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## PRIVATIZATION OF PUBLIC UTILITIES *IN NIGERIA*

Mike I. Obadan\*

### 1. Introduction

In the context of economic reforms, specifically structural adjustment programme, in the mid-1980s, the Nigerian government introduced the privatization and commercialization programme and implemented it up to 1993. Even though the major public utilities were known to be poor performers, some of them were slated to be commercialized under the programme. After about five years of suspension, the privatization programme resumed in 1999 with the scheduling of major enterprises, including utilities in the monopoly sector of the economy for privatization in Phase III of the programme. This paper reviews the experience so far with the privatization of public utilities. To this end, the paper is organized into five sections. In order to underscore the essence of the programme, Section II makes a strong case for the privatization of public utilities in Nigeria while Section III discusses the significance of strategy and regulation in privatizing public utilities. In Section IV is a review of the privatization journey so far with respect to public utilities. The fifth Section contains the concluding remarks.

### 2. The Case for Privatizing Public Utilities

For a long time in Nigeria, some enterprises, particularly those providing utilities, have been seen as being too 'big' or 'strategic' to be left in the hands of the private sector. They have also been seen as having monopoly status, providing public service. Other reasons have also been advanced for not privatizing utilities, among which are that competition may not be effective, they should not be owned by foreigners, the employees/unions would be against it, unemployment will result, the private sector

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would not provide non-economic services, the need not to lose control of the board or that no one would buy them. These are some of the reasons for the expressed opposition to the privatization of enterprises, in Nigeria, mainly utilities, such as:

- National Electric Power Authority (NEPA)
- Nigerian Ports Authority (NPA)
- Federal Airports Authority of Nigeria (FAAN)
- Nigerian National Petroleum Corporation (NNPC)
- Nigerian Airways
- Nigerian Railways
- Nigerian Telecommunications Limited (NITEL)
- Nigerian Postal Service (NIPOST)
- Water Corporations

All the above excepting the airways and petroleum corporation, perhaps, provide utility services. While water supply has a natural monopoly status, electricity distribution and railways have partial monopoly status. All the others have no monopoly status. All of them are expected to provide services for direct consumption to enhance welfare or as vital inputs into the production process.

But then, the failings of public enterprises (PEs) or state-owned enterprises (SOEs) in most parts of the developing world, Nigeria included, have elicited so much attention and concern. Concerns have been expressed that most public utilities do not work, new investment is needed and the government does not have the money for it, the government can no longer afford subsidies for them, political interference in utilities is stifling, no tax revenue is received, and that most PEs are unable to introduce new technology and techniques and enhance efficiency. Indeed, those who have been dissatisfied with the services of public enterprises have argued that in country after country, unbridled state expansion has led to the following (see Paul, 1988: 42; Samuel, 1998: 13):

- economic inefficiency in the production of goods and services by the public sector, with higher costs of production, inability to innovate, and costly delays in delivery of the goods produced;

- ineffectiveness in the provision of goods and services, such as failure to meet intended objectives, diversion of benefits to elite groups, etc;
- rapid expansion of the bureaucracy, severely straining the public budget with huge deficits of public enterprises becoming massive drain on government resources, inefficiency in government, etc; and
- poor financial performance of PEs, reflecting a history of huge financial losses, overstaffing, and burden of excessive debts.

Therefore, it is further stressed, under the circumstances of PEs being economically inefficient and wasteful of resources, making significant demands on government resources as well as on domestic and foreign credit, and low profitability, the issue of privatizing PEs should be viewed with less emotion. And that the benefits of privatization should more than compensate for the loss of public sector ownership and control inherent in the narrow conception of privatization.

The benefits that can be associated with privatization include the following: reduction of financial and administrative burden of government as a result of SOEs' inefficiencies; increasing the availability of services; raising the quality of services provided and reducing the high cost of utilities, domestic manufacturing and services; reducing the spill-over effects of perennial inefficiencies of parastatals providing utilities; improving economic efficiency and performance in terms of productive and allocative efficiency; improvements in public finance through fiscal deficit reduction, and increase in taxes paid by profit-making enterprises; possible increased inflow of foreign direct investment with the attendant benefits of transfer of technology, management skills and technical assistance; ensuring the enthronement of popular capitalism; increasing the size and dynamism of the private sector; broadening and deepening the domestic capital market; introduction of new technology and techniques, and expansion of service more quickly to badly served areas; and developing a competitive industry which serves consumers well.

The Adam Smith Institute has documented the impressive benefits from utility liberalization in the United Kingdom as follows:

- a fall of 29% in real terms in prices charged by British Gas to domestic and small business consumers since equitization;
- a fall of 30 percent in British Gas' contract prices to industrial customers;
- a fall of 30 per cent in real terms in British telecom's main prices since equitization;
- British Gas has reduced by 50% the number of disconnections since equitization;
- now 95% of British Telecom's customer installations are completed within the time agreed by the customer;
- by 1993, 95% of payphones were working compared to 77% sixteen years previously and British Telecom provided nearly 45% more of them;
- since reform of the electricity industry in 1991 domestic prices have fallen by 9 per cent in real terms. Some businesses have had even larger reductions in price.

It is true that under the appropriate conditions and circumstances, privatization, if implemented right, is potentially a useful means of promoting growth and efficiency. And for it to yield the desired and satisfactory outcomes, certain prerequisites/conditions are imperative, among which are (Obadan, 2000: Chapter 4): appropriate policy environment, including a liberalized and competitive environment and regulatory framework, so that privatization does not yield the unsatisfactory outcome of a private monopoly replacing a public monopoly. Besides, the privatization programme would have to address issues of equity and interests of the poor, fear of foreign domination, transparency and accountability, labour matters, capacity for programme implementation, broad ownership of privatized assets, proper handling of privatization proceeds, privatization policy instruments, etc. Where a privatization programme

adequately takes care of these issues, the outcomes are less likely to be resented vehemently. Indeed, from a privatization programme, the benefit of better service and lower prices is what is of interest to many consumers who may not be bothered about economic philosophies of state ownership and private ownership. The presence of tangible benefits in a privatization programme tends to douse the fears of its opponents.

In the case of Nigeria, the dominance of PEs in the economy, like in many other developing countries has, over the years, constituted a significant drag on the overall economic growth rate. There is sufficient evidence that PEs in Nigeria have failed in the performance of their critical roles in the nation's economic development. The performances of the majority of the PEs have been dismal in terms of huge financial losses, poor customer service, and inability to meet demands. For the PEs in strategic economic sectors, such as the National Electric Power Authority (NEPA), Nigerian Telecommunications Limited (NITEL), Nigerian National Petroleum Corporation (NNPC), Nigerian Railways, Water Corporations, Nigerian Ports Authority, etc, customers and the general public have always been dissatisfied with the efficiency of these enterprises (NESG, 2002:31). The financial losses incurred by inefficient PEs imposed a huge budgetary burden on government treasury through non-payment of taxes, and requirement of subsidies to meet capital and recurrent costs, straining of the credit system and requirements of concessionaire interest rates on loans that were never serviced, diversion of borrowed foreign capital away from investment to covering operating losses.

Available data and estimates show that in 1998 Nigerian PEs enjoyed about ₦265 billion in the form of subsidized foreign exchange (59%), grant/subventions (13%), unremitted revenues (11%), loans/guarantees (6%), tax exemptions/arrears (6%) and import duty exemptions (5%). Besides, the activities of PEs were characterized by defective capital structures, poor management and mismanagement of funds and operations, high costs, lack of coverage, sporadic maintenance, corruption, misuse of monopoly power, and bureaucratic suffocation from supervising ministries and politicians. The inefficiencies of key parastatals providing utilities including NEPA, NITEL, and the national oil refineries, have led to decades of widespread losses of production and high cost of

doing business. The inefficiencies and monopolistic pricing of NITEL before the deregulation of the telecommunication sector, did not only undermine the efficiency of the Nigerian economy, but also hampered the development of information technology and related high-tech industries, despite Nigeria's large market and reservoir of educated labour (Enweze, 2001:5).

Thus, the majority of the PEs failed to live up to expectations, consumed a large proportion of national resources without providing the goods and services expected of them or not providing them in an efficient and effective manner. They served as platforms for political patronage and promotion of myopic political objectives to the detriment of the nation's long-term development. Besides, the PEs, rather than become an instrument for accelerated economic growth and development, cultivated an infrastructure for corruption, parasitism and rent-seeking for elites, and consumed an average of \$3.00 billion annually in subsidies from 1992-99 (el-Rufai, 2000:31). Under the circumstances, the question is asked as to the use of inefficient strategic economic enterprises that constitute a drag on economic growth through their contributions to huge production losses, high cost of doing business and uncompetitiveness of the Nigerian economy. The case for not privatizing in order to preserve strategic economic enterprises and national assets is thus seriously weakened (Obadan, 2003:9). It is pertinent to note that even opponents of privatization acknowledge the sustained poor performances and inefficiencies of the PEs and the "crisis of confidence" thus created. In this direction, Akeredolu-Ale (2002:17) has observed that:

*"even those who have serious reservations regarding the sale of public enterprises to so-called private investors continue to be disappointed at the deplorable performance of certain public enterprises, most notably NEPA and NITEL. Opponents of privatization are, therefore, in a very difficult position, between the benefits of privatization and the myriad of frustration and suffering which Nigeria's badly run and terribly inefficient state enterprises continuously inflict on the society... Even those of us who have always known that there was something sinister about Nigeria's*

*current privatization programme and those who have criticized the whole policy have been shamed by the ever-worsening performance of these enterprises. We are in a situation in which it is difficult to continue to oppose the policy of privatization rigidly without seeming unreasonable”.*

Thus, there is an obvious need to strike a balance between the need for efficiency through privatization and the redressing of concerns/fears about privatization. As Obadan (2000:32) has argued, most of the concerns are definitely not unfounded. Therefore, strategies and measures to deal with them must form an integral part of the privatization programme, in terms of appropriate policy and regulatory framework.

### **3. Significance of Strategy and Regulation**

In privatization, competition, like regulation, is of utmost importance for success. Indeed, the two may even be more important than ownership in determining economic performance. Efficiency gains are predicated on competitiveness. Where there is no competition, private enterprise may be able to reap substantial monopoly profits, leaving consumers worse off. In the case of utilities which exhibit features of natural monopoly, price inelasticity and huge sunken costs, for example, electric power, telecommunications, water, gas transportation and distribution, public transport (e.g. railways, highways), ports, etc, competition can be introduced, in the context of a redefined market, through the strategy of unbundling on geographic area or services category basis (horizontal unbundling) or through vertical unbundling by breaking public monopoly firms into components by stages of production, e.g. electric power where competition is introduced in generation and supply (purchase and sale of electricity), but monopoly is retained in transmission. In unbundling, the right to run a natural monopoly is made the object of competition by auctioning/awarding franchise or concessions to the private sector. These are methods of fostering competition among private sector providers in utilities or other privatized sectors. Franchising refers to authorizing the delivery of certain services in designated geographical areas. It is common in utilities and urban transport. At the start of the privatization, the government

sets the tariff, require and asks interested investors to bid for the franchise or concession to operate the enterprise for a given period. Competitive bids bring better bargains. Bids spur investors to dip their hands deeper into their pockets in the fear that their rivals may beat them to the deal. Bids also reduce the possibility of collusion, thereby enhancing the image of the government and the country as a whole. The investor who satisfies government's conditions is awarded the concession to operate the enterprise. At the end of the pre-established period, the process can be repeated again. This process of periodic competitive bidding for the concession compels the investor to exercise fiduciary responsibility over the asset (Otobo, 1998:25). Besides, horizontal unbundling allows competition by comparison whereby the regulatory agency is able to compare the performance, for example, of two monopolists operating the natural environment, and thus, reducing the information advantage of the monopolists. This, it is able to do by forcing each of the regulated operators to reveal much data on key areas of operation, which would be difficult to obtain from a single operator.

The United Kingdom has used the strategy of unbundling to restructure its electricity industry to have one transmission company (National Grid) which operates the high voltage transmission of power and many generation companies. As at 2000, under a liberalized and competitive generation environment, there were 40 companies (large and small) competing daily to generate electricity. Many of the new entrants are Independent Power Producers (IPPs). As a result of the unbundling of the industry in England and Wales, an electricity market (The Pool) was created. The major generators compete among themselves daily on hour basis to sell electricity to the Pool, from where the distribution companies buy their electricity. At the heart of the pool is the Pooling and Settlement Agreement (PSA), an arrangement that sets out the procedures for operation of the Pool. Members contribute to cover the administrative costs, based on volume traded (Odubiyi, 2000:25). The transmission company operates the high voltage transmission of power. It is charged with administering the pool and provides open access to new entrants. Apart from competition in the generation sector, the final consumers can choose their supplier either from their local supplier or other suppliers. The unique nature of the industry restructuring is that any company with an electricity supply can sell electricity anywhere in the country (Odubiyi, Ibid). Thus, in the light of

the U.K. experience, it is clear that unbundling of the electricity value delivery chain is feasible even in industry with traditional vertical integration. But then there must be adequate availability of generating capacity for a competitive power pool.

Perhaps, in the light of the experiences in other countries, NEPA is to be unbundled under the current privatization exercise. The basic premise of the unbundling strategy is to create eighteen new businesses/units. Consequently, there will be six Generation Companies (Gencos), an independent transmission company, and eleven Distribution/Marketing Companies (Discos). The objective is that each of these companies will become a commercially viable independent company. In the same vein, the critical sector reform initiatives for the Nigerian Gas Company Limited (NGC) includes the unbundling of the company by separating its gas transportation functions from its distribution and regulatory functions and establishing in its place a regulated gas transportation company.

In the privatization of infrastructure and services, including utilities, it is not just enough to sell off an inefficient state enterprise to private sector operators who may not care much about better delivery of essential public services like electric power, transportation, communications, water and sanitation, etc. In order for the consumers to have the benefits of better performance, and not just change of owners or management, something much more is required: regulation. One of the crucial components of a privatization programme should be the creation of a regulatory framework/regime that would promote contestable markets and protect public interest. An effective and efficient regulatory framework, in the form of rules, regulations or policies, including competitive policy, towards the sector, and an agency or mechanism for monitoring and enforcing compliance with the rules or policies, is important in many respects:

- It acts as a safeguard to public interest in privatization;
- It prevents abuse of market power by incumbent enterprises, especially in the utilities sector;
- It prevents a public monopoly from becoming a private monopoly through price or unbundling;

- It can steer newly privatized enterprises to deliver quality and competitive goods;
- It provides a level playing field for new entrants and deals with information asymmetry; and
- It can ensure that the owners of privatized enterprises do not trample upon the rights of workers.

Thus, for privatization to succeed in a liberalized environment, a country needs to redefine the rules of the game and create strong independent regulatory agencies. Such agencies must not only be independent, they must also build effective regulatory capacities, and enforce regulatory policies and measures conscientiously in a competent and impartial manner. Essentially, the utility regulator must move away from acting like a player towards a role of neutral referee. It should, in addition, do the following:

- work for consumers by trying to provide an open and fair market that is independent of the dominant operator;
- exist to ensure fair play between the operators and end users;
- arbitrate inter-operator disputes;
- punish operators trying to take an unfair advantage;
- interfere as little as possible in the running of services to avoid red tape and delay;
- define measures of output, not process, for example, service quality and access ratios; and
- enforce policy objectives that are for the general good of the country and not necessarily of the owners or operators of utility services, for example, standards enforcement and universal service obligations.

Nigeria's first-round privatization, 1988-93, was characterized by weak regulation. The Utilities Charges Commission (UCC) was to regulate user charges of commercialized PEs with a view to expanding output, ensuring greater capacity utilization, and the reduction of the rate of inflation in the country. The Commission was hardly able to achieve these through tariff regulation as most PEs tended to raise tariffs without the required consultation with the Commission, but only to inform it thereafter. Consequently, arbitrary tariff hikes were very rampant among PEs, while the Commission

looked on helplessly. And as the regulatory body did not live up to expectations in aligning tariffs with the quality of PEs' products/services, commercialized enterprises providing utilities had ample opportunities to extort consumers through monopoly pricing. And as Obadan (2000:40) had recommended for the current privatization exercise, a Monopoly and Mergers Commission needs to be established to deal with anti-competition practices of enterprises, particularly as in the absence of effective regulation, private capital, when left alone, can wreck havoc on the economy and society.

#### **4. The Privatization of Utilities: The Journey So Far**

##### *4.1 First Round Privatization/Commercialization Programme:*

The first round of Nigeria's public enterprises reform which began in 1988 was a comprehensive one entailing both privatization and commercialization of PEs. This was reflected in the Commercialization and Privatization Decree No. 25 of October, 1988. Commercialization, in the Decree which applied to most public utilities was to take the form of full commercialization or partial commercialization. To this end, all PEs which possessed high potentials for effective operation (productivity, profitability and efficiency) were to be commercialized with government divesting its equity to a maximum of 40 per cent. For effectiveness, there were to be public evaluation committees to monitor the affected enterprises' activities and evaluate their performances for reward or penalty. PEs which did not fall into the above category and did not get involved in the production of social services or utilities were to be privatized. Thirty-five PEs were to be either partially or fully commercialized.

Some of the utilities in which the government was to retain a maximum of 40 per cent share after privatization are as follows:

- National Electric Power Authority
- Refineries
- Pipelines Product and Marketing Company Limited
- Nigerian Gas Company Limited
- Nigerian Telecommunications Plc

- Nigerian Mobile Telecommunications Ltd
- Federal Airports Authority of Nigeria

As at 1993 when the first round privatization was terminated, there was no divestment of government interests in any of the utilities. However, there were actions in the direction of commercializing them, in terms of reorganizing the enterprises toward improving efficiency and achieving profitability, hence resulting in less dependence on government for funding. The Technical Committee on Privatization and Commercialization (TCPC) prepared a comprehensive framework for commercialization applicable to PEs in Nigeria and specific reform packages for 30 out of the 35 affected enterprises. The ones not done were the uncompleted projects in the steel industry. Commercialized enterprises were to have powers to fix rates, prices and charges for goods and services rendered. A crucial element of the commercialization programme is the Performance Agreement or Contract which is designed to govern the relationship between the government and the commercialization of PEs under it. The introduction of the Performance Agreement was a revolutionary measure aimed at ensuring that PEs, particularly the utilities, perform their supportive roles to the rest of the economy (Zayaad, 1999:22). Under the system of Performance Agreement, managerial autonomy at the enterprise level was enhanced and accountability promoted.

The commercialization policy resulted in some notable impacts, one of which is the withdrawal of subventions to some commercialized enterprises. This meant considerable savings to the government and it was expected that by the time the programme was fully in place, the total savings on annual subventions alone would exceed ₦50 billion. However, while some PEs like NITEL and the Nigerian Ports Authority stopped receiving direct cash funding from the annual budget, other transfers in the form of hidden subsidies, import duty waivers and tax deferrals continued. And very importantly, the performance of most of the affected public utilities in the sphere of quantum and quality of services still left much to be desired. Indeed, the commercialization component of the PEs reform did not achieve the same level of success as privatization; it was a huge failure. Commercialized utilities, especially in the power and communications sectors,

failed to provide efficient and reliable services. Treasury dependence remained and within a few years their outputs deteriorated to the point of near collapse (Obadan, 2003b:13). The poor performance derived from the following, among others:

- failure to entrench operational autonomy in the relationship of the commercialized PEs and the supervising ministries, such that official interference was continuously seen as limiting effectiveness;
- continuation of the culture of poor management and corruption; and
- absence of an effective supervisory system encouraged inefficiencies and reckless pricing of goods and services by commercialized PEs (Obadan, 2003b:14).

#### 4.2 *Second Round Privatization/Commercialization Programme:*

After about five years of suspension, the privatization programme resumed effectively in November, 1999 with the scheduling of enterprises for privatization in three phases. Phase III of the second round programme comprises the privatization of major enterprises including utilities, in the monopoly sector of the economy. These enterprises which require major pre-divestiture sector reform include NEPA, NITEL, the Ports, the NNPC and its subsidiaries. In order to accelerate the privatization of NITEL it was brought forward to Phase II from Phase III. But this appears not to have helped much as the privatization of NITEL is yet to be concluded.

The implementation of Phase III of the privatization programme is on a rather slow course as sector reform and restructuring is required, prior to or side-by-side with the divestiture transaction. In the monopoly sectors like electric power and telecommunications, sector reforms are undertaken in a logical sequence as follows:

- Policy formulation or review;
- Legal/regulatory framework design;

- Restructuring and liberalization; and
- Privatization transaction.

The sectors – power, telecoms, ports, and oil and gas - are at various stages of reforms. The reform actions taken so far are highlighted as follows:

(a) *Power:*

- (i) Objectives defined for the power sector reform;
- (ii) A power policy was approved by the Federal Executive Council on March 28, 2001;
- (iii) A draft Electric Power Sector Reform Bill was approved by the Federal Executive Council and submitted to the National Assembly for enactment in September 2001. The passage of the Bill (not passed as at September, 2004) is said to be paramount to the establishment of a transparent power sector in Nigeria. The Bill creates a sector regulator, Nigerian Electricity Regulatory Commission responsible for tariff regulation, and economic and technical regulation of the electricity supply industry; and
- (iv) Approval, on August 26th, 2002 by the National Council on Privatization, of the implementation of the blueprint for the restructuring of NEPA. The restructuring entailing unbundling of NEPA, will involve the creation of six Generation Companies (Gencos); an independent Transmission Company; and eleven Distribution/Marketing Companies (Discos) matching NEPA's existing zonal structure, with the exception that the high demand and revenue – yielding Lagos zone will be restructured into two separate companies. The establishment of these companies will be followed later by divestiture of the Federal Government's interests in the Discos followed by the Gencos. The BPE is currently considering a post-restructuring strategy of putting management contracts in place in some of the new companies. Also, it is said to be working hand in hand

with both the Ministry of Power and Steel and NEPA towards the implementation of the restructuring blueprint.

As it were, the outstanding activities are still many, including the passage of the Power Bill; restructuring of NEPA; establishment of the National Electricity Regulatory Commission and a Special Purpose Entity (to hold and pay off NEPA's major financial and trading liabilities); development of the Rural Energy Policy; finalization of the Transition Market Rules; and privatization of the individual power companies.

*(b) Telecommunications Sector*

The reform actions in this sector to date include the following:

- (i) Implementation of a new National Telecom Policy. It was this policy that created the enabling environment for the current telecom revolution in the country – the dynamic private sector – driven GSM revolution;
- (ii) Preparation of a draft Telecommunications Bill. The Bill was submitted to the National Assembly in the third quarter of 2001 and is still awaiting final passage;
- (iii) Steps taken on the privatization of NITEL include consideration of bid proposals received from three potential core investors for a 51 per cent equity stake in the company. The investors and their bids are as follows:
  - Investors International (London) Limited (IILL) (US \$1.317 billion);
  - Newtel Limited Consortium (US \$1.072 billion); and
  - Telnet Nigeria Limited Consortium (US \$1.310 billion).

The preferred bidder was declared to be IILL which paid 10% of its bid price on 12th December 2001 but failed to pay the remaining 90% as required by the deadline of 12th February 2002. IILL consequently lost its deposit and the Reserve Bidder, Telnet Nigeria Limited, was invited for negotiations. It later declined to take up the offer;

- (iv) As a result of the inconclusiveness of the core investor sale transaction for NITEL, the Federal Government decided to introduce private management contract into the company. Pentascope International Limited of Netherlands was selected out of nine short-listed bidders as the management contractor. The management contract was signed on March 18, 2003 and the company assumed full responsibility of NITEL on April 28, 2003. The management contract is for a period of 3 years. So far, there has been no discernible improvement in the services provided by NITEL;
- (v) On September 27, 2004, the BPE published in the Guardian Newspaper an Invitation to Strategic Investors for Expression of Interest in acquisition of 51% equity stake in NITEL limited; and
- (vi) Receipt of approval from the National Council on Privatization for the initial public offer of a portion of the Federal Government's shares in NITEL. The Secretariat had anticipated opening the public offer by May, 2003, having signed the contract with management contractor in March, 2003. However, a revised timeline envisaged that the offer would open in June 2004.

*(c) Oil and Gas Sector:*

The Federal Government is said to have assigned very high priority to the petroleum sector renewal and reform. The reform initiatives so far include:

- (i) Establishment of the Oil and Gas Sector Implementation Committee with six sub-committees. They have each submitted reports, which would provide the framework for a new policy;
- (ii) Scheduling of the fully-owned subsidiaries of NNPC for privatization:
  - Four refineries located in Port Harcourt, Warri and Kaduna;

- Petroleum and Pipelines Marketing Company Limited;
  - Nigerian Gas Company; and
  - Eleme Petrochemicals Company Limited.
- and
- (iii) Setting of the reform agenda entailing:
- Market liberalization;
  - Policy review and formulation;
  - Review of legal and regulatory framework; and
  - Privatization.

What is clear in this case is that apart from declaring the petroleum market liberalized/deregulated and setting of objectives, not much has been accomplished.

*(d) Ports:*

The actions taken on ports reform and privatization include the following:

- (i) Proposal, by the BPE and the Transport Sector Reform Implementation Committee (TSRC), of a programme for the reform and privatization of the ports sector. The proposal entails, among others: formulation and implementation of a new Transport Policy for Nigeria; establishment of an appropriate legal and regulatory framework; creation of a regulator for the sector; restructuring the Nigerian Ports Authority (NPA); and the issuance of concessions for ports services and operations to private sector operators;
- (ii) Appointment, in December 2003, of privatization advisers – CPCS Transcom Consortium. They have submitted progress reports; and
- (iii) Appointment of Rosabel Advertising Limited as short-term Marketing/Communications Adviser. The company which commenced its assignment in January, 2003 has submitted two reports: the Inception Report and Draft Marketing Concept.

Again, as in the case of oil and gas, only preliminary actions have been taken on ports sector reform and privatization.

### *4.3 Challenges*

The privatization of public utilities appears to be rather slow, and so consumers will still have to wait quite a while before they have access to efficient and effective services of the type provided elsewhere. And so, there is the challenge of moving the process forward in a satisfactory manner. One militating factor that straddles across the reform efforts so far is the slow process of legal reform. Several enterprises in the non-competitive sectors, especially those providing utilities, require sector reforms entailing new policies and legislation to ensure a fair, competitive and level-playing field for all investors, and also to protect consumers. But the process of enacting new privatization laws by the National Assembly has been slow and unhelpful, such that some reform bills submitted for upwards of three years have not been passed. The National Assembly has a crucial responsibility to facilitate the privatization process. The Bureau of Public Enterprises has complained of Nigeria's poor investment climate as a major challenge. The situation has been such that the response from investors to requests for expressions of interest has been rather poor in many instances and the Bureau has had to readvertise. This factor may also be remotely at work in the situation where by some preferred bidders develop cold feet at the point of payment for their bids, and so decline to meet the payment terms. It may be recalled that the NITEL transaction could not be financially closed because the selected preferred bidder could not meet the payment deadline while the reserved bidder declined to take up the offer, and so the deal failed. Besides, there is the challenge posed by opposition from notable stakeholders to the privatization activities. Not only are there concerns relating to labour problems, there are also issues relating to inadequate participation of low-income earners in the programme and allegations of inequity and unfairness in the transactions. These need to be properly looked into and redressed.

## 5. Conclusions

This paper has reviewed the privatization of public utilities in Nigeria and argued strongly in favour of the exercise, especially against the backdrop of the dismal performance of the enterprises – huge financial losses, poor customer service, and inability to meet demands. The inefficiencies of key parastatals providing utilities including NEPA, NITEL, and the national oil refineries, have led to decades of widespread losses of production and high cost of doing business, and undermined the efficiency of the Nigerian economy. However, privatization qua privatization is not what is desired. In other words, the privatization of public utilities must bring forth the benefits of better service at lower prices. And this is what is of interest to consumers. For privatization to yield significant benefits, it must be accompanied by other measures which promote market efficiency: unbundling and liberalization measures designed to foster competition and create an enabling environment for private investment. Competition is key in the privatization process as the replacement of public monopoly by private monopoly will not yield efficiency gains. And regulation is indispensable. If the regulatory framework is inadequate, there is the danger that monopoly situations will persist, profits would be at the expense of the consumers while the desired level of market efficiency may not materialize. The result would be that the privatization of public monopolies like NITEL and NEPA will simply create highly profitable, but economically inefficient private enterprises. And so, the extent to which privatized public utilities like NEPA, NITEL and NIPOST will be more efficient than before would depend on the effectiveness of the regulatory framework.

In carrying on with the current privatization exercise for public utilities, best practices elsewhere should continue to guide the process as the strategy for NEPA suggests. A well-thought through and implemented utilities liberalization yields substantial benefits to consumers – lower prices, greater availability and higher quality service – as the UK experience has shown. Finally, the privatization of public utilities in Nigeria has been on the rather slow lane, perhaps because of the pre-divestiture sector reforms required. But the National Assembly needs to assist the process through much greater commitment than before and give priority consideration to the enactment of privatization-related Bills.

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