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Revisiting the Proposed Sales of Some Selected National Assets: Need for Legislative Support

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I. Overview

1. Sales of national assets has been a highly controversial issue that evokes sharp reactions and divide among the political actors and the populace in general. National assets sale is a situation where the government or its agency sells or transfers ownership and control of public assets to the private sector, with the government having no role any longer in the financial support, management or oversight of such assets. After the sale of a public asset or enterprise, public agency may become a regulatory body over a former public asset or enterprise system if new ownership results in a potential monopoly.

2. According to Merrill Lynch, there are factors to be considered when assessing the possible sales of national assets. They include assessing the following:
   - ❖ The asset or enterprise is not a core government function.
   - ❖ The public agency is in serious financial trouble or has an urgent need for capital.
   - ❖ The asset or enterprise is producing poor financial results under the current ownership structure.
   - ❖ The asset or enterprise has an established operating history of five or more years and has reasonable flexibility for revenue increases.

II. Historical Constitutional Provisions on the Sale of National Assets and the Role of Bureau of Public Enterprises (BPE)

3. Government's policy on privatization was first emphasized in the Structural Adjustment Programme (SAP, 1986). The main objective of SAP was to ensure the possible removal of subsidies, reduction in wage bills and the contraction of the public sector size through deregulation and privatization. To actualize this objective, in July 1987, the government set up a Technical

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Committee on Privatization and Commercialization (TCPC) which was backed up by the privatization and Commercialization Decree (No. 25 of 1988; later designated as an "Act") which categorized all State-owned enterprises and parastatals into four main groups, namely:

(a) Those to be partially privatized

(b) Those to be fully privatized;

(c) Those to be partially commercialized

(d) Those to be fully commercialized.

4. The Technical Committee adopted three methods in offering the shares of the Privatized Companies to the public, namely, Public Offer for Sale, Private Placement and outright Sale of the Assets in cases of inability to sell by other processes. By the end of 1989, the TCPC had arranged for the sale of 16 firms, including the Nigerian Flour Mills, 2 Petroleum firms and 13 Insurance Companies. In 1993, the Bureau of Public Enterprises Decree which had the same schedules like that of Technical Committee of 1998 was promulgated. This was again modified and changed to the Public Enterprises Decree in 1999 and currently Public Enterprises Act (2004).

5. The Public Enterprises Act (Privatization and Commercialization, 1999), as amended provides for a total of 95 enterprises, 25 of which are to be fully privatized, 37 to be partially privatized, 24 to be partially commercialized and 9 to be fully commercialized. Section 1(1) lists the enterprises to be partially privatized in Part 1 of the First Schedule[1] while Section 1(2) provides for full privatization of the listed enterprises in part II[2]. See Tables 1 and 2 for concluded, current and upcoming transactions on national assets.

6. The Privatization Act gives the National Council on Privatization (NCP) – overall body responsible for formulating and approving policies on privatization and commercialization in Nigeria – sufficient flexibility in deciding the appropriate method/strategy to be adopted in privatizing each enterprise. However, in choosing the strategy for each enterprise, the following are always taken into consideration, Government Policy, Opportunities and Constraints, and Nature of the enterprise. The following strategies have been consistently used in the privatization

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[1] Some of which include the Nigerian Telecommunication Plc, National Electric Power Authority, Port Harcourt Refinery I and II, Kaduna Refinery and Petrochemicals, Warri Refinery and Petrochemicals, Eleme Petrochemical Co. Ltd, Pipelines products and marketing Co. Ltd, the Nigerian Petroleum Development Co. Ltd, National Fertilizer Co. of Nigeria Ltd, Jos, Katsina, Oshogbo and Ajaokuta Steel Companies, Nigeria Coal Corporation and Subsidiaries, Nigeria Mining Corporation and Subsidiaries, Federal Airports Authority of Nigeria and Nigeria Airways Ltd among others

[2] This include Unipetrol Plc, National Oil and Chemical Co. Ltd, African Petroleum Plc, Ashaka Cement Co. Plc, Benue Cement Co. Plc, Northern Nigeria Cement Co. Plc, Nigerian Cement Co. Calabar Cement Co. Ltd, West African Portland Cement Plc, Afribank Nigeria Plc, Assurance Bank Plc etc.

exercise particularly since 1999; Competitive Asset Sale, Concession, Core Investor Sale (of minority or majority equity stake), Guided Liquidation (including as a going concern), Private Placement, Sale to existing shareholders, and, Share floatation/Public offers.

III Issues on the sale of National Assets

A. Argument against Sales of National Assets

7. There have been serious and strong arguments against the sale of National Assets. Indeed, some of enterprises listed for partial or full privatization in part I and II of the BPE Act (2004) had to be reversed in 2007 by the Yar'Adua administration due to strong opposition against such sales. Similarly, attempt by the current administration to privatize/commercialize some of these assets had also met stiff resistant at the National Assembly.

8. Opponents of sales of National Assets have always argued that sales of government assets would only amount to handing over the collective commonwealth to a few individuals and further impoverish majority of Nigerians. They reasoned that these assets were built by the past leaders to bind us and to make us a sovereign county with a feature of unity. Furthermore, they opined that all assets that have been sold in time past have not brought any significant change in the economic fortune of the country. Another fear as expressed by this group is the possibility of job loss that may likely arise from such sales.

9. From a legal perspective, they contended that sale of national assets is unconstitutional as it is in conflict with section 16 of the Constitution which has prohibited the concentration of the nation's wealth in the hands of a few people or a group. They also argued that section 44 of the Constitution stipulates that "the nation's natural resources shall be held in trust for the Nigerian people by the federal government". However, as submitted by the legal luminary – Mr. Femi Falana (SAN), the nation may consider selling some national assets to help salvage the economy while leaving out some assets like NLNG, Refineries and NNPC unsold.

10. At present, some of the contentious National Assets consist of stadia, refineries, national theater, trade fair complex, airports, power transmission, unused government buildings scattered all over the country, pipelines, rail, federal secretariat in Ikoyi, aircrafts in the presidential fleet, river basins (Dams), Joint Venture Companies (JVCs), Nigeria National Petroleum Corporation (NNPC), government shares in Nigeria Liquefied Natural Gas (NLNG) and government stake in financial institutions e.g. Africa Finance Corporation among others.

Table 1: Selected Concluded Sale of National Assets

Concluded Transactions			
Industry	**Asset Name**	**Transaction Strategy**	**Date of Sale**
Aviation	National Aviation Handling Company	Public Offer of Shares at NSE	Nov-05
	National Clearing and Forwarding Agency	Core Investors	Aug-06
	Skypower Aviation Handling Company Limited	Core Investor (Willing buyer, Willing seller)	Sep-09
	Lagos International Trade Fair Complex	Concession	May-07
National Facilities	Tafawa Balewa Square	Concession	May-07
	Jos Steel Rolling Mill	Liquidation	Nov-05
Steel	Katsina Steel Rolling Mill	Liquidation	Nov-05
	Delta Steel Company Limited	Core Investor Sale	Feb-05
	Oshogbo Steel Rolling Company Limited	Liquidation	Nov-05
	Apapa Container Terminal	Concession	Mar-05
Ports	Calabar New Port Terminal B	Concession	May-06
	NPA Quarters, Lagos	Asset Sale	Oct-04
	Port Harcourt Terminal A	Concession	May-05
	Tin Can Island Port Lillypond Terminal	Concession	Sep-05
	Warri Canal Berth	Concession	May-06
	Unipetrol Nigeria PLC (OANDO)	Core Investor Sale	May-00
Petroleum	National Oil & Chemical Marketing Co. PLC (Now Conoil PLC)	Share Flotation	Apr-01
	M-I Nigeria Limited	Private Placement	Jan-07
	LPG Calabar Depot	Asset sale	May-07
	African Petroleum PLC	Share Flotation	May-01
	Dowell Schlumberger Nig. Ltd	Private Placement	Jan-07

Source: BPE website. http://www.bpeng.org/sites/bpe/concluded%20transactions/Pages/default.aspx. Retrieved on 2/15/2018

Table 2: Selected Current and Upcoming Sale of National Assets

Upcoming Transactions		Current Transactions	
Industry	**Asset Name**	**Industry**	**Asset Name**
Transport	Concession of the Airports	Mines	Kujama Quarry
	National Inland Waterways Authority (NIWA)		Gano Quarry
Petroleum	Two Refineries in Port Harcourt (PHRC)		Gubi Quarry
	One Refinery in Warri (WRPC)		Naraguta Bricks
	One Refinery in Kaduna (KRPC)		Maiduguri Bricks
	Pipelines and Product Marketing Company (PPMC)		Terrazzo Limited

	Nigerian Gas Company (NGC)	Transport	Terminal 'B' Warri Old Port
	LPG Depots		Skypower Catering & Hotel Services Ltd (SKYCAT)
Industry	National Arts Theatre	Coal	Inyi coal block
	Nigeria-Romanian Wood Industry (NIROWI)		Amansiodo Coal Block
Electric power	Nigerian Integrated Power Project (NIPP) Plants		Okpara Coal Block
	Calabar Power Plant		Ogwashi-Azagba coal block
	Oji River Power Plant		Onyeama Coal Block
	Ijora Power Plant	Steel	Ajaokuta Steel Company Ltd (ASCL)
	Transmission Company of Nigeria (TCN)	Electric Power	Afam Power Plant Plc
Media	Federal Radio Corporation of Nigeria - FRCN	National Facilities	National Parks
	News Agency of Nigeria - NAN		Federal Housing Authority (FHA)
	Nigeria Television Authority - NTA		National Stadia
	Nigerian Film Corporation		Bank of Industry (BOI)
Communications	Nigerian Postal Service - NIPOST	Agriculture	Nigerian Commodities Exchange (NCX)
			Bank of Agriculture (BOA)
			Federal Mortgage Bank of Nigeria (FMBN)
			River Basins Development Authority (RBDA)

Source: BPE Website: http://www.bpeng.org/sites/bpe/upcoming%20transactions/Pages/default.aspx. Retrieved on 2/15/2018.

B. Argument for the Sale of National Assets

11. It has been argued that the Federal Government does not have good record of operating businesses and that it has only continued to deny the customers (public) the opportunity of choice and the benefit of market competitiveness by simply monopolizing most of the sectors where it operates thereby encouraging inefficiency and complacency. At present, there is quantum wastage of public funds on most of these assets while Nigerians get poor service or returns from them. As revealed in Box 1, rather than being veritable sources of revenue generation to the government, these assets have become conduit pipe for wastage and syphoning of government funds.

12. Government exiting ownership or at the minimum, management of some of these assets especially the revenue generating enterprises will streamline government operations from a participant to a regulator, solely tasked with quality control, ensuring local content, and putting in place mechanisms to create an enabling environment for market players to compete. This will enhance efficient allocation of resources, freeing scarce resources for use in other areas such as education and other social services. In addition, the sales is expected to greatly contribute to the acceleration of economic growth through improve innovation, greater investment, corporate expansion, improved

efficiency and productivity of such assets and in the sectors where they operate thereby guaranteeing high quality services to Nigerians and reduce the spillover effect of perennial inefficiencies in their management.

13. Sale of National Assets can also be justified by what was done in telecom sector which was in decay when it was being run by the government. The selling of Nigerian Telecommunication and especially the freeing up of the space brought investment in that sector to saturation, employing more people that would have been employed were it to be under the government. It is no longer one of the sectors holding the economy back but one that is pushing the economy forward. It should be noted that similar model has been adopted in other frontier markets such as India and Malaysia and they have recorded resounding success.

Box 1: Stylized Facts on Government Enterprises Management

- Since the return of democracy in 1999, successive governments in Nigeria have invested up to NGN800 billion or USD5.16 billion in state-owned enterprises with annual returns on these huge investments have been below 10 percent due to inefficiencies.
- Public enterprises were avenues for over 5,000 board appointments that controlled funds in excess of NGN1 trillion or USD6.4 billion as patronage for political loyalists in the country.
- Public enterprises were responsible for over 40 percent of fiscal deficit and in addition, they account for 55 percent of non-performing debts in Nigeria.
- Between 2012 and 2014, annual expenditure on honorarium and sitting allowances stood at N12.8 billion for 3,731 board Chairmen and members of 71 out of the 500 boards of public enterprise for four years (FMF: 2015). This huge amount paid to these board members was outside other benefits, such as accommodation, out of station travel expenses, furniture, vehicles, contracts and medicals.
- As at December 2012, the total liabilities of 39 of these PEs were in excess of NGN1.1 trillion or USD6.5 billion, with accumulated loses of NGN92.3 billion or USD589 million.
- The cumulative value of the Federal Government investment by way of equity, loans and other transfers to 62 enterprises is estimated at nearly USD70 billion. Unfortunately, it is extremely unlikely that government will ever recoup these investments.

	Cross Country Experience		
	Ownership		
Countries	Airports	Dams	Stadia
USA	All but one U.S. commercial airport are owned and operated by public entities. Airport operations are largely self- sustaining as they are fully commercialized with no financial support from the state as most of their numerous services have been contracted out to private firms. The vast majority of airport revenues come from fees paid by passengers using the airports, landing fees and space rental fees paid by airlines, parking charges and sales of food and goods at the airport.	The majority of dams in the United States are privately owned. According to Federal Emergency Management Agency, 56.4% are owed by the private enterprises, 32% are publicly owned while the remaining 11.6% are undetermined	All stadiums in the US are privately owned. However, there is a huge subsidy by respective state governments in providing for infrastructure for these privately owned stadiums. The idea behind this subsidy is that the stadiums are public goods.
Malaysia	The management of airports and ownership in Malaysia is the responsibility of both the Government and the Private sector. While the government through the Department of Civil Aviation (DCA) remains the regulatory body, operation, management, and maintenance of airports are privately managed	The ownership and management of dams rest on both private and the government. Public ownership of dams are transferred to the private sector mostly through sales and purchase agreements.	Stadiums in Malaysia are owned by the federal government in collaboration with state governments. The Stadium Corporation in Malaysia, is the public agency responsible for managing the stadiums.
United Kingdom	Majority of airports in the UK were owned by the private sector including British Airways and British Airports Authority, which owned London's Heathrow and a half dozen other airports.	Dams in the UK are privately owned under different regulatory agencies. Ownership of the dams is vested in more than 700 disparate owners.	The Stadiums in the United Kingdom are all privately owned. Wembly Stadium is the only national stadium with tenancy agreements with other private organizations for its use.
France	There is mixed ownership of airports whose shares are owned by a combination of private investor(s) and public authorities of the country where the airport is located.	A large proportion of the dams in France is owned by the French utility company on behalf of the state.	There are more privately owned stadiums in France. The French national stadium owned by the government allows for tenancy

		Other dams are owned by private companies	agreements for the use of the national stadium.
South Africa	The Airports Company of South Africa Limited (ACSA) is a private company that manages major South African airports. The remaining airports, are smaller ones being managed by the Federal government.	Dams in South Africa are being owned by cities and other government departments and water boards.	The stadiums in South Africa are being owned by the private organization and the cities in which these stadiums are situated The ones owned by the cities are being privately managed.

V. Our Position/ Issues to Note by the National Assembly.

14. Nigeria economy is in dire need of growth stimuli and conscientious efforts to diverse its revenue base. The economy cannot continue to depend solely on oil or continue to depend on debts to finance its budget deficit which appears to be perpetual, while spending scarce resources on some pseudo national assets that have become inefficient and at worse moribund. It is evident that some of the national assets such as national stadia, national theater and trade fair complex are all deteriorating without maintenance thereby losing values. Nigerian airports are far behind in terms of efficiency, effectiveness and esthetics compared to their foreign counterparts because they have remained in the hands of the government. Also in the power sector, the frequent blackout and poor electricity supply has been largely blamed on government being a sole operator in power transmission in the country. Experts in the industry have suggested that power transmission should be unbundled into regional transmission companies.

15. Considering our political environment and the performance of government in managing some of these assets, it is more desirable for government to be less involved in business management. Government should largely be a regulator and not an operator, particularly in all the revenue generating assets of the economy [as it was done in telecoms sector and to some extent in Nigerian Liquefied Natural Gas (NLNG)], while concentrate on providing social services and operate in sectors or areas which private sector may not find attractive, yet, crucial for socio-economic well-being of the people.

16. In our view, the time is right, based on Merrill Lynch assessment criteria as espoused above, for the authorities to consider selling off some of these

assets as the economy is gradually coming out of recession with crude oil price and foreign reserves on the increase to consolidate on the revenue generation drive of the Federal Government. The outright sales or concessionning of some of these assets will generate capital for infrastructural development and shore up foreign reserves thereby putting the economy on a sustainable and inclusive growth. This will send the correct signals to key domestic and external economic actors of the seriousness of government to diversify the economy through macro-economic reforms that are irreversible.

17. We therefore encourage the National Assembly to consider lending its support to the executive in its bid to sell off some National Assets to free them from undue political interference and bureaucratic bottlenecks. On the need for transparency in the bidding, negotiation and sales of such assets, it can be argued that the present administration has gained some credibility in anti-corruption drive relative to previous administrations, so we can have some confidence that the process would be transparent, credible and proceed from such sale would be judiciously utilized.

18. Nevertheless, the Assembly may consider setting up committee to carry out cost/benefit analysis on all the national assets with a view to identifying the ones to be put up for outright sale, the ones suitable for concessioning and how much of holdings should be retained from its joint holding ventures and advise the executive accordingly. The committee may also ensure that the structure of such sales and negotiation is transparent and competitive, and the money realized properly accounted for and tied to specific infrastructural projects.

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The views expressed in this Research Issue Brief are those of the author(s) and do not necessarily represent the views of the Institute and its Management.

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