AN APPRAISAL OF THE PRIVATISATION AND COMMERCIALISATION LAW AND POLICY IN NIGERIA

BY

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DECLARATION

I declare that this thesis titled "An Appraisal of the Privatisation and Commercialisation Law and Policy in Nigeria" has been carried out by me in the Department of Commercial Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree (or diploma) at this or other Institutions.

_____ _____

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CERTIFICATION

This thesis titled "An Appraisal of the Privatisation and Commercialisation Law and Policy in Nigeria" by Ahmed Nma Alhaji has met the regulations governing the award of the Master of Laws Degree of Ahmadu Bello University, Zaria, and is, therefore, approved for its literary presentation and contribution to knowledge.

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DEDICATION

This thesis is dedicated to my late father, my mother, dear wife- Mrs. Safiya Ahmed and my lovely children: Zainab (Kubra), Abdul-Gaffar (Walid), Aisha (Humaira) and Habib.

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ABSTRACT

A global trend has emerged aimed at reducing government's involvement and attracting private partnership in the economy. This global trend came about through the process of privatisation or both privatisation and commercialisation of government owned enterprises. The reasons offered for this economic policy vary from country to country. In Nigeria, as part of its programmes of National Economic Reforms, the Federal Government introduced privatisation along with commercialisation. The research which focused on law and policy in the privatisation and commercialisation process sees the spirit and letter of the law as not being given unfettered expression in terms of implementation in accordance with the existing legislations on the policy. The apparent ineffectiveness and inefficiency of the programme leaves one in doubt as to whether adequate provisions were not made in the law and policy to succinctly swathe the operations of the programme; hence the investigation of the law and policy. The regulatory framework on privatisation and commercialisation set up by the Nigerian Government is a matter of law, which has been juxtaposed among the government agencies. The research adopted a doctrinal methodology with considerable attention to both primary and secondary materials through which relevant laws on or connected to the programme from 1987 till date was examined. Certain findings were made which included the fact that Section 1(3) and Section 6(3) of the Act offend the provision of Sections 4(1), (4), (a), (b) of the CFRN, 1999 (as amended) and paragraph 17(b) of the Concurrent Legislative List of the Constitution and by virtue of Section 315(1) (a) of the CFRN 1999 (as amended) as an Act of the National Assembly who can constitutionally exercise the power and not the Council (NCP). Furthermore, Section 19 (1) of the Act establishing opening Privatisation Proceeds Account and subsection (2) providing that such funds be utilized for such purposes as may be determined by the Government of the Federation contradicts Section 162(1) of the CFRN, 1999 (as amended) dealing with the Federation Account. Equally, the Act does not provide for measures to probe and punish erring officers of the Bureau. This work also discovered that the Act does not provide for post-privatisation regulations to regulate the activities of privatised enterprises.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Problem

A global trend has emerged aimed at reducing government's involvement in the economy. This global trend came about through the process of privatisation or both privatisation and commercialisation of government owned enterprises. In Nigeria, as part of its programmes of National Economic Reforms, the Federal Government introduced privatisation along with commercialisation. Thus, commercialisation was conceived as an alternative to privatisation in some cases.[1] That is to say, commercialisation was introduced as an alternative to privatisation which was deemed inappropriate.

The reasons offered for this economic policy vary from country to country. For example, in Britain it was resorted to as "an ideologically based program, devised and driven by a powerful leader, motivated by a combination of intellectual conviction of the benefits of free markets and hatred of the power of organised labour".[2] In some jurisdictions, commercialisation is not used in the same context as it is being used in Nigeria. Thus in Jurisdiction like South Africa, it is believed that commercialisation is one of the phases of privatisation. Hence, it was submitted that "the entity should first be corporatized, then commercialized, but in South Africa, Privatisation[3] was perceived, and thus, embraced as a veritable instrument in the restructuring of its troubled economy.[4] This is in tandem with reasons given by the International Monetary Fund (IMF), which universalized the

[1] Synge, R. (1993). Nigeria- The Way Forward. London: Euromoney Books.
[2] Kay, J. (2002). Twenty Years of Privatisation @ www.johnkay.com/2002/06/01/twenty-years-of-privatisation
[3] Brynard, P. A. (1993). Privatisation and Deregulation as Part of Economic Reforms in South Africa. Journal of Economic and Management Sciences
[4] Brynard, P. A. (1993). Ibid

programme as a key element in economic restructuring of distressed economies especially in Africa.[5] Hence, Privatisation and Commercialisation became components of structural adjustment program of the IMF.

In Nigeria, and in most countries of Africa, interest in the program is motivated by the desire to correct past failures of development policies and reduce money losing trends of government owned enterprises.[6] The programme of privatisation and commercialisation became imperative with the national aspiration to strike a balance between political independence and economic independence. This reason is apt since a country with political independence devoid of economic independence will not thrive. For any country in the world to survive and develop, the duo of political and economic independence must co-exist side by side. The political stability of every country depends largely on its sound economic policies, growth and development.

The foregoing economic background, paved way leading to privatisation and commercialisation law and policy in Nigeria in 1988,[7] as part of the Structural Adjustment Programme (SAP) of General Ibrahim Babangida's Administration. This law established the Technical Committee on Privatisation and Commercialisation (TCPC) to implement and oversee the privatisation programme. SAP is a neo-liberal development strategy by international financial institution to incorporate national economy into global market. This has been summarized thus:

[5] Owasanoye, B. (1996). Legal Framework for Privatisation of Banks in Nigeria. In: Ayua I.A. (ed) Privatisation of Government Owned Banks and the Issue of Ownership and Control (Legal and Economic Perspectives), Nigeria Institute of Advanced Legal Studies, Lagos, Nigeria, p. 8

[6] Industrialization In Nigeria – A Handbook Published for Federal Ministry of Industry and Technology by Sahel Publishing and Printing Co. Ltd Lagos, Nigeria.

[7] Privatisation and Commercialisation Act. Cap. 369, Laws of the Federation of Nigeria (LFN), 1990 formerly P&C Decree No. 25,1988. Where necessary, the Act and Decree will be used interchangeably.

> The vision of a 'global market civilization' has been reinforced by the policies of the major institutions of global economic government… up to the mid 1990s underlying the structural adjustment programs has been a new liberal development strategy referred to as the Washington consensus which prioritizes the opening up of national economies to global market force and the requirement for the limited government intervention in the management of the economy.[8]

It, therefore, became one of the main objectives of SAP to pursue deregulation leading to removal of subsidies, reduction in wage bills and the retrenchment of the public sector ostensibly.[9] The privatisation and commercialisation law[10] provided the regulatory frame work for the programme, as well established the TCPC which was entrusted with the responsibility of ensuring correct and speedy implementation of the programme. The TCPC privatised 111 public enterprises and commercialized 34 others. In 1993, the TCPC concluded its assignment and submitted a final report having privatised 88 out of the 111 enterprises specified in the Decree.[11]

In 1993, the TCPC was transformed into the Bureau of Public Enterprises to oversee the commercialized parastatals. By virtue of the Bureau of Public Enterprises Decree,[12] new phase of the programme was designed which introduced rules and set up a new agency to continue the programme.[13] In 1999, the Federal Government again revisited the

[8] Otive, I. (2003). Privatisation in Nigeria: Critical Issue of Concern to Civil Society. In: Eze Onyekpere (ed) Readings on Privatisation, Socio-Economic Right Initiative, Lagos P. 38 citing McGrew, A: Sustainable globalization? The Global Policies of Development and Exclusion in the New World Order' in Allen, T. et al (eds.), Poverty and Development into the 21st Century, New York Oxford University Press Inc.
[9] Ibid
[10] Cap. 369, LFN, 1990 (now repealed)
[11] Otive, Igbuzor, op. cit, fn. 8
[12] Decree No. 78 1993 (which repealed and replaced the Cap. 369, LFN, 1990).
[13] Iheme, E. (2003). The Legal Regulation of Privatisation in Nigeria: A Critique. In: Eze, O. (ed). Readings on Privatisation, Socio-Economic Right Initiative, Lagos p.9

programme and enacted the Public Enterprises (Privatisation and Commercialisation) Act.[14]

The Act[15] is the current legal framework on privatisation and commercialisation policy in Nigeria. It creates the National Council on Privatisation under the chairmanship of the Vice President. It also establishes permanent secretariat for the programme, the Bureau of Public Enterprises, which is charged with implementation of the programme and the NCP charged with policy formulation. Further innovation under the Act is the establishment of Public Enterprises Arbitration Panel to facilitate the implementation of commercialisation programme.

The emergence of this policy, among other things, provides incentives for private investment. Thus, privatisation and commercialisation, which is still on course, seeks to motivate private participation in the economy as government divests itself of its equity holding, or part thereof. The divestment of government equity holdings in hitherto publicly owned enterprises is not an end in itself. It, therefore, behoves both political and economic stakeholders, to critically follow the spirit and letter of the legislation especially in terms of implementation in order to fully harness the wholesome benefits associated with privatisation and commercialisation. The program if implemented honestly and with a sense of detachment aimed at promoting and protecting national interest will ultimately provide an enabling environment for full private investors' participation both from within and outside the country. Also, proper implementation of the program with the incidental divestment by government of its equity holding, or part

[14] Public Enterprises (Privatisation and Commercialisation) Act, Cap. P 38 Laws of the Federation (LFN), 2004. This Cap. P38 shall subsequently be referred to as "The Act" where the context permits.
[15] Ibid

thereof as the case may be, will restrict government to core policy-making function and the issue of national governance as against meddlesome interference in the corporate governance. This will breed an era of sound political and socio-economic policies. Furthermore, an uncompromised implementation of the program will relieve the government of the onerous financial burden in form of allocations to these state-owned enterprises (SOEs).

On its own, privatisation and commercialisation program is not without prospects. These prospects are best appreciated in terms of management efficiency, development of capital markets, cost control, and above all, customer service. This has proved true in Britain. It was admitted that after privatisation, British Steel ('Corus' as its post privatisation name) became one of the best managed and lowest cost steel producers in the World; British Airways raced ahead of other European Airlines by concentrating on cost control, marketing and customer service.[16] In the same vein, British Telecom did better after privatisation than as a nationalized industry.[17]

In fact, while making a case for privatisation, the South African former Minister of Finance, Derek Keys, stated that "from a pragmatic viewpoint privatisation was the only realistic solution to the financial problems of the government."[18] As a matter of fact, the benefits associated with successful privatisation and commercialisation program are made glaring from the six-point plan identified by the South African Cabinet on a major campaign to give impetus to the 'RDP'. They are to wit:

[16] John, Kay (2002). op. cit, p.1
[17] Ibid
[18] Brynard, P. A. (1993). Privatisation and Deregulation as Part of Economic Reforms in South Africa. Journal of Economic and Management Sciences

1. A 'belt-tightening' exercise of cutting unnecessary expenditure and putting state assets to more productive use;
2. Reprioritizing of expenditure;
3. A fundamental restructuring of the public service;
4. Re-organisation of state assets and enterprises;
5. Building new inter-government relations; and
6. Developing an internal monitoring capacity for the above programs.[19]

Apart from the foregoing analysis on the importance of privatisation and commercialisation, it is submitted that, privatisation of SOEs will bring about economic equilibrium. At the inception of a democratic government in South Africa, Mandela stated that:

> Privatisation should be used as an instrument for black empowerment… privatisation is seen as the single, most effective instrument in the hands of the black residents of South Africa. If Privatisation helps to realize this empowerment the political obstacles would have been overcome. Shares in privatised enterprises should be made available to black South Africans…[20]

1.2 Statement of the Problem

It is clear that the ultimate goal of privatization includes the actualization of the economic objectives in the Constitution when the provisions of section16 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

[19] Ibid
[20] Ibid

of business enterprises operating in the country. It is imperative to note that almost all commentators on this section 16 always reproduce section 16(1) to (2) and sometimes subsection (4) without reproducing subsection (3) that validates the enactments on privatization and control of the economy[21], which constitutes the focus of this work.

On the whole, this work considers the legal framework of the policy. Being an economic policy, a case will be made for the programme as the economic catalyst capable upon proper implementation of enhancing economic growth and development and private investors' participation in the development of national economy through transfer of ownership, management, or management and control though subject to the policy-making powers of the government.

In giving appraisal to the current statutes regulating the programme, the work will look at the far-reaching powers of the National Council on Privatisation under the Act. That is to say, the legislative powers, issue of transparency, accountability, strategic investors, projects and the challenges posed and the desirability or otherwise, of the privatization and commercialization law and policy in Nigeria. However, the apparent ineffectiveness and inefficiency of the programme leaves one in doubt as to whether adequate provisions were not made in the law and policy to succinctly swathe the operations of the programme. In addition, the high level of corruption has bedeviled the programme in that the political class exploit the policy for their personal and selfish aggrandizement by selling the SOEs to themselves.

1.3 Objective of the Research

[21] Idornigie, P. O. (2012). "Privatisation and Commercialisation of Public Enterprises in Nigeria", being a paper presented at the National Conference on Law and Economic Transformation in Nigeria organised by the Faculty of Law, OAU, Ile-Ife: 11 -13th July.

The objective of this research, given the prevailing socio-economic and political conditions of the Nigerian Economy, is to examine the policies on privatisation and commercialisation, the application of these policies to privatisation and commercialisation as well as their justification for institutional reform of public enterprises. Findings will be drawn from the application of these policies and adequate recommendations will be made.

1.4 The Scope of the Research

The research work sets to examine the institutional and policy reform so far carried out in Nigeria through the instrumentality of privatisation and commercialisation of the hitherto state owned enterprises. Also, it's within the ambit of this research work to make a serious case in support of the program in Nigeria with respect to these SOEs that are yet to be privatised or commercialized. In the course of the work, a review of similar socio-economic policy in other jurisdictions both within and outside the shore of Africa may become inevitable for the purpose of ascertaining the successes or otherwise of privatisation and commercialisation program as instrument of socio-economic reform.

This means that apart from having recourse to the existing legislations which regulate privatisation and commercialisation policy in Nigeria, provisions of the constitution, text books and research works of others within the country, those emanating from other jurisdictions will of necessity be examined and considered in the appropriate stages of the research work.

1.5 Research Methodology

The research methodology is mainly doctrinal with considerable attention on both primary and secondary materials. Primary materials involve the examination and consideration of the relevant laws on or connected to privatisation and commercialisation from 1987 till date especially the current Public Enterprises (Privatisation and Commercialisation) Act,[22] and the Constitution.[23] On the other hand, secondary sources involve consideration of text books, journals, seminar papers and other relevant writings and materials where opinions and submissions on privatisation and commercialisation have been made.

1.6 Literature Review

Privatisation and Commercialisation of State Owned Enterprises (SOEs) in Nigeria is an economic policy, adopted by the government as a means of salvaging the infrastructural and industrial assets, as well as the attendant embarrassing revenue of the public enterprises from total collapse and to enable Nigerians participate in the policy objectives and targets. The programme was embarked upon to help in reducing the financial burden through government internal and external borrowing, in order to meet up with its commitments, especially in financing the hitherto unproductive SOEs.

Privatisation and Commercialisation law and policy in Nigeria is an off-shoot of economic policy of the Federal Government designed to address the country's peculiar socio-economic and political conditions, and to lay the foundations for greater private sector participation in the national economy. This explains the policy and institutional reforms embarked upon since 1987 as mechanism for correcting the internal economic

[22] Cap. P.38 (LFN) 2004
[23] Constitution of the Federal Republic of Nigeria (CFRN), 1999, (as amended)

distortion which had hitherto impeded economic progress in Nigeria. These reforms range from fiscal policy, monetary policy, exchange rate policy, trade and price policy, and external public debt management among others.

Thus, "Readings on Privatisation,"[24] a compendium of both legal and socio-economic writers, which was edited by Onyekpere discussed extensively on the program but not without limitations. First, over sixty percent of the contributors wrote from purely economic stand point, thereby overlooking the legal framework regulating the program. On the other hand, those who wrote from legal perspective dwelt so much on academic issues hence omitting the economic relevance of the program.

Another reviewed work on the program is "Privatisation of Government owned Banks and the Issue of Ownership and Control"[25] edited by Ayua and Owasanonye. This work apart from limiting its discussion to privatisation only further restricted itself to banks. Whereas, the twin economic policy privatisation and commercialisation – ought to have been married in a systematic discussion at least to justify their legal union under the various Laws that introduced the program in Nigeria. Also, banks though very important aspect of the economy is still fragment of the nation's economy so that a discussion on banks cannot accurately and adequately represent an appraisal of all other enterprises.

In the same vein, "The powers of Directors in Nigeria company: An Analysis of the Dynamic of Director's Dominance in Modern Company"[26]. Ali, writing comprehensively

[24] Onyekpere, E. (ed)(2003). Readings on Privatisation; Socio-Economic Right Initiative, Surulere, Lagos.

[25] Ayua, I. A. et al (eds) (1996). Privatisation of Government Owned Banks and the issue of Ownership and Control, Nigeria Institute of Advance Legal Studies, Lagos.

[26] Ali, H.L. (1996). "The Power of Directors in Nigeria Company: An Analysis of the Dynamic of Director's Dominance in Modern Company" being LL.M Thesis (unpublished), Department of Commercial Law, ABU, Zaria, Nigeria, p. 32.

on company Law, only discussed privatisation and commercialisation in passing. It is however conceded here that extensive discussion on privatisation and commercialisation may have been beyond its research mandate; this thesis notwithstanding, views it expedient to leave at the disposal of both lecturers and researchers a more comprehensive work on the programme of privatisation and commercialisation in Nigeria.

Also on the list of reviewed works, is "Privatisation and Market Development: Global Movements in Public Policy Ideas,"[27] edited by Hodge. This book in its entire analysis on privatisation leaves readers and researchers in doubt of the concepts of partial and full privatisation. It may be true that the choice of its presentation reflects the law on the concept as it is in 'western' jurisdictions from where it originated. But, since its circulation is not restricted to those jurisdictions, it is therefore submitted that, the book ought to have addressed the functional distinctions of privatisation. More so, any discussion on the subject which omitted these functional distinctions cannot guarantee proper understanding of the concept.

Among the works reviewed also include "Economic Deregulation and Corporate Investment in Nigeria"[28] by Akume. In his work, he notes that 'the primary role of any government in economic activity is the provision of enabling environment and infrastructure necessary to stimulate economic growth' as well as the provision of opportunities for industries to spring up. It is with view to this government has been adopting policies that would not only promote economic growth but also protect its

[27] Hodge, G. A. (2006). Privatisation and Market Development: Global Movements in Public Policy Ideas. Australia: Edward Elgar publishing.

[28] Akume, A. A (2010). Economic Deregulation and Corporate Investment in Nigeria. In Agom et al. Ogebe and the Law. Nigeria: Tamaza Publishing Company Limited.

indigenous enterprises from competition from foreign enterprises. Among these policies include the indigenization policy of 1972 and the privatization policy of 1988; the latter giving way to a free market economy. His work concerned itself primarily with the various forms of corporate investment which he classified into indigenous, foreign and alien corporate investments exploring the legal implications of such investments in Nigeria as well as the jurisdiction of the Nigerian Courts in entertaining conflicts that may arise in the cause of doing business of such enterprises.

Akume in his work mentioned privatization and commercialization in parsing but discussed in detail deregulation and corporate investment, which is only part of the privatization and commercialization policy.

Idornigie, in his contribution, wrote on 'Privatisation and Commercialisation of Public Enterprises in Nigeria'[29] outlining the historical emergence of the concept from Ancient Greece. Today, several countries in the developed world practice it and Nigeria has also come to adopt the policy. He examined the challenges of privatization in appositive with its objectives which include efficiency and development of the economy, efficiency and development of the enterprise, budgetary and financial improvements, income distribution or redistribution in addition to constitutional challenge. He went further in addressing these challenges through the first phase (1988 - 1993), second phase (1993 - 1999) and third phase (1999 - present). He argues that for any progress to be made, certain reform activities must have to be implemented.

[29] Idornigie, P. (2012). Privatisation and Commercialisation of Public Enterprises in Nigeria, Being a Paper Presented at the National Conference on Law and Economic Transformation in Nigeria Organised by the Faculty of Law, Obafemi Awolowo University, Ilfe-Ife: 11-13 July.

Idornigie focused more on the challenges and reforms of privatization and commercialization with less emphasis on the policy and law of the economic concept thereby leaving a lacuna which this present work seeks to fill.

1.7 Justification

Considering the gains of privatisation and commercialisation to the economies of the world and the challenges of the implementation of such policies in Nigeria, the implementing institutions of this program will find this research work a coherent and solid foundation upon which a viable and profitable privatisation and commercialisation scheme will be built. In fact, this work is intended to benefit government, the implementing institutions, the academics, economists, students especially of law, judges, to mention but a few.

1.8 Organisational Layout

The body of the work comprises six chapters: chapter one, General Introduction which introduces the matter and foundation on which the research will stand. Chapter two dwells on the Regulatory Frame Work on Privatisation and Commercialisation in Nigeria. That is to say, National Council on Privatisation is discussed and its functions and powers, the Bureau, for Public Enterprises is also discussed extensively and the Public Arbitration Panel is considered too.

Chapter three starts with Privatisation of Enterprises in Nigeria. This touches on the concept of privatisation, full and partial privatisation, mode of privatisation of public enterprises and the concluding remarks.

Chapter four dwells on the Commercialisation of Enterprises in Nigeria – the concept of commercialisation, partial and full commercialisation, mode of commercialisation and the concluding remarks.

Chapter five discusses Privatisation and Commercialisation Policy in Nigeria, its birth and motive of the policy, the objectives of the policy, its positive impact on the Nigeria Capital Market, economic growth and development, private sector investment, foreign investment, ownership and control, management and the concluding remarks.

Chapter six, which is last the chapter, deals with the conclusion. This chapter summarizes the whole work and gives concluding remarks, findings and recommendations for the possible reforms of the policy and amendment of the current legislation on the policy.

CHAPTER TWO

PRIVATISATION OF ENTERPRISES IN NIGERIA

2.1 Introduction

Privatisation of enterprises in Nigeria, which now occupies the centre stage in global economic liberalisation is regarded as an avenue for raising productivity and enhancing overall economic growth.[1] Over the years, many countries of the world, especially developing countries have increasing costs of and poor performance of the public enterprises, resulting in heavy financial losses.

In Nigeria, there had been a cumulative dismal performance of State Owned Enterprises (SOEs) which resulted in a crisis of confidence. This was due to various problems which could be attributed to both internal and external factors. The internal Factors relate to inadequate and inappropriate investment decisions, adverse business environment characterised by weak capital base and control mechanism, poor system of accountability and the absence of any remarkable reward system. While the external factors relate to unfavourable export / import prices, restricted access to external markets and funds, high rates of interest on foreign loans and so on[2].

Since 1970, Public Enterprises in Nigeria and, in fact, most Countries of the world have thus become an unsustainable burden on government, absorbing large share of budgets of government in form of subsidies and capital infusion. Consequently, stringent management measures taken between 1982 and 1985 by the administrations of Shagari and Buhari were both unsuccessful. The persistence of these problems became a heavy

[1]. Salako, H.A. (1999). An Overview of privatisation in Nigeria and Option for its Efficient Implementation, CBN Economic and Financial Review, Vol. 37, No 2, p.17

[2]. Ibid, p 18

embarrassment on the government in particular and on Nigeria generally, which of course made the government to double its effort in a bid to stabilize the economy and put it on the part recovery.

The result was a comprehensive review of the economic structure, and the prevailing policies which recommended a fundamental restructuring of the nation's economic policy. As part of the liberalisation program, forming part of the Structural Adjustment Program (SAP) of the then Military Head of State[3], the privatisation and commercialisation policy received a thumb up as a solution to the ailing and epileptic economy of that period.

Since 1988[4], when the first legal framework on the policy emerged, various governments have tried to keep faith with the program and thus have made frantic efforts to uphold the objectives of the economic liberalisation which saw an end to the 'command economy' – the colonial economic debacle. Though, there have been some measures of success especially in the banking industry and telecommunication sub-sector. It is hereby submitted that a lot still needs to be done especially with respect to privatizing Power Holding Company of Nigeria (PHCN) and indeed other sub-sectors so as to make full harvest of the dividends of privatisation, nay liberalisation program.

The objective of this chapter, given the prevailing socio-economic and political conditions of the Nigerian Economy, is to discuss the policy justification for institutional reform of public enterprises. This will be done through classification of privatisation of

[3] General Ibrahim Badamasi Babangida, the Military Head of State between 1985 to 1993

[4] Privatisation and Commercialisation Act, Cap 369, (LFN) 1990 which first introduced the policy into our economic master plan

public enterprises either partially or fully as listed in the various Laws establishing the program and the attendant methods applied in privatizing the enterprises.

2.2 The Concept of Privatisation

The concept of privatisation is ideologically and politically meaningful in spite of the sharp political reactions regarding its objectives. Thus privatisation is:

> …. any of a variety of measures adopted by government to expose a public enterprise to competition or to bring in private ownership or control or management into a public enterprise and accordingly to reduce the usual weight of public ownership or control or management. However, in a strict sense privatisation means the transfer of the ownership, (and all the incidence of ownership, including management) of a public enterprise to private investors.[5]

This is adopted here for the purpose of drawing a distinction between the broader economic term, liberalisation and the stricter legal usage privatisation. In this respect, the first part of the definition applies to the former, that is economic liberalisation[6] and the second part strictosenso applies to the latter that is privatisation. Privatisation can also be seen as a strategic implementation of an economic policy that emphasizes a shift from the public ownership and / or management to private ownership and / or management of SOEs.

Privatisation has over the years become a key aspect of the restructuring and adjustment programmes. The influence of privatisation as an economic policy the world over today is due to majorly the emphasis placed on it by World Bank and International Monetary

[5] Iheme, E. (1997), The Incubes: The Story of Public Enterprises in Nigeria, cited by Igbuzor, O. Privatisation in Nigeria: Critical Issues of Concern to Civil Society. In: Onyekpere E. (ed) (2003). Readings on Privatisation, Socio-Economic Rights Initiative, Surelere Lagos, p. 36

[6] It is however maintained here that a clear cut distinction between the two concepts, that is liberalisation and privatisation is not attainable. Probably, this is due to the fact that privatisation on a liberal term forms part of liberalisation programme and thus could pass as a component part of a larger whole. Therefore, more often than not, the two terms will be used inter changeably where the context however permits such usage.

Fund which at every turn endorse privatisation as a condition for lending to developing countries. Probably, the speed at which privatisation gained acceptance into countries informs the assertion that privatisation is a major fall out of globalisation.[7] Apart from being an incidence of globalization, privatisation is ‘’related to numerous changes in the relations between the state, the market; and the enterprise in a given economy.”[8] Such changes have been divided into four – changes in the overall functioning of the economy (deregulation), organisational changes, operational changes and ownership changes (de-nationalization), divesture.[9]

The above stated changes seem to have favoured Nigerian experiences where privatisation programme was opted for after series of economic ‘garbage in’ and ‘garbage out’ which started immediately after Independence. With National Independence of 1st October 1960, Nigeria stepped into the shoes of the colonial masters that hitherto controlled and directed the affairs of the country including political and socio-economic policies. Thus, before independence, the Nigerian economy was dominated by foreign investors particularly the British entrepreneurs. But as part of the incidents of the World War II, there was amazing revelation about the weaknesses of a white man and the strength of black man, which before then was outside the contemplation of humanity. This gave rise to national consciousness and the irresistible desire by Nigerians to control their economy.

After the independence in 1960, “there was conscious effort by Nigerians at not only participating in the economic development of the country, but also to control the

[7] Uzochukwu, A. et al. (2003). “Privatisation and Globalisation: options for Sub-Sahara Africa”, in Onyekpere E. (ed), Readings on Privatisation, p. 84
[8] Ibid, p.85
[9] Ibid

"commanding heights' of their economy."[10] This conscious efforts received a boost after the discovery of oil in 1958 at Owibiri. It is supposedly this conscious desire that led to indigenisation policy in Nigeria, which was intended to restrict alien participation in certain businesses perceived to be either the exclusive reserve for Nigerians or to accommodate the prescribed levels of local participation. Pursuant to indigenisation policy, the country had its first and second National Development plans aimed at achieving "Fullest Nigerian Participation" in the ownership, direction and management of industrial enterprises at the earliest possible time, and the establishment of a united, strong and self-reliant nation".[11] The above statement eventually found expression in the country's National Development Plans, where it was noted:

> Experience has shown through history that political independence without economic independence is but an empty shell. The validity of this statement derives from the fact that the interest of the foreign private investors in the Nigerian economy cannot be expected to coincide at all times and in every respect with the national aspirations….. A truly independent nation cannot allow its objectives and priorities to be distorted or frustrated by the manipulations of powerful foreign investors.[12]

The above expression sets in motion the process of Nigerianisation of foreign enterprises, by putting in place an agency to work in conjunction with the expatriate quota committee and also through the acquisition of equity shares in some strategic industries for the benefit of the citizenry, and in some cases embark on Nationalization with adequate arrangement for compensation.[13] The Nigerianisation notion was further authenticated

[10] Ali, H.L. (1996). "The Powers of Directors in Nigeria Company: An Analysis of the Dynamic of Director's Dominance in Modern Company" being LL.M Thesis (unpublished), Department of Commercial Law, ABU, Zaria, Nigeria, p.32.
[11] Ibid, p. 34
[12] See second National Development Plan, 1970-1974 cited by Ali, H.L. ibid, p.35
[13] See both first and second National Development Plans of 1962-68 and 1970-74 respectively, ibid p. 34

by the series of legislations[14] aimed at disengaging foreign economic gourmets from national economic dominance. The Nationalization notion coincided with the dominant world thought that, industries whose services will beneficially impact on majority of the population should be run by the state. Within this thought framework, the major sectors of the economy were reserved for the state. These combined to saddle governments at all levels with the task of engineering the overall growth and development of the economy through industrialization and the provision of infrastructure and social services.[15] The result, however, was a proliferation of SOEs with their attendant consequences on government.

The indigenisation scheme was thus born but soon thought to be undesirable, principally, due to the fact that Nigerians at the time lacked the requisite financial strength to pilot their economic destiny. And in some cases the absence of experience and managerial acumen negative this policy; though here the relevant laws allowed a degree of Nigerian and Foreign participation.[16] At this point, government came to the rescue and "acquired interests in most of the indigenised enterprises on behalf of Nigerians"[17] Under this arrangement, government owned and controlled the affected enterprises which were being run by its appointees.

Immediately, after the second half of the 1980s, it became economically imperative to have a rethink about the wisdom of continuing with the nationalization policy. Here, it

[14] These legislations include but not limited to: The Nigerian Enterprises Promotion Act, 1972 (Decree No. 4,1972); the Nigerian Enterprises Promotion Act, 1977 (No. 3,1977 which repealed the 1972 Decree) and so on.
[15] Onyekpere, E. (2003). Challenges for the Privatisation Programme In: Onyekpere E (ed) Readings on Privatisation, p. 24
[16] Nigerian Enterprises and Promotion Act provided that where it was felt that Nigerians possess the requisition capital, experience and managerial skills, such businesses were exclusive reserve for Nigerians. But where it was not the case, there should be Nigerian and Foreign Participation.
[17] Ali, op. cit, p.32
[18] ibid, p. 33

was the turn of Nigeria to joint the league of the nations that welcome privatisation program as capable of some 'economic misdemeanour'.

Apart from privatisation program, commercialisation, liberalisation and deregulation were amongst the ideas mooted following the developments (which will be stated anon) that eventually paved way for another economic policy migration. By liberalisation, more actors were allowed to come on stream and help break the wall of economic monopoly built in favour of government. Deregulation as an economic policy involves "a transfer of decision making on economic parameters like prices and import priorities from the state to the market".[18] Thus, deregulation of the economy invariably sets up the basic conditions under which privatisation is carried out through measures such as new investment laws and abolishment of price subsidies.[19] This means that deregulation aims at creating an enabling environment for privatisation to be implemented.

The reason behind this economic policy shift has been subject of varied opinions. To Ali, it was then "felt that Nigerians possessed the requisite managerial ability and financial wherewithal to take over the activities of enterprises hitherto controlled by the government. The government is therefore relinquishing its interests in most companies in favour of private investors."[20] Onyekpere, on his own, took exception to the above reason. According to him, privatisation was opted for as a child of necessity in the face of unproductive and unprofitable economy as a result of series of actions and inactions of both the government and workforce of those enterprises. He posited thus:

> In the course of time, government officials abused appointments to boards and management of these corporations. Appointments based on merit gave way to mediocrity; poor performance and

[19] Ibid
[20] ibid

> corruption set in. Otherwise profitable corporations started depending on state subventions and since there was no competition in the sectors, there was a gross decline in the quality of services rendered. In consideration of the attachment of these corporations to the public service, "the civil service mentality"[21] crept in leading to the bureaucratization of processes of service delivery. This in turn led to slow response mechanisms to customer needs and poor public rating of these corporations.
>
> These corporations like NEPA and NITEL could neither expand their services to all parts of the country nor enhance the quality of services in areas already covered. The oil boom of the seventies hid a lot of these inefficiencies as government continued to subsidize these corporations. However, from the eighties to date, with dwindling oil revenues, massive import bills, unsustainable external debts, rising recurrent expenditure, Structural Adjustment Programme, and the shift in dominant western thought on the role of the market and the private sector in the economy, the Nigerian government had to rethink its participation in these major heights of the economy.[22]

Gleaned from the above, it was mainly the combination of abuse of government's appointment powers to the boards and management of these enterprises and "civil service mentality" that have over the years bedeviled the entity called Nigeria and the Nigerians that produced the undesirable platform in the socio-economic circle before privatisation of these enterprises became desirable. In seeming corroboration Salako stated:

> In Nigeria, there had been a cumulative dismal performance of SOEs which resulted in a "crisis of confidence." This was due to various problems which can be attributed to internal and external factors. These internal factors relate to inadequate and inappropriate investment decisions, adverse business environment characterised by weak capital base and control mechanism, poor system of accountability and the absence of any remarkable reward system. The external factors relate to unfavourable export / import prices, restricted access to external market and funds; high rates of interest on foreign loans…[23]

[21] To Onyekpere Eze, (2003). The 'civil service mentality' guarantees that salaries and emoluments will be paid whether workers are productive or not.
[22] ibid. p. 24 - 25
[23] Salako, op. cit. p. 35

To properly determine the reason why privatisation was given a thumb up by stakeholders, it is pertinent to understand the motivating factors or the basic objectives government was set to realize when it decided to establish and pilot these enterprises in the first place. These policy objectives could be summarized thus:

1. Provision of social services;
2. Promotion of rapid economic development;
3. Assuming the risk of capital intensive projects adjudged too large for private sector;
4. Preventing vital sectors of the national economy from being dominated by foreign private capital, and
5. Compensation for the lack of indigenous entrepreneurial capacity.[24]

With the above stated objectives, government proliferated its public enterprises most of which "were of doubtful viability while others so badly managed that they yielded little or no return to justify the huge investments in them."[25] As stated earlier, the oil boom era made government to condone the waste and inefficiencies of these enterprises. With the economic recession of 1979, reality began to unfold which agitated government into commissioning several study groups for example, Shagari's presidential commission on parastatals,[26] to examine their operations with a view to designing a basis for new funding schemes, appropriate capital structures as well as incentive measures to enhance

[24] Industrialisation in Nigeria, being a Handbook published for Federal Ministry of Industry and Technology by Sahal Publishing and Printing Co. Ltd, Lagos, Nigeria, p.170.
[25] Ibid, p. 171
[26] Technical Committee on Privatisation and Commercialisation in Nigeria, Vol. 1, p.8

productivity and general efficiency. As would be expected, the enterprises were found to be infested with the following problems:

1. Confused and conflicting mission;
2. Political interference in operational decisions;
3. Misuse of monopoly powers;
4. Defective capital structures;
5. Bureaucratic red-tapism in their relations with supervising ministries or agencies; and
6. Mismanagement, Corruption and Nepotism.[27]

Now to actually understand the extent of these economic inefficiencies and waste caused by the stated problems above, one needs to judge the inefficiencies and waste in the light of the number of enterprises being owned by the Federal Government at the time. As at 1998, there were 588 public enterprises owned by the Federal Government of Nigeria.[28] This implies that the Federal Government was responsible for over 5000 board appointments and this constitutes an economic drain on the Federal Government purse. According to IMF, the drain of public enterprises in 1998 was equal to 5 percent of the nation's Gross Domestic Product. For example, in 1998 alone, the amount spent on Nigeria public enterprises was ₦265, 000,000,000.00 (Two Hundred and Sixty Five Billion Naira). The breakdown of the amount is presented in the **Table 1** annexed as appendage.

The data as presented by IMF is not in any way misleading in view of the total number of enterprises Nigeria owned and financed by the Federal Government. For example, in

[27] Industrialisation in Nigeria, op. cit, p. 45

[28] Omoleke, I.I. (2010). Privatisation Policy of the Nigerian Government and the Hope of the Grassroots, p.8

1986, investments in public enterprises stood at ₦23 billion made up of ₦8 billion in equity and ₦15 billion in loans. The total investments by 1990 stood at more than ₦36 billion as shown in **Table 2** annexed as appendage.

The terrible condition of the SOEs was aptly presented by the Secretary to the Military Government (SMG) when he stated that the Government has invested over ₦8 billion in equity shares and ₦15 billion in loans on about 100 public companies and parastatals. The returns, he continued, from their investments were lower than ₦400 Million to ₦800 Million. Besides, as much as 40 percent of the governments non – salary expenditure and 30 percent of its capital investment budget was channeled into supporting public enterprises with adverse effect on the treasury and the overall national economy, thus compelling the government to critically re-examine the economic wisdom in preserving the status quo.[29] The SMG then concluded, or rather lamented that the Government has not received "a fair share of its equity investments in public enterprises.[30]

From the foregoing, it is deducible that these are two major schools of thought as per the reason government decided to privatise. Firstly, the rather cynical school of thought is that which concluded that the government was insolvent and could not afford to keep the enterprises afloat on its dwindling resources. The second school of thought, who

[29] Chief Olu Falae, (1986). SMG in a keynote address to the 5th Annual Conference of the Chief Executives of Public Enterprises held at Durbar Hotel Kaduna, between 22 to 23 May, cited by Okorodudu, M.T, State control and intervention in strategic business and the promotion of private Investment In: Ayua, I.A, et al (eds) (1996). Privatisation of Government Owned Banks and the issue of ownership and control, Nigeria Institute of Advanced Legal Studies, Lagos, p.10.

[30] Ibid.

represents a popular view in the official quarters, is that the government was not receiving "a fair share on its equity investment" in the public enterprises.[31]

There is, however, a confluence point between the two schools of thought. The one uniting factor is that there is an emphasis on the unprofitability of the public enterprises before an option to privatise was contemplated. But it is instructive to note that the unprofitability of the public enterprises predated eighties (80s) and in fact it has been "a problem with public enterprises in this country since their inception."[32] while the 'oil boom' lasted which made the economy to appear buoyant, the losses engendered by these public enterprises could be tolerated; but as soon as the 'oil recession' set in with the real state of the economy exposed, it became apparent that the financial resources of the government could no longer absorb the perennial losses of these enterprises.

On the whole, it is apposite to conclude therefore that government privatisation policy is a child of necessity arising from poor management of public enterprises and the expectation that the enterprises will be more efficient in the hands of private investors. Privatisation may be partial or full.

2.2.1 Partial Privatisation

It is among other things the focus of this chapter to establish privatisation as having a positive impact on the profitability and efficiency of the affected enterprises in their overall performance. The successful privatisation of SOEs, subject to the prevailing state laws regulating their operations cedes both the ownership and control/management

[31] Ibid
[32] Okorodudu – Fubara, Ibid, P.28

powers which prior to privatisation resided in government and/or its appointees to private hands. This however, is true where the government decides to sell off all the assets of the affected enterprises with their equity shares. An instance of this arrangement is seen in Nigeria where the Public Enterprises (Privatisation and Commercialisation) Act[33] provides for full privatisation of some designated SOEs.

In some other cases, the government may decide to adopt partial privatisation of some of its SOEs where it sells non-controlling equity stakes on the stock market. Here while management of the enterprises resides in the hands of private persons or strategic investors, the government remains the controlling owner. The Nigerian privatisation Act in addition to full privatisation designates certain enterprises for partial privatisation.[34] It is submitted that most countries of the world prefer partial privatisation of their SOEs to full privatisation. According to Jones,[35] in a sample of share-issue privatisation from 59 countries just 11.5% of the firms sold all of their capital, and less than 30% sold more than half of their capital in the initial public offering.

Apart from the practical importance of partial privatisation, there is no doubt, it has some theoretical relevance because of the insight it offers into the long-standing debate over why SOEs perform poorly. In this regard, the political view argues that governments pursue objectives in addition and in conflict with profit maximization, and that this political interference can distort the objectives and constraints faced by managers[36] hence,

[33] Cap. P. 38 (LFN) 2004.
[34] For these enterprises, see part I of First Schedule to the Act., Cap. P. 38, LFN, 2004
[35] Jones et al (1999) cited by Nandini, G. (2005). "Partial Privatisation and Firm Performance", The Journal of Finance, Vol. LX No. 2 @ http//www.bus.indiana.edu/nagupta.

only transfer of management and control to private owners is likely to address inefficiency in SOEs.

The managerial view, based on agency theory is that SOEs have difficulty in monitoring managers because there is neither an individual owner with strong incentives to monitor managers nor a public shares price to provide information about manager's action as judged by stock market participants.[37] Under partial privatisation, the shares of the firm are traded on the stock market whereas the firm remains under government's control and subject to political interference. This offers an opportunity to verify the managerial perspective that inadequate information about managers is an important factor that militates against the efficiency of SOEs. Here, experience of other jurisdiction will be helpful. It is submitted that India has a well-established stock market that long predates privatisation, and yet privatisation in India consists solely of the sale of minority equity stakes.[38]

As a result of the intermediate position between public and private ownership, partial privatisation probes into the more general question of whether financial markets can alleviate agency problems due to the separation of ownership and control. Thus, stock markets can alleviate agency problems due to the separation of ownership and control. Thus, stock markets provide incentives to investors to gather information that is reflected in the share price, which can improve managerial incentives in a number of

[37] Laffont and Tirole (1993) A Theory of Incentives in Procurement and Regulation. Cambridge (Mass): MIT Press, p. 705

[38] Nandini, G. (2005)"Partial Privatisation and Firm Performance", The Journal of Finance, Vol. LX No. 2 @ http//www.bus.indiana.edu/nagupta.

ways.[39] Importantly, the share price which contains unique information that may not be retrieved from accounting data, can be used to design more effective schemes to improve performance.[40] Moreover, financial markets facilitate corporate control through takeovers, which can impose managerial discipline.[41]

Still on Indian privatisation, an observation was made of the pre – and post – privatisation performance of 40 firms partially privatised by the Federal Government of India and two firms sold by regional governments over the period of 1990 to 2000. In all these firms, only non-controlling shares were sold to financial institutions, foreign institutional investors, and the public through open auctions, public offerings, and global depository receipts in domestic and international stock receipts. Since shares of these firms were traded as soon as the government sold equity, it is easy to tests the managerial perspective of inefficiency in SOEs. The empirical strategy involved here was to investigate whether the operating performance of firms depends on the share of equity sold, once other factors that can affect manager incentives are controlled.

Among other things, it was found that the impact of partial privatisation remains statistically significant when changes in competitive conditions are controlled.[42] The results, therefore, suggest that both the levels and the growth rates of profitability, labour productivity, and investment spending improve significantly following partial

[39] Ibid.
[40] ibid.
[41] ScharfStein, D. (1988). "The disciplinary roles of takeovers", Review of Economic Studies 55, 185- 199 and Stein, Jeremy C. (1988). "Takeover threats and managerial myopia, Journal of Political Economy 96, 61-80
[42] Ibid.

privatisation.[43] It is submitted that since improvements in operating performance are not accompanied by lay-offs, this suggests the continued presence of political interference by the government in these firms. The implication is that there is a support to the hypothesis that partial privatisation addresses the managerial rather than political view of inefficiency in SOEs. Be that as it may, to properly understand how the managerial labour market may, affect incentives, it is imperative to examine turnover in the senior management of SOEs, that sell equity on whether the managerial labour market is one channel through which partial privatisation improves incentives, it was observed that:

> ..... because information about firm performance is now public, managers may use success at a partially privatised firm to further their career. Second, because of the better incentives and opportunities for displaying their talents, partially privatised firms may be able to attract better managers.[44]

It was discovered in this regard that the "performance of partially privatised enterprises at the time of CEO turnover has a strong effect on the ability of outgoing CEOs to move into the higher-pay private sector"[45] Thus, "departing CEOs, hired by private firms are likely to have come from over performing state-owned firms, that departing CEOs hired by other state –owned enterprises are likely to have come from firm with slightly better than average performance, and that departing CEOs who retire are likely to have come from underperforming firms."[46] However, better career opportunities and improved

[43] In the Firm Fixed Effects Regression, it was found that a 10% point decrease in government ownership increases annual (log) sales and (Long) profit by 13% and 10% respectively, and the average product of labour and returns to labour by 8% and 5%, respectively. It was also discovered that investment spending on research and development and expenditures on fixed assets rise significantly following an increase in the private share of a firms equity. For more on this, see Nandini Gupta, op. cit, p. 52

[44] Ibid.

[46] Ibid.

[47] Ibid.

incentives under partial privatisation can also attract better managers hence it was opined that "COE turnover leads to significant improvements in the performance of partially privatised firms."[47] It is possible that partially privatised companies "lose fewer workers by attrition because they become more profitable."[48]

No doubt, reducing surplus employment would clearly lead to further improvement in the allocation efficiency and profitability of the enterprises privatised are brought about by an organised and higher labour productivity which ultimately will lead the enterprises to hire more workers. Also, appreciable is the fact that partial privatisation leads to decline in investment spending as politically motivated spending is reduced. Importantly, the ceding of management powers to private investors brings about an improved monitoring mechanism and may lead managers to invest in better technology and thus increase productivity.

The exposure of the shares of the partially privatised enterprises to capital market makes it possible for the business analysts and institutional and individual investors to closely monitor those shares. This has been conceded to when analyzing the situation in India that, "Accounts from annual shareholders' meetings suggest that private shareholders of partially privatised companies regularly voice concerns about performance."[49]

This shareholders concern leads to prioritizing sound corporate management, even though the government remains in control. The result is the awareness of career concerns and other incentives within the management cadre, that influences policy – making process which lends credence to the hypothesis that, "partial privatisation both facilitates

[48] Ibid.
[49] Ibid.

the selection of better managers and improves incentives for existing and new managers."[50]

Nigerian government in carrying out its privatisation exercise since the inception of the programme has always listed certain enterprises for partial privatisation in both the precursory and current laws. Beyond designating enterprises for partial privatisation, various implementing institutions have been established in these laws with mandates to oversee the success of the programme. Also, the allocation of shares of the affected enterprises (in a given percentage) to the various groups – associations, interest group, staff, and of recent strategic investors – has always been part of the policy objective of the programme.

Thus, under the 1988 Decree, the Technical Committee on Privatisation and Commercialisation (TCPC) with the mandate of implementing the programme listed the shares of the partially privatised enterprises in the Nigerian Stock, capital market through public issue. Others were however by private placement where the TCPC so recommends to government. The law expressly reserves between 10% -20% of the shares of SOEs to be privatised for interest groups (i.e trade unions) while a maximum of 10% was reserved for the staff of such enterprises.[51] It should be noted that SOEs on the list that were not already incorporated as companies were to be incorporated as public companies by the TCPC. In effecting sale of shares of these enterprises, the TCPC relied on the Securities and Exchange Commission.[52]

[50] Ibid.
[51] Section 7 of Privatisation and Commercialisation Act, Cap. 369, LFN, 1990(now repealed)
[52] Section 5, Ibid

The above law was replaced by the Bureau of Public Enterprises Decree.[53] This later Decree however maintained the 10 – 20% shareholding reservation for unions and associations, and 10% for staff. In addition, it stipulated a maximum of 1% shareholding for any individual.[54] Under the current law, there is a departure of emphasis of the policy objectives from transferring assets to Nigerians to transferring the assets to any person who could enhance the business by the introduction of strategic investors.[55] The programme reserves 40% of the shares for this group; 20% to the Nigerian public through the Nigerian Stock Market, whereas the Government is to retain 40% of the shares.[56]

The wisdom for the introduction of strategic investors into the present policy objectives has been questioned thus:

> Why should any shareholder be allotted any volume of shares over and above all other willing buyers of the shares of the company? Why should the shareholder enjoy the right to install management to the exclusion of other shareholders. Is not the ability to identify a consensus amongst shareholders on any issue including the installation of management the hallmark of shareholder democracy? With the introduction of strategic investor policy, is government trying to replace the tyranny of a strategic core investor who does not derive its powers from the shareholders but from a process determined by a seller who has already been paid for his goods?[57]

This plight may not be completely out of place, but it is important to state that the introduction of the strategic investors into the economic terrain was most respectfully guided by the objectives of the privatisation programme which were listed to include**:**

[53] Decree No. 78, 1993 (now repealed).
[54] Section 14, of Privatisation and Commercialisation Act, Cap. 369, LFN 1990 (now repealed).
[55] Sections 3 and 4 of Public Enterprises (Privatisation and Commercialisation) Act, Cap. P. 38 (LNF), 2004
[56] Part I of the First schedule to the Act, i.e Cap. P. 38 (LFN) 2004
[57] Babalakin, W. (2003). "Legal Dynamics of Privatisation in Nigeria", Presentation at First Bank Round Table, Lagos http://www.babalakinandco.com

restraining and rationalizing the public sector in order to reduce dominance of unproductive investments in the sector; re-orienting SOEs for performance and efficiency; raising funds for financing socio—economic developments in areas as health, education, and infrastructure; ensuring positive returns on public sector investment through efficient management; avoiding dependence on treasury for funding and encouraging the use of the Nigerian Capital Market to meet such funding requirements; creating jobs, acquiring knowledge and technology, and exposing the country's economy to international competition.[58]

Though, the strategic investors are favoured under the present privatisation programme; it is note worthy that the government still retains 40% of the shares with which it can exercise their attendants rights in favour of or as supplementary to other shareholders and in the overall national economic interest. Also, the policy-making powers resided with the government. At any point in time, it can invoke same for the purpose of correcting or redirecting any anti-people corporate governance / policy in the overall public interest.

Below are the practical demonstrations of the partial privatisation as represented in the legal framework of privatisation and commercialisation policy in Nigeria starting from its inception in 1988. This is illustrated in **table 3, 4 and 5** respectively as annexed in the appendage.

2.2.2 Full Privatisation

Full Privatisation is another type of privatisation recognized under the privatisation law and policy in Nigeria. The term full privatisation is not in any way defined in the Public

[58] The underlining for emphasis

Enterprises (Privatisation and Commercialisation) Act.[59] However, from the definition offered of privatisation in its precursory law,[60] the meaning of the term full privatisation is "the relinquishment of part or all of the equity and other interests held by the Federal Government or its agency in enterprises"[61] Also, the term has been defined as "the divestment by the Federal Government of all its ordinary shareholding in the designated enterprises."[62]

This definition clearly draws a distinction between full privatisation and partial privatisation. In the latter, it is only part of its ordinary shareholding that is divested of the government. Whereas in the former, all of the equity and other interest held by the Federal Government or its agency in the designated enterprises are being relinquished and vested in the private persons or entities. What informed full privatisation of an enterprise is the belief that so long as politicians are in control of the enterprise, SOEs "will be characterised by political interference."[63] That is to say, the presence of government in business inhibits the performance of the overall national economy through undue political interferences. On the other hand, the etching away of politicians from business put them in proper position to pursue and ensure sound economic policy that will support ''institutional reforms, including the promotion of competition, the protection of private property rights, and effective regulation where there is market failure."[64] The economic implication, therefore, is an improvement in the firms

[59] Cap P38, LFN, 2004
[60] Section 14, Privatisation and Commercialisation Act (Cap. 369, LFN) 1990.
[61] Underlining for emphasis, S. 14 Ibid
[62] http://www.nigeriaembassyusa.org
[63] Nandini Gupta op. cit, p. 52
[64] Parker, David, (2006). Enterprises Sales: Thatcher Leads the change in Hodge Graema (ed), Privatisation and Market Development-Global Movements in Public Policy Ideas, Edward Elgar, Cheltenham, U.K, p.23

performance as a result of concerted and concentrated economic initiatives brought about by new human capital, better monitoring mechanism and enhanced incentives.

In fact, the effect of full privatisation in particular is made clear with the British success after its "economy was trapped in the cycle of low growth and inflation, which economists called 'stagflation'; and mainstream Keynesianism was intellectually and politically bankrupt of solutions to it"[65] At the point in time, the United Kingdom (UK) in particular was unceremoniously often referred to as 'the Sickman of Europe"[66] It was at the peak of this economic crisis that Mrs. Margaret Thatcher emerged Prime Minister and "introduced a radical departure from the economics of the 'post war consensus', attacking trade union powers, public expenditure budgets, tax levels and the grip of the nationalized industry on the supply of critical services such as telecommunications, electricity and water."[67] Due to the huge success recorded by Mrs. Margaret Thatcher administration in selling off most of the British public firms through full privatisation especially other European countries such as Portugal, Spain, Italy and France followed suit and introduced major privatisation programs in their economic mainstream.[68] Table 6 details the major privatisation undertaken in the UK with their dates and methods of sale also annexed in the appendage.

Under the various laws on privatisation in Nigeria since the inception of the exercise, certain enterprises have always been specified for full privatisation. Worthy of note here is the decision of the Federal Government to privatise fully, the twelve commercial and

[65] Lawson (1992) op. cit, pp. 9 – 10
[66] Parker, David, op. cit, p.9
[67] Ibid
[68] Ibid.

merchant banks were formerly listed for partial privatisation.[69] The full privatisation of these banks especially the four biggest banks in Nigeria i.e. the Union Bank of Nigeria Plc; United Bank for Africa Plc; First Bank of Nigeria Plc and Afribank Plc generated a lot of controversies which was indeed worsen by government's attempt to come back and acquire its sold out shares under the guise of "Golden Shares". But fortunately, this was never to be; in fact, government's attempt to come back and acquire their 'golden shares' threw the country along economic divide.

The rationale behind privatisation especially on full scale basis is hinged on the economic history that the needs of the "commanding heights'' of the economy are best served when government is not directly involved in either ownership or operation but limits itself to establishing and maintaining a sound investment friendly and enabling environment"[70] No doubt, this formed the economic drive for the privatisation of British Petroleum at the inception of the privatisation exercise in Britain which success prepared the stage for subsequent privatisation adventures in Nigeria. Details of the listed enterprises for full privatisation under their various laws are given in **tables 6, 7, and 8** annexed to the appendage.

2.3 Mode of Privatisation

A successful privatisation policy must consider several issues, including which types of SOEs should be privatised. The question of when and how the privatisation programme

[69] Part I of First Schedule to the Privatisation and Commercialisation Act, Cap. 369, LFN, 1990. See also Bernard B.A. Ver, Post – Privatisation Appraisal of Control and Management in privatised Banks: the need for a Golden Share. In: Ayua I.A et al (eds) (1996), "Privatisation of Government Owned Banks and the Issue of Ownership and Control", Lagos, p.66.

[70] Ekundayo J.O. (1996). "Private VS Public Pre and Post-Privatisation Appraisal of Performance in Privatised Banks", in Ayua, I. A. et al (eds) (1996). Privatisation of Government Owned Banks and the Issue of Ownership and Control, Nigeria Institute of Advanced Legal Studies, Lagos, p. 10.

should be carried out and to whom should the SOEs be sold and at what price are the critical issues that should be addressed. Also, the privatisation option to adopt would depend on the objectives of the divestiture.[71] Models, mode or form of privatisation has been observed to depend largely on the objectives of the government and the particular need of the country. The same way, different political institutions help in explaining one country's ability of implementing policies with significant distributional consequences such as privatisation.[72] In any case, the mode of divestiture chosen for a particular enterprise of course depends on a blend of political, commercial and strategic objectives.[74]

In implementing privatisation policy, the Nigeria's Public Enterprises (Privatisation and Commercialisation) Act[75] specifically provided for two modes of privatisation to include (a) public offer for sale of shares, and (b) private placement. However, the Act[76] gives the National Council on Privatisation Powers to determine any other modes thought to be appropriate.

Generally, in carrying out the privatisation programme, several modes are used some of these modes however intertwined in operation and are therefore definitive of others. Below are some of the models of privatisation often in use:

(i) **Offer of shares to the public**

[71] Uzochukwu, A. op. cit ., p. 22
[72] ibid
[74] Section 2(1), Cap. P38 (LFN), 2004
[75] Section 2 (3)ibid
[76] Salako, H.A. op. cit, p. 44

Under this mode, the entire SOE equity or part of it could be offered for sale depending on the privatisation objective as well as the depth of the domestic capital market. For example, in Latin America, where many countries had relatively well-developed capital markets, governments commonly sold a part of the equity to the public.[77] In Africa where capital market were underdeveloped or non existent, governments used management contracts and leases to privatise SOEs. However, the option could be politically damaging if it failed.[78]

In Nigeria, public offer for sale of shares of the affected enterprises involves listing of the SOEs on Nigeria Stock Exchange (provided they qualify for listing) and inviting individuals and corporate bodies to purchase shares offered for sale at a given price. The need to divest from an enterprise through public offer of its shares is predicated on the need for wide share ownership and the development and strengthening of the capital market.[79] This mode (method) requires wide publicity through the instrumentality of the media in order to attract the needed participants. As a result, it may be more costly and may involve a discount to maximize – impact. But this method may not fare well in the countries (as it is in Africa) where capital markets are underdeveloped and in some cases non-existent. Here other methods may be opted for so as not to defeat the purpose of the arrangement or programme.

(ii) **Trade Sale**

The trade sale is usually preferred in disposal of well-established SOEs which are sufficiently small and specialized not to merit IPO. Trade sale may be the "only option in

[77] Uzochukwu, A. op. cit, p. 64
[78] Ibid
[79] salako, H. A. op. cit, p. 65

countries with vestigial capital markets. However, it is difficult to justify the sale price of the SOE as objective, as it could be challenged with the benefit of hindsight"[80] The SOE affected by this mode but which is performing poorly or technically in solvent may require write-offs before sale.

(iii) **Sale of a SOE to other Company/Consortium/Conglomerate**

By this mode, governments may choose to sell state-owned utilities to companies irrespective of origin – foreign or domestic. A good example is seen in Bolivia Privatizing the State electricity monopoly by breaking it into three electricity generation companies and directly selling them off to foreign companies, primarily U.S utility companies.[81]

(iv) **Direct Sale of the Entire Enterprises to the Public**

Direct sale is predominantly used in Sub-Saharan Africa, and this "signifies a reflection of low value of assets, the under development of local capital markets and the wide spread use of privatisation by liquidating the firm and selling the assets".[82] This mode involves the transfer of ownership of industries or completely to the public. Here the market determines the value of companies through the bidding process. The auctioning of an enterprise in some cases has revealed a divergence between newly discovered market value and the previous book value of an enterprise as recognized by the government. Countries other than Sub-Saharan African that used the method include Argentina, United Kingdom, Chile, and New Zealand.[83]

[80] Uzochukwu, A. op. cit. p. 56
[81] Ibid
[82] ibid
[83] Anyanwu, C.M. (1998). Economic Liberalisation through Privatisation and Commercialisation of Public Enterprises. A panacea for efficient performance and improved productivity, Central Bank of Nigeria Journal, Vol. 22, No. 2, p.61

(v) **Deferred Public Sales**

The method is invoked for enterprise which although considered viable, if sold by shares, would realize revenue that would be less that the real value of the whole assets of the affected enterprises. Under this method, the willing buyer and the willing seller price is negotiated on the basis of a revaluations of the underlying assets of the affected enterprises.

By deferred public offer, the sole purchaser sell after a stipulated period a certain percentage of shares to the general public, so that the large proportion of the population will benefit from the privatisation exercise. In carrying out privatisation scheme in Nigeria, four hotels were privatised by this method on the understanding that the new owner would sell not less than 40 percent of the equity to Nigerians within the period of five years after the taker-over.[84] This method is commonly used in Ghana, Zambia and Nigeria.[85]

(vi) **Sale of Assets**

Where it is obvious that the affected enterprise cannot be appropriately or conveniently sold by either public offer of shares or private placement of shares, this method could be the appropriate one. The choice to effect privatisation programme by sale of assets of the affected enterprise is usually informed where the enterprise has poor tract record and its future outlook does not hold good prospects.

This is done by first liquidating the enterprise and presenting its assets for sale, which may be by piece-meal, to the public by means of public tender. This method makes an

[84] Uzochukwu, A. op. cit. p. 67
[85] Salako, H. A. Op. cit. p. 66

unattractive State Owned Enterprise (SOE) business more attractive for sale. Here, all the residual liabilities may still hang on the Government who also may write-off the remaining unsold assets. A rather pathetic feature of this method is the possible lay-off of the employees of the affected enterprises by the Government.

(vii) **Management Buy Out (MBO)**

Management buy- out is a situation whereby the entire or substantial part of the share capital of the enterprise is sold to the employees, who shoulder the responsibility of organizing and managing the enterprises. The shares are usually sold at give away or low prices, and the method is encouraged in transitional economy because of the relative ease of administration or/and political implementation.

Arrangement under MBO may become necessary in the case where other interested purchasers cannot be found or as a matter of government labour policy to encourage employee ownership and participation in the enterprises, the subject of privatisation. This option may allow privatisation to take place when all other methods are impracticable. This method paves way for substantial improvements in corporate performance due to charge of work attitude and improved motivation.

(viii) **Private Placement of Shares**

The method is usually appropriate where Government holding is so minimal that the majority Shareholders cannot be persuaded to make a public offer of shares though the enterprise meets the listing requirements of the Stock Exchange. Ideally, this method is appropriate where the full potentials of the enterprise have not been harnessed and need to be nurtured for some time. Here, the prospects of the potentials of the enterprise being harnessed in the nearest future must be positive.

Also, this method can be applied to enable the public sector investment agencies to be in custody of the shares of affected enterprise pending when it will be expedient for them (shares) to be sold through public offer on the stock market.

(ix) **New Equity Investment By the Private Sector**

In addition, or in lieu of the sale by own stockholding in the SOE, the government's shares or all of its newly-issued stock of the SOE can be sold to private sector purchasers. This option may require conversion of the state enterprises into a Public Company where the management discipline of the private sector is introduced. This arrangement produces some revenues for the state when compared to outright privatisation.[86]

(x) **Management Contracts and Leases**:

Here, government uses Private Sector for the provision of goods and services. The private contractor is expected to deliver goods and services to the government or the public subject to the terms and conditions specified in the contract. This could take the form of leasing of assets for a "predetermined period to an outside group that assumes full commercial responsibility for operating them, while the state retains ownership and responsibility subject however to agreed contract."[87] Through this arrangement, the management provides skills and technology for an agreed fee. One peculiar feature of this method is that liabilities and responsibilities remain with the government.

It has been advised that to "ensure greater internal efficiency, retention and continuity of private management should be predicated upon performance."[88] The contracting and

[86] Uzochukwu, A. op. cit., p. 68
[87] ibid
[88] ibid

leasing method is less visible, avoids suspicions often associated with foreign ownership of African assets and diffuses the re-colonization issues.[89]

African Countries that use this form of privatisation are Benin, Burundi, Congo, Cote d'Ivoire, Gambia, Kenya, Madagascar, Mali, Niger, Nigeria and Senegal.[90] Though this process widens the options of government, for example management contracting[91] and franchising,[92] it could however retard the adoption of the more market based forms of privatisation in Africa.

(xi) **Reorganisation or Breakup**

By embarking on reorganisation of SOEs, government dismantles monopolies before privatisation, and this could also allow partial disposals to take place. After reorganisation of the SOEs, government may then decide on any of the preceding options discussed above.

Reorganisation of SOEs could take form of management contracts and leases, deregulation, removal of subsidies and voucher schemes. This further lends credence to the earlier submission that some of the methods under discussion are intertwined.

Notwithstanding, the two specified methods under the Act[93] but consequent, upon section 2 (3) empowered the Technical Committee on Privatisation and Commercialisation

[89] ibid
[90] Here Enterprises remain in the hands of government while at the same time, their operations are privatised through management.
[91] Commonly used for public utilities where government grant an exclusive right to a private firm to produce and deliver the services.
[92] As seen from Section 2 (1), CAP P 38 LFN, 2004.
[93] See TCPC final Report Vol. 1, p. 8

(TCPC) of enterprises in Nigeria which evolved 5 methods[94] through which these enterprises were privatised. These methods include:

i) Public offer of Shares through the Nigerian Stock Exchange (NSE). The enterprises privatised through this method were adjudged to have a good record of profitability for 5 years and history of dividend payment of not less than 5 percent for at least 3 years. A total of 53[95] enterprises were privatised through public offer of share.

ii) Private placement of Shares mainly to institutional investors and core groups with demonstrated management and / or technical skills. This method was opted for to privatise those enterprises where government holding was small and the majority Shareholders could not be persuaded to make public offer of shares, even when the conditions for listing were fulfilled. A total of 7 enterprises were privatised through this method.

iii) **Sale of assets**: Where the above two could not apply as a result of poor tract records, liquidation of assets was done via this method. A total of twenty – six enterprises were privatised this way.

iv)**Management Buy out (MBO)**: Under MBO arrangement, the entire enterprise or a substantial part of same was sold to workers who would shoulder the responsibility of organizing and managing it in their own way. Only one enterprise was privatised this way.

[94] This number however includes 8 enterprises privatised by FMOA & FMOT before TCPC emerged.
[95] Salako, H. A. op. cit. p. 68

v) **Deferred Public Offer**: This method was applied where less revenue would be generated than the real value of the enterprises. A total of 4 enterprises were privatised by this method.

Details of these 5 methods applied by TCPC in carrying out privatisation exercise with the total number of enterprises privatised through each method are shown in **Table 9 and 10** annexed as appendage.

2.4 Concluding Remark

The Chapter dwelt on the imperative of economic liberalisation programme in Nigeria vis-à-vis the efforts so far made by the government to champion the realization of such economic liberalisation as inherently seen in its laws made at various times. These efforts gave birth to the idea of privatisation of enterprises in Nigeria as a panacea to the hitherto government monopolized, but increasingly deteriorating, corporate entities. Hence, the chapter concentrated on privatisation of enterprises in Nigeria.

The chapter opened with an x-ray into the pitiable condition of public enterprises of the United Kingdom (UK) and other countries of the world, especially developing countries, before they embarked on policy reform and corporate restructuring. The same reason caused the dismal performance of State Owned Enterprises (SOEs) since independence in Nigeria and hence, our agitation for a way forward. Also considered here, is the concept of privatisation which in summary is an economic policy whereby private individuals or entities assume or take part in the ownership, management and control of enterprises. This practice in a way addresses the incidence of management complacency and nonchalant attitude usually orchestrated towards public property. This further, relieves

government all or part of the burden of allocating huge resources to these enterprises without commensurate returns, economically speaking. Usually the concept of privatisation is perceived in two ways, to wit: Partial Privatisation and Full Privatisation.

Under Partial Privatisation, the ownership, management and control of enterprises are concurrently done by the duo of government and private entity depending on their various equity holdings; whereas in full privatisation, the ownership, management and control of the enterprise rest in the hands of private entities. These two categories of privatisation were discussed under the various laws that were passed in order to give the policy a legal backing.[96]

The chapter finally made a detour into the various modes of privatisation. Here, several modes were highlighted and discussed. It is however, noted that the modes are not limited to the ones discussed though some of them are intertwined. Hence their distinctions are being understood as a function of mere nomenclature.

CHAPTER THREE

COMMERCIALISATION OF ENTERPRISES IN NIGERIA

3.1 Introduction

In a bid to properly understand and appreciate the patterns of corporate ownership and control in Nigeria, from a historical perspective, three stages have been identified. These stages are (2) the era of economic domination (1900-1959), otherwise called the colonial era; (b) the era of economic nationalism and protectionism (1960-1990); and (c) the era of corporate capitalism and liberalisation (1960-Date).[1]

For the purpose of this chapter, this discourse will represent the economic developments and the attendant economic policies of the last two (2) stages, that is, the eras of economic nationalism and protectionism and corporate capitalism and liberalisation.

These economic developments were as a result of the domination of the Nigerian economy by foreign companies and the overhead national consciousness of Nigeria, not only to participate in the economic development of the country but also to control the commanding heights of their economy. This agitation to wrestle the nation's economy from the control of the colonialists gave rise to the First National Development Plan in 1962 aimed at taking measures at ensuring greater private investment and full participation in the affaires of the economy of the country. Consequently, three instruments were made. These instruments were (a) the Companies Act, 1968 (b) the

[1] Ali, H. L. (1996). "The Powers of Directors in Nigeria Company: An Analysis of the Dynamic of Directors' Dominance in Modern Company". LL.M Thesis (Unpublished), Dept. of Commercial Law, Faculty of Law, Ahmadu Bello University, Zaria, p. 31.

Nigerian Enterprises Promotion Act, 1990 (and subsequent amendments), and (c) the Privatisation and Commercialisation Act, 1988 (and subsequent amendments).

The Companies Act, 1968 started by first reorganizing the white-dominated-corporate organisations. It provided that every foreign company desiring to carry on business in Nigeria must first and foremost, or if already carrying on business within six weeks, register as an independent separate entity from its foreign parent.[2] This provision brought about what has been termed compulsory 'naturalization'[3] of foreign companies, in order to get Nigerians directly involved in the ownership and control of every company registered in Nigeria and also to make those companies 'more easily assessable to tax than if they had retained their foreign status.[4] As a supplement to the revolutionary provisions of Companies Act of 1968, was the Second National Development Plan between 1970-1974 which places national aspirations far above the interest of the foreign private investors when it stated thus:-

> The government will seek to acquire, by law of necessity, equity Participation in a number of strategic industries that will be specified from time. In order to ensure that the economic destiny of Nigeria is determined by Nigerians themselves, the government will seek to widen and intensify its positive participation in industrial developmen[5].

It should be noted here that despite the 1st and 2nd National Development Plans and the incidental indigenisation Acts aimed at increasing Nigerian Participation in decision making in the larger commercial and industrial companies, Nigerians at the point in time lacked the requisite entrepreneurial skills and financial capital to enable them displace

[2] Section 369, Companies Act, 1968(now repealed).
[3] ibid
[4] Ibid
[5] The Federal Republic of Nigeria: Second National Development Plan 1970- 1974 (Lagos), 1970, P. 289

foreign investors. This explains why and how the Government stepped in to rescue the situation by acquiring the shares of those indigenised enterprises 'on behalf of the people on the understanding that as soon as the people were in a position to pay for the acquired shares the government would divest itself of such holding.'[6]

The implication of the foregoing is that as from 1960 – 1990, government was an active participant in the ownership and control of enterprises. However, at the later part of 1980s, there was another round of agitation (internal). Ali aptly represented this internal agitation in a very succinct way when he stated thus:

> It was now felt that Nigerians possess the requisite managerial ability and financial wherewithal to take the activities of the government. The government is therefore relinquishing its interests in most companies in favour of private investor.[7]

At the heat of this economic agitation, Nigerian government took a cue in the trend of world economy as public ownership of industries is now in retreat throughout the world as private sector over. This brought about the twin pillars of economic reform policy of privatisation and commercialisation. This chapter will concentrate on commercialisation.

3.2 The Concept of Commercialisation

In understanding commercialisation, it is imperative to state that there is interplay between nationalization and the two pillars of economic reform policy – privatisation and commercialisation. That is to say, for any government to privatise any enterprise, it must first and foremost nationalize such an enterprise. In the same vein, government does not

[6] Olowole, A.: " The Background and the Degree" (The Privatisation and Commercialisation Decree No. 25 of 1988) cited by Ali, P. 36
[7] Ali, Op. cit. p. 25

talk of commercializing an enterprise which is not a public entity. This only lends credence to the legal principle that one cannot give what he does not have.

It is against the above background that the concept of commercialisation shall be discussed. The birth of commercialisation came as part of the innovative programs introduced under the Structure Adjustment Program (SAP) adopted in 1986. As a result of the prevailing socio-economic and political conditions of the nation's economy, it became imperative to embark on institutional reform of the State Owned Enterprises (SOEs) with the ultimate purpose of;

a) Restoring fiscal balance by addressing the excessive budget deficits and their inflationary impact.
b) Improving on the efficiency in the public sector; and
c) Reducing the size of involvement of government in economic activities so as to free some resources which could be deployed to alleviate international debt burden.[9]

This institutional reform among other things called for reduction in costs of public administration; reduction of subsidies, enhanced productivity and effectiveness of public institutions.[10] The ultimate target was to re-orient fiscal expenditure strategies away from that of undue intervention and investments in activities that could best be performed by private sector and to refocus them to favour activities that would benefit more the vulnerable groups.[11]

[9] Salako, H. A. (1999). "An Overview of Privatisation in Nigeria and Options for its Efficient Implementation". In CBN Economic and Financial Review, Vol. 37 No. 2. p. 19
[10] CBN, (1993). "Economic Policy Reforms in Nigeria"- A Study Report by the Research Department, p. 65
[11] ibid

In order to meet this national economic aspiration, there reforms of key public – owned utility services enterprises such as the National Electric Power Authority (NEPA), now renamed Power Holding Company of Nigeria (PHCN), Nigerian Airways, Nigerian Telecommunication Limited (NITEL), Nigerian Postal Services (NIPOST) and Nigerian National Petroleum Corporation (NNPC) were reorganised and made to charge largely commercial rates for their Services. These key products / services in which the subsidy level was reduced through the adoption of appropriate pricing included petroleum products, mail delivery, water supply, electricity and telephone.

Commercialisation, therefore, being an economic reform policy is to be explained or defined bearing in mind the foregoing background. Accordingly, Brynard sees commercialisation as 'a process directed at establishing a private sector management principles, values, practices and policies within public sector organisation'.[12] Commercialisation has also been defined as 'when a company decides to launch its new product into the market places. It requires the building of a market plan and budget to launch to product. Successful commercialisation will ultimately lead to or exceed predicted sales forecasts.[13] In the words of Sasegbon, commercialisation is:-

[12] Brynard, P. A. (1993). "Privatisation and Deregulation as Part of Economic Reforms in South Africa". In Journal of Economic Management Sciences @ http://www.unisa.ac.za
[13] ibid

> The re-organisation of enterprises wholly or partly owned by the government so that reorganised enterprises begin to operate as profit making commercial venture and without grant, or subventions from government.[14]

This definition is useful because it is in consonance with that offered by the Nigeria's Public Enterprises (Privatisation and Commercialisation) Act.[15] The Act defines commercialisation thus:- *The reorganisation of enterprises wholly or partly owned by the Federal Government in which such commercialized ventures are without subvention from the Federal Government..*[16]

The important fact to note here is that Government still retains the ownership, either wholly or partly of commercialized enterprises, except that those commercialized enterprises must muster enough financial strength to keep afloat or at least break even. However, the fact that ownership (partly or wholly) and management remain with the Government does not mean that private sector is excluded. Hence the 'private sector will deliver the service while the company remains under the management of the public sector.'[17]

[14] Sasegbon, D. (1992)."Doing Business in Nigeria". In Sasegbon, D. (ed.) Nigerian Companies and Allied Matters Law and Practice, Vol. 4, Lagos: DSC Publications Ltd, p. 250

[15] Although the present CAP. P38 (LFN) 2004 did not define commercialisation, it is, however, presumed that the definition offered in Section 14 of CAP. 369 (LFN) 1990 (now repealed) is adopted for the purpose of the present law.

[16] See S. 14, Privatisation and Commercialisation Act, CAP. 369 (LFN) 1990, (now repealed).

[17] Brynard, P. A. (1993). Privatisation and Deregulation as Part of Economic Reforms in South Africa. Journal of Economic and Management Sciences p. 82

From the provision of **Section 6 of the Act 2004,**[18] it is clear that commercialisation can either be partial or full. Each of these classifications shall form the mainstream of discussion in the subsequent headings.

3.2.1 Partial Commercialisation

Emphatically, **Section 6 (1) Act**[19] provides that 'the enterprises listed in part 1 of Second Schedule to this Act shall be partially commercialised…[20]

The purpose of this provision is that those enterprises so designated as partially commercialised will be expected to generate enough revenue to cover their operating expenditures. The government may consider giving them capital projects. It is to be noted that these enterprises which are partially commercialised also have powers, subject to the general regulatory powers of the general regulatory powers of the Federal Government to (i) fix, prices and charges for goods and services they render; (ii) capitalize assets; and (iii) Sue and be sued in their corporate names.[21]

From the inception of Structural Adjustment Program (SAP), our various laws on economic reform took their respective turns in restructuring the hitherto deteriorating public institutions. Thus, under 1988 law on privatisation and commercialisation, Section 12 (1) of the Act,[22] provided that all the enterprises listed in Part 1 of the Second Schedule shall be partially commercialized. These enterprises are fourteen (14) in number and include the following Nigerian Railway Corporation, Nigerian Airports Authority,

[18] Cap. P. 38 (LFN) 2004
[19] Cap. P38 (LFN) 2004. Our concern here is partial commercialisation, hence further comments on full commercialisation is reserved till we get to the heading 'Full Commercialisation'.
[20] Ibid
[21] See Section 8 Cap. P. 38 LFN (2004)
[22] Cap. 369, LFN (1990)

National Electric Power Authority, Nigerian Security Printing and Minting Company Limited, Cross River Basin Development Authority, Hadejia-Jama'are River Basin Development Authority, Lower Benue River Basin Development Authority, Niger River Basin Development Authority, Ogun-Osun River Basin Development Authority, Upper Benue River Basin Development Authority, Sokoto-Rima River Basin Development Authority, Anambra-Imo River Basin Development Authority, Benin Owena River Basin Development Authority, Chad River Basin Development Authority, National Provident Fund, Ajaokuta Steel Company Limited, Delta Steel Company Limited, Nigerian Machine Tools Limited, Federal Housing Authority, Kainji Lake National Park, Federal Radio Corporation of Nigeria, Nigerian Television Authority and News Agency of Nigeria.

Also, in Decree No. 78 of Bureau of Public Enterprises, 1993, Section 17 (1)[23] refers to Part 1 of the Second Schedule to the Decree as containing the same number and names of enterprises listed to be partially commercialized as contained in Cap. 369, LFN, 1990.

In the same vein, under the current law, the enterprises to be partially commercialised are specified under **Section 6 (1) of the Act.** The above sub-section refers to the Act as containing the list twenty six enterprises to be partially commercialized an addition of three enterprises to the existing ones in the previous laws. These include Nigeria Film Corporation, Federal Medical Centre, Gombe and National Hospital, Abuja.

[23] Decree No. 78 (1993;)

3.2.2 Full Commercialisation

It has already been shown that two types of commercialisation about. This is seen from our working definition as espoused by Sasegbon when he posited thus:

> Commercialisation is the reorganisation of enterprises wholly or partly owned by the government so that such reorganised enterprises operate as profit making commercial ventures and without subventions from the government.[24]

Under Public Enterprises (Privatisation and Commercialisation) Act,[25] full commercialisation is endorsed when it provides that "The enterprises listed in Part II of the Second Schedule… shall be fully commercialized"[26]

By full commercialisation, the enterprises designed as such engage their goods and services profitably on a commercial basis in order to raise funds from the capital market without any government guarantee. For fully commercialized enterprises to be able to raise funds, they use private sector procedures in running of their business. The only striking feature that marked fully commercialized enterprises from purely private entities is that in the former, no divestment of the Federal Government's shareholding is involved. Like the partial commercialisation, the fully commercialized enterprises have the powers, subject the general regulatory powers of the Federal Government, to (i) fix rate, prices and charges for goods produced and services rendered; (b) capitalize assets, and (sue and be sued in their corporate names).[27]

Under our various laws, the enterprises listed for full commercialisation were specified. Thus, in the 1988 law on Privatisation and Commercialisation, Part II of the Second

[24] Sasegbon, D. op. cit, p. 83
[25] Cap. P. 38 (LFN) 2004
[26] See Section 6 (2) of the Act, Cap. P. 38 LFN (2004).
[27] See Section 8 of the Act Cap. P 38 LFN (2004)

Schedule to the Act[28] listed the total number of Eleven (11) enterprises that were to be fully commercialized, which include Nigerian National Petroleum Corporation, Nigerian Telecommunications Limited (NITEL), Association Ores Mining Company Limited, Nigerian Mining Company, Nigerian Coal Corporation, National Insurance Corporation, Nigeria Re-Insurance Corporation, National Properties Limited, Tafawa Balewa Square Management Committee, Nigerian Ports Authority and African Re-Insurance Corporation.

In like manner, Part II of the Third Schedules to the Decree No. 78, Bureau of Public Enterprises, 1993[29] listed four more enterprises in addition to the eleven listed under Cap 369, LFN, 1990 to be fully commercialized under the Decree. These enterprises include Federal Mortgage Bank of Nigeria, Nigerian Industrial Development Bank Limited, Nigerian Bank for Commerce and Industry Limited and Nigeria Airways Limited.

Finally, Section 6(2) of the Public Enterprises (Privatisation and Commercialisation) Act[30] provides that the enterprises listed in Part II of the Second Schedule to this Act shall be fully commercialized. In the said Part II of the Second Schedule, a total number of Nine (9) enterprises are though listed for full commercialization only three were new to the list which are Federal Mortgage Finance Co. Limited, Federal Housing Authority and Nigerian Social Insurance Trust Fund.

[28] See Section 12 (2) of the Privatisation and Commercialisation Act, Cap. 369 (LFN), 1990.
[29] See Section 17 (2) of the Decree No. 78 (1993).
[30] See Cap. P. 38 (LFN) 2004.

The implication here is that both Cap. 369, LFN, 1990, Decree No. 78, 1993 and Cap. P. 38, LFN, 2004 listed the same enterprises for full commercialization; the discrepancy being in the number of enterprises.

3.3 Modes of Commercialisation

Reading through the law on privatisation and commercialisation,[31] there is no provision for specific modes of commercialisation, unlike that of privatisation where Section 2 of Public Enterprises (Privatisation and Commercialisation) Act provides for the modes of privatisation. This makes it imperative for us to set the definition of commercialisation to see how helpful it will be in determining what modes should apply.

Thus, commercialisation is the "reorganisation of enterprises"[32] wholly or partly owned by government in which such enterprises shall operate as profit-making ventures and without subvention from government."

By the words underlined, the modes of commercialisation involve operational reorganisation or rearrangement of the enterprises slated for commercialisation. Here, as soon as an enterprise decides to launch its products into the market place it has to build up a market plan and budget, together with the predicted sales forecasts.

Therefore, the above strategies should be complied with if commercialisation exercise is going to be a success. However, from a careful study of the meaning and nature of the

[31] Cap. P38 (LFN), 2004, even those of 1988 and 1993 laws.
[32] The key words in the above definition are 'reorganisation of enterprises'.

commercialisation program, the modes of commercialisation are to be viewed in terms of stages which, are basically two, to wit:- Preparatory Stage, and (II) Operational Stage.[33]

i) **Preparatory Stage**: This stage is dominated by the policy makers, National Council on Privatisation and Bureau of Public Enterprises. And this involves:-

   a) Forming an opinion and short listing those enterprises for commercialisation.
   b) Getting the necessary approvals for those enterprises shortlisted for commercialisation; and
   c) Deciding and adopting strong strategies for the successful implementation of the program.[34]

ii) **Operational Stage**: Here, all preparatory tasks have been carried out and the operational framework for the successful implementation of the program gotten approval. This means that the commercialized enterprises have obtained substantial measure of operational. At this stage, the involvement of Government as regards finance and control will be determined and endorsed; hence, the commercialized enterprises will be subject to a performance contract.

According to a Handbook published for the Federal Ministry of Industry and Technology, the elements of the performance are:

   a) A corporate plan
   b) Statements of specific, long term objectives of the enterprises

[33] Since the law leaves everyone at the mercy of speculation, and moreso when no specific modes have been evolved, the modes should be understood in line with the above submission.
[34] These are deduceable when one considers each of the numerous functions of the Council and Bureau of Public Enterprises especially those involving decision and policy making on when and how an enterprise is to operate.

c) Set of performance criteria by which the performance of the management can be measured;

d) Negotiated level of enterprises performance; and

e) A performance bond with specified penalties and rewards for failing to meet or surpassing an agreed level of performance

3.4 Concluding Remarks

It has been stated earlier in this chapter that commercialisation is one of the twin pillars of economic reform program, which have been accepted as a solution to the hitherto bastardized nation's economy. This economic woe was due to over-dependence on the National Treasury for Subsidies and Grants while at the same time making little or no returns into the same treasury. Consequently, both States and the Federal Government became heavily indebted both to the local and foreign banks.[35]

In fact the precarious condition of the national corporate existence at the time was rightly captured by Richard Synge, when he averred that:-

> By 1986 numerous wholly or majority government owned companies or corporations established in the 1970s and early 1980s had become entirely dependent upon Federal Government subsidies and handouts, while contributing a low level of service ….. their inability to generate or collect revenue contributing to the Federal Government's own indebtedness."[36]

At this time in the national history, there was a public outcry and concerted agitation for the way forward. These agitation and call for the solution led to the promulgation of Privatisation and Commercialisation Decree No. 25 of 1988 which established the

[35] Or what might be referred to as 'Financial Predators'.

[36] Singe, R. (1993). Nigeria- The Way Forward. Euromoney Books, London, p. 150

Technical Committee on Privatisation and Commercialisation (TCPC) with the overall tasks of implementing and overseeing the success of the program.

By commercializing public enterprises, those enterprises wholly or partly owned by government were subjected to logical reorganisation to enable them operate as profit-making ventures. This means, they were repositioned to generate funds and fend for themselves without relying on government, financially. However, in the case of partially commercialized enterprises government may provide capital grants for the financing of their capital projects. The dependence on government by the partially commercialized enterprises to execute capital intensive projects marks them out from those fully commercialized.

Importantly, unlike privatisation, there is no specific mode of commercialisation. However, it accord reasonability to posit that the modes consist of the major steps taken by the policy –makers and those entrusted with the management of the enterprises, which may be private sector. These steps have been subsumed into two broad stages, to wit (i) Preparatory Stage, and (ii) Operational Stage. The combined effect of these stages is to perfect the commercialisation arrangement and to ensure sustainability of those enterprises at the post – commercialisation period.

So far so good, a large number of the key publicly – owned utility services enterprises have been so reformed and reorganised, and made to charge commercial rates for their services. This key publicity-owned enterprises include, among other ones, Power Holding Company of Nigeria (formerly known as National Electric Power Authority – NEPA),

Nigerian Airways, Nigerian Telecommunication Limited (NITEL), Nigeria Postal Services (NIPOST), and Nigerian National Petroleum Corporation (NNPC).

Since the introduction of commercialisation policy, a lot have been achieved in the effectiveness of these commercialized enterprises and in re-orienting fiscal expenditure strategies to favour those activities that will benefit more the vulnerable groups in the country. However, these successes should not foreclose the prospects of further improvement, and most importantly the sustainability of those commercialized institutions. In fact, a lot is left to be done especially in the Power Sector where the only impact felt is in the change of nomenclature, that is, from NEPA to PHCN.

CHAPTER FOUR

THE REGULATORY FRAMEWORK ON PRIVATISATION AND COMMERCIALISATION IN NIGERIA

4.1 Introduction

It would be recalled that the participation of the Nigerian Government in the control and ownership of enterprises owned and operated in the country by foreigners after independence was because the Nigerian entrepreneurs were not financially and managerially competent to take over such enterprises. Essentially, all sectors of the economy had to be controlled by the government.

The indigenisation policy of the government which was intended to transfer control and ownership of existing foreign enterprises could not achieve the desired result because the legal framework was lacking as well as the expertise both from the government and the citizens who were to assume control of these organisations. 'The consequence of this was the proliferation of over 1000 state owned corporations in virtually all sectors of the economy operating as monopolies without competition from the atrophied private sector.[1]

These corporations were funded by Nigeria's new found oil wealth. Their scope of operation covered oil and gas, agriculture, steel plants, banks, defence, leisure, mass transit … etc. According to Adoga (2008),[2] by the early 80s, the crash of international oil prices ensured that the usual billions of naira pumped into these corporations annually

[1] Ali, H.L. (1996). The Powers of Directors in Nigerian Company: An Analysis of the Dynamics of Director's Dominance in Modern Companies. LLM. Thesis, (Unpublished) Dept. of Commercial Law, Faculty of Law, ABU, Zaria, Nigeria.

[2] Adoga, O. (2008). A Critical Appraisal of Privatisation in Nigeria. Brooke Chambers.

could no longer be sustained by the Federal Government. The annual profits of these corporations nose-dived so drastically due to the following factors:

1. State corruption and inefficiency
2. Excessive bureaucracy
3. Defective ownership structure
4. Gross incompetence in management
5. Defective capital structure
6. Lack of effective control and supervision by the government
7. Out dated technology
8. International competition.

Private participation in the National Economy became imperative to expand the Nigerian Economy by direct deregulation. 'It became imperative to establish and build a private sector driven market, ensure provision of efficient and quality services to the citizenry, improve infrastructure, improve local manpower development while freeing up the already stretched Government revenue for core public services such as defense and security, privatisation of public corporations, firms, companies and services became the most viable economic solution'.[3]

At the close of the decade, the Federal Government of Nigeria responded promptly to the challenge by establishing the TCPC. This action the government took with view to relinquishing control and ownership of most of the state owned enterprises to individuals and other corporate organisations through the machinery of privatisation and commercialisation. To build on these economic landmarks, the Bureau for Public

[3] ibid

Enterprises (BPE) was established in 1999 as a successor to TCPC. The National Council on Privatisation (NCP) was also established through the promulgation of the Public Enterprises (Privatisation and Commercialisation) Act, 1999. The two bodies BPE and NCP were to regulate activities concerning the privatisation and commercialisation of State Owned Enterprises.

4.2 National Council on Privatisation

The National Council on Privatisation is a regulatory agency the government has put in place to ensure effective privatisation and commercialisation of SOEs. The functions of this council are:

a) Determine the political, economic and social objectives of privatisation and commercialisation of public enterprises.
b) Approve policies on privatisation and commercialisation
c) Approve guidelines and criteria for valuation of public enterprises for privatisation and choice of strategic investors.
d) Approve public enterprises to be privatised and commercialized
e) Approve the legal and regulatory framework for the public enterprises to be privatised.
f) Determine whether the shares of a listed public enterprise to be offered should be by public or private issue or otherwise and advise the Government of the Federation accordingly.
g) Determine the time and when a public enterprise is to be privatised.
h) Approve the prices for shares or assets of the public enterprise to be offered for sale.

i) Review from time to time the socio – economic effects of the programme of privatisation and commercialisation and divide on appropriate remedies.

j) Approve the appointment of the privatisation advisers and consultants and their remuneration.

k) Appoint as and when necessary committees comprising persons from private and public sectors with requisite technical competence to advice on the privatisation or commercialisation of specific public enterprises.

l) Approve the budget of the Council

m) Approve the budget of the Bureau

n) Supervise the activities of the Bureau and issue directions on the implementation of the privatisation and commercialisation program.

o) Receive and consider for approval the audited accounts of the Bureau.

p) Submit to the president in each year a report on the activities of the Council and the Bureau.

q) Receive regular and periodic reports from the Bureau on program implementation and give appropriate directions; and

r) Perform such other functions as may, from time to time; be necessary to achieve its objectives.[4]

[4] Public Enterprises (Privatisation and Commercialisation) Act, Cap P. 38, 2004

4.3 The Bureau of Public Enterprises

The Bureau was established and vested with the following function;

The functions of the Bureau with respect to privatisation are to:

i. Implement the Council's policy on privatisation

ii. Prepare public enterprises approved by the Council for privatisation.

iii. Advise the Council on further public enterprises that may be privatised.

iv. Advise the Council on the capital restructuring needs of the public enterprises to be privatised.

v. Make recommendations to the Council on the appointment of consultants, advisers, investment bankers, issuing houses, stock brokers, solicitors, trustees, accountants and other professionals required for the purpose of privatisation.

vi. Carry out all activities required for the successful issue of shares and sale of assets of the public enterprises to be privatised.

vii. Advice the Council on the allotment pattern for the sale of the shares of the public enterprises set out for privatisation.

viii. Oversee the actual sale of shares of the public enterprises to be privatised by the issuing houses in accordance with the guidelines approved from time to time by the Council.

ix. Ensure the success of the privatisation exercise taking into account the need for balance and meaningful participation by Nigerians and foreigners in accordance with the relevant laws of Nigeria; and

x. Perform such functions with respect to privatisation as the Council may from time to time assign to it.[5]

The Bureau is also charged with responsibilities as it has to do with commercialisation of SOEs. These functions are to:

a. Implement the Council's policy on commercialisation
b. Prepare public enterprises approved by the Council for commercialisation
c. Advise the Council on further public enterprises that may be commercialized
d. Ensure the updating of the accounts of all commercialized enterprises to ensure financial discipline
e. Ensure the success of the commercialisation exercise and monitor, on a continuous basis for such period as may be considered necessary, the operations of the public enterprises of the commercialisation
f. Review the objectives for which public enterprises were established in order to ensure that they adapt to the changing needs of the economy;
g. Ensure that public enterprises are managed in accordance with sound commercial principles and prudent financial practices;
h. Interface with the public enterprises, together with the supervising ministries in order to ensure effective monitoring and safe guard of the public enterprises managerial practices.
i. Ensure that the Board and Management of each commercialized enterprise and the government of the federation keep to the terms and conditions of the performance

[5] Ibid

agreement if any, between the public enterprises concerned and the government of the federation.

j. Maintain and review on a continuous basis any performance agreement between a public enterprise and the government of the federation.

k. Evaluate and recommend to the Council whether or not a public enterprise is eligible for funding through grants, loans, subventions or equity; and

l. Perform such functions with respect to commercialisation as the Council may from time to time assign to it.[6]

4.4 The Public Enterprises Arbitration Panel

Arbitration, reference of a dispute to an impartial person or persons, corporate organisations or enterprises, called arbitrators, for a decision or award based on evidence and argument presented by the disputants. The parties usually involved agree to resort to arbitration in lieu of court proceedings to resolve an existing dispute or any grievance that may arise between them. Arbitration may sometimes be compelled by law, particularly in connection with labour disputes, involving public employees or employees of private companies invested with a public interest such as utilities.[7]

However, the PEAP established under the Privatisation and Commercialisation Act of 1999 was provided that;

1. The panel shall have power to arbitrate;

a) In any dispute raising questions as to the interpretation of any of the provisions of a performance agreement; or

[6] ibid
[7] Public Enterprises Arbitration Panel, Encarta, 2009

b) In any dispute on the performance or non – performance by any enterprise of its undertakings under a performance agreement.

2. A dispute on the performance or non – performance by any of the parties to the performance agreement shall, in the case of a commercialized enterprises to that panel provided that such reference may be made after all reasonable efforts to resolve the dispute have been made and have not been proved.[8]

4.5 Concluding Remarks

The regulatory framework on privatisation and commercialisation set up by the Nigerian Government is a matter of law, cohere as the Council is established to approve recommendations made to it and supervise, when appropriate, other agencies established for similar purposes. The Bureau is to make recommendations to the Council on privatisation and commercialisation. The Arbitration Panel is simply to handle matters of misunderstandings in the course of privatisation and commercialisation of SOEs.

[8] Public Enterprises Act, Cap P. 38, 2004

CHAPTER FIVE

PRIVATISATION AND COMMERCIALISATION POLICY IN NIGERIA

5.1 Introduction

The policy of privatisation and commercialisation is today a globally embraced programmed starting from November 1979, at the successful privatisation of British Petroleum (BP) under the watchful eyes of Margaret Thatcher's Conservative Government in Britain. Since then, the program has been appraised as an economic magic wand capable of restoring sanity to any nation's economic notwithstanding the level of deterioration. Hence, the duo of World Bank (WB) and International Monitory Fund (IMF) stake loans to soliciting Countries on privatisation.

Though the program has been much touted as having economic healing virtues, there is still a mixed feeling about same giving birth to pro and anti privatisation and commercialisation policy. Agreeably, each side may have a justification for its position but the aim of this work is to advocate for the policy as the most viable of other economic options. In doing this, reference shall be made to buttress the success of the programmed within and outside the shores of Africa.

In Britain, this radical economic change is undertaken through the policy of privatisation. In Nigeria however, it is conceived and pursued under the duo of privatisation and commercialisation programmed since it is inception. There is no doubt; it has nomenclature – change in both the legal and regulatory frameworks on the programme. Yet, the program itself with the underlying objectives remains unchanged. We shall now consider the birth and objectives of the programme.

5.2 The Birth and Motive of the Policy

The factor leading to the establishment of privatisation and commercialisation is the same across the globe. That is, the bad state of economy of the subscribing country otherwise called 'economic crises with strong determination to proffer the most profitable solution to it. Be that as it may, there can never be complete discussion on the birth of the policy without reference to the economic situation of Britain when the then British Prime Minister, Mrs. Margaret Thatcher threw her weight behind privatisation during the late 1970s.

The 1970s saw the end of the post-war years of almost continuous economic growth, low unemployment and subdued inflation. However, the ''oil shock'' of 1973/74 and 1978/79 led to ''stagflation'' in the western world, rising unemployment and industry closures.[1]

This unhealthy economic situation was particularly more vehement in this United Kingdom (UK), which, at the time was often referred to as 'the sic man of Europe.'[2] Between 1950s and 1960s, the UK economy has expanded and was ranking the seventh – highest labour productivity measured by real GDP to hours worked. But by 1973, the UK was in thirteenth place.[3] As a result of this economic shift, the GDP per capita in the UK in 1979 had fallen behind that of a number of countries in Europe including Austria, France, Germany, Italy, Belgium, Denmark, Netherlands, Norway, Switzerland, Luxembourg and Sweden.[4] The UK's share of world trade in manufactures fell from 25.4

[1] Parker, David (2006). Enterprise Sales: Thatcher Leads the Charge. In : Graeme Hodge (ed.) Privatisation and Market Development and Public Policy Ideas, p.9
[2] Ibid
[3] Grafts (2002), ibid
[4] House of Commons 1998, ibid

percent in 1950 to 9.1 percent in 1973.[5] In 1975, the UK's inflation rate peaked at 24.2 percent.[6]

Consequently, unemployment had risen to nearly 1.7 million and labour unrest had grown sharply. Thus, between 1974 and 1979 an average of almost 11.7 million working days were lost each year through strikes, compared with 3.9 million a decade earlier, and general government expenditure had mercilessly grown from 38.8 percent in 1972 to 42.5 percent by 1979.[7] By the time Mrs. Margaret Thatcher took over as the prime minister of Britain, the economic state of Britain had reached a disastrous point that Nigel Lawson[8] stated that economic experts were ''intellectually and politically bankrupt of solution to it.''[9]

At the point in time, The Britain was charged with desires to see an end to its economic condition. In May 1979, Mrs. Margaret Thatcher led the conservative party to electoral victory. As part of her government's core economic policy, she introduce a radical departure from the economic of the 'post-war consensus' attacking trade union powers, public expenditure budgets, tax levels and the grip of the nationalized industries on the supply of Critical services such as telecommunications, electricity and water.[10]

[5] Grafts, (2002), ibid
[6] Parker, D. op. cit fn 1
[7] Saunders, E. M. (1993). Stock Prices and Wall Street Whether, in The American Economic Review Vol. 83, No. 5, pp. 1337-1345 and Artis, M. (1996). "How Accurate are the IMF's Short-Term Forecasts? Another Examination of the World Economic Outlook". IMF Working Paper 96/89, IMF
[8] Nigel Lawson served as Chancellor of the Exchequer from June 1983 to October 1989.
[9] Ibid, P. 10
[10] Parker, op. cit p. 96

During the 1990s, other countries while emulating the UK's experience, introduced major privatisation programmes. These include Portugal, Spain, Italy, and Frence.[11] But before this period, some African countries particularly Nigeria has already adopted the policy in their national economic reformation.

For example, Nigeria as part of its structural adjustment programme (SAP) introduced privatisation and commercialisation as earlier as 1988 by promulgating privatisation and commercialisation decree.[12]

The programme of privatisation and commercialisation in Nigeria was the product of frantic efforts to provide lasting solution to then deteriorating nation's economy. It should be noted that Nigeria at independence inherited a system of state control of enterprises from its colonial master, which itself was the product of the ideology of the Labour Government of the post-war United kingdom.

In introducing the welfare state, the Labour Government felt that the market economy was very unfair and imperfect. In the same vein, the Nigerian Government was of the opinion that leaving the means of production, distribution and exchange to market forces would become inequitable and could lead to the marginalization and impoverishment of the people. Thus, it was thought an ideal thing for Government to control important sectors of the economy to ensure a fairer distribution of the ''national cake''[13]

Also, the Nigerian population was largely illiterate and poor. More so, the private sector was still in its infancy and could not be a major player in industrialization and service

[11] ibid
[12] Decree No. 25, 1988 (referred to as Cap. P. 369 LFN, 1990)
[13] Babalakin, W. (2003). "Legal Dynamics of Privatisation in Nigeria" Presentation at First Bank Round Table, Lagos

delivery.[14] Most importantly, it was a dominant thought framework that industries whose services will beneficially impact on majority of the population should be run by the state[15] this dominant thought framework has more population within the official circles, and this is evident in view of the fact that both the 1979 and 1999 constitution all contain well entrenched provision[16] on economic objectives under the fundamental Objectives and Directive principal of State Policy. For the avoidance of doubt, the relevant part of the Section 16 of the Constitution will be set out in full. 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 of every citizen on the basis of social justice and equality of status and opportunity;
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 major sectors of the economy, manage the major sectors of the economy.

[14] Onyekpere, E. (2003). Challenges for Privatisation Programme. In Onyekpere, E (ed.) Readings on Privatisation, Socio-Economic Rights Initiative, Surulere, Lagos, p. 24
[15] ibid
[16] Section 16 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) see also Section 16 of the Precursorial Constitution i.e. CFRN, 1979.

d) Without prejudice to the right of any person to participate in areas of the economy without the major sector of the economy, protect the right of every citizen to engage in any economy activities outside the major sectors of the economy.

2. The state shall direct its policy towards ensuring:

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

b) That the material resources of the national 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;……[17]

It is based on the construction of the above constitutional provision, and in view of the dominant framework especially within the official quarters at the time, that government felt it was saddled with the task of engineering the overall growth and development of the economy through industrialization and the provision of infrastructure and social services. Thus, government at all levels; particularly Federal and State Governments become actively involved in the setting up and management or industries and the provision of these services.[18]

Areas that came under strong grip of government in this regard included telecommunications, energy, airlines, shipping, electricity, radio, television, and postal services, to mention just a few. By the mid 1970s, the ‘‘underling theory of commerce

[17] Section 16, Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[18] Onyekpere, E. op. cit, p. 99

was that Government must be in control of the commanding height of the economy.''[19] This led to the enactment of the Land Use Act of 1978, which helped to introduce a new land tenure system throughout Nigeria by guaranteeing government access to land any where in Nigeria under the doctrine of overriding public purposes.[20] Where land was acquired, the owners of the land were only entitled to compensation for the improvements on the land, for instance, on buildings.[21]

Also consistent with the policy of controlling the commanding heights of the economy the federal government established many corporations, to wit: 'Nigeria Electric Power Authority (NEPA), now Power Holding Company of Nigeria (PHCN), Nigeria Telecommunications Petroleum Company Limited, (NITEL), Nigeria National Petroleum Corporation, Nigeria Railway Corporation, Nigeria Television Authority and the Federal Radio Corporation. In fact, the Federal Government acquired both state government and privately owned enterprises that were hitherto run exclusively, or concurrently in the case of the state government owned enterprises. As a result, the Daily Times of Nigeria, a well run privately owned newspaper become a government enterprise. Oil Corporations had to cede 60% of their total shareholding to the Government. Banks were not spared. Both foreign and locally owned Banks become government institutions.

At the peak of this economic adventure in the 1970s, it become clear that Government as an entrepreneur had not succeeded. This obvious truth was however concealed during the period of oil boom. But immediately after the oil ''bubble burst'' in 1970s, it was for the

[19] Babalakin, W. op. cit, p. 99
[20] Section 28 of the Land Use Act, 1978
[21] Section 29, Ibid

first time discovered that most Government investments in commerce had been a colossal waste of government revenue.

By this time, the Labour Government of Sir Harold Wilson in the UK had been defeated in the polls by the conservative Government of Mrs. Margaret Thatcher, which made the overwhelming philosophical position in the UK to shift.[22] Then, it was realized that Government has no business in the commerce. It was equally understood that the duty incumbent on government was to provide an enabling environment for entrepreneurs to flourish, subject to a right to collect taxes from these business enterprises.

By this revelation and being apprehended of the heavy dependence of these proliferated public enterprises; Nigeria Government began to search for solution. Successive Governments set Presidential committees to analyze the economic situation and come up with recommendation. Just as in the case of the UK, privatisation and commercialisation Was the answer. By this, the effected enterprises will depend on little or not all on the subvention from government. In the case of privatisation, government was to be relieved from the onerous financial burden of financing these enterprises especially when it is obvious that there is no commensurate return, if any at all from these enterprises.

From the foregoing analysis, it is crystal clear that the emergence of the policy of privatisation and commercialisation in Nigeria is replete with chequered economic antecedent, with the ultimate motive of putting government in proper perspective of its duty, in concentrating on economic policy capable of producing a sound economic environment for the business entrepreneurs, to thrive and succeed. It was this

[22] Onyekpere, E. eds. (2003). Readings on Privatisation: Socio-Economic Right Initiative, Surulere, Lagos.

understanding that guided the putting in place of both the legal and regulatory institutions and frameworks since the inception of the programme.

5.3 The Objectives of the Policy

The thrust of the objectives of the privatisation and commercialisation policy is to ensure total liberalisation and transformation of the economic sector to meet the world standard in the capital market. The policy since its inception has always been guided by the defined objectives, which are to wit:

i. To restructure and rationalize the public sector in order to lessen the dominance of unproductive investments in that sector;
ii. To encourage share ownership by Nigerians in productive investment hitherto wholly or partially by the Government, and in the process to broaden the Nigeria capital market;
iii. To re-orientate the enterprises for privatisation and commercialisation towards a new horizon of performance improvement, viability and overall efficiency
iv. To ensure positive returns on public sector investments in commercialized enterprises;
v. To check the present absolute dependence of commercially oriented parastatals on the treasury for funding and to encourage their approach to the Nigerian Capital market;
vi. To initiate the process of gradual cession to the private sector of such public enterprises that by the nature of their operations and other socio-economic factors are best performed by the private sector;

vii. To create a favourable investment climate for both local and foreign investors;

viii. To provide institutional arrangement and operational guidelines that will ensure that the gains of privatisation and commercialisation are sustained in the future.

5.4 The Positive Impact on the Nigerian Capital Market

The policy of privatisation and commercialisation has to play a vital role in the expansion and structural charge in the financial system. The floatation of shares from the privatise enterprises has given a boost to the Nigerian Capital Market development in the recent past. It submitted that at every turn of economic liberalisation, the issue of appropriate regulatory mechanism for capital market is given much attention.

It has been rightly observed that:

> Former in the command economies of Eastern Europe the transition to market-oriented economy has brought about the establishment of capitalist institutions such as stock exchanges and other capital market institutions has in turn necessitated the setting up of statutory agencies to regulate the activities of market participants…. Also drawing from the United Kingdom, financial market liberalisation in the late 1980s ushered in new regulations and the establishment of the Securities and Investment Board (SIB) - the statutory market regulator.[23]

Hinging the motive behind the establishment of these institutional regulatory bodies on the need and desire to ginger capital market development and economic stability, Akamiokhor went further to state that:

> The need for capital market development is motivated by the desire to protect the investment from public malpractices, instil confidence in the system and ensure financial market and

[23] Akamiokhor, G. A. (1992). The Role of Regulatory Bodies in Capital Market Development: The Nigerian Experience, Bullion-Publication of the CBN, Vol. 16, No. 4, P.12

economic stability which are pivotal to economic growth and development.[23a]

The above assertion is apt in consideration of the factors antecedent to the consolidation of commercial bank in Nigeria (CBN).Thus, privatisation for example has led to the strengthening of the regulatory bodies with defined goal of ensuring sanity in the Capital Market, and this could greatly assist in fostering economic development. As a result, there has been a remarkable increase in the size of the financial market brought about by the number of

Equities trade as well as the number of operation in the market. This noticeable expansion in the capital market and the number of operators therein is attributed to the policy of privatisation and commercialisation of public enterprises initiated in 1986 and intensified between 2004 and 2007. The portion of government equity holding in the privatised firms sold the public through the Nigerian Stock Exchange boosted the volume of activities in the market.[24]

This Capital Market expansion is also facilitated by the recapitalization program in the banking and insurance industries which made many of these companies to issue shares in the market in order to raise funds to meet the required targets of ₦25 billion for each of them. Consequently, the ‘‘number of equity listed on the exchange increase by 119.3 percent from 93 in 1981 to 204 in 2007.’’[25] Owing to this positive development in the

[23a] ibid
[24] Udom, I. S. (2009). Equity Market Crash in Nigeria: Causes, Consequences and Remedies. Bullion-Publication of CBN ,Vol. 33, No. 4, P. 31
[25] ibid

capital market, there is need to guarantee the investors' confidence, and the market's integrity and stability.

It is submitted that experience has shown that following any economic liberalisation, the participants are more likely to abuse the system. For instance, a report of Friday, 14th August, 2009 credited to the CBN on audit of the twenty – four Deposit Money Banks (DMBs) in the country indicated that loans amounting to ₦2.1 Trillion granted by the banks were non-performing.[26] While investigating some indicted managing directors of the affected banks, the Economic and Financial Crime Commission (EFCC) revealed that substantial part of the banks' non-performing loans were to money borrowers. Others were sunk on margin loans in the stock market.[27]

It is apposite therefore, to state that the policy has not only opened the floodgate of Nigerian Capital Market development, but also created awareness of the dire need to put-up measures especially institutional measures capable of securing corporate governance within the market arena. The development so far witnessed in the capital market was due to the commitment of the Securities and Exchange Commission, which has statutory powers and the Nigerian Stock Exchange with non-statutory powers. These existing regulatory bodies have both independently and collectively played commendable roles in the development of the Capital Market. These roles have been supplemented by the effort of the CBN to ensure fair play in the banking industries as earlier on observed.

[26] Adamu, B. I. Financing Gap for Small and Medium Enterprises (SMEs) in the Post Consolidated Banking Sector in Nigeria
[27] Ibid

5.5 Economic Development

Unarguably, sound economic policy, when properly implemented has a way of impacting positively on the overall national development. This is because sound economy is the bedrock of any social and political institutions. Thus, the absence of known economic stability makes socio-political objectives a mirage.

The introduction of privatisation and commercialisation regime has ultimately changed the thrust and dynamics of the Nigerian economy. It should however be appreciated that these success achieved in the economy are partly due to the liberalisation, with made it possible for other actors to come into the economic playing ground hitherto considered inaccessible. In fact, it is not difficult to grasp the sound revolution sweeping through the banking and telecommunication sectors; sound micro and macro-economic environments, sectorial reforms, a stable exchange rate regime and increasing external reserves. Hence, it is conceded that macro – economic stability and sound financial systems constitute the foundation and lubricant for the new economic regime.

The impact of the Privatisation and Commercialisation Policy could be summarized as follows:

1. Average GDP growth rate of 7.5 percent since 2003 compared with 2.8 percent in the 1990s.
2. Non-oil sectors growth rate above 7.0 percent since 2004, led by services with 7.0 percent.

3. Growth in external reserves from US and 4 billion in 1991 to US $ 51.3 billion in December, 2007, even after paying about US $ 14 billion to Paris and London Clubs.
4. Debt relief (from Paris and London Clubs – about US $ 33 billion).
5. Foreign investment of over US $ 4.0 billion in 2007
6. Remittances of about US $ 4.0 billion per annum and by 2007 reached US #$ 10,000 billion.
7. End period inflation declined to single digit in 2006
8. Exchange rate has been appreciating and stable, while parallel and official rates converged.[28]

After it become obvious that policies under the Structural Adjustment Program (SAP) were hampered by misguided and incoherent implementation strategies, Government embarked on renewed initiative to formulate its home-grown programme. This home grown programme was christened by the National Economic Empowerment and Development Strategy (NEEDS) aimed at enhancing efficiency and higher productivity growth, transparency and accountability in the economy.[29]

Flowing from the objectives of NEEDS, it is deducible that the policy of privatisation and commercialisation is inherent in NEEDS agenda.[30] Since 2002, it is expected that the Nigeria's policy reforms should continue focusing in four main themes; pursuing sound economic management, improving the condition of public infrastructure, diversifying the

[28] Yakub, M. U. (2008). The Impact of Oil on Nigeria's Economy: The Boom and the Burst Circles, Bullion-Publication of the CBN, Vol. 32/ No. 2, p. 47
[29] Ibid
[30] ibid

economy while emphasizing Poverty reduction, and increasing integration with the regional and global economies.

The policy of privatisation and commercialisation as inherently found within NEEDS reform policies, which itself is another attempt to chart a sustainable growth path for the economy is meant to enable ‘‘Nigeria turn around and adopt a broad based market oriented economy that is private sector – led and in which people can be empowered to afford the of life.’[31]

It is as a result of the liberalisation especially with privatisation program introduce in the national economy that Nigeria was able to gain the confidence of its creditors (Paris and London clubs) which eventually paid off by securing remarkable debt relief.

Before then, Nigeria has already made commendable progress in initiating and implementing its economic reform programmes. Owing to this development, Nigerian authorities requested and got the International Monetary Fund (I MF) board’s approval of the establishment of the Policy Support Instrument (PSI) in 2005.

PSI is a non-lending programme, which provided policy advice to poor countries and sends a signal to donors and markets about the quality of a country’s economic policies. This arrangement assisted Nigeria to secure relief form once embarrassing and rising international dept profile.

Most importantly, the rapid growth in the number of banks and other financial institution, along with deregulation of Interest rates has increase competition among the banks. Thus,

[31] Yakub, M. U. (2008). The Impact of Oil on Nigeria’s Economy: The Boom and the Burst Circles. Bullion-Publication of the CBN, Vol. 32, No. 2, p. 47

for the first time the banking industry shifted priority from armchair banking to a more aggressive and dynamic posture so as to attract deposits. And recently, most of the 24 ‘‘biggies’’ have embarked on trans-border banking adventure almost taking over East and West African countries. In conceding to this submission, Kama opined that:

> ……development have led to increase competition within the sector and heightened banks appetite to become internationally active, particularly within the west - African sub region and beyond. Consequently financial Institutions in Nigeria have expended their activities, often through subsidiaries beyond their traditional areas of operation. Financial groupings have thus emerged, combining banking insurance, pension funds, discount houses, finance companies, primary mortgage institutions, micro-finance banks and the security businesses.[32]

From the above observation, it is clear that banking industry did not just increase its territorial expansion but has extended its deli very to new frontiers. The progress made by the financial institutions especially commercial banks, prompted the progressive increase in demand for new banks, as evidenced in the number for application license from the CBN, before the last consolidation exercise.

This increase demand for new banks led the monetary authorities to raise the capital base form ₦2 million and ₦10 million to ₦12 million and ₦20 million for merchant and commercial banks respectively at the onset of the financial liberalisation.[33] As the process of financial liberalisation continued, it became apparent that the capital base of most of the banks could not support the financial obligations that the development in the foreign exchange Market dictated. This compelled the regulatory authorities to raise upward their

[32] Kama, U. (2008). Consolidated Supervision of Banks: Concepts and Practice- Bullion-Publication of the CBN, Vol. 32, No. 3, p. 17

[33] CBN (1993). Economic Policy Reforms in Nigeria: A Study Report by the Research Department, p. 71

capital base to ₦40 million and ₦50 million for merchant and the commercial banks respectively.[34] the development challenge vis-à-vis the need for adequate capital base on the banks continued, until the CBN came up between 2004 and 2005 with more radical policy to the effect that, all deposit money banks should re-capitalize with the sum of ₦25 billion. Incidental, this gave birth to the 25 ''biggies'' after mergers and acquisitions.

The impact of privatisation and commercialisation policy on the Nigerian economy is also felt in the institutional arrangements, which have reinforced the foundation of the financial sectors generally. For instance, the Nigeria Deposit Insurance Corporation (NDIC), established in 1988, is responsible for insurance bank deposit against failures and monitoring the activities of banks, in collaboration with the CBN, to ensure sound banking practices in the sector.[35] Also, the Securities and Exchange Commission (SEC) has been applying its tool of registration, investigation, and enforcement to ensure that those conducting business in the capital market are persons of higher integrity, and that issues floated are genuine and not intended to defraud the investing public. Consequently, the Commission suspended stock firms in 1990, from trading on the floor of Nigerian Stock Exchange (NSE) after some legal proceedings for violation of some section of its decree.[36]

The economic reforms policy undertaken since 1988 have also made some positive on the economy brought about by the expansion of the number and operational capacity in the insurance industry. The increase in the number of insurance companies is enhancing

[34] Ibid
[35] Ibid, p. 75
[36] Ibid, p. 72-73

competition in the industry. In this regard, the Nigerian Reinsurance Corporation now intensifies examination of records of insurance companies, in an attempt to enforce compliance with insurance requirements, while the CBN make the sure the companies are financial sound and observe establish monetary policy guidelines.

The combination of these developments in the economic arena has helped in showcasing Nigeria to the international community, as having the potentials to compete affectively with any world strongest economy in no distant time. The evidence of this position is seen in the Goldman Sachs projection in a series of reports between 2001 and 2005 that Nigeria "has the potentials to become one of the 20 largest economies of the world by 2025."[37] According to the reports, Nigeria is projected to be ahead of Egypt and Bangladesh in 2025 but could become 12th largest economy in the world by 2050 ahead of Korea, Italy, Canada, etc.[38]

5.6 Private Sector Investment

As part of the economic reforms programme, the Nigerian Government realized the importance of private sector in the pursuit of economic independence. This realization prompted the introduction of mass mobilization for Social Justice, Self-reliance and Economic Recovery (MAMSER). MAMSER programme at the time was aimed to bring

[37] Nwaoba, P. (2009). Nigeria's Financial System Strategy 2020: Conceptual Framework- Issues and Challenges, Bullion-Publication of the CBN, Vol. 33, No. 4, p. 4
[38] ibid

the people in, revive their flagging morals, restore their confidence in the further of their country and revitalize the ailing economy.[39]

In fact, it has been asserted that "the development of the private sector is the most important precondition for self-reliance and economic development of Nigeria".[40] Agu went further to state that, in the 1960s and early 1970s, Nigeria, Malaysia, Indonesia, growth rates and underdevelopment in political structures.[41] Interestingly however, these countries (with Nigeria as an exception) popularly called Asian Tigers or Newly Industrialized Countries (NICs) have escaped underdevelopment and poverty partly, because of the way which they transformed their private sectors to become the engine of growth.

Today, it is part of conventional wisdom that growth-oriented governments, should concentrate on providing a conducive macro-economic economic environment to enable private enterprises flourish. This entails that "governments should generally disengage from direct involvement in production in order to allow market forces play a dominant role in the economy.[42] Stressing further, Oyeranti posited that:

> …… private enterprise has become one of the largest and most powerful levels available to foster development ……
>
> Thus, a vibrant private sector building on the combined strength and linkages between large, medium, small and micro enterprises is an essential prerequisite, transferring and diffusing new

[39] Agu, C. C. (2004). An Overview of the Contribution of the Private Sector to Economic Growth in Nigeria; in Nnanna, O.J et al. (ed.), Proceedings of the Thirteen Annual Conference of the Regional Research Units organised by the CBN, Abuja at Motel Benin Plaza, Benin City, p. 47

[40] Ibid, p. 48

[41] ibid

[42] Oyeranti, O. A. (2003). Foreign Private Investment: Conceptual and Theoretical Issues in Foreign Private in Nigeria, Proceedings of the Twelfth Annual Conference 1-5th September

> industrial technologies, maintaining competiveness, and contributing to entrepreneurship development and ultimately poverty reduction, as called for in the Millennium Development Goals.[43]

Aside the negative implications the government's mono-cultural economy predicated on oil, too much involvement of Nigerian government in economic activities has made the Country a land of paradox. This has been rightly observed by the United Nations experts that:

> Nigeria is a land of paradox. We see so much wealth and again so much poverty. There is poverty in Nigeria more than ever before. In fact the economic gains made over the past decades are being reversed with frightening speed, while the government's mono-cultural economy predicated on oil makes it impossible for an organic growth to ensure.[44]

Also on this, the Udoji Report had emphasized the embarrassing increased bureaucratization of economic life in the following words:

> Today, the public services of Nigeria are involved in affairs that were beyond the imagination of our Civil Servants 15 years ago. We are now selling insurance and minting coins, we are selling ships and refining oil … we are banking and building. Tomorrow, we shall be forging steel and educating every young Nigerian through his primary years. [45]

As touching as Udoji's Report is, it simply reveals the phenomenon of welfare state popular at the colonial era, which path the Nigeria government was touring, so as to discharge their social responsibilities to the people, the successive Nigerian governments invested hug sums of money to:

1. Correct market failure in infrastructure and utilizes sectors

[43] Ibid, p. 1-2
[44] UN International Day for the Eradication of Poverty, 14th October, 2004, cited by Agu, C. C. (2004)
[45] Udoji Report on Public Service Commission, Para., 419, 1975 cited by Agu, C.C. (2004), p. 51

2. Control the "commanding heights" of the economy;
3. Supplement the need the capital, which was deemed to be in short supply; and
4. Generate employment opportunities.[46]

In pursuit of the above objectives, Nigerian government had since independence embraced systematic economic planning by formulating and executing four development plans as follows: Between 1962 – 68; 1970 – 74; 1975 – 80; and 1981 – 85 plans.[47] In executing these development plans, stupendous investment expenditures were involved. More so, those private sectors were absent. For instance the 1962 – 68 and 1970 – 74 plans involved ₦2.2 billion and ₦3.0 billion respectively while the 1975 – 80 and 1981 – 85 plans involved capital expenditure of ₦30.0 and ₦82.0 billion respectively.[48]

From the First to the Fourth Development Plans, the share of the investment quotas titled in favour of the public sector. See for instance **table 12** as attached in the appendix.

A careful study of **Table 12** shows that private sector's contribution decreased from 60.1 percent of the total investment in plan period 1962 – 74 plan period. By 1980-80 the shares of the Private Sector to total investment in the 1975 – 80 plan period was 33.3 percent. Notwithstanding these huge investments by the government in establishing and maintaining public enterprises, government never received due returns and worse still, the economy never improved. This made various governments to set up several Presidential Commission and Study Groups on the performance of public enterprises.

[46] Ibid
[47] Ibid
[48] ibid

These include: Adebo (1969), Udoji (1973), Onosede (1981) and al-hakim (1984) presidential commissions.[49]

However, since the period private sector came in as the main driver of the economy, the usual discontentment about dismal performance of public enterprises gave way to a near vibrant economy. This is most evident the banking industry where the wind of economic change is blowing through the continent, and the astronomical growth of the Nigerian capital market.[50]

With privatisation especially, the size of public sector involvement in the economic life become minimized as seen from **Table 12** as attached in the appendix.

Another area of economy where private sector has helped to develop far beyond imagination is the telecommunication industry. It is submitted that prior to 2001, access to telephones was at a very low ebb in the world index and far behind countries like Ghana, South Africa, Kenya and Malaysia as seen from the third columns of **table 13** as attached in the appendix.

With the deregulation of the telecommunication industry, the situation in the sector has drastically improved. Today, out of every 10 adult persons living in urban areas, 8 persons are users of GSM; 4 persons are GSM users. The real problem, however, is with the power sector as seen from the second column of **table 14** above and worse. If the recent move by the Federal Government the privatise the power sector is pursued to is logical end, the level of power utilization in the country will drastically move upward,

[49] Ibid

[50] We do not intend to go into another discussion of the impact of Privatisation and Commercialisation Policy on the economy since that has been taken care of in the preceding subtopics.

and in no time, Nigeria will overtake most of the countries in table 14 above. From the discussion so far, through it is understandable that the economy has not fared well enough. The revolutionary changed noticed presently in both the Banking and telecommunication industries, are indication that, if private sector will be allowed in other sectors like power Holding Company of Nigeria (PHCN), The National economy will soon be transformed for better. Especially if the regulatory institutions of government respecting this sector will play an active role, just like CBN Nigerian Communication Council regulating banking and telecommunication industries are doing.

5.7 Foreign Investment

Foreign investment otherwise referred to as Foreign Private Investment (FPI) is one of the components of international capital flowers especially from the developed countries. In the words of Thirlwill, FPI refers to investment by multinational companies with headquarters in developed countries.[51]

According to Development Assistance Committee (DAC) of the organisation for Economic Co-operation and Development (OECD), FPI is conceptualized as net financing by an entity in a developed country, which has the objective of obtaining or retaining a lasting interest in an entity resident in developing countries.[52] It should be understood that a mention of 'lasting interest' above, connotes a long term relationship where the direct investor has a significant influence on the management of the enterprise

[51] Thirlwall (1994), cited by Oyeranti, O. A. –Foreign Private Investment: Conceptual and Theoretical Issues. In Nnanna, O. J. (ed.). (2003). Foreign Private Investment in Nigeria being proceedings of the Twelfth Annual Conference of the Regional Research Units of the CBN, p. 11

[52] ibid

reflected by ownership of at least 10 percent of the shares of the enterprises, or equivalent in voting power or other means of control.[53]

In any instance of FPI, the usually compelling factors is the development of incidence of economic policy thrust on structural reform programmes leading to increase openness of the country's economy towards the foreign investors. Examples of these reforms have been identified to include: the progressive lowering of barriers to trade and foreign investment; the liberalisation of domestic financial market and removal of restriction on capital movement; land the implementation of privatisation programmes.[54] The combined effect of the above economic reform measures, is the underscoring of the relevance of private sector in economic growth and development in the developing economies.

Most importantly, the presence of FPI in the developing economics process has a number of advantages in favour of the recipient country through Foreign Investment (FI)[55] in – flows. These advantages are, to wit:

a) FI allows the transfer of technology, particularly in the form of new verities of capital inputs, which cannot be achieved thorough financial investments or trade in goods and services. Consequent of this technology transfer, it is possible also that FI can promote competition in the domestic input market.
b) Recipients of FI often gain employee training in the course of operating the new businesses, which directly contributes to human capital development in the host country.
c) Profits generated by FI contribute to corporate tax revenues in the host country.[56]

[53] ibid
[54] Ibid, p. 13
[55] For the purpose of this work, FDI and FPI shall be used interchangeably and in any case where FDI is used, FPI is intended.

From the above, it is obvious that FPI beyond being sources of finance and employment, is certainly a medium for acquiring skills, technology, organisational and managerial practices and access to markets. By implication, FPI exerts a positive impact on growth in the recipient country through the sum of direct effects of capital inflows along with technology transfer. With the above premises, Garba concedes that:

> Not only does the size of international capital flows respond to the attractiveness of investing abroad relative to investing at home, but also the allocation of foreign Investment among the countries and among industries reflect profit prospects as seen by the investor. It is therefore clear that Nigeria is at the same time, competing with other developing and developed countries for global flows of foreign capitals.[57]

Some of the countries competing along with Nigeria for the capital inflow have been indentified to include: Ghana, South Africa, Egypt, Kenya, and Malaysia.[58] Therefore, given the institutional and policy changes that have occurred globally, the prospects of Nigerian economy attracting foreign private investors in view of the overall competitiveness are to be considered or judged by the state of its economy relative to other competitors indentified above.

From **Table 14, 15, 16, 17 and 18**, the crucial factors always considered by foreign investors before committing their resources inform of investment will be looked at. **Table 14** showcases the general state of the economy. Thus the annual average growth rate of real GDP for Nigeria moved from 1.6% during the period 1980 – 90 and 1990 – 99. But, when compared with the performance of other countries like Ghana, Malaysia, and

[56] Feldstein, M. (2000). Aspects of Global Economic Integration: Outlook for the Future, in "Aspects of Global Economic Integration", Annual Conference of the Federal Reserve Bank of Kansas City. NBER Working Paper No. 7899

[57] Garba, A.G. (2006). "The Impact of Globalization on Foreign Private Investment in Nigeria", p. 169

[58] ibid

Egypt, it becomes clear that there is no real progress in the economy. Even analysis of the development in the sub- sectors also reveals that Nigeria still performs less than Egypt, Malaysia, and Kenya, in manufacturing; Malaysia and Ghana in agriculture; Malaysia, Egypt, and Kenya, in the services sub-sector. See attached table in the appendix.

On the state of power utilization and access to telephone as at 1999, **table 15** shows that Nigeria is classified as severally indicated. Thus Nigeria was lower than Ghana and Kenya, and in fact clearly uncompetitive relative to Egypt, South Africa and Malaysia. This entails that costs of production activities are more likely to be on the high side in Nigeria, hence, globally uncompetitive. The implication therefore is that, foreign investors will most likely favour Ghana, South Africa, Egypt, Kenya and Malaysia, than Nigeria. See attached table in the appendix. Another important factor for consideration by the foreign investors is also the financial viability of a particular nation in question.

Table 16 shows the relevant indicators ranging from risk rating, credit rating, interest rate spread and spread over LIBOR. Going by the indicators in **table 16,** there is no doubt that portfolio investors like institutional investors rate Nigeria least of other countries. The real rate of interest spread in Nigeria epitomizes inefficiencies in the financial system, which is higher than Kenya, South Africa and Malaysia in 1990 and higher than allover countries except Kenya in 1999. Also, the spread over LIBOR in 1990 is highest in Nigeria and only second to Kenya in 1999. This probably implies that Nigeria may not be considered in preference to other countries by institutional investors. See attached table in the appendix.

Also, of importance to the foreign investors is the general perception of the host country vis-à-vis corruption and conflict tendencies. From **Table 17,** Nigeria is viewed as most corrupt country and most conflict prone especially after 1998. The effects of these vices are risen transaction cost, increase uncertainty and instability and risk all of which scare foreign investors – direct and portfolio. See Attached table in the appendix.

Table 18 exemplifies the trend of FDI and portfolio and investment in the period 1970 – 98. By this table, a cumulative of less than ₦2 Billion in the eleven years, i.e. 1970 – 80 was recorded. That is to say that, on average, Act FDI into Nigeria was about ₦142.1 Million annually. There is however, an increase to ₦336.7 Million in 1981 – 85, and that is about 140% increase. Portfolio flows were not recorded probably due to the control regime at the time which could be hostile to portfolio investments.[59] See attached table in the appendix.

In 1986, when Nigeria government began implementing the structural Adjustment programme (SAP) with liberalisation[60] and deregulations of the Nigerian economy as its core objectives, Table 4.8 shows that the FDI flows rose to an annual average in 1986 – 92 of ₦6,407.1 million. Subsequently, this escalated to ₦77,500 million in 1993 – 98 indicating an impressive eleven fold increase. Though, the noticeable increases appear to be impressive. It is submitted that the increase are (a) nominal and (b) naira denominated.[61]

[59] Ibid, P. 172-173

[60] The policy of Privatisation and Commercialisation form part of the liberalisation programme since the hallmark is to remove the economic barriers that impede economic growth and development. Hence, liberalisation as used above inherently contemplates the policy under discourse in this work.

[61] Garba, A. G, op. cit. p. 124

From the foregoing analysis, it is obvious that one of the countries that are unable to record an impressive development in its effort to attract FDI and portfolio investment for the reasons canvassed above, such as risks, financial viability, infrastructure, governance, corruption indices and so on. It is therefore imperative, that in implementing its economic liberalisation strategies, effort should be double in creating not just enable condition for FPI but must also focus on enhancing Nigerians overall competitive capacities in global international relations.

5.8 Ownership and Control

Before independence, the pattern of ownership and control within the Nigerian corporate environment appeared colonialist in outlook; neo- colonialist in presentation after independence and top-down approach ten years later and until 1995 when the government laid down rules (of ownership and control) for corporate entity in Nigeria.

Following government's gradual divestment of its equity or interest in public corporations, the legal regulatory framework underwent a major overhaul, which ushered us to the period of corporate capitalism. Ali identifies three stages, which are the colonial era, the post-colonial era (1960 to 1986) and 1986 to date.[64]

The first era in this classification notes hundred percent foreign ownership and control of corporate enterprises in Nigeria, being the period for which 'the domination of the Nigerian economy by foreign companies particularly those of the British'[66] was witnessed. This period was also an epitome of subjugation of Nigerians 'to mere

[64] Ali, H. L. (1996). " The Powers of Directors in Nigeria Company: An Analysis of the Dynamic of Director's Dominance in Modern Company", Being LLM Thesis (Unpublished), Dept. of Commercial Law, ABU, Zaria, Nigeria, p. 32

[66] Ali, op. cit p. 129

producers of raw materials for the use of British companies / industries and consumers of British manufactured goods'.[67] It is worthy of note that terms of trade of Nigerian agricultural raw materials and British manufactured goods were regulated by the British Colonial Administration in favour of British companies paying less for raw materials and selling high for goods manufactured.

What accounts for this dominance is viewed against the background of the history of Nigerian company law. Before the country came under British control, companies were not in existence although there were organised groups for 'some common purpose, usually for economic gain and prosperity of the members'.[69]

Igweike gave reasons to account for this phenomenon.

> To demand for the establishment of banks with indigenous entrepreneurship. Thus came the birth of the Agbonmagbe Bank established an 1945, the African Continent Bank (ACB) and the Nigerian Farmers and Commercial Bank, both established in 1947. Others were the Nigeria Bank…. all established in 1951.[74]

The attainment of regional autonomy by Nigeria in 1945 led to direct government involvement in the economic activities of the regions. One of the areas that attracted the regional governments, particularly the eastern and western regions was the ownership and control of Banks. At the latter part of this era, the pattern of corporate ownership and control in Nigeria tilted slightly in favour of its citizens motivated by the nationalist spirit and direct government participation as represented by the Regional Governments.

[67] Ibid
[69] Asomongha, M.E. (1994). Company Law in Nigeria Under the Companies and Allied Matters Act, Lagos: Toma Micro Publishers Ltd, p. 1
[74] Igweike, K. I. (2005). Law of Bank and Negotiable Instruments, Revised Edition, Onitsha. AFPL, p. 1

Stage II: The era of Economic Nationalism and Protectionism (1960 – 1990). This phase witnessed the attainment of political independence from the colonial masters. In 1962, the National Development Plan was drawn up that promised, 'to take measures aimed at ensuring greater private investment and fullest Nigerian Participation in the ownership, direction and management of foreign investment in Nigeria'.[77] The discovery of oil in the 60s accentuated this desire forming the basis for government's Indigenisation and Nationalization schemes. Indigenisation was aimed principally at restricting alien participation in contain businesses, which were either reserved exclusively for Nigerians or had to accommodate prescribed levels of local participation.

However, the determination of corporate ownership and control was based on three important instruments, namely, 'the Companies Act 1968, the Nigerian Enterprises Promotion Act 1990 and subsequent amendments, and the Privatisation and Commercialisation Act 1990'.[78]

The government policy aimed at according ownership and control to Nigerian businessmen was not without its set backs. No sooner had the government put in place these instruments that it realized that 'Nigerian entrepreneurs and investors were least prepared financially to sustain it. The burden then fell back on the government who acquired the interests in most of the Indigenised enterprises on behalf of Nigerians'.[79] This era was basically characterised by government ownership and control of these enterprises.

[77] Ali, Op. cit, p. 130
[78] ibid
[79] ibid

One other essence of the indigenisation scheme was to 'ginger up the Nigerian entrepreneurial class to rise to the challenges posed by majority participation, ownership and the control and direction of the country's major business establishments, and thereby create a viable entrepreneurial class'.[80]

The question at this point is whether there in a link between government's deliberate action and the patterns of corporate ownership and control Nigeria had adopted within this period in history. In 1972, NEPD discouraged alien – participation in certain categorized businesses (contained in schedule 1 of the decree) and restricted such in favour of Nigerians in others.

Schedule 2 contained the ventures in which non – Nigerians may participate but not less than 60% of the equity holding must be reserved for Nigerians, and schedule 3 listed businesses of which not less than 40% equity holdings must be reserved for Nigerians.[83] In a nut shell, ownership and control rested in Nigerians for enterprises under schedule 1; for businesses in schedule 2, ownership resided in Nigerians and foreigners with Nigerians accounting for 60% ownership and foreigners accounting for the remaining 40%; and with respect to enterprises schedule 3, ownership rested in Nigerians to the extent of 40% while foreigners accounted for ownership of the remaining 60%. If control is a function of ownership, then control could be said to reside mutatis mutandis. The indigenisation act is a failure with regard to corporate control.

This era is very important in history considering that government was an active participant in the ownership and control of enterprises – hence government, Nigerians

[80] ibid
[83] ibid

and foreigners were owners of some enterprises, though control could reside in government in enterprises in which government had controlling equity. In other enterprises, Nigerians had greater equity stake and thus, 'supposedly', controlled them; but in others, they had lesser equity holding; and thus in reality control was with the foreigners in such enterprises. Significantly, there was evident presence of Nigerians in the ownership of corporate enterprises, but that was not the case in terms of control. Implicitly, under this era, ownership was separate and distinct from control.[84]

It would, however, be observed that within the era 1985 to 1990'

> It was now felt that Nigerians possess the requisite managerial ability and financial wherewithal to take over the activities of the enterprises hitherto controlled by the government. The government is, therefore, relinquishing its interests in most companies in favour of private investors. [85]

This era was actually to pave way to the emergence of the third era of corporate capitalism and openness. It is the point the government is going to commercialize and privatise enterprises which hitherto, it was only holding brief as a result of the level of unpreparedness of the country's entrepreneurs.

Stage III: **The Era of Corporate Capitalism and Liberation (1990 to Date).**

Ali dates back this era to 1986.[87] The era noted the impression that Nigerians possess the requisite managerial ability and the financial wherewithal to take over the activities of enterprises hitherto controlled by the government. The implication here is that government will and is relinquishing its equity shares in most of the companies in favour

[84] ibid
[85] Ali, Op. cit, p. 133
[87] Ali, Op. cit, p. 133

of private investors. This action by government cannot be done without a law and policy overseeing such operation. This research, which concerns itself basically with the issues of law and policy in the privatisation and commercialisation of SOEs, shall at this juncture take a cursory look at such laws and policies made thus far.

At Independence in 1960, the country churned out its 1st and 2nd national rolling plans emphasizing inter-alia, ‘‘fullest Nigerian participation’[88] in the ownership , direction and management of industrial enterprises at the earliest possible time and the establishment of a united, strong and self – reliant nation’’.[89]

Government effort was to quickly Nigerianise the work force of foreign businesses through the establishment of an agency where it was to undertake the lead role in the control structure of the economy through the acquisition of equity shares in strategic industries for the benefit of its citizens, and where possible nationalize such.

Most importantly was the legislation and policies which were churned out to regulate and control foreign investment. Barbara Callaway as cited by Ali summarized the state of the Nigerian economy as:

> Nigeria is a neo-colonial state in that political independence did not significantly affect the country’s economic dependency before the post 1970 development of the oil industry.[90]

In more clear terms, the 1970 – 74 National Development Plan notes:

[88] ibid
[89] ibid
[90] ibid

> Experience has shown through history that political independence without economic independence is but an empty shell. The validity of this statement derives from the fact that the interest of the foreign private investors in the Nigerian economy cannot be expected to coincide at all times and in every respect with the National aspirations ….. A truly independent nation cannot allow its objectives and priorities to be distorted or frustrated by the manipulations of powerful foreign investors.[92]

Following from this, therefore, the government in a bid to save the economy from foreign domination legislated various indigenisation Acts. 'Although, the Nigerian Enterprise Promotion Act, 1989 was until January 1995 the applicable law ... it is the 1972 and 1977 acts that are more relevant'.[93]

The government's Indigenisation Acts particularly the 1972 and 1977 verified the ideals of and objectives of the 1970-74 National Development plan to wit-Nigerian control of the country's economy via government acquisitions and indigenous participation.

The substance of the Indigenisation Act can be viewed in four ways.

1. To increase Nigerian participation in decision making in the larger commercial and industrial companies.
2. To motivate Nigerian shareholders and board members on greater reinvestment of profit to reduce the amount of remittances abroad in the forum of dividend distribution.
3. To direct foreign capital and participation into those areas where they are most needed. With the promulgation of the Nigerian Enterprises Promotion Act – 1989, the 1977 Act was repealed. This new Act provided a single schedule which incorporated

[92] 1970 -1974 National Development Plan
[93] Ali. Op. cit, p. 136

all the businesses in the first and the second schedule in the 1977Act, and a host of other businesses reserved exclusively for Nigerians.

4. To ginger up the Nigerian entrepreneurial class to rise to the challenges posed by majority participation, ownership and the control and direction of the country's major business establishment. Between 1990 and 1995, the legal environment got a boost with the enactment of the Companies and Allied Matters Act, 1990, while the process of privatisation and commercialisation was still going on under a statutory instrument.[94]

   Following liberalisation of the corporate environment, revolutionary legislation was made in 1995. However, the promulgation of CAP 369 1990 'marked a turning point in the ownership and control of public enterprises in the Nigerian economy'.[95] While in the early days of the privatisation initiative, the technical committee was 'apparently' transparent when compared to the scathing criticisms and rage that trailed recent privatisation between 1999 and 2007. In a nutshell, the privatisation scheme was meant to keep the promise of the government when it first indigenised. The promise was to crystallize into creating dispersed ownership structure such that control is distinct and separate from ownership.

   For the purpose of this research, ownership shall be taken to mean the interest of a person in a company as expressed or represented by the quantity of shares beneficially held by him or her. An investigation into corporate ownership of any company is to discover the membership of such a company and thus identify persons

[94] Ibid
[95] Ibid

who are or have been financially interested in the success or failure of the company or able to control or materially influence the policy of the company. By persons, this research is referring to corporate bodies not disqualified under the Companies and Allied Matters Act.

Control on the other hand is considered as the direct or indirect power to direct the management and policies of a person or equity, whether through ownership of voting securities or by contract, or otherwise. In other words, control is the 'indirect power to superintend the management and policies of an equity, which can be said to exist where there is any person on whose instructions and directions the directors of a company are accustomed to act'.[97]

Corporate control theories have been formulated to see how corporations would be managed and controlled. These theories are: Special interest group control, state control, managerial control and shareholder democracy.

Special Interest Group Control: this theory is built on the premise that corporate decision making affects large spectrum of not only the several stakeholders, but also the shareholders and managers of the corporation. Since corporate decision making is as contagious as to affecting such a large group of person, all conceivable stakeholder groups should be represented on the board of directors of all major corporations. It is

[97] ibid

arguable from the legal stand point that such a theory holds sway in Nigeria. On the contrary, it is possible and practicable to adopt such a view.[98]

State Control: the proponents maintain that corporate decisions should be made by an impartial group of corporate outsiders, having regard to the pervasive impact of corporate decision making on a larger spectrum of stakeholders beyond the shareholders and managers. In decision making, the corporate outsiders would take into account the needs of the entire society and the economy as a whole. Apart from being socialist in orientation, most of the nationalized corporation in the 1970 in Nigeria could not fare better under government ownership and control.

Managerial Control: this theory considers the officers and directors as being in the best position to judge not only the needs of the corporations, but also the needs of the community (corporate social responsibility). Based on the conceptualized framework that Modern Corporation is too large for any single investors to supply all necessary capital, investors have handed over decision making to managers. Adam Smith opines that 'the directors of such companies, however, being the managers rather of other peoples' money than their own, can not well be expected, that they should watch over it with the same anxious vigilance with which the partners of a private copartnery frequently watch over their own.[99] The concern of Adam smith was taken care of under CAMA: apart from making of directors answerable for their actions, the directors are answerable to the shareholders in general meetings.

[98] Brown, G. N and Sukys, P. A. (2001). Business Law with UCC Applications, 10th Ed., NY: Glencoe McGraw- Hill, p. 649 -651
[99] ibid

Shareholders Democracy is the theory of corporate control hinged on the view that shareholders have the right to run the corporations because they are the real owners of the corporation and thus should have the right to say 'how their money and their property should be used'.[100]

5.8.1 Management

Over the years, management has been seen as the key players in the decision making of business or government corporations. There is increasing separation of ownership and management in modern companies which has been described as managerial revolution. This revolution is a product of two factors.

1. The pooling together of large capital from individuals and institutions for purposes of investment by few managers.
2. Efficiency in the running of corporate business and the requirements of managerial and technical expertise.[101]

The degree of influence of these factors on the operations of a company may vary depending on whether it is a private or owner – controlled company on the one hand or a public company on the other hand, be it quoted on the stock exchange or not. The role of competent management and technical expertise on the performance of private companies cannot be ruled out. In other to retain absolute control and independence of action in an owner-controlled company, the very assistance of the company may be endangered and consequently short- lived. Theoretically, the general management of the affairs of a company is vested in its board of directors.

[100] See Section 3 of CAMA
[101] Brown and Sukys Op. cit, p. 142

The board usually appoints one among them as the managing director and chief executive officer of the company. The directors are generally responsible for making policy decisions in the companies. The chief executives normally see to implementation and oversee the daily operations of the company.

In owner-controlled companies, the provision of the necessary capitals, the provision of the necessary capital, the management of the company and the implementation of policy decisions of the directors may be vested in the same person or group of persons.

In large companies, there is always a more elaborate vertical chain command extending from the board through middle management to the work force. This is because of the diffusion of shareholders in such companies. It in turn requires that management be accountable to a potentially questioning set of shareholders and the media.

The importance of this development is underscored by the diversified nature of shareholding in quoted companies in Nigeria. The Indigenisation Acts 1972 and 1977 brought into list investors more than 700,000 individuals, and saw over 70 public issues by multinational corporations valued at over ₦400 Million.[102]

5.8 Concluding Remarks

In a nutshell, privatisation and commercialisation policy began in Nigeria and in favour of Nigerian owned enterprises at the wake of independence. The

[102] Ali, Op. cit, p. 138

indigenisation Acts of 1972 and 1977 were to divert control and ownership of the foreign based corporations doing business in Nigeria to Nigerians.

CHAPTER SIX

SUMMARY, FINDINGS AND RECOMMENDATIONS

6.1 Summary

The work in its review of related literature contained in chapter one discussed the basic intent of privatisation and commercialisation of State Owned Enterprises in Nigeria; noting that privatization and commercialisation law and policy is an off-shoot of the government's economic policy aimed at addressing the socio-economic and political conditions and to enhance greater private sector participation in the nation's economy.

Chapter two dwelt on the imperative of economic liberalisation programme in Nigeria vis-à-vis the efforts so far made by the government to champion the realization of such economic liberalisation as inherently seen in its laws made at various times. These efforts gave birth to the idea of privatisation of enterprises in Nigeria as a panacea to the hitherto government monopolised, but increasingly deteriorating, corporate entities. Hence, the chapter concentrated on privatisation of enterprises in Nigeria.

In chapter three, it is noted that commercialisation is one of the twin pillars of economic reform programme, which have been accepted as a solution to the hitherto bastardized nation's economy. This economic woe was due to over-dependence on the National Treasury for Subsidies and Grants while at the same time making little or no returns into the same treasury. Consequently, both states and Federal Governments became heavily indebted both to the local and foreign banks.

By commercialising public enterprises, those enterprises wholly or partly owned by government were subjected to logical reorganisation to enable them operate as profit-making ventures. This means, they were repositioned to generate funds and fend for themselves without relying on government, financially. However, in the case of partially commercialized enterprises government may provide capital grants for the financing of their capital projects. The dependence on government by the partially commercialised enterprises to execute capital intensive projects marks them out from those fully commercialised.

Chapter four examine the regulatory framework on privatisation and commercialisation set up by the Nigerian Government as a matter of law, cohere as the Council is established to approve recommendations made to it and supervise, when appropriate, other agencies established for similar purposes. The Bureau is to make recommendations to the Council on privatisation and commercialisation. The Arbitration Panel is simply to handle matters of misunderstandings in the course of privatisation and commercialisation of SOEs.

Chapter five discussed the birth and motive of the policy globally and then confined it to Nigeria. It discussed the objectives for which the policy was adopted and implemented in Nigeria as well as the positive impact on the Nigeria Capital Market, Economic Development, Private Sector Investment, and Foreign Investment. It also took a critical look at ownership and control within the Nigerian corporate environment identifying three stages of the Nigerian economic growth with their attendant economic policies.

6.2 Findings

The research having analyzed its data came out with the following findings:

1. Section 1(3) and Section 6(3) of the Act give the NCP established under Section 9 of the Act powers to act from time to time by order published in the Gazette- to alter, add, delete or amend the provisions of the First Schedule to this Act. Same goes with Section 6 of the Act touching on Second Schedule to the Act.

   It is submitted that these sections offend the provision of Sections 4(1), (4), (a), (b) of the CFRN, 1999 (as amended) and paragraph 17(b) of the Concurrent Legislative List of the Constitution. The Act being an existing law by virtue of Section 315(1) (a) of the CFRN 1999 (as amended) is deemed to be the Act of the National Assembly accordingly. Therefore, it is only the National Assembly that can constitutionally exercise the power and not the Council (NCP). The issue of delegated legislation cannot be exercised to this legislative function of the National Assembly.

2. There is no definition of the word privatization and commercialization in the Public Enterprises (Privatisation and Commercialisation) Act, Cap P. 38 Laws of the Federation of Nigeria, 2014. The only definition found on the word Privatisation and Commercialisation is the one provided in Section 14 of the Privatisation and Commercialisation Act, Cap 369, Laws of the Federation of Nigeria 1990 (now repealed).

3. Section 19 (1) of the Act establishes opening an account in CBN to be known as Privatisation Proceeds Account into which shall be paid all proceeds received from the Privatisation of Public Enterprises before and after commencement of the Act.

While subsection 2 of Section 19 provides that the funds in the account established under subsection 1 shall be utilized for such purposes as may be determined by the Government of the federation from time to time. Section 19 of the Act contradicts Section 162(1) of the CFRN, 1999 (as amended) dealing with the Federation Account. The Section provides as follows:

> The Federation shall maintain a special account to be called "The Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigerian Police Force, the ministry or department of government charged with the responsibility of Foreign Affairs and the residents of the Federal Capital Territory, Abuja.

From the provision of Section 162 (1) above, proceeds accruing from the privatization exercise are to go to the Federation Account instead of being left to the discretion of the Government to spend as it deems expedient. Therefore, privatisation proceeds are within the ambit of public revenue of the Federal Government by virtue of Section 162 (1).

4. Section 23(1), (2) and (4) are other provisions of the Act impeding access to justice on condition precedent, (i.e. a one month pre-action notice) must be given to the Bureau before the institution of any legal proceedings against the Council or Bureau and the applicability of the provisions of the Public Officers' Protection Act – S.23 of the Act. Although subsection (3) of Section 23 of the Act has been deleted, however, the force of the subsection runs into subsection (4) therein.

5. Section 27(1) of the Act establishes Public Enterprises Arbitration Panel (PEAP) an ad-hoc body charged with the responsibilities of settling disputes arising between an enterprise and the NCP or the BPE. The jurisdiction of the panel is confined to disputes raising the questions as to the interpretation of any of the provisions of a performance agreement; or any dispute on the performance or non-performance by any enterprise or its undertaking under performance agreement.

   Section 27(4) of the Act violates the provision of Section 36(1) of the Constitution of the Federal Republic Nigeria, 1999 (as amended). The provision guarantees that in determination of its civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality. Nemo judex in causa sua (do not be a judge in your own cause), yet the Panel is vested with the powers to settle disputes between an enterprise and the Council which appoints its members.

6. The provision of Section 5(2) of the Act which provides that not less than 1% of shares to be offered for sale to Nigerians shall be reserved for the staff of the public enterprise to be privatized and the shares shall be held in trust by the public enterprise for its employees.

   It is submitted that this provision does not indicate how the shares are to be paid for by the staff of the public enterprise to be privatized or by the public enterprise for its employees.

7. The Act does not provide for measures to probe and punish erring officers of the Bureau.

8. This work also discovered that the Act does not provide for post-privatisation regulations to regulate the activities of privatized enterprises.

6.3 Recommendations

Following the findings, therefore, this work makes the following recommendations:

1. It is submitted that Sections 1(3) and Section 6(3) of the Act offends the provision of S. 4 of the CFRN, 1999 (as amended) as the Act, being an existing law, is deemed to be the Act of the National Assembly by virtue of Section 315 of the CFRN, 1999. Any alteration or amendment to be done to the Act has to be referred to the National Assembly accordingly. It is recommended this section be repealed.
2. It is recommended that the provision of Section 23 (1), (2) and (4) of the Act be reviewed or repealed to remove the provisions of Public Officers' Protection Act, limitation of action and pre-action notice which are incorporated in the provision of Section 23 of the Act to protect any officer or employee of the Bureau from any suit instituted against them. These will remove the impediments on the road to justice by exposing the public officers who are found wanting in terms of corruption during the implementation of projects in Nigeria through the supervisory jurisdiction of the regular courts.
3. It is submitted that the Act should be reviewed to include measures to probe and punish erring officers or employees of the Bureau. That is to say, by establishing

investigative panels to try cases relating to privatisation and commercialisation offences by the officers or employees of the Bureau.

4. It is recommended that the Act be reviewed to provide definition for the word privatisation and commercialisation to give a better understanding of the two concepts or the definition provided by Section 14 of Cap 369, LFN, 1990 (now repealed) be reintroduced in the Act when being reviewed.

5. It is submitted that Section 19 of the Act is inconsistent with the provision of Section 162(1) of the CFRN, 1999 (as amended) and to the extent of its inconsistency by virtue of Section 1 (3) of the Constitution, It is recommended that the section be repealed.

6. It is recommended that Section 27 of the Act which violates the provision of Section 36(1) of the CFRN, 1999 (as amended) be repealed as it will not secure the independence and impartiality of the ad-hoc tribunal which the NCP appoints its members. Alternately, any dispute arising between an enterprise and the Council or Bureau should be referred to an independent Arbitration Panel created outside the provisions of the Act or better still be referred to National industrial Court for prompt settlement. This will give room for fair hearing provision of the Constitution.

7. It is submitted that Section 5 (2) of the Act is not clear as to how the shares shall be reserved for the staff of the Public Enterprises to be privatized. It is recommended that the Section be reviewed to provide for how the shares to be reserved for the staff of the public enterprises to be privatized shall be paid for and who is to pay for such shares.

8. It is also submitted that the National Assembly by the powers vested in them by Section 16(3) of the Constitution should establish more sector regulators. Sector Regulations Commission Act as specific regulators of the privatized enterprises in specific sectors which would enforce price control, free competition, service control etc.

Appendix

Table 1: Expenditure on public enterprises

Subsidized Foreign Exchange	**₦156.56bn**
Import duty Waivers	**₦ 12.56bn**
Tax exemption / Areas	**₦ 15.00bn**
Unmerited Revenue	**₦ 29.50bn**
Loans and Guarantees	**₦ 16.50bn**
Grants / Subventions	**₦ 35.00bn**
Total	**₦ 265.00bn**

Source: 1. Nigerian Business Magazine vol. 4, No. 12, 19th June, 2000, p.19
2. Omoleke 1.1 privatisation policy of the Nigerian Government and the Hope of the Grassroots, p.10

Table 2

SUMMARY OF FEDERAL GOVERNMENT INVESTMENT UP TO NOVEMBER, 1990

S/N	SECTOR	EQUITY HOLDING	LOCAL LOANS	SUBVENTION/ GRANT	TOTAL INVESTMENT
1	Agro-Allied / Manufacturing / Mining	2,670,236,561	3,694,112,650	1,745,545,275	8,109,894,485
2	Financial Institutions - Bank Insurance	1,135,740,349 180,224,568	435,496,551 -	10,361,000 -	1,581,597,900 180,224,568
3	Services -NNPC -other	 6,398,373,000 7,182,323,192	- 6,471,735,912	599,598,00 -	6,997,971,000 13,654,059,290
4	External Investment	261,323,378	15,072,795	-	276,415,987
5	Investment Forfeited to Federal Government	769,686	-	-	794,686
6	Loans to statutory Corporations Loans without Terms	- -	1,312,875,312	3,144,817,661	4,457,692,923
	TOTAL	**27,829,035,734**	**12,839,975,835**	**5,798,604,525**	**36,464,616,094**

Sources: 1. Ministry of Finance Incorporated (MOFI), Lagos, Nov. 1990

2. Bolaji Owasanoye, et al, Legal Framework for privatisation of Banks in Nigeria In: Ayua, I.A (eds.), Privatisation of Government Owned Banks and the Issue of Ownership and Control (Legal and Economic Perspectives), Nigerian Institute of Advanced Legal Studies, Lagos (1996), p. 18

Table 3

Enterprises which Equity Held was Partially Privatized under Cap. 369 LFN 1990

S/N	Names of enterprises	Present Federal Government Holding (%)	Maximum federal Government Participation as % of Equity (after Privatization)
	Commercial and Merchant Banks		
1	Savannah bank of Nigeria Limited	51.34	No change in Equity Holding
2	Union Bank of Nigeria Ltd	51.67	No change in Equity Holding
3	Union Bank for Africa Ltd	45.76	No change in Equity Holding
4	Intercontinental Bank for West Africa Ltd	50	No change in Equity Holding
5	Allied Bank of Nigeria Ltd	51	No change in Equity Holding
6	Continental Merchant Bank Ltd	51	No change in Equity Holding
7	Intercontinental Merchant Bank Ltd	60	No change in Equity Holding
8	Nigeria Arab Bank Ltd	60	No change in Equity Holding
9	Nigeria Merchant Bank Ltd	60	No change in Equity Holding
10	First Bank of Nigeria Ltd	44.8	No change in Equity Holding
11	NAL Merchant Bank Ltd	20	No change in Equity Holding
12	Merchant Bank of Africa	5	No change in Equity Holding
	Agricultural, Co-Operative and Development Bank		
1	Nigeria Industrial Development Bank	100	Not more than 70 by the

	Ltd		Federal Government and its agencies
2	Federal Savings Bank	100	Not more than 70 by the Federal Government and its agencies
3	Nigeria Industrial Development Bank Ltd	100	Not more than 70%
4	Nigerian Bank of Commerce and Industry Ltd	100	Not more than 70%
	Oil Marketing Companies		
1	Unipetrol	100	Not more than 40%
2	National Oil &Chemical Co.Ltd	60	Not more than 40%
3	African Petroleum Ltd	80	Not more than 40%
	Steel Rolling Mills		
1	Jos Steel Rolling Mill	100	Not more than 40%
2	Katsina Steel Rolling Mill	100	Not more than 40%
3	Oshogbo Steel Rolling Mill	100	Not more than 40%
	Air and Sea Travel Companies		
1	Nigeria Airways Ltd	100	Not more than 40%
2	Nigeria National Shipping Line Ltd	100	Not more than 40%
	Fertilizer Companies		
1	Nigerian Super Phosphate Fertilizer Companies Ltd	100	Not more than 40%
2	National Fertilizer Company Nigeria Ltd	70	Not more than 40%
	Paper Mills		
1	Nigeria National Paper Manufacture Company Ltd	64.03	Not more than 40%

2	Nigeria News Print Manufacture Company Ltd	100	Not more than 40%
3	Nigeria Paper Mills Ltd	100	Not more than 40%
	Sugar Companies		
1	Savannah Sugar Company Ltd	75.4	Not more than 40%
2	Sunti Sugar Company Ltd	90	Not more than 40%
3	Lafiaji Sugar Company Ltd	70	Not more than 40%
	Cement companies		
1	Ashaka Cement Company Ltd	72	Not more than 30%
2	Benue Cement Company Ltd	39	Not more than 30%
3	Calabar Cement Company Ltd	68	Not more than 30%
4	Cement Company of Northern Nigeria Ltd	31.53	Not more than 30%
5	Nigeria Cement Company limited, Nkalagu	10.72	Not more than10%
	Motor Vehicles And Truck Assembly Companies		
1	Anambra Motor Manufacturing Company Limited	35	Present holding to be maintained
2	Leyland Nigeria limited	35	Present holding to be maintained
3	Nigeria truck manufacturing company limited	35	Present holding to be maintained
4	Peugeot Automobile of Nigeria limited	35	Present holding to be maintained
5	Volkswagen of Nigeria limited	35	Present holding to be maintained

6	Steyr Nigeria limited	35	Present holding to be maintained

Source: part 1 of 1st schedule to the privatisation and commercialisation

Act (cap.LFN, 1990)

Table 4

Enterprises in which equity held share shall be partially privatized under Bureau of Public Enterprises Decree 78, 1993

S/N	NAME OF ENTERPRISES	PRESENT FEDERAL GOVERNMENT HOLDING (%)	MAXIMUM FEDERAL GOVERNMENT PARTICIPATION AS % OF EQUITY (AFTER PRIVATIZATION)
	Oil Marketing Companies		
1	Unipetrol Plc	100%	Not more than40%
2	National Oil Chemical Co. Plc	60%	Not more than40%
3	African Petroleum Plc	60%	Not more than40%
	Steel rolling mills		
1	Jos Steel Rolling Mill Limited	100%	Not more than40%
2	Katsina Steel Rolling	100%	Not more than40%
3	Oshogbo Steel Rolling Mill Limited	100%	Not more than40%
	Fertilizer Company		
1	Nigeria Super Phosphate Fertilizer Co. Nig. Ltd	100%	Not more than40%
2	National Fertilizer Co. Nig. Ltd	70%	Not more than40%
	News print companies		Not more than40%
1	Nigerian National Paper Manufacturing Co. Ltd	64.03%	Not more than40%
2	Nigerian News Print Manufacturing Co. Ltd	100%	Not more than40%

3	Nigeria Paper Mills Limited	100%	Not more than40%
	Sugar Companies		
1	Savannah Sugar Companies Limited	75%	Not more than40%
2	Sunti Sugar Company Limited	90%	Not more than40%
3	Lafiaji Sugar Company Limited	70%	Not more than40%
	Cement Companies		
1	Ashaka Cement Company Ltd	72%	30%
2	Calabar Cement Company Ltd	39%	30%
3	Cement Company of Northern Nigeria Ltd	31.53%	30%
4	Nigeria Cement Company Limited, Ngkalagu	10.72%	100%
	Transport Company		
1	Air Nigeria Plc	100%	20%

Source: part 1 of 2nd schedule to the bureau of public enterprises

(Decree No. 78, 1993)

Table 5

Enterprises in which equity held shares to be partially privatised under Public Enterprises (Privatisation and Commercialisation) Act, Cap P. 38 LFN, 2004.

S/N	Enterprises	Maximum Strategic Investor Participation as Percentage after Privatization	Maximum Federal Government Participation as% of Equity (After Privatization)	Nigeria Individuals Participation as Percentage after Privatization
	Telecommunication Sector			
1	Nigerian Telecommunication Plc	40%	40%	20%
2	Nigerian Mobile Telecommunication Ltd.	40%	40%	40%
	Electricity Sector			
1	National Electric Power Authority	40%	40%	20%
	Petroleum / Oil Sector			
1	Port Harcourt Refinery Port Harcourt Refinery	(i) 40% (ii) 40%	40%	20%
2	Kaduna Refinery and Petro-Chemicals	40%	40%	20%
3	Warri Refinery and Petro-Chemicals	40%	40%	20%
4	Eleme Petrochemicals Company Ltd	40%	40%	20%
5	Pipelines Product and Marketing Company Ltd.	40%	40%	20%
6	Nigerian Petroleum Development Company Ltd	40%	40%	20%

	Machine Tools			
1	Nigerian Machine Tools Company Limited	40%	40%	20%
	Gas			
1	Nigeria gas limited	40%	40%	20%
	Steel and Aluminium Minerals Sector			
1	Jos Steel Rolling Mill Limited	40%	40%	20%
2	Katsina Steel Rolling	40%	40%	20%
3	Oshogbo Steel Rolling Mill Limited	40%	40%	20%
4	Ajaokuta Steel Company Limited	40%	40%	20%
5	Delta Steel Company Limited	40%	40%	20%
6	Aluminium Smelter Company Limited	40%	40%	20%
	Mining and solid minerals sector			
1	Nigerian Coal Corporation and Subsidiaries	40%	40%	20%
2	Nigerian mining Corporation and Subsidiaries	40%	40%	20%
3	Nigerian Mining Corporation and Subsidiaries	40%	40%	20%
4	Nigerian Iron – Ore Mining Company Limited	40%	20%	20%
	Media Companies			
1	Daily Times of Nigeria Plc and Subsidiaries	40%	40%	20%

2	New Nigerian Newspaper Limited	40%	40%	20%
	Insurance Companies			
1	NICON Insurance Company	40%	40%	20%
2	Nigerian Reinsurance Plc	40%	40%	20%
	Transport and Aviation Companies			
1	Federal Airports Authority of Nigeria	40%	40%	20%
2	Nigerdock Limited	40%	40%	20%
3	Nigeria Airways Ltd	40%	40%	20%
	Paper Companies			
1	Nigeria National Paper Manufacturing Company Ltd, Ibokun	40%	40%	20%
2	Nigeria News Print Manufacturing company Ltd. Oku Ibokun	40%	40%	20%
3	Nigeria Paper Mills	40%	40%	20%
	Sugar Companies			
1	Sunti Sugar Company Ltd	40%	40%	20%
2	Lafiagi Sugar Company Ltd	40%	40%	20%
3	Nigeria Sugar Company, Bacita	40%	40%	20%
	Miscellaneous			
1	Nigeria Postal Service	40%	40%	20%
2	Nigerian railway Corporation	40%	40%	20%
3	Nigerian Industrial Development Bank	40%	40%	20%

4	Nigerian Agricultural and Co-operative Bank	40%	40%	20%
5	Nigerian Bank for Commerce and Industries Limited	40%	40%	20%
6	Nigerian Aviation Handling Company Limited	40%	10%	10%
7	Nigeria Unity line	40%	40%	20%
8	National Inland waterways Authority	40%	40%	20%
9	Carlson /Bermuda Limited	40%	40%	20%
10	Hyson (Nig) Limited	40%	40%	20%
11	Abuja Environmental protection Board	40%	40%	20%
12	Abuja Water Board	40%	40%	20%
13	National Emergency Reconstruction Fund	40%	40%	20%
14	Nigeria Ports Authority	40%	40%	20%
15	Electricity Meter Co. Limited (EMCOL)	40%	10%	10%
16	International Trade Fair-Complex, Lagos	60%	20%	20%
17	Nigerdock Limited	60%	20%	20%
18	Kaduna Refinery And Petrochemicals Company Limited	40%	40%	20%

Source: Part 1 of 1st Schedule to Public Enterprises (Privatization and Commercialization) Act, (Cap. P38, LFN, 2004)

Table 6 Enterprises in which 100% of equity held Shares by the Federal Government shall be fully privatised under Cap. 369, LFN 1990.

s/N	Enterprises	Present federal Government Holding (%)	After Privatization
1	Nigeria Hotels limited	100	Nil
2	Durbar Hotels limited	100	Nil
3	Aba textile mills	100	Nil
4	National Cargo Handling limited	100	Nil
5	Nigerian Dairies Company Limited	100	Nil
6	Nigerian National Fish Company Limited	100	Nil
7	Nigerian food company limited	100	Nil
8	National grains production Ltd	100	Nil
9	National poultry production company limited	100	Nil
10	National root crops production company limited and other such food production company	100	Nil
11	Nigerian National shrimps company limited	100	Nil
12	New Nigerian salt company limited	100	Nil
13	National fruit company limited	100	Nil
14	National salt company limited, ijoko	100	Nil
15	South-East Rumanian wood limited, Calabar industries	100	Nil
16	Nigerian Rumanian wood industry limited, Ondo.	100	Nil
17	Nigerian yeast and alcohol company limited, Bacita	100	Nil

18	Nigerian film corporation	100	Nil
19	National freight company limited	100	Nil
20	National animal feed company limited, Port-Harcourt	100	Nil
21	Opobi boat yard	100	Nil
22	Madara Dairy company limited. Vom	100	Nil
23	Ore/Irere oil palm company limited. Ondo	100	Nil
24	Okomu Oil palm company limited, Ondo	100	Nil
25	National livestock production limited	100	Nil
26	Road Construction company of Nigeria Ltd	100	Nil
27	National film distribution company limited	100	Nil
28	Nigerian Ranches company limited, Kaduna	100	Nil
29	Impressit Bakolori Nigeria limited	100	Nil
30	North Breweries limited, Kano	100	Nil
31	Nigerian Beverages Production Company Limited	100	Nil
32	West African Distilleries Limited	100	Nil
33	Nigeria Engineering Construction Company Limited	100	Nil
34	Tourist Company of Nigeria Limited (owners of Federal palace Hotel)	100	Nil
35	Electricity Meters Company Limited, Zaria	100	Nil
36	American International Insurance Company Limited	100	Nil
37	Guinea Insurance Company Limited	100	Nil
38	Sun Insurance Company Limited	100	Nil

39	United Nigeria Life Insurance Company	100	Nil
40	United Nigeria Insurance Company Limited	100	Nil
41	Nigeria Insurance Company Limited	100	Nil
42	Mercury Assurance Company Limited	100	Nil
43	Crusader Insurance Company Limited	100	Nil
44	Royal Exchange Company Limited	100	Nil
45	NEM Insurance Company Limited	100	Nil
46	Law Union and Rock Insurance Company Limited	100	Nil
47	Prestige Assurance Company Limited	100	Nil
48	British American Insurance Company Limited	100	Nil
49	West African Insurance Provincial Company Limited	100	Nil
50	Manchok Cattle Ranch	100	Nil
51	Mokwa Cattle Ranch	100	Nil
52	Poultry Production Units in Jos, Ilorin and Kaduna	100	Nil
53	Kaduna Abattoir and Kaduna	100	Nil
54	Bauchi Meat Factory and Galambi Cattle Ranch	100	Nil
55	Minna Pig Farm	100	Nil
56	Kao Abattoir Company Limited	100	Nil
57	Umuahia Pig Farm	100	Nil
58	Giant Cold Store, Kano	100	Nil
59	Ayip – Eku Oil Palm Company Limited	100	Nil

60	Ihechiowu Oil Palm Company Limited	100	Nil
61	Sokoto Integrated Livestock Company Ltd	100	Nil
62	Motor Engineering Services Company Ltd	100	Nil
63	Floor Mills of Nigeria Limited	100	Nil
64	Nigeria Yeastb Alcohol Manufacturing Company Limited	100	Nil
65	Nichemtex Industries Limited	100	Nil

Source: Part II of 1st Schedule to the privatization and Commercialization Act (cap. 369, LFN, 1999).

Table 7

Enterprises in which Equity Held Shares shall be fully privatised under Bureau of Public Enterprises Decree No. 78, 1993.

S/N	Enterprises	Present Federal Government Participation	Maximum Federal Government participation as percentage (After Privatization)
	Commercial and Merchant Banks		
1	Savannah Bank of Nigeria Limited	51.34	Nil
2	Union Bank for Nigeria Limited	51.67	Nil
3	United Bank for Africa Limited	45.6	Nil
4	Int ’l Bank for west Africa Limited	50	Nil
5	Allied Bank of Nigeria Limited	51	Nil
6	Continental Merchant Bank Limited	51	Nil
7	Int ‘ l Merchant Bank Limited	60	Nil
8	Nigeria Arab Bank Limited	60	Nil
9	Nigeria Merchant Bank Limited	60	Nil
10	First Bank of Nigeria Limited	44.8	Nil
11	NAL Merchant Bank Limited	20	Nil
12	Merchant Bank of Africa	5	Nil
13	FSB International Bank Plc	Not Known	Nil
	Insurance Companies		
1	American Int ’l Insurance Company Limited	100	Nil

2	Guinea Insurance Company Limited	100	Nil
3	Sun Insurance Company Limited	100	Nil
4	United Nigeria Insurance Company Limited	100	Nil
5	United Nigeria Life Insurance Company Ltd	100	Nil
6	Nigeria Insurance Company Limited	100	Nil
7	Crusader Insurance Company Limited	100	Nil
8	Royal Exchange Company	100	Nil
9	NEM Insurance Company Limited	100	Nil
10	Law Union and Rock Insurance	100	Nil
11	Prestige Assurance Company Limited	100	Nil
12	British American Insurance Company Limited	100	Nil
13	West African Insurance Provincial Company Limited	100	Nil
	Hotels		
1	Nigeria Hotels Limited	100	Nil
2	Durbar Hotel Limited	100	Nil
3	Festac 77 Hotel Plc	100	Nil
4	Tourist Company Of Nigeria Limited (owners of Federal Place Hotels)	100	Nil
	Salt Companies		
1	New Nigerian Salt Company Limited	100	Nil
2	National Salt Company Limited	100	Nil

	Textiles		
1	Aba Textile Mills	100	Nil
2	Nichemtex Industries Limited	100	Nil
	Transport Companies		
1	Central Water Transportation Companies	100	Nil
2	National Cargo Handling Companies	100	Nil
3	Opobo Boat Yard	100	Nil
	Construction and Engineering Companies		
1	Road Construction Company of Nigeria Limited	100	Nil
2	Imprest Bakolori Nigeria Limited	100	Nil
3	Nigeria Engineering Constriction Company Limited	100	Nil
4	Electricity Meter Company Limited	100	Nil
5	Motor Engineering Services Company Limited	100	Nil
	Food Processing Companies	100	Nil
1	Floor Mills of Nigeria Limited	100	Nil
2	Nigerian Food Company Limited	100	Nil
3	National Grains Production Company Limited	100	Nil
4	National Root Crops Production Company Limited	100	Nil

5	National Fruit Company Limited	100	Nil
6	Ore/Irele Oil Palm Company	100	Nil
7	Okomu Oil Palm Company Limited	100	Nil
8	Ihechiowa Oil Palm Company Limited	100	Nil
9	Mokwa Cattle Ranch	100	Nil
10	Umuahia Pig Farm	100	Nil
11	Sokoto Integrated Livestock Company Limited	100	Nil
	Fishing/Trawling Companies		
1	Nigerian National Fish Company Limited	100	Nil
2	Nigerian National Shrimps Company Limited	100	Nil
	Breweries		
1	Nigerian Yeast and Alcohol Limited	100	Nil
2	North Breweries Limited	100	Nil
3	West African Distillers Limited	100	Nil
	Wood Processing Companies	100	Nil
1	South-East Romanian Wood Industry Limited	100	Nil
2	Nigerian Romanian Wood Industry Limited	100	Nil
	Motor Vehicle and Truck Assembly Company		
1	Anambra Motor Manufacturing Company Limited	35%	Nil
2	Leyland Nigeria Limited	35%	Nil
3	Nigeria Truck Manufacturing Company	35%	Nil

	Limited		
4	Peugeot Automobile of Nigeria Limited	35%	Nil
5	Volkswagen of Nigeria Limited	35%	Nil
6	Steyr Nigeria Limited	35%	Nil

Source: Part II of 2nd Schedule to the Bureau of public Enterprises (Decree No78,1993)

Table 8

Enterprises in which equity held shares are to be fully privatised under Cap. P38, LFN, 2004.

S/N	Infrastructure Utility Companies	Federal Government Ownership	Post Privatization Federal Government Ownership
1	Unipetrol Plc	40%	Nil
2.	National Oil and Chemical Company Limited	40%	Nil
3.	African Petroleum Plc	40%	Nil
	Cement Companies		
	Ashaka Cement Company Ltd.	30%	Nil
	Benue Cement Company Ltd.	30%	Nil
	Northern Nigeria Cement Company Limited	30%	Nil
	Nigeria Cement Company Limited Ngalagu	10%	Nil
	Calabar Cement Company Ltd.	40%	Nil
	West African Portland Cement Plc.	27%	Nil
	Commercial and Merchant Bank		
1	Afri Bank Nigeria Plc	-	Nil
2	Assurance Bank Plc	-	Nil
3	FSB International Bank Plc (Shares owned by Parastatals)	-	Nil
4	International Merchant Bank Plc	-	Nil
5	NAL Merchant Bank Plc	-	Nil
			Nil

	Agro – Allied		
1	Ayib – Eku Oil Palm Company Plc	25%	Nil
2	Opobo Boat Yard	25%	Nil
3	Nigerian Romanian Wood Insurance Limited	25%	Nil
	Motor Vehicle and truck Assembly Companies		
1	Anambra Motor Manufacturing Company Limited	35%	
2	Leyland Nigeria Limited	35%	
3	Nigeria Truck Manufacturing Company Limited	35%	
4	Peugeot Automobile of Nigeria Limited	35%	
5	Volkswagen of Nigeria Limited	35%	
6	Steyr Nigeria Limited	35%	
	Hotels		
	Nigeria Hotels Limited	47%	
	FESTAC 77 Plc.	100%	
	Miscellaneous		
1	Savannah Sugar Company, Numan	100%	Nil
2	Central Packages Company, Ilupeju, Lagos	40%	Nil
3	Chemical Company of Senegal, Dakar	10%	Nil
4	……. (Deleted by S.I. 24 of 2001)	-	Nil
5	Ahmadu Bello Stadium, Kaduna	100%	Nil
6	Liberty Stadium, Ibadan	100%	Nil
7	Nnamdi Azikwe Stadium, Enugu	100%	Nil
8	National Arts Theatre, Iganmu	100%	Nil

9	NICON – Hilton Hotel	100%	Nil
10	Abuja International Hotel	100%	Nil
11	Sharaton Hotel, Limited	100%	Nil
12	Dresser Nigeria Limited	36%	Nil
13	Solus Scholl Nigeria Limited	36%	Nil
14	A.C.M Nigeria Limited	36%	Nil
15	A.C.M Nigeria Limited	36%	Nil
16	Baker Nigeria Limited	36%	Nil
17	Schlumberger Testing and Product Services Nigeria Limited	36%	Nil
18	Schlumberger Wire Line Company	36%	Nil
19	Dowell Schlumberger Niger Limited	36%	Nil
20	Key Drill Nigeria Limited	36%	Nil
21	Bariod Nigeria Limited	36%	Nil
22	D.C.P Limited	36%	Nil
23	Save Sugar Company, Benin Republic	36%	Nil
24	Onigbolo Cement, Benin Republic	46%	Nil
25	Ihechiowa Oil Palm Limited	60%	Nil
26	Ore –Irele Oil Palm Limited	60%	Nil
27	Durbar Hotel, Kaduna	100%	Nil
28	West African Refinery Company Limited	40%	Nil
29	Nigeria Security Printing and Mining Company Limited	40%	Nil
30	International Conference Centre, Abuja	100%	Nil
31	Abuja Stock Exchange Plc	100%	Nil

32	Stallion Properties Development Company Limited	51%	Nil
33	National Assembly Building, Lagos	100%	Nil
34	International Trade Fair Complex, Lagos	100%	Nil
35	National Clearing and Forwarding Company Limited	100%	Nil

Source: part II of 1st Schedule to public Enterprises (Privatisation and Commercialisation) Act, (Cap. P38, LFN, 2004)

Table 9: Modes of privatisation

Companies Privatized as at 31 March 1992 (with value of shares sold in millions of Naira)

Public Offer of Shares	
African Petroleum	32.8
National Oil and Chemical Marketing	33.6
Flour Mills of Nigeria	6.2
UNIC	17.6
American International Insurance Company (Nigeria)	6.5
Prestige Assurance (Nigeria)	3.3
Royal Exchange Assurance (Nigeria)	17.6
Sun Insurance (Nigeria)	1.5
Niger Insurance Company	8.8
NEM Insurance Company	0.9
West African Provincial Insurance Company	0.7
British American Insurance Company	4.3
Crusader Insurance Company	2.5
Guinea Insurance Company	1.5
Law Union & Rock Insurance Company	3.7
United Nigeria Life Insurance Company	0.6
Ashaka Cement Company	39.0
Nigerian Yeast & Alcohol Manufacturing	3.2
Okomu Oil Palm Company	23.2
National Salt Company of Nigeria	9.9
Ayip Eku Oil Palm Company	15.0

Benue Cement Company	42.6
Unipetrol	96.0
Abatex	18.3
Durbar Hotel	40.2
Impresit Bakolori	5.9
Cement Company of Northern Nigeria	72.0

Deferred Public Offer	
Tourist Company of Nigeria	493.2
New Nigeria Salt Company	35.2
North Brewery	9.0
West Africa Distillers	2.3
NECCO	25.9
Private Placement	
Nichimtex Industries	8.5
Sale of Assets	
National Cargo Handling Company	3.5
National Root Crop Production Company	12.3
Nigeria n Grains Production Company	41.3
Nigerian National Shrimps Company	25.0
Central Water Transportation Company	93.2
Motor Engineering Company	0.2
Other	
Non-water asset of RBDAs	216.7
Federal Ministry of Agriculture Proceeds	18.6
Nigeria Beverages Production Company	4.1
Manchock Cattle Ranch	0.3
Nigerian Food Company	0.8

Source: Technical Committee on Privatization and Commercialization, quoted by Richard Synge- Nigeria: The way forwar

d, Euromoney Books, London, 1993, p. 150

Table 10

Modes of Privatization

S/N	MODEL OF DIVESTITURE	NUMBER
1	Public Offer for Sales of Shares	35
2	Private Placement	7
3	Management Buy Out	1
4	Deferred Public Offer	4
5	Sale of Assets	26
6	Others	5

Source: C.M. Anyanwu – a Principal Economist, Research Dept, CBN.

The above represents those enterprises that were successfully privatized as of 1998 when Anyanwu concluded his research on the subject

Table 11

Share of Public and Private Sectors in Local Investment Programme 1962–80

Million Naira				**Percentages**	
Plan Period	**Total Investment**	**Actual Public Sector**	**Actual private Sector**	**Public Sector's Share of Total investment**	**Private Sector's Share of Total investment**
1996 – 68	2,200	1,073	1,612	39.9	60.1
1970 - 74	5,300	2,237	3,100	41.6	58.4
1975 – 80	30,000	20,000	10,000	66.7	33.3

Source: C.C Agu, An Overview of the Contribution of to Economic Private Sector Growth in Nigeria

Table 12: Growth Capital Consumption Expenditure by Private and Public Sector 1981 – 99 (Percentages).

	1981	1984	1988	1994	1999
Private sector	83.9	87.4	92.4	96.0	90.0
Public sector	16.1	12.6	7.6	0.4	10.0

Sources: C. C. Agu, An Overview of the Contribution of the Private Sector to Economic Growth in Nigeria

Table 13: Infrastructures of Nigeria and other Emerging Markets, 1999

Country	Electricity Consumption per Capital	Telephone per 1000 persons	Internet users('000)	Classification
Nigeria	85	4	100	Severely Indebted
Ghana	289	8	20	Moderately Indebted
South Africa	3832	125	1,829	Less Indebted
Kenya	129	10	35	Moderately indebted
Egypt	861	75	200	Less indebted
Malaysia	2554	203	1,500	Moderately Indebted

Sources: 1. World Bank (2001), world development indicators, 2001.

Table 14 Growth Rate of Gross Domestic Product for Selected Countries (%)

Country	**GDP**		**Agriculture**		**Manufacturing**		**Service**	
Country		**1990 – 1999**		**1990 – 1999**	**1980 – 1990**	**1990 – 1999**	**1980-1990**	**1990 – 1999**
Nigeria		2.4		2.9	0.7	2.0	3.7	2.8
Ghana		4.3		3.4		0.3	2.9	1.9
South Africa		1.9		1.0	1.1	1.1	2.4	2.4
Kenya		2.2		1.4	4.9	2.4	4.9	3.5
Egypt		4.4		1.1	0.2	5.3	0.7	5.8
Malaysia		3.7		0.2	9.3	9.7	4.9	8.0

Table 15: Indicators of Financial Viability

Country	Risk Rating (September, 2000)	Institutional Investors Credit	Interest rate Spread		Spread Over LOBOR	
			1990	1999	1990	1999
Nigeria	59.3	18.1	5.5	7.5	17.0	14.9
Ghana	53.8	29.5	-	-	-	-
South Africa	68.0	55.1	2.1	5.8	12.7	12.6
Kenya	69.3	25.0	5.1	12.8	10.4	17.0
Egypt	75.8	51.0	7.0	3.7	10.7	7.6
Malaysia	48.2	59.0	1.3	3.2	1.1	1.9

Sources: World Bank, World Development Indicators, 2001 and Africa Economic Outlook

Table 16: Corruption perception and conflict rating

Country	Corruption perception			Conflict	
	1998	**2000**	**2001**	**1998**	**2001**
Nigeria	1981	2.1 (80)	2.0 (84)	21.4	11.3
Ghana	3.3 (55)	3.5 (50)	3.4 (59)	2.4	0.3
South Africa	5.2 (32)	5.0 (34)	4.8 (38)	29.8	2.2
Kenya	2.5 (74)	2.1 (80)	2.0 (84)	48.5	2.9
Egypt	2.9 (66)	3.1 (53)	3.6 (54)	0	3.4

Sources: World Bank, World Development indicators, 2001 and African Economic outlook.

Table 17: Trend of FDI and portfolio Investment, 1970 – 98 (₦ Million Naira)

Period	FDI (Million Naira)		Portfolio (Million Naira)	
	Cumulative	Period Average	Cumulative	Period Average
1970 – 1980	1,562.7	142.1	-	-
1981 – 1985	1,683.5	336.7	-	-
1986 – 1992	44,849.4	6,407.1	36,256.9	5,179.6
1993 – 1998	465,001.3	77,500.2	-23,864.2	3,977.4

Sources: Computed from CBN, Statistical Bulletin, various years by A.G Garba the impact of globalization on foreign private investment in Nigeria. (2003).

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