

Interview: 19 August, 2021

Theme: Privatisation/Commercialisation of Governmental Parastatals:

Questions

What is the BPE and why was it introduced?

- ✓ Historical and economic context
- To appreciate the exact status of the Bureau of Public Enterprises (BPE), we have to go back to 1981. In Nigeria, the Report of the **Presidential Commission on Parastatals (Onosode Commission)** set up in 1981 under the Shehu Shagari Administration revealed that public enterprises were characterized by misuse of monopoly power, defective capital structure, mismanagement, corruption and nepotism. Consequently, the Commission recommended that there should be an increased role for the private sector especially in parastatals where security and other sensitive aspect of public policy are not as paramount as the satisfactory delivery of service to the people.
- Similarly, the **International Monetary Fund (IMF)**, in considering the request by the Federal Government for a loan under Shagari's Administration imposed certain conditionalities. **One of them was the divestiture of ownership, management and control of some public enterprises.**
- The debate on whether Nigeria should embark on privatization resonated throughout the regime of Buhari/Idiagbon until General Babangida in his 1986 Budget Speech announced government's intention to divest its holdings in certain key sectors of the economy and subsequently promulgated the Privatization and Commercialization Act No. 25 of 1988 and introduced the Structural Adjustment Programme (SAP). This Act was the first legislative instrument on privatization and commercialization in Nigeria. Under this enactment, we had the Technical Committee on Privatization and Commercialisation (TCPC) that is the precursor of the Bureau of Public Enterprises (BPE).
- In 1993, this enactment was repealed and the Bureau of Public Enterprises Act was promulgated under the Abacha Administration.

- Not much was achieved by this enactment until the Public Enterprises (Privatization and Commercialization) Act was promulgated in 1999 ('the Privatization Act'). Under the Privatization Act, the National Council on Privatization (NCP) and BPE were established. The BPE is the Secretariat of the NCP.

✓ Core objectives

The definition of the core objectives of privatization is not an easy task and it is made no easier by the multiplicity of possible objectives and stakeholders with different, often conflicting interests.

The objectives can be discussed under various heads including:

Efficiency and Development of the Economy

In emerging economies, the key objectives are the creation of a market economy, encouragement of private enterprises and expansion of the private sector in general. Others are the promotion of macroeconomic or sectoral efficiency and competitiveness, elimination of rigidities, promotion of competition particularly by abolishing monopolies, development of efficient capital markets, improvement of access to foreign markets for domestic products, promotion of foreign investment, promotion of domestic investment and maintenance or creation of employment.

The whole concept of core investor sale introduced in the third phase of the privatization programme was aimed at the promotion of macroeconomic or sectoral efficiency and competitiveness.

Efficiency and Development of the Enterprise

It is assumed that because public enterprises are funded wholly or partly by government and also run by government they are run inefficiently. Consequently, in terms of public enterprises, privatization will introduce new technologies and promote innovation while the private investors will upgrade plant and equipment, increase productivity, including utilization of industrial plant, improve the quality of the goods and services produced, introduce new management methods and teams and allow the enterprise to enter into domestic and international alliances essential to its survival.

Budgetary and Financial Improvements

In Nigeria, a conservative estimate shows that between 1975 and 1995, \$100 billion was spent on public enterprises and that the funding of these enterprises has been a drain on the treasury. In the words of President Obasanjo, **'It is conservatively estimated that the nation may have lost about USD800 million dollars due to unreliable power supply by NEPA and another USD4000 million through inadequate and inefficient fuel distribution.'**

Thus, the objectives of privatization in this regard include the reduction of the financial drain on the state in the form of subsidies, unpaid taxes, loan arrears and guarantees given, mobilization of private resources to finance investments that can no longer be funded from public finances, generation of new sources of tax revenue, limitation of the future risk of demands on the budget inherent in state ownership of businesses, including the need to provide capital for their expansion or to rescue them if they are in financial crisis.

A cursory examination of the appropriations made between 1970 and 1999 and 1999 till date will show that no appropriations were made to the public enterprises listed for privatization.

Instead the proceeds of sale were paid to the government treasury for the purpose of appropriation. Similarly, the \$500 million paid by Transcorp for 51% of Nigerian Telecommunications Limited (NITEL) shares was insufficient to cover the staff benefits.

Income Distribution or Re-Distribution

Before the privatization programme, share ownership was limited and in very few hands. Besides, government owned and operated the 'commanding heights' of economy. **Privatization is seen as fostering broader capital ownership and promotion of popular or mass capitalism.** It also provides avenues for the development of a **national middle class**, foster the economic development of a particular group, encourage employee ownership, and restore full rights to former owners of property expropriated by previous regimes.

In Nigeria, this objective was actualised in the first phase of the privatisation Programme through the sale of shares of the privatized companies.

Political Considerations

Although, maximizing economic efficiency and return on investment is usually the main objective of a privatization programme, in practice other considerations of a socio-political nature also influence the choices of the authorities. In the midst

of tension between the conflicting objectives, other political considerations include the reduction of the size and scope of the public sector or its share in economic activity and re-definition of the field of activity of the public sector, abandoning production tasks and focusing on the core of government functions, including the creation of an environment favourable to private economic activity. **Other political considerations include the reduction of the opportunities for corruption and misuse of public property by government officials and SOE managers, reduction of the grip of a particular group on the economic and raising the government's popularity and its likelihood of being returned to power in the next elections.**

In practice, the multiplicity and sometimes mutually incompatible nature of the objectives make it essential to rank them. The more objectives there are, the more complex the entire privatization process. (eg the power sector reform - high purchase price, low investment).

As will be shown shortly, the reform activities carried out by the National Council on Privatization/Bureau of Public Enterprises are aimed at restricting the role of government to regulation and creation of institutions while the private sector runs the enterprises as can be seen in the ports in Nigeria.

Other Challenges

Other than the objectives, there are other challenges including:

Constitutional

The question often asked is whether privatization is constitutional given the provisions of section 16 of the Constitution of the Federal Republic of Nigeria, 1999, as amended dealing with economic objectives and whether the provisions of the Act are not inconsistent with the Constitution? When the provisions of section 16 of the Constitution are read with the provisions of all enactments on privatization and commercialization and other relevant enactments dealing with the review of the ownership structure and control of business enterprises operating in the country, it becomes clear that the ultimate goal of privatization includes the actualization of the economic objectives in the Constitution.

Do we need a law on privatization?

This varies from country to country but in Nigeria, we have the Act. **In countries like the UK, Australia, Malaysia and New Zealand, there is no enabling legislation.** In such systems, it is generally considered that in the absence of

explicit prohibition, the government possesses inherent power to privatize public assets and enterprises without the need for special legislative authorization.

Legal Status of the SOEs

The legal status of SOEs to be privatized varies greatly and affects the choice of privatization techniques. For example, it is easier to privatize SOEs established under the provisions of the Companies and Allied Matters Act (CAMA) and listed in the Stock Exchange than those established by statute. That was why it was easier to privatize (or attempt to privatize) NITEL than NEPA or the Ports and Railways. Indeed, in the first phase of the privatization programme, almost all the enterprises were limited liability companies. This can be contrasted with the third phase dealing with the industrial sectors.

Purpose of Governance

The other challenge is 'what is the purpose of governance'? It is argued that under the social contract theory of Locke and Rousseau, it is the duty of government to provide **public goods** and, therefore, such public goods should not be privatized. **Originally some of the public goods exhibited natural monopolies and the initial capital outlay was high. It was thought that they were best provided by government.** However, with information technology and the knowledge and resources available to the private sector, this argument is being faulted.

Valuation Methods

When a public enterprise is to be privatized whether by share sale or asset sale, the critical question is what valuation method should be adopted. **Should it be the historical cost, book value, replacement cost, discounted cash flow and a combination of some of all? Empirically, even when a method is adopted, different valuers may give different values.**

Whatever method is adopted, the value of a public enterprise is what a prudent buyer is willing to pay for it despite the seller's valuation methods.(eg ALSCON).

Transaction Cost

Before a public enterprise is taken to the point of sale and there is completion and proceeds received, costs are incurred. Transaction Advisers - legal, technical, financial and management are usually engaged. The privatization agency, the Bureau of Public Enterprises (BPE), incur other costs including enterprise visit, due diligence, and data room exercise. Unfortunately, in the Nigerian experience, there was no budgetary allocation for the purpose of privatizing any public enterprise and

privatization proceeds was to be paid into Privatization Proceeds Account at the Central Bank of Nigeria. So does 'proceeds' refer to gross or net proceeds?

Stakeholders

Worldwide, privatization is unpopular. The concept itself is emotive and controversial essentially because it means several things to several stakeholders. The issue is how to reconcile the competing interests at play. The stakeholders include the Federal Government, President of the Federal Republic of Nigeria, the Vice-President who is also the Chairman of the National Council on Privatization (NCP), other members of the NCP especially the Minister of Finance and the supervising Minister of the public enterprise to be privatized, the Managing Director of the public enterprise, the unions, the workers, the pensioners, the Nigerian public and the Development Partners.

Strategic/Core Investor

Section 33 of the Privatization Act defines a 'strategic investor' as a reputable core investor or group of investors having the requisite technical expertise, managerial experience and the financial capacity to effectively contribute to the management of the enterprises to be privatized. All the stakeholders are interested in who emerges as the core investor. In such circumstances, should the focus be on technical or managerial or financial giving the conflicting objectives of privatization?

Privatization Methods

Privatization methods include share sale or core investor sale, asset sale, management contract, public offer, private placement, leases, auctions, concession, sale by share issue, debt-equity swap, management/employee buy out and guided liquidation. How do you determine the best method for a particular public enterprise?

The Post Acquisition Plan (PAP)

In the third phase of the privatization programme, all core investor sales were accompanied by a Post Acquisition Plan (PAP). The challenge posed by this arrangement is if the investor pays too high for the public enterprise so as to increase the revenue to the treasury, there may be no funds for rehabilitating the public enterprise. What should be the proper policy of government - pay very high purchase price and forget about revamping the sector or pay low and have funds to turn around the public enterprise?

Lastly, there is the fear of creating private monopolies from public monopolies and hence the need for a competition regime.

How does the BPE fit into the commercial story of Nigeria:

- ✓ The economic responsibilities of the government as stated in the constitution. Section 13 of the Constitution provides **that it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution (ss 14-24). Is this chapter justiciable?**

See Centre for Oil Pollution Watch v NNPC (2019) 5 NWLR (Pt 1666) 518 at 568 where the Supreme Court held that the non-justiciability of section 6(6)(c) is neither total nor sacrosanct. In other words, Chapter 2 of the Constitution, standing alone is non-justiciable. However when read with other provisions of the Constitution, it is justiciable. The argument is that the subsection gives a leeway by the use of the words 'except as otherwise provided by this Constitution'. This means that if the Constitution otherwise provides in another section, which makes a section or sections of Chapter 2 justiciable, it will be so interpreted by the courts.

Section 16 provides thus

- (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 sector of the economy,

protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

(2) The State shall direct its policy towards ensuring:

(a) the promotion of a planned and balanced economic development;

(b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;

(c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and

(d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

(3) A body shall be set up by an Act of the National Assembly which shall have power;

(a) to review, from time to time, the ownership and control of business enterprises operating in Nigeria and make recommendations to the President on same; and

(b) to administer any law for the regulation of the ownership and control of such enterprises.

(4) For the purposes of subsection (1) of this section -

(a) the reference to the "major sectors of the economy" shall be construed as a reference to such economic activities as may, from time to time, be declared by a resolution of each House of the National Assembly to be managed and operated exclusively by the Government of the Federation, and until a resolution to the contrary is made by the National Assembly, economic activities being operated exclusively by the Government of the Federation on the date immediately preceding the day when this section comes into force, whether directly or through the agencies of a statutory or other corporation or company, shall be deemed to be major sectors of the economy;

(b) "economic activities" includes activities directly concerned with the production, distribution and exchange of wealth or of goods and services; and

(c) "participate" includes the rendering of services and supplying of goods.

✓ Successive economic plans of government.

- **Note: In the First Republic, we had the National Development Plans. Indeed the Delta Steel Company, National Iron Ore Mining Company Limited and Ajaokuta Steel Company Limited are products of the Third National Development Plans (1975-1980) and the provisions of the National Steel Development Authority Act of 1971 and 1979.**
- Other than the Privatization Act, the government has adopted several other instruments.
- From 2003 to 2007, Nigeria attempted to implement an economic reform program called the **National Economic Empowerment Development Strategy (NEEDS)**. The purpose of the NEEDS was to raise the country's standard of living through a variety of reforms, including macroeconomic stability, deregulation, liberalization, privatization, transparency, and accountability. The NEEDS addressed basic deficiencies, such as the lack of freshwater for household use and irrigation, unreliable power supplies, decaying infrastructure, impediments to private enterprise, and corruption. The government hoped that the NEEDS would create 7 million new jobs, diversify the economy, boost non-energy exports, increase industrial capacity utilization, and improve agricultural productivity.
- A related initiative on the state level is the **State Economic Empowerment Development Strategy (SEEDS)**.
- In the area of PPP transactions, the main instrument at the federal level is the **Infrastructure Concession Regulatory Commission Act of 2005**. The Commission established under this enactment has published a **National Policy on PPP**.
- In 2005, the FGN launched **Vision 20:2020** - The Vision aimed to **minimise corruption by creating wealth and employment opportunities; reducing poverty and ensuring the social security of Nigerians so that by the year 2020, Nigeria would be among the largest 20 economies in the world.**

- In March 2015, the **National Integrated Infrastructure Master Plan** was launched. It was a policy document for accelerated infrastructure development. **It was estimated that a total investment of N3.0 trillion would be required in the next 30 years to build and maintain infrastructure for Nigeria.** It sets out the framework for raising Nigeria's infrastructure stock from 20-25 per cent of GDP to at least 70 per cent by 2043. It provides the strategies, targets and priority projects as well as total investment outlay for the first five years and scheduled timelines for deliverables.
- In April 2017, the Federal Government of Nigeria launched the **Economic Recovery and Growth Plan (ERGP) - 2017-2020.** The ERGP is a medium term plan built on the **Strategic Implementation Plan (SIP)** for the 2016 Budget of Change. The ERGP has been developed for the purpose of restoring economic growth while leveraging on the ingenuity and resilience of the Nigerian people. **One of the objectives of the ERGP is the privatization of selected public enterprises and assets and building on the National Industrial Revolution Plan and the Nigeria Integrated Infrastructure Master Plan.** It is also expected that the ERGP will leverage the power of the private sector.
- In response to COVID-19, we have the **Economic Sustainability Plan 2020,** a short term plan aimed at developing a clear Sustainable Plan in response to the COVID-19 pandemic, propose monetary policy measures, provide monetary/fiscal Stimulus Package, etc.

What do privatisation and commercialisation mean?

- ✓ What does each process entail?
 - The restructuring of public enterprises or state owned enterprises (SOEs) or economic sectors raises **constitutional, legal, strategic, emotional, institutional and economic issues and challenges.** Such restructuring can take the form of **privatization, commercialization or any other form of public-private partnership (PPP).**
 - **The word 'privatization' is a concept as well as a process.** As a concept, it is not only emotive but controversial. As a process, the methods adopted vary from sector to sector, country to country and in Nigeria, from one phase to another. It also has both a narrow and broad meaning. Yet at another level, it can mean the privatization of a sector or the entire economy. **Sometimes the level of irreversibility of the privatization transaction is critical in determining its classification.**

- As a concept it is the process of transferring ownership and sometimes control of a business, an enterprise, an agency, a sector or public enterprise from the public sector to the private sector. Some transfers will involve the introduction of private entry, often by the abolition of monopolies or barriers to entry and the introduction of competition.
- In a narrow sense, privatization implies permanent transfer of control from the public sector to the private sector.
- **Broadly, privatization involves all forms of public-private partnership (PPP) where measures are adopted for the transfer from the public sector to the private sector of activities exercised until then by a public authority.** It is in this broad category that we have sub-contracting, management contracts, lease and concessions.
- **As a process, privatization describes the sequencing of transactions and the methods of sale.** For example, how do you determine the public enterprise or sector to be privatized? Second, how do you determine the strategy to be adopted in privatizing a public enterprise? Third, how do you attract investors-local or international? Fourth, how do you determine whether it is full or partial privatization? Fifth, how do you carry out due diligence on the enterprise? Sixth, who and how will the transaction documents (Advertisement for Expression of Interest, Information Memorandum, Non-Disclosure Agreement, Request for Proposals, Share Sale/Purchase Agreement, Asset Sale Agreement, Shareholders Agreement, Concession Agreement and Management Contract) be prepared. Seventh, who is the approving authority and what administrative structures will you create?
- **The failure to appreciate privatization as a process led to the misunderstanding of the sale of ALSCON to RUSAL as against BFIG. This sale is not an auction sale but share and purchase of shares under certain conditions.**
- According to the provisions of section 14 of the Privatization and Commercialization Act, 'commercialization' means the reorganization of enterprises wholly or partly owned by the Federal Government in which such commercialized enterprises shall operate as profit-making commercial ventures and without subventions from the

Federal Government. Although the Privatization Act did not define 'commercialization', section 8 of the Act provides thus:

Notwithstanding the provisions of any other enactment and without prejudice to the generality of section 6 of this Act, a commercialized enterprise shall **operate as a purely commercial enterprise and may, subject to the general regulatory power of the Government of the Federation**

(a) fix the rates, prices and charges for goods and services it provides;

(b) capitalize its assets;

(c) borrow money and issue debenture stocks; and

(d) sue and be sued in its corporate name.

- It is clear, therefore, that when a public enterprise is fully commercialized, the expectation is that it should operate as a purely commercial enterprise without subventions from the Federal Government.

✓ **What were the frameworks for privatisation and commercialisation?**

Other than the enactments, that is the Privatization and Commercialization Act, 1988, BPE Act, 2003 and the Public Enterprises (Privatization & Commercialization) Act, 1999, BPE produced a Privatization Manual to guide every transaction.

While sections 1 and 2 of the Privatization Act provides for 'privatization', section 6 provides for 'commercialization' as follows:

1. (1) The enterprises listed in Part I of the First Schedule to this Act shall be partially privatised in accordance with the provisions of this Act.

(2) The enterprises listed in Part II of the First Schedule to this Act shall be fully privatised in accordance with the provisions of this Act.

(3) The National Council on Privatisation (in this Act referred to as "the Council") established under section 8 of this Act may, from time to time, by order published in the Gazette alter, add, delete, or amend the provisions of the First Schedule to this Act.

2. (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.

[...]

6. (1) The enterprises listed in Part I of the Second Schedule to this Act shall be partially commercialised in accordance with the provisions of this Act.

(2) The enterprises listed in Part II of the Second Schedule to this Act shall be fully commercialised in accordance with the provisions of this Act.

(3) The Council may, from time to time, by order published in the Gazette amend the Second Schedule to this Act so as to alter the category to which any enterprise listed in that Schedule shall be classified.

- ✓ Which sectors and governmental parastatals were privatised/commercialised by the BPE?
- Section 33 of the Privatization Act defines a 'public enterprise' as any corporation, board, company or parastatal established by or under any enactment in which the Government of the Federation, a Ministry or extra Ministerial department or agency has ownership, or equity interest and includes a partnership, joint venture or any other form of business arrangement or organization. **This definition captures most of the candidates for either privatization/commercialization or PPP transactions.**
- The Privatization Act has two Schedules with two parts each - Sche I - Privatization [Partial & Full] and Sch II - Commercialization [Partial & Full].
- The Sectors -
 - **Telecommunications Sector** - NITEL, Nigeria Mobil Telecoms Ltd
 - **Electricity Sector** - NEPA

- **Petroleum Sector** - The two Refineries in PH, Petrochemicals in Kaduna, Warri, EPCL, NNDC, etc
 - **Fertilizer Companies** - Federal Superphosphate Fertilizer Company Ltd, National Fertilizer Company Nigeria Ltd,
 - **Gas** - NGC
 - **Steel and Aluminium** - Steel Rolling Mills in Jos, Katsina, Oshogbo, ASCL, DSC, ALSCON
 - **Mining & Solid Minerals** - Nigeria Coal Corporation, Nigerian Mining Corporation, NIOMCO
 - **Media Companies** - DTN, NNN Ltd
 - **Insurance Companies** - NICON and Nigeria Re
 - **Transport & Aviation Companies** - FAAN, Nigerdock Limited, and NAL
 - **Paper Companies** - Nigerian National Paper Manufacturing Company Ltd, Iwopin, Nigerian Newsprint Manufacturing Coy Ltd - Oku Ibokun, Nigeria Paper Mills Ltd
 - **Sugar Companies** - Sunti, Lafiaji, Nigeria, Bacita
 - **Cement Companies** - Ashaka, Benue, Northern Nigeria, Nigeria Cement, Nkalagu, Calabar Cement, West African Portland Cement
 - **Commercial Banks** - Afribank, Assurance Bank,
 - **Motor Vehicle and Truck Assembly Plants** - ANAMCO, Leyland, PAN, Volks, Steyr
 - **Hotels** - Nigeria Hotels Limited, FESTAC 77 Plc
 - **River Basin Development Authorities** in Cross River, Lower Benue, Nigeria, Ogun-Osun, etc
 - **National Parks** in Old Oyo, Yankari, Cross River, etc
 - **Miscellaneous** - NIWA, NRC, NPA, International Trade Fair Complex,
- ✓ Some parastatals could not be privatised because they were insolvent. What method did the BPE create to divest the government of these enterprises?
- As a result of huge debt overhang, we developed the concept of guided liquidation - a combination of the provisions of CAMA and Privatization Methods.
 - Section 2(3) of the Act provides that where the shares of an enterprise are not to be offered for sale by public issue of shares or private placement, **the NCP may approve that the shares be offered for sale through a willing seller and willing buyer basis or through any other means.** Thus NCP has adopted 'guided liquidation' as a mode of privatization and one of the 'other means'. This decision was taken after giving due consideration to the powers of the liquidator under CAMA.

- Guided liquidation' is a process whereby the normal liquidation process as provided in CAMA and the Companies Winding Up Rules 2001 are integrated into the bidding processes of BPE. The bidding processes of BPE are in conformity with international best practices. The processes ensure that whoever emerges, as a core investor is technically, financially and managerially competent. Thus instead of selling the assets of the enterprise in parts as a liquidator is wont to do, the sale should be to a core investor who would be able to turn around the enterprise. In the case of NAFCON, the NCP was looking for an investor who will run the plant as a fertilizer company and not one who will asset strip the company.
- I must state that the policy of guided liquidation is not meant to teleguide or remotely control the liquidator. Rather it means that instead of selling the assets of the enterprise in parts, the liquidator is expected to sell the enterprise as a going concern in order to achieve one of the objectives of privatization.
- **It could be asked why not a direct core investor sale or offer for sale instead of guided liquidation.** In either of these options, the BPE will be faced with the huge liabilities of these enterprises either arising from trade debts or pension and gratuity owed to ex-employees or arrears of salaries owed to workers. **For instance in the case of NAFCON, there was an unverified liability of about N26 billion.** Generally the money realized from the sale will not meet these liabilities whereas in liquidation, there are clear rules on how to settle such liabilities. It is hoped that when the liquidator verifies these liabilities, the sum will be drastically reduced. (See also NITEL and the delay in privatizing the power sector, Nigeria Airways Limited).
- It is noteworthy that although it was labeled a liquidation exercise, the liquidation of NAFCON went through the normal bidding process of BPE. Thus instead of BPE going through the bidding process, the liquidator did. For example, the liquidator placed advertisements for Expressions of Interest (EOI). At the expiration of the time, 14 EOI's were received and they were duly evaluated. After the evaluation 4 firms were pre-qualified, those pre-qualified were issued Request for Proposal (RFP) and they submitted Technical and Financial Bids. The Technical Bids were evaluated and the four firms were invited for financial bid opening. At the financial bid opening, O-Secul Nigeria Ltd, an engineering and oil service company emerged as the preferred bidder with an offer of \$152 million. When NAFCON was first sold in 2002, the offer was \$75 million and the preferred bidder could not pay.

- Other public enterprises liquidated include: three Inland Steel Rolling Mills [in Jos, Katsina and Osbogbo], the paper mills at Jebba and Oku Ibokun.

Commercial Law Reform:

- ✓ BPE has contributed to the creation of an appropriate regulatory environment for commercial activities in Nigeria. In that vein, it contributed to the passage of several laws and creation of several bills, could you list some of these?

The NCP, in exercise of its powers under section 11(k) of the Privatization Act to set up committees established 19 Implementation/Steering Committees including:

- Oil & Gas Implementation Committee (April 2000) - drafted the Policy for the sector and PIA, 2021
- Telecom Sector Reform Implementation Committee (January 2000) - drafted the NCC Act, 2003
- Electric Power Sector Implementation Committee (2000) - drafted the EPSR Act, 2005
- Industry/Manufacturing Sector Steering Committee (2000)
- Transport Sector Steering Committee (2000)
- Aviation Sector Reform Implementation Committee (2000) - was involved in the drafting of the Civil Aviation Act, 2006
- Solid Mineral Sector Steering Committee (2000) - was involved in the drafting of the Mineral and Mines Act, 2007
- Steering Committee on Competition and Anti-Trust Reform (2001) - drafted the Federal Competition and Consumer Protection Council Act, 2019.
- Steering Committee on Pension Reform in the Public Service (2001) - drafted the Pension Reform Act, 2004.

The mandate of these Committees was essentially the same - formulate sector policy, reform the sector and draft appropriate legislation.

✓ Reform Bills -

- National Transport Commission Bill 2015
- Nigerian Railway Authority Bill 2015
- Nigerian Ports and Harbours Authority Bill 2015
- National Inland Waterways Authority Bill 2015
- National Roads Fund Bill 2015
- Federal Roads Authority Bill, 2015

- Nigeria Postal Commission Bill 2015
- Federal Competition and Consumer Protection Commission Bill 2015
- Petroleum Industry Bill, 2015

Thus, contrary to the popular view that BPE only sold public enterprises, BPE has contributed to the creation of an appropriate regulatory environment for commercial activities in Nigeria.

Between 1988 and 1993, Out of the 111 SOEs, 88 were privatized and between 1999 and 2009, 148 SOEs were privatized, excluding the power sector privatization.

- ✓ What was the process utilised in getting the Bills passed?

The BPE appointed Consultants that worked with the Secretariat in drafting the bills. The bills were approved by the National Council on Privatization, thence to the Ministry of Justice, Federal Executive Council and NASS. They were initially Executive Bills and driven by the Ministry of Justice and the relevant Ministry. I was personally involved in this process in 2008 when the bills got to the NASS. They were re-presented in 2015.

Lately, they are Private Members' Bills since they were not re-introduced as Executive Bills.

It is noteworthy that NASSBER is now driving the Bills.

- ✓ Are there any outstanding bills, awaiting enactment? Why?

Out of all the Bills, only the Federal Competition and Consumer Protection Council Bill was passed into law in 2018 and assented in 2019.

The Petroleum Industry Bill was signed into law on 16 August, 2021 though I have problems with the regulatory and host community provisions in the Bill. **Why have the Bills not been passed into law? I will attribute this to the Stakeholders - their conflicting interests and government reservation about regulators. What stalled the passage of the PIB was the Stakeholders - the host communities, the International Oil Companies, Ministry of Petroleum Resources, the Minister, the staff of NNPC, the Unions, etc.**

Your experience

- ✓ Could you tell us some of the lessons of commercial law reform in Nigeria?
 - As can be seen from the number of Reform Bills not yet passed into law that have been drafted some as far back as 2002, I really do not feel that the economy has benefited from the reforms started since 2000.

- For these reforms, I must acknowledge the pioneering work done by the former VC, HE (Alhaji) Atiku Abubakar, GCON and former DG, HE Mallam Narisu El Rufai.
- We are yet to appreciate the concept of independent regulator even though the NCC Act, 2003 and EPSR At 2005 made some progress in this area.
- The provision on regulation in the PIA (section 3) is a retrogression as the regulator is subject to the control of the Minister.
- **It has aptly been stated that around the world, governments perform three main functions: they tax, they spend, and they regulate. And of these three functions, regulation is the least understood.**
- One way of appreciating what regulation is all about is to highlight the attributes of an independent regulator or the benchmark used in evaluating regulators. The regulator must be organizationally separate from existing Ministry or Departments (**organizational independence**), earmarked, secure and adequate source of funding (**financial independence**) and autonomy over internal administration and protection from dismissal without due cause (**management independence**).
- I must also acknowledge the pioneering work done by other DGs of BPE - Dr Julius Bala, Mrs Irene Chigbue, Bolanle Onaguruwa and Benjamin Dikki.
- ✓ What have you been most proud of and what changes would you like to see?
 - I am proud to be part of the following:
 - Privatization of former NICON NOGA Hilton Hotel, Eleme Petrochemicals, concessioning of the ports in Lagos, Calabar, Warri and Port Harcourt.
 - Passage of the NCC Act, 2003, Debt Management Office (Establishment, etc) Act, 2003, Pension Reform Act, 2004, EPSR Act, 2005, Civil Aviation Act, 2006, Minerals & Mining Act, 2007, Federal Competition and Consumer Protection Council Act, 2019 and Petroleum Industry Act, 2021.
 - Note:**
 - EPCL, established in 1991, started production in 1995 but attained less than 25% capacity utilization; privatized in 2005 handed over in October 2006.
 - At the General Meeting of EPCL held on 4 October, 2007, payment of Interim Dividend was approved. Accordingly, EPCL paid dividends in accordance with the shareholding structure. The FGN got N660,000,000.00 (six hundred and sixty million naira) for its 15% shares.

- This is the first privatized enterprise in the second phase of privatization, paying dividends.
- NICON Hilton - winner of bid - Capital Leisure Consortium but entered into an MOU with Transcorp to pay the full purchase consideration while Capital Leisure Consortium retained 30% but failed to pay. Same thing applied to NICON Insurance Plc.
- Concessioning of the Ports -
- Nigerian Ports, a service port (as opposed to a landlord model) - NPA owns the port infrastructure and superstructure and provide port services - owner of the ports, manager of the ports, regulator and provide of port facilities).
- NPA services were inefficient and unattractive to shippers. The ports were characterized by:
 - Long turnaround time for cargo and ships
 - Insecurity of cargo
 - Unproductive labour force in both NPA and docklabour
 - Multiple government agencies in the ports
 - Corrupt practices
 - Excessive charges
 - NPA was owner, manager, regulator and service provider

NPA unbundled and leased 24 of the port terminals without a regulator as the Ports & Harbours Bill,2002 is yet to be passed into law though the Shippers Council is playing this role now. For me the Shippers Council is neither a technical or economic regulator.
- I would like to see all the Reform Bills passed.
- Globally, the last two decades have witnessed a fundamental shift in the paradigm of infrastructure delivery around the world.
- **Governments in industrial and developing countries alike are retreating from owning and operating infrastructure and are focusing more on regulating and facilitating infrastructure delivery services provided by private firms.**
- I would like to see more of this paradigm shift in Nigeria - also confining the role of the Minister to policy issues and not regulatory issues.
- Government functionaries still behave as if they own the economy and therefore, any reform must be consistent with their personal interest. (See the powers of the Minister in the 2012 and current Versions of the PIB).

- By way of conclusion, I will simply ask 'Are We Ready for Reform of the Economy'? Are we ready for industrialization?
- Secondly, BPE is accused of selling our 'crown jewels' or common wealth or 'commanding heights of the economy'. Other than the public enterprises sold through the stock exchange in the first phase, can someone name an enterprise that was doing well when privatized - ASCL, NIOMCO, DSC, ALSCON, NITEL, NEPA, NAL, Steeling Rolling Mills, Vehicle Assembly Plants [PAN, Steyr, Volks, Leyland, ANAMCO], etc, etc?
- All the public enterprises listed in the Privatization Act, 1999, what were their conditions in 1999?

THE END.