*, is not a bad idea but the nature of its implementation and the practical implications it has on the Nation's economic sovereignty is where the problem lies. The research is of the opinion that if privatization is carried out properly, it will benefit the nation and its constituents while safeguarding its sovereignty. Workers will be shareholders. Consumers will be better off because of better services. New graduates and other unemployed persons will get jobs because of expansion. Government will be relieved of the burden of subsidies. Investors will gain investment opportunities. Ultimately, the public (both foreigners and nationals alike) will be free to pursue any private economic interest.