

**TRANSITIONING FROM A REGULATED ECONOMY TO A COMPETITION REGIME:  
NIGERIA AS A CASE STUDY\***

**Abstract**

*This study gives a brief history of the evolution of the Nigerian economy from independence till date taking into account the several milestones towards actualization of a fully liberalized economy devoid of cartels, price fixing and unhealthy competition. Another important aspect of this article will be to dissect several economic policies that successive governments had deployed in Nigeria to ensure stability of the economy. Several economic terms like regulation, privatization, re-regulation, capitalization, indigenization, deregulation and competition are analyzed vis-a-vis the Nigerian economy. This work understudies the Nigerian economy as at today to decipher what economic models it has deployed to ensure a vibrant and robust economy. It places the newly passed competition law on a scale with the current regulatory strategy adopted by government in several sectors of the economy, forecasting its applicability to what is currently obtainable in the country. Bottlenecks and challenges that lie ahead are also identified and possible recommendations made using the experience of advanced economies in competition law.*

**Keywords:** Regulated economy, Competition regime, Nigeria, Change

**1. Introduction**

The vision to achieve a deregulated economy and a free market in Nigeria has been the agenda of several governments<sup>1</sup>. As far back as 1986, the government of General Ibrahim Babangida made one of the early moves towards deregulating the Nigerian economy through its Structural Adjustment Programme. However this dream or vision up until recently has remained at the blue print stage yet to be actualized. Nigeria's economy has seen an evolution from colonization built companies of pre 60's to government owned enterprises of the 80's and privatized enterprises of the millennium; this metamorphosis aiming to achieve a liberalized economy free from government interference and promotion of healthy competition.<sup>2</sup> This vision of a totally deregulated economy constantly eludes the reach of the Nigerian economy, hence the operation of a mainly regulated economy with frequent government interference.<sup>3</sup> Recently, a giant leap by the Nigerian government to introduce a Competition law regime in an economy that could be said to be a purely regulated economy has raised some controversy. The applicability and implementation of this new law to several facets of the Nigerian regulated economy will be the subject of this article.<sup>4</sup> Observers are of the opinion that the deregulation of key aspects of the economy, which normally precedes a competition regime, is yet to be actualized in Nigeria.<sup>5</sup> Government implementing a competition regime without laying proper foundation would be catastrophic, as envisaged in several developed economies like the United States of America, who over thirty years of trial and error nurtured their robust competition and Anti-trust regime.<sup>6</sup>

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<sup>1</sup>DT Godwin & D Dagogo (2015) Deregulation in Nigeria: the Theoretical Milieu. Proceedings of the First International Workshop on Technology.

<sup>2</sup> Gregory Austin Nwakunor 'Forgotten Brides: Companies That Colonization Built In Nigeria' Guardian Newspaper 20<sup>th</sup> December 2015

<sup>3</sup>Nnamdi Dimgba 'The urgent need for anti-trust law in Nigeria' *This Day* Newspaper 3<sup>rd</sup> February, 2004

<sup>4</sup>Nnamdi Dimgba 'The need and the Challenges to the Establishment of a Competition Law Regime in Nigeria' [www.academia.edu](http://www.academia.edu) viewed on 18<sup>th</sup> December, 2019.

<sup>5</sup> Ibid. p 10 'the need and challenges to the establishment of a competition regime in Nigeria'

<sup>6</sup> During The 1925 Administration of William Humphrey, there was no single 'progressive' Philosophy on antitrust in the United States, as there were divergent views about the need to create a Federal Trade Commission, however after long debates three visions on the appropriate role of the Federal Trade Commission emerged culled from *Anti-trust Law Journal* Vol. 77 Issue 3, 2011 p. 724 footnote.

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Pre independence Nigeria`s economy was fairly robust with several multinational companies investing in the economy of the country. Big names such as Kingsway Stores, UAC, UTC, Lever Brothers, CFAO, and Leventis were some major players in the fast moving consumer goods sector of the Nigerian economy. The growth and success of these conglomerates was hinged on the abundance of natural resources, colonial control and management of these companies<sup>7</sup>. Their modus operandi was sourcing raw materials locally, exporting them abroad where they are processed as finished products to be sold to consumers in Nigeria.<sup>8</sup> These companies continued to enjoy dominance in the Nigerian economy up until independence when not only the political system was emancipated from colonial rule; the economy on the other hand, was also tending towards a positive direction.

At independence in 1960, private foreign investment in Nigeria accounted for 70 percent of the total industrial investment and over 90 percent of investment in such industries as chemical production and vehicle assembly plants and no less than 90 percent in other manufacturing sub sectors.<sup>9</sup> Upon the realization that the objectives of foreign capital may not always be compatible and favorable to the overall national interest, the Nigerian government sought to assume the commanding heights of the national economy by investing in such basic industries like steel, paper, cement, etc. These were called government enterprises or State owned enterprise (SOE) of the early 1970`s most of which are comatose or wound up as at today<sup>10</sup>. These state owned enterprises were bought over and maintained from the proceeds of the oil windfall of the 70`s when there was much liquidity in the system to cover up for the excesses of these state owned enterprises. Such problems as bureaucratic structures, outdated infrastructure, fussy and unclear procedures as envisaged in the private sector, budget rigidities and over centralization of management and authority structures as experience and discretion were not properly deployed in management decisions were some of the challenges faced by the enterprises impeding their growth.<sup>11</sup>

By the late 80`s most of these SOE`s were either moribund, obsolete, or uncompleted white elephant projects and the need to use legislation or other policies and tools of government to make the most of these bad investments was imperative hence several policies like indigenization, privatization, regulation, de-regulation and recently competition were introduced to sustain growth and development of the economy.<sup>12</sup>

### **2. Nigerian Economy Pre-Independence and the Theory of Government Intervention**

As earlier observed, the major reason for the heavy presence of big multinationals who were majorly dealing in fast moving consumer goods, automobiles and textiles prior to independence was as a result of the nation`s wealth in mineral and human capital. The strategy adopted by these major British companies was to source their raw materials locally and export them to produce finished products that will be sold to Nigerians. The economy as at then was solely dependent on the activities of these multinationals who dominated every facet of the economy. As opined by Aboyade, ‘the development process of any economy is substantially determined by the way productive forces in and around the economy is organized. This organization in terms of dominant institutions and social production relations, in turn reflects the ideological bias of those who had hitherto ruled or are currently ruling the society’<sup>13</sup> After the fanfare and post independence euphoria of 1960 in Nigeria had died down, it was recognized by the then government that they had the political power without being in control of the economy, hence the need to

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<sup>7</sup> Gareth Austin ‘African Economic Development and Colonial Legacies’ *International Development Policy*, January, 2010.

<sup>8</sup> Gregory Austin Nwakunor: Forgotten Brides: Companies that Colonization built in Nigeria; *The Guardian Newspaper* of 20<sup>th</sup> December, 2015.

<sup>9</sup> L.N Chete, J.O Adeoti, F.M. Adeyinka, and O. Ogundele ‘Industrial Development in Nigeria, Lessons and Challenges’ Working Paper No. 8, African development Bank Group, Nigerian Institute of Social Economic Research (NISER) Ibadan.

<sup>10</sup> Remi Medupin : ‘Privatization in Nigeria : A tentative Assessment’ *Economic Policy Analysis: Contemporary Issues* December 2002.

<sup>11</sup> Eze Onyekpere, ‘Privatization in the Dock’ A case study on the privatization of Nigerdock ’*Socio Economic Rights Initiative (SERI)*, 2005 pg 2-3.

<sup>12</sup> *ibid*

<sup>13</sup> Ojetunji Aboyade, ‘Nigerian Public Enterprises as an Organization Dilemma’ *Administration for Development in Nigeria* (Africa Education Press 1980)

make policies and legislations of government to ensure that the economy was controlled by the government as there were not much bourgeois who were capable of investing in the major sectors of the economy<sup>14</sup>. Nigeria then adopted a socialist type of economy where major infrastructure was owned and operated by the state. To make this possible, it was only through legislation and policies of government that the economic power of the nation was to be restored to the new found Nigerian state. Succinctly put by Azinge et al, ‘the post independence period marked a watershed in the growth and spread of public corporation. However, with independence came realization that few people had the necessary competence to properly run a public corporation inherited from the colonial masters and there was inadequacy in the legal regime, regulating the few private enterprises established as at that time’<sup>15</sup>

### **3. Strategies Deployed by the Nigerian Government Post-Independence towards Liberalization of the Economy**

#### **Direct intervention through state participation (SOE`s)**

It has been opined by scholars and economists that Nigeria`s use of state owned enterprises post-independence was an important tool in securing the grip of the economy from the British and ensuring development, growth and control of the new economy. These SOE`s were both service providers and regulators in their different sectors of the economy. The government post independence enjoyed a total monopoly of the sectors operating as state owned enterprises. It is also worthy of note to state that there was an undertone of providing social services enshrined in the enabling laws of these government enterprise, the profit making objectives overrode their underlining social services provision. In a bid to strike a balance between the two statutory objectives in most of these state owned enterprises, several obstacles and challenges started trickling in as experienced in the 70`s during the oil boom where subsidization of some of these services provided by these SOE`s was a major factor that led to their inefficiencies<sup>16</sup>.

#### **Regulation**

This was another strategy that the government deployed in ensuring that they were in control of the economy. In the real sense of it, the term ‘*regulation*’ connotes total authority. So it follows that a regulator is one who carries its mandated oversight functions unhindered and backed by legislation. However the independence of regulation in Nigeria seems to have been whittled down by either the establishing Act of major regulators often termed independent regulators. Even the so called independent regulators in Nigeria such as CBN and NCC are subservient to their different ministries, hence the pertinent question, is the Nigeria economy independently regulated without government interference. Research has shown that quite a number of regulatory agencies whose enabling Act prescribe for either imprisonment or various punishments for offenders; before commencing prosecution, must have to seek the Attorney General`s fiat or may have to prosecute through the Attorney General`s office. The cumbersome process of completing an investigation, forwarding reports to the legal department, preparing legal opinion for the chief executives to sanction litigation, and having granted the sanction, preparing legal briefs for the Attorney General`s office to prosecute, most times cause undue delay. Prosecution as we are aware requires diligence and speed, as a delayed prosecution can be quashed or thrown out of the courts due to want of diligence prosecution. The required synergy between the legal departments of some of these regulators and the Attorney General`s office is lacking, hence the need to grant regulators the right to prosecute directly from their offices rather than going through the rigorous process of going through the attorney general`s office. This independence is required so that most regulators will attain independence in carrying out its administrative and organizational functions. This is the ideal form of regulation. As Azinge et al. opined, ‘one way of appreciating what regulation is all about is to highlight the attributes of an independent regulator or the bench mark used in evaluating regulators. The regulator must be organizationally separate from the existing ministry or departments (Organizational

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<sup>14</sup>Ibid

<sup>15</sup> E. Azinge ibid. p. 187.

<sup>16</sup> T. Andzenge, ‘Privatization and Regulation: Inevitable Siblings’ *Competition Law and Policy in Nigeria* NIALS 2012

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independence), earmarked, secure and adequate source of funding (Financial independence) and autonomy over internal administration and protections from dismissal without due cause (Management independence)'.<sup>17</sup>

Part III of Chapter 6 of the Central Bank of Nigeria Act<sup>18</sup>, makes provisions for the appointment of members of the board of directors of the bank. The composition of the board members shows that four members of the board including the Central Bank of Nigeria Governor represent the bank, while six members from the supervisory ministry the Federal ministry of finance represent the ministry. This shows lack of independence the bank has over major decisions that are taken at the board level. Amongst part of the functions of the board is to in 3(a)<sup>19</sup> 'to consider and approve the annual budget of the bank', thereby depriving the management of the bank maximum financial independence. From the above review it can be deduced that the independent nature of Central Bank of Nigeria's regulation has been whittled down by the supervising ministry of Finance that maintains a major stake in the decisions bothering on the day to day affairs of the apex regulator of financial services in Nigeria. S.7 (1)<sup>20</sup> also makes the governor answerable to the board of Directors for his acts and decisions. Also the appointment of the Governor of the Central bank of Nigeria is done by the president with no option for nomination as seen in other independent arms of government like the Judiciary where the National Judicial Commission nominates a candidate and the president appoints for Supreme Court judges. Having outlined these points, it could be said that the Central Bank of Nigeria still exercises its regulatory functions with little or no interference from its supervisory ministry of Finance. However at board level, major decisions may sway in favour of its supervising ministry due to their numerical strength.

### **Privatization**

As a result of the inefficiencies of government enterprises and some of the lapses in the corporations where the government had controlling shares, it was needful and expedient that a restructuring of the several sectors of the economy include private sector participation. Through a Privatization and Commercialization Act of 1988<sup>21</sup>, the ball was set rolling for the divestiture of the ownership and management of government enterprises to the hands of private sector participants. Subsequent efforts that yielded results was the enactment of the Privatization and commercialization Act of 1999<sup>22</sup>, which provides for the National Council of Privatization in its chapter II and the Bureau for Public Enterprise<sup>23</sup> in its Chapter III<sup>24</sup>, these were the major tools which ensured the smooth sail of privatization of government assets.

### **Deregulation**

This article has explained the concept of privatization and the need for government to check the excesses of private companies who through a privatization process are in control of government enterprises and infrastructure. There comes a time after a privatization exercise that regulation or much government oversight over the activities of private companies is reduced to a barest minimum, as the regulated have over time mastered their roles as players in the economy and have become self-regulatory in nature. These private companies anticipate, forecast and become proactive in nature and need not the government's policing to operate according to laid down guidelines and rules and sometimes even suggest to the government on better models and ways of making the economy more vibrant. Until such a time, there remains a need for adequate regulation. This work will envisage the parlance 'deregulation' as a free market with little or no interference of government. Rhetoric : Can it be said that major sectors of the economy in Nigeria like the telecommunications, Power and Petroleum sectors has attained such status that private

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<sup>17</sup> E. Azinge and B. Owasanoye; *Deregulation, Law, Economics and Politics* ( Nigeria Institute of Advanced Legal Studies) NIALS Press, 2012

<sup>18</sup> Central Bank of Nigeria Act CAP C4 LFN 2004

<sup>19</sup> S. 3 (a) CBN Act CAP c4, LFN, 2004

<sup>20</sup> S. 7(1) CBN Act CAP C4, LFN 2004

<sup>21</sup> CAP No. 25, 1988

<sup>22</sup> CAP P38

<sup>23</sup> Chapter II CAP P38

<sup>24</sup> Chapter III, CAP P38

companies operating within these sectors of the economy are proactive and self-regulatory. If yes, then deregulation, which sets the pace for a competition regime is required. If the answer to the above rhetoric is no, then the current passage of a competition bill into law may be early in time. Looking at it from a positive angle, the government of the day may in its wisdom, pass a competition law based on the forecast that certain aspects of the Nigerian economy like the banking and the telecommunications sector are almost attaining the status of self-regulation, so that once these sectors of the economy are deregulated, the market is left to be driven by competitive market forces. The downstream sector of the petroleum industry has experienced a partial deregulation but the regulator Nigerian National Petroleum Agency (NNPC) has a bench mark for products like premium motor spirit (PMS), DPK, AGO and Aviation fuel, thereby exercising some form of regulatory oversight as to pricing of products.

However, this part of this work will dwell on de-regulation as a tool of government in ensuring that the economy stays viable, further discuss on competition will be later in this work.

#### **4. Competition Regime in a Regulated Economy**

What is a competition regime? This is a regime that allows an economy to opportune the best innovations in businesses to thrive, and provide an easy entrant to markets without much opposition from monopolies or long existent cartels.<sup>25</sup> A competition regime remains a sine-qua –non to a deregulation of the economy. Having rescued the moribund economy of Nigeria from the doldrums of State Owned Enterprise (SOE`s), to a more organized private sector driven economy; the government from its past experiences set a strict regulatory framework to checkmate the activities of private enterprises, preventing their reverting back to pre independence status quo, where foreign private enterprises were in control of the economy. Two major challenges faced policy makers while making rules for transitioning from state owned corporations to private firms. The first major challenge is trying to determine the price of a service which has long since been underpriced or subsidized by government; secondly provision of access to universal services for essential services like telecommunications and telegraph. It remains the duty of a regulator to ensure that the effect of sale or privatization does not adversely affect consumer behavior, hence the use of regulations and guidelines to balance the effect.

The enactment of the Competition and Consumer Protection Act 2018 was aimed at encouraging competition, ensuring a free market devoid of dominance with little or no government or state interference. While in a deregulation the government steers the economy towards the path of a free market, but never in the history of economies, was the ideal free market achieved. The best that was attained in the European Union was a deregulation with little or no government interference. However this work will envisage the parlance ‘deregulation’ as a free market with little or no interference of government. It is also necessary to review some of the aforementioned regulations and determine the extent they have fared in steering the different sectors of the economy towards a free competitive market. Until regulated sectors attain the status of self regulation or with little or no regulation, the need for a competition law would be unnecessary. Some key sectors of the Nigerian economy will be evaluated to determine their extent of self regulation. The recent passage into law of the Federal Competition and Consumer Protection Commission Act (FCCPCA)<sup>26</sup> is a welcomed development and a step towards ensuring that the economy of Nigeria is rid of a longstanding cartel arrangement in several sectors of the economy and also ensure riddance to the dominant status of certain sacred cows in some select aspects of the economy. However one must state here that making of laws or passage of prototype some foreign legislative instruments into law would only go this far, the bulk of the work is in implementation and workability of passed laws. From experience we have seen that the Nigerian National Assembly discharges it`s functions by passing bills into law, but the needed resources and political commitment made on the part of the executive in ensuring the workability of passed laws continues to fall short. The just passed Competition law needs massive political and financial support to be adequately implemented

<sup>25</sup>Rt Honourable Dr. Vince Cable MP ‘Growth, Competition and The Competition regime’ BIS Department for Business and Skills, March 2012.

<sup>26</sup>Federal Competition and Consumer Protection Commission Act (FCCPCA), 2018

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and functional, as certain sectors of the economy are being operated by a network of cartels international in nature, that a mere passage into law of a competition law, is just likened to a toddler's first step towards a journey of a thousand miles.

Another important factor that may adversely affect the performance of the new competition body in Nigeria will be inadequate expertise in the areas of law, finance and economics. While regulation requires having a particular agency with professionals in a certain area like health, or trading standards, a competition regime involves a multifaceted regulation or I would say balancing of the markets. The vast area of oversight in a competition regime requires not only the political will and funding but most importantly expertise diverse professionals capable of steering a new formed competition regime towards the desired direction. This new agency must be given complete independence with no interference from the powers that be, to hire skilled professionals who are capable of making policies that will be regulator and people friendly, thereby promoting a conducive atmosphere for a healthy competitive market. Worthy of note is the final and most important aspect of a competition regime that requires great concern.

### **5. Towards Introducing Competition Regime in a Natural Monopoly in Nigeria**

Most developing countries like Nigeria in a bid to ensure private sector participation in its economy through legislation or administrative instruments have privatized several aspects of their economy. There are some latent monopolies that are still in existence even after a privatization exercise has been carried out by the government. These are called natural monopolies and they exist not because the regulators are weak to fight their market domination, but due to massive infrastructural deposits or investment that has been made on a particular sector introducing a competition would be to the detrimental to the economy<sup>27</sup>. In Nigeria for instance, the power sector was privatized and unbundled into generation, distribution, and transmission, however, due to the massive infrastructural and natural deposits in some of these aspects of the National Electric Power Authority (NEPA), the Electric Power Sector Reform Act (EPSR), while unbundling the defunct NEPA, left some aspects of power generation and transmission to enjoy their natural monopolies<sup>28</sup>. Transmission of electricity currently lies within the purview of the federal government and there seem to be a natural monopoly in that sector of power ministry. The aim of competition law is to ensure that the market is as much as possible devoid of state interference and dominant players. Several modalities have been adopted by different jurisdictions in ensuring that natural monopolies are receptive to the introduction of a competition regime.

### **Concessioning Agreements**

Concession agreements are viewed as substitutes for privatization when the latter is not feasible, especially in natural monopolies. Concessions are necessary tools used by the government to promote competition in a specific sector. In this special arrangement, the concessionaire takes possession of the relevant assets (but ownership usually remains with the government) and uses them to provide relevant products or services according to the terms of the contract.<sup>29</sup> Several infrastructures in Nigeria with residual natural monopolies have experienced some form of competition with the deploying of this economic tool. With the advent of a competition regime, there is need for a robust working relationship between the new anti-competition agency and the Infrastructure Concession Regulatory Commission, to harmonize policies, rules and guidelines with a view to ensuring synergy and avoiding duplicity of regulatory roles in a competitive economy. Using the concessioning of the Nigerian ports around 2005/2006 as a case study, major Private Terminal Operators emerged as a result of existing inefficiency within the operations of the Nigerian Ports. Incidents of slow berthing/unberthing of vessels, night navigation restrictions, the quay walls at

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<sup>27</sup>The Use of Concessioning to promote Competition in a Sector: Organization for Economic Co-operation and Development OECD Policy Brief 2007.

<sup>28</sup> ibid

<sup>29</sup>The Use of Concessioning to promote Competition in a Sector: Organization for Economic Co-operation and Development OECD Policy Brief 2007.

Apapa ports as at then were obsolete, and non-availability of pilots which resulted in undue delay in the ports.<sup>30</sup> The government in its wisdom concessioned the major port facilities, rather than outright sale through its privatization exercise due to the residual natural monopoly enjoyed by the Nigerian Ports Authority. The unbundling and concessioning of the PTO's (Port Terminal Operators) to several private handling companies automatically introduced the competition the market needed at that time. A working synergy between the Ports Authority and the Infrastructure Concession and Regulatory Commission in ensuring that the terms of the concession agreement were kept by the PTO's bearing in mind the port regulations was a major factor behind the success of a competitive market in the ports and handling business in the country.

### **Competition Regime in the Petroleum Downstream Sector**

The downstream sector of the petroleum industry though deregulated maintains a strong association or unionism which indirectly controls the market and on several occasions called the bluff of the Federal Government during their incessant industrial actions. The Competition regime aims to reduce to the barest minimum, dominant behavior in the markets and jettison every form of cartel arrangement currently envisaged in the downstream sector of the petroleum industry. There must be a tactical engagement of stakeholders in the downstream sector of the petroleum industry especially the IPMAN (Independent Petroleum Marketers Association of Nigeria), of great importance is their inputs and advise on any policy that the commission makes in the aspect of tackling the existing cartel that control the market. Through constructive engagements the new commission must tread with great caution using a carrot and stick approach to some anti-competitive practices like price fixing, and artificial scarcity occasionally experienced in the downstream sector.

### **Competition in the Telecommunications Industry in Nigeria**

The advent of competition regime in the telecommunication industry would further bring down the prices of tariffs that are now at an all-time low as a result of regulatory safeguards. The industry has so far fared well by keeping services and standards of high quality and keeping prices low. Competition limits the ability to cross-subsidize services. However, in the Telecommunications sector through a circular by Nigerian Communications Commission to all telecoms service providers mandated a co-location<sup>31</sup> of infrastructure with a view to reduce costs and reduce environmental hazards. This guideline makes it possible for a base station owned by MTN for instance, to share costs and infrastructure with other telecom companies (sharing the maintenance costs of diesel and paying a security guard for that particular base station). This guideline reduced the cost of providing these services and positively affected the cost of tariffs. The dominance enjoyed by early entrants into the market through the guideline of NCC ensured sharing of infrastructure. S. 70 of the Federal Competition and Consumer Protection Act<sup>32</sup> makes provision for instances of abuse of dominant position in the market. Other areas where there seem to be some form of dominance will experience the effect of the provision.

### **Competition in the Power Industry**

As seen from the above telecommunications sector, the privatization and unbundling of the defunct NITEL paved the way for a competitive market in the telecommunications sector. However the power sector being a peculiar sector does not only demand its privatization to set the ball rolling for a competitive market, there remains another hurdle which must be crossed to attain a free and competitive market. The sector is comprised of generation, transmission, and distribution of electricity and the unbundling of this complex sector remain necessary. In Nigeria today, there could said to exist a partial unbundling of the power sector which makes the market not fully liberalized and competitive. Unlike the telecommunications sector, where Telco's are responsible for providing their infrastructure, the generation and distribution of power on the other hand has been privatized, while a natural monopoly still exists in the transmission of power in Nigeria. In an unbundled system, it may be difficult for

<sup>30</sup> NPA Concessions and Joint Venture Agreements- Final Report; Prepared by Crown agents Ref. No. 106890 (April, 2007)

<sup>31</sup> Guidelines on Collocation and Infrastructure Sharing (NCC)

<sup>32</sup> S.70 (1) and (2) FCCPC Act, 2018

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providers of competitive final services to co-ordinate with monopoly of infrastructure networks of the government in the instant example of transmission of power in Nigeria<sup>33</sup>. In Nigeria currently, the power sector is not a fully competitive market as all generated power goes back to the National grid. The establishment of these bodies, The Nigerian Electricity Supply Industry (NESI) and the Nigerian Bulk Electricity Trading Company (NBET), remains a major setback in the achievement of a free and independently and competitive power sector in Nigeria.<sup>34</sup> Through restrictive clauses in its agreements with distribution companies thereby denying these companies the control of the market forces which is the ideal environment for a competitive power sector.<sup>35</sup>

In this competition regime, adequate infrastructure must be put in place not only in the power sector but all other sectors to ensure that industry players freely compete devoid of government interference. If such arrangement is not made, then competitiveness of the market will be stalled in the long run due to pockets of natural monopolies that are residual.<sup>36</sup> Secondly the NESI and NBTE should as a matter of urgency brace up to the challenges of regulating the power sector through their roles as regulators of bulk trading. Steps should be taken to reduce the limiting clauses in bulk power trading with the distribution companies. The role of NERC should be intensified and the new dispensation of a competition regime must be considered when making formulas for bulk purchase of power by the DISCO's.<sup>37</sup>

### **6. Conclusion and Recommendations**

While the recent competition regime in Nigeria is applauded, lessons must be learnt from developed economies where the unbundling of infrastructure remains a critical hurdle a competition regime must pass before players in the market begin to enjoy a free competitive market. From the local loop unbundling in the telecommunications sector, to an attempt to unbundle pipelines which remains a fixed infrastructure in its natural monopoly, under the control of the government; to the unbundling of the rail lines in a privatized economy, all these are infrastructure whose monopoly remains residual and are in their state of natural monopoly. The use of special legal instruments like leasing contracts and concessioning agreements should be deployed by government to break down natural monopolies still existing in some key sectors of the Nigerian economy. The new competition body in Nigeria must be in liaison with the ICRC a body charged with concessioning of infrastructure to ensure that concessioning of these major infrastructures is made possible to entirely remove the residual monopoly that the government enjoys. Concessioning will further open the market to competition. It is recommended that a transparent concessioning of the Pipeline Products and Marketing Company and the Transmission Company of Nigeria (TCN) is considered to ensure that the residual monopoly which the government still enjoys over these infrastructures is totally removed. Also a leasing contract of major power generating stations should be considered.

Another area where the new competition agency should massively lobby for is the merging of different sector specific regulators into one umbrella regulator whose voice will be heard. The business of competition requires coming together of different professionals in the business of regulation tending towards attaining a free and competitive market. With all due respect to the new FCCPC Act S.27-37<sup>38</sup> bothering on its investigatory powers, a broader approach of the defunct Office for Fair Trading in the United Kingdom is recommended. Where the investigatory powers of the OFT was tagged on the same level with that of the Special Frauds Office of the United Kingdom. If the new FCCPC act in its implementation does not have commensurate investigative powers and access to that of the Economic and Financial Crimes Commission, where certain privileged information is availed to them

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<sup>33</sup> I. Kessides; 'Reforming Infrastructure, Privatization, Regulation and Competition'. A world Bank Policy Reform Paper, Oxford University Press, 2004.

<sup>34</sup> E. Azinge and Laura Ani 'Competition Law and Policy in Nigeria' NIALS Press, 2012.

<sup>35</sup> E. Azinge and L. Ani, *ibid*.

<sup>36</sup> *ibid*

<sup>37</sup> *Ibid*.

<sup>38</sup> Section 27-37 FCCPC Act, 2018.



in the course of their investigations, then the ability to fight cartels and international trade syndicates would be cumbersome<sup>39</sup>.

Also in the area of sanctions and orders that may likely sway consumer opinion negatively or affect fixed prices; sufficient market analysis is required, being very sensitive economic matters, which if not handled properly may result in avoidable public uprising. Orders, tribunal decisions, regulations and guidelines must be backed up with adequate economic and legal reasoning. As Idigbe Anthony opined ‘the ability to balance pure competition issues as against consumer protection and or public interest issues will determine the extent of success of this new competition law regime’.<sup>40</sup>

Finally, the field of competition law is diverse and broad that tackling every facet of competition may overwhelm a young agency like FCCPC. The recent collaboration with the Security and Exchange Commission on reviewing merger applications and ensuring that monopoly is checked in the Nigerian Securities market is a good step and such other collaborations will be recommended.<sup>41</sup> As times goes by, the area of coverage may expand to price fixing, and checking dominance in several sectors of the economy.

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<sup>39</sup> S. 2 (f) Central Bank of Nigeria (Anti money Laundering and combating the financing of terrorism in banks and other financial institutions in Nigeria) Regulations 2003

<sup>40</sup> Anthony Idigbe ‘ Overview of competition Law in Nigeria’Punuka Attorney and Solicitors September 2019

<sup>41</sup> *ibid.*