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CHAPTER THIRTY

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Introduction

All over the world, public service as a matter of experience, has not been known for their capacity to create wealth. Consequently, public enterprises have usually been perceived as drain pipes for government budget, thus creating budgetary strains and avoidable burden on the economy. It became a national policy imperative therefore to disengage the public sector from those areas where the private sector has the comparable advantage to perform, while letting the state concern itself with the provision of infrastructure, security and the enabling environment for business to thrive through enhanced wealth creation.

It is important to observe that for many developing countries like Nigeria it was perhaps unavoidable for the government, in an earlier epoch, to promote the initial investments in the early phase of national development when the private sector was almost non-existent. Unfortunately the government got herself so involved in business that could best be tackled by the private sector, that government could no longer perform her traditional functions: the provision of infrastructure and security through the maintenance of law and order as well as the promotion of an enabling and conducive environment for investments and wealth creation.

The study comprises of seven sections starting with the introduction. Definition and meaning of privatization and commercialization is examined in section two, while origin of privatization policy is undertaken in section three. Section four details the typologies of privatization and section five chronicles the documents provided by the privatization commission and bidders. Section six appraises the major objectives of the privatization and commercialization policies in Nigeria. Section seven presents the criticisms of privatization policy and concludes the study.

Definition and meaning of privatization

According to the World Bank, privatization “is the transfer of ownership of State Owned Enterprises (SOEs) to the private sector by sale (full or partial) of going concerns or by sale of assets following their liquidation.” Some of the important definitions under the part III of privatization Decree 25 of 1988 include the following: privatization is the relinquishment of interests held by the government or its agencies in those enterprises wholly or partly owned by the government. Such relinquishment involves means of production and distribution of goods and services, as to ensure profitability, accountability and the prospects of accessibility to the capital market.
Shively (1997) sees privatization as selling to the public or by some other means transforming to private ownership of economic enterprises that were previously owned and managed by the State. And according to Udo-Aka (1986) privatization means:

i) The sale of government owned assets, wholly or partly to private enterprises.

ii) The removal of government entirely from involvement in economic activities of a company or parastatal.

iii) Allowing private sector to provide services hitherto monopolized by the public sector, and

iv) The contracting out of services to private firms while government provides the funds.

Privatization could be full or partial. Full privatization implies the relinquishment by government of all its ordinary shareholding in the designated enterprises. From these definitions, it is obvious that by privatizing, government removes itself from the possibility of meddling in the management of enterprises once owned and run by government. It also recovers some of its investments and ensures the survival of the enterprises by handling them over to those whose controlling interest demand profitability as a major objective.

On the other hand, commercialization is the transformation of an otherwise government dependent organization to a self-sustaining profitable organization, whose prices of goods and services are largely market determined. Commercialization therefore, implies the reorganization of any enterprises owned by the government to enable it operate as a profit making venture (Fatokun, 1987).

Enterprises that are commercialized are expected to be self-financing that is to operate profitably without recourse to government subsidy or subvention. All fully commercialized enterprises are expected to charge commensurate fees for their services and should be able to raise funds from the capital market without government guarantee.

From the fore-going, privatization, therefore may simply mean the selling of government companies and corporations to an individual or a group of persons or corporate concerns for efficient management. What this means is that privatization of government's holding in commercial and industrial ventures is better left to private ownership and management.

This was first introduced and inaugurated in July 1988, by the General Ibrahim Badamasi Babangida led military regime. To implement the privatization and commercialization policy, the membership of the technical committee on privatization and commercialization was deliberately drawn from both private and public sectors so that the policy could be of benefit to the government and Nigerians.

Privatization and commercialization policy is not simply the sale of shares or assets owned by the government to private individuals in order to realize more revenue or reduce
government's budgetary deficit. Rather, the commercialization aspect of the policy is a well-thought-out and comprehensive policy of public enterprise reform. According to the policy, when fully implemented, it will take the performance of the Nigerian public enterprises to new heights and should have a fundamental effect on the performance and efficiency of the national economy.

Origin of Privatization Policy
The 1970s were characterized by the multiplication of the number of public enterprises in the majority of developing countries. By way of example, in Morocco the number of public enterprises quadrupled between 1969 and 1979, increasing from 160 to 617 units. Similarly, almost two-thirds of the public enterprises in Mexico were created between 1970 and 1982, whereas the first had been established as long ago as the 1930s.

This expansion was accompanied by great diversification of a public sector increasingly far removed from the reasoning used as justification for the creation and the reinforcement of national public sectors in the 1960s, often as an extension of accession to independence. The dominant theories then advocated the achievement of economic independence, which implied “self-centred” development based on import substitution and accelerated industrialization thanks to a strong public sector occupying the “strategic sectors” of the national economy.

During the 1970s, however, public enterprises proliferated in sectors that could scarcely be called strategic: service activities (marketing and exporting offices, tourism, hotels and catering services, etc.) and to lesser extent small and medium industrial enterprises. This expansion of the public sector in all directions is evidence of the growing role of the state within the different types of mixed economy in the developing countries and resulting in the most heterogeneous public appropriations in the late 1970s. It made a reaction in favour of the private sphere in the form of privatization virtually inevitable.

Privatization as a tool for economic management therefore, came to the front burner when Chile became the first country to turn public assets/businesses to private operators in the early 1970s. Since then, over 140 countries (both developed and developing) have embraced privatization as a route to economic growth and prosperity. While the details and strategies of the privatization exercise may vary in each of these countries, the ultimate objective is to liberalize the economies through increasing private sector involvement and capacity utilization.

A critical aim is to free enterprises from control by rigid and bureaucratic structures, and make the management of such enterprises more flexible in their management and investment strategies. The main fact is that since the down turn of the world economy, privatization has been embraced world-wide-in Europe, Asia and America.
Even the socialist countries have not escaped the wind of change. In China, it is called *individualization*. In Russia, it is *perestroika* (meaning reform). In Venezuela, it is *flexibilization*. In other countries such as Argentina, United Kingdom and Mexico where it has worked, different tags have been adopted but the aim and purpose have remained the same. It is worth noting that over 120 countries have embraced the idea of privatization. In the process of privatization, more investible capital has been injected into the various economies through local and foreign investors to the benefit of the country at large. In the process, funds that would have been committed have been freed to be put into more productive sectors of the economy.

In the case of Nigeria, the issue of mismanagement and under-utilization which led to huge wastage of resources and manpower potentials gave the government of the day no other option but to pursue quickly the privatization policy. There are about 600 public enterprises in Nigeria run or controlled by the Federal Government. Many more are controlled by the State Governments. These companies take a sizeable portion of the Federal Budget and account for over 5,000 appointments into their Management and Board, a powerful source of political patronage. Transfers to these enterprises ran into billions of Naira. These transfers were in the form of subsidized foreign exchange, import duty waivers, tax exemptions and /or write-off of arrears unremitted revenues, loans and guarantees and grants/subventions. These companies were also infested with many problems which became an avoidable drag on the economy such as abuse of monopoly power, defective capital structure, heavy dependence on treasury funding, rigid bureaucratic structures and bottlenecks, mismanagement, corruption and nepotism. With all these problems, the government had no other option but to take a positive step. In March 1988, the then Nigerian Head of State, Ibrahim Badamosi Babangida promulgated a decree establishing the Technical Committee on Privatization and Commercialization (TCPC). The committee was formally inaugurated in July 1988 to undertake the task of reform of public enterprises, as an integral and critical component of the Structural Adjustment Programme (SAP), which was started in 1986.

The reform as conceived had two interrelated components—privatization and commercialization. The overall roles of the privatization exercise were:

- To improve on the operational efficiency and reliability of our public enterprises;
- To minimize their dependence on the national treasury for the funding of their operations;
- To roll back the frontiers of state capitalism and emphasize private sector initiative engine of growth;
- To encourage share ownership by Nigerian citizens in productive investments hitherto owned wholly or partially by the Nigerian government and, in the process, to broaden and deepen the Nigerian market.
Under the Phase One of the policy, which spanned from July 1988 and June 1993, about 88 public enterprises were either fully or partially privatized.

These were enterprises in which the Nigerian government invested jointly with foreign or private Nigerian investors. With the exception of the Cement and the Oil Marketing companies, the capitalization of most of them was small. The huge capital-intensive and basic industries like the fertilizer Companies, Sugar Companies, Vehicle Assembly Plants, and the Steel Mills which hold vital positions in the economy could not be privatized for various reasons ranging from financial insolvency to negative net worth. Finally, there was lack of clarity of government's policy on some critical issues associated with the implementation of the policy.

The exercise had an unqualified success. Unlike other countries, the privatization exercise in Nigeria was done by Nigerians for Nigerians without any foreign technical assistance. The policy succeeded in relieving the government of the huge and growing burden of financing public enterprises, minimized the overstretching of government's managerial capacity through a redevaluation of the role of the supervising ministries, created a large body of shareholders and deepened and broadened the Nigerian Capital Market to the position of being the most developed in black Africa. The market capitalization of the Nigeria Stock Exchange (NSE) through which the shares were sold has grown from N8.9 billion in 1987 before privatization to N65.5 billion in 1994 (after the Phase-1) and stood at N428.9 billion as at the end of August 2000.

The Technical Committee on Privatization and Commercialization wound up her activities and submitted a report to the President on June 5, 1993. The TCPC also transformed to the Bureau for Public Enterprises (BPE). The Bureau was to monitor the performance of the enterprises privatized in the past exercise and plan for the future phases. Because of the success of the past exercise, the military government under General Abdulsalam Abubakar promulgated the Public Enterprise (Privatization and Commercialization) Decree No. 28 in early 1999 (before the hand-over to a democratically elected government). The decree kicked off the Phase II of the privatization exercise under the Bureau for Public Enterprises (BPE). The decree allows BPE to alter, add, delete or amend the provisions in the document in the best interest of the country. Initially sixty-one (61) enterprises were slated for privatization (36 partial and 25 full privatization) but because of the new powers granted BPE, it increased the list by 37 extra enterprises (some of which were originally meant for commercialization).

In December 1999, the democratically elected government of President Olusegun Obasanjo picked interest in the privatization exercise and gave it a boost by establishing the National Council on Privatization (NCP) with the Vice-President, Alhaji Atiku Abubakar, as its Chairman. The Council is empowered among other things to determine the political,
economic and social objectives of the Privatization and Commercialization policy, approve
guidelines and criteria for valuation of public enterprises marked out for privatization
determine enterprises to be privatized or commercialized, and approve the prices for shares
or assets of the public enterprise to be offered for sale. The privatization exercise is
seemingly slow as a result of the desire of the government to ensure maximum transparency
in the process as well as introduce measures that will sensitize the people to participate
massively.

Typologies of Privatization
There are two forms of privatization, what is called first order and second order
privatizations. The first order privatization involves change of ownership from public or
state to private, this is called divestiture. Such divestiture is often characterized by full
divesture (this entails outright sale), partial divestiture (this entails joint ownership or joint
state/private sector ownership) or liquidation of a company (this means neither the state nor
private sector is able to have access to the enterprise). Liquidation can also mean the process
by which the enterprise's property and assets are identified and released to pay off its debts
and the surplus, if any, distributed among the enterprise members in accordance with their
entitlement under the articles and memorandum of association.

On the other hand, there is the second order privatization or restructuring (here state
ownership is retained) however there is a commitment to the market logic. This process often
culminates in partial commercialization, which means the services of the enterprise will be
offered for a fee or price that is more often competitive, although the state still retains
ownership or control over the enterprise. Three forms of partial commercialization are
identifiable: pricing adjustment, management reforms and rationalizations. In between the
first and second order privatization is full commercialization. This entails four processes or
typologies, first there is capitalization (this means an enterprise being turned into a self-
financing public liability company); second is performance contract; third is contracting out
and fourth is leasing of management contract (Momoh, 2001).

Other forms or typologies of privatization are:

Sale of shares: This is where the government has shares (equity) in the enterprise and then it
offers those shares to the public. In most cases management of the enterprise is not changed
but remained the same.

Concession: In this case government owns the land and most assets. The concessionaire can
make capital expenditure and investment with the permission of the government. The
concessionaire pays government a fee for the right to operate the business. Government
reserves the right to cancel the concession where the concessionaire fails to perform. The
concessionaire may be allowed to purchase the enterprise at a later date.
Sale of assets: Here government can sell the assets (building, vehicles, stock, and fixtures) piece meal. This is when the business is unprofitable.

Sale of enterprise: Here the business is sold as a going concern. It is expected that the enterprise will continue to operate.

Management Buy Out: This is where the existing management buys a controlling share of the business.

Management Contract/Service Contract: It is an arrangement where a team of experts or enterprise is identified to run the state owned enterprise on behalf of the government. The government pays a fee to the expert or enterprise involved.

Documents Provided by the Privatization Commission and Bidders
There are standard documents which are available at Privatization Commission to assist bidders in the preparation of their bids. The bidders in most cases are outsiders and might not have full details on the financial position of an enterprise so the documents are intended to facilitate the preparation of bid documents.

Information Memorandum: This contains a profile of every public enterprise to be privatized whose purpose is to provide interested person with comprehensive, accurate and updated information on the public enterprise and assist them to decide whether they should bid for it and determine the terms of their bids. It contains information such as:

- Full name, address and contact of the public enterprise.
- The enterprise's legal status (whether it is a limited or unlimited enterprise).
- The enterprise's bankers, auditors and legal practitioners.
- The enterprise's brief history.
- The enterprise's type of business, markets, suppliers, turnover levels capacity and utilization.
- The enterprise's latest accounts.
- The enterprise's constitutional documents (Memorandum and Articles of Association).

Draft Sale and Purchase Agreement: This document states the terms of the sale and purchase agreement and they are signed by the buyer and the commission. There are two types of forms which have to be filled representing whether the sale is by shares or sales of assets.

Bid Procedure: These are documents issued by the Privatization Commission to persons interested in bidding for the public enterprise following advertising of that entity by the
Commission. The documents include the letter which informs the first and second letters to interested persons and a confidential undertaking that the information obtained from the Commission on the public enterprise to be privatized shall be kept secret and will only be used for making a bid. The bid documents are given at a fee. While the bidders produce the following documents for the purpose of buying the entity being privatized:

- Qualification statements i.e. technical proposals, normally business plan.
- Price bids or financial proposals, normally the price offered for the entity being privatized.

**Major Objectives of the Privatization and Commercialization Policy**

The major objectives of the privatization and commercialization policy can be summarized as follows:

1) The policy is a critical element in our economic recovery and development strategy, which will lead to reduction of government subventions to otherwise commercially unviable enterprises, increase the scope of private sector activity and through public sale of shares, and contribute towards the deepening and broadening of the capital market.

2) The policy also is to shift the greater responsibility for investment to individuals and encourage public enterprises to self-finance their operations, which will in turn relieve government of the necessity to be the all-encompassing agent of development.

3) It will allow government to focus attention on areas where its intention is critical and thus channel scarce public resources to priority areas of economic development e.g. infrastructure where the general public's interest cannot adequately be met by private capital.

4) In the social sectors, public resources will be available to enhance the quality of life and provide better education and health services, which constitute the safety valve necessary for the upliftment of the weaker sectors of the economy.

5) Privatization involves the re-organization and restructuring of the affected enterprises in such a way as to make them more efficient, more commercially viable and more profit-oriented.

6) It will also promote managerial and financial autonomy, enhance operational efficiency, raise the quality of services rendered and more importantly, improve resources allocation in the public enterprises, and also lay a solid foundation for sustained economic growth. In order to facilitate this policy, the then Federal Military Government gave approval to some crucial issues affecting the operational autonomy of public enterprise to be privatized or commercialized.

   a) The re-definition of the role of the Board of Directors to give them more powers to regulate and supervise public enterprises including the determination of their condition of service and tariffs.

   b) The re-definition of the role of management and the making of management accountable for results;
Changes in the procedure and criteria for the appointment and removal of members of Boards of Directors to emphasize merit over sheer patronage, and to ensure continuity by staggering such appointments.

d) Changes in the procedure for the appointment and removal of chief executives and executive directors to ensure that such appointees are accountable to their Boards of Directors, and

e) The re-definition of the role of the supervising ministry to ensure that it no longer interferes in the day-to-day operation of public enterprises under it.

Special reform packages were also specified. In addition, measures will be taken to expose public enterprises to the stimuli of competition and to ensure that the pricing policies, particularly of public utilities, reflect the economic values of the goods or services produced and are also consistent with the following objectives:

ing. Affordability of basic services by the poorest segment of the citizenry;

ii. Financial autonomy as a foundation for enhanced operational efficiency, and

iii. Higher quality of services and efficiency in resource allocation.

Criticisms of the Policy

Thus in spite of the modalities set for the implementation of these policies, privatization and commercialization are faced with lots of criticisms. Privatization of public enterprises runs counter to the collective interest of the people. This is because public companies perform the following roles:

1) They provide the necessary environment and support for capital accumulation on an increasing scale;

2) They promote local generation of capital through direct investment, creation of jobs and other economic activities;

3) They regulate the process of the local accumulation of capital so as to correct the manifestation of uneven development at both the sectoral and regional levels; and

4) They provide general services, which offer the requisite atmospheres, cultural and otherwise capitalist development.

Over the years many Nigerians have expressed fear that privatization would expose the country's weak economy to more hiccups if implemented in totality. The antagonists of the policy are of the view that:

a) The policy would only end up further enriching foreign interests and local "money bags".

b) It would result in more retrenchments;

- The policy would surely result in more fraudulent transfer of foreign exchange earnings through over invoicing and

d) Wholesale privatization of public enterprises would ensure Nigeria remains forever a peripheral economy and consequently never industrialized.
e) Another major criticism against the policy is that there are scholars, public commentators and concerned public who believe that if government officials do not intend to sell public enterprises to themselves or agents, then, it could commercialize without privatizing such enterprises.

The feeling of many Nigerians is summarized in section 16 of the 1999 constitution. Here, the Federal Government is directed to ensure that it maintains the major sectors of the economy while allowing private individuals a role. Section 16(4)(b) of the Constitution explains the major sectors of the economy to include activities directly concerned with the production, distribution and exchange of wealth or of goods and services.

From the support of the aforesaid provision of 1999 constitution, the wholesale privatization as the National Council on Privatization (NCP) is advertising as good for the health of the economy is unconstitutional.

And this is why past administrations in the country decided to tread very cautiously on the issue of privatization despite the pressure from International Monetary Fund (IMF) and its twin sister, the International Bank for Reconstruction and Development (World Bank).

The Muhammadu Buhari's administration rebuffed the overtures of both bodies to take loans, devalue the national currency and embark on wholesale privatization. They rather set up the Ali Al Hakim Study Group, to examine all state owned parastatals critically and make recommendations to the administration.

The group submitted it report in November, 1984 and recommended among other things that:

a) In embarking on privatization the government should always ensure that it does so selectively in order to ginger other public enterprises to be more efficient; and
b) Its implementation of the policy should always ensure that national interest and national security are always given paramount considerations.

It is against this background that many Nigerians now view the activities of the NCP with veritable trepidation.

There is a plan to privatize Nigerian Telecommunications Ltd. (NITEL), Nigerian Ports Authority (NPA), the Nigerian Security Printing and Minting Company (NSPMC) and the refineries among others. This is despite the fact that some of these public corporations have not been depending on government subventions for their survival.

For example, since 1965 when it was established, NSPMC has not only been self-financing, but it has also realized profits for its shareholders over the years. Apart from this, there is no
country in the whole wide world that has left the national currency, international passport and several other sensitive documents in the hands of private entrepreneurs.

It might interest the government and the Bureau for Public Enterprise (BPE) to know that the American government manages United States Department of Treasury's Bureau of Engraving and Printing. The Bank of England's Printing Works, London Essex, manages printing of the British currency in England. Also in France, the printing of money is handled by Banque des France Fabrication des Bilets, Putaux Codex.

Again, it defies economic rationality of any type to think of selling a viable company with an asset base that would be worth over 223 billion Naira in the next few years. The government's plan to privatize the NPA could be seen in a similar light. Finally, the argument that private companies perform better than public ones, which has remained the anchor point for protagonists of total privatization of the Nigerian economy, could be baseless. For instance, the Role-On Roll-Off (RORO) terminal, a company in the maritime sector, which was for many years managed by a private company claimed to have generated a paltry revenue of 54 million Naira in the accounts it rendered. It said that out of this amount 48 million Naira was used to pay salaries and settle other sundry expenses. This left only a profit of six million Naira which was paid to the NPA. But when the NPA took over management of the company, it recorded 60 million Naira revenue in its first month of operation.

Ordinarily, for the government to be seen as serious and taking the interest of Nigerians to heart, it ought to first of all, tinker with the prospects of removing the company's monopoly before ever considering its privatization, just as NITEL's monopoly to a large extent has been broken with licenses granted fixed wireless operators, GSM operators and the plan to license another national trunk carrier. In all calculations, intents and purposes, it is the view of many Nigerians that the plan to privatize public corporations lacks transparency and not in the overall national interest of the country.
REFERENCES


