# COMPETITION REGIME SCENARIO IN NIGERIA

**Preliminary Country Paper (PCP), Nigeria**

**CUTS 7Up4 Project**

**by**

Consumers Empowerment Organisation of Nigeria (CEON)

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**List of Acronyms**

| | |
|---|---|
| BPE | Bureau of Public Enterprises |
| CAMON | Consumer Affairs Movement of Nigeria |
| CBN | Central Bank of Nigeria |
| CCIER | Centre for Competition, Investment and Economic Regulation |
| CEON | Consumes Empowerment Organisation of Nigeria |
| CPC | Consumer Protection Council |
| CUTS | Consumer Unity and Trust Society |
| EFCC | Economic and Financial Crime Commission |
| EPA | Economic Partnership Agreement |
| FCC | Federal Competition Commission |
| FDI | Foreign Direct Investment |
| GDP | Gross Domestic Product |
| HDI | Human Development Index |
| HDR | Human Development Report |
| IMF | International Monetary Fund |
| NCC | Nigerian Communication Commission |
| NCP | National Council on Privatisation |
| NEEDS | National Economic Empowerment and Development Strategy |
| NEPA | Nigeria Electricity Power Authority |
| NERC | Nigerian Electricity Regulatory Commission |
| NIPC | Nigerian Investment Promotion Commission |
| PE | Public Enterprises |
| SEEDS | State Economic Empowerment and Development Strategy |
| TELECOM | Telecommunication |
| WDI | World Development Indicator |
| WTO | World Trade Organisation |
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## Introduction

This paper attempts to present the current situation regarding the competition regime scenario in Nigeria. It mainly uses available literature from secondary sources. *The objective of this paper is to provoke thought and act as a base paper to help members of the National Reference Group (NRG) to enter into the debate on competition. It would also lay the foundation for the more detailed research that would be subsequently undertaken to produce the Country Research Report (CRR).* Such issues include some aspects of socio and economic policies affecting competition, the nature of the market/competition and anti-competitive practices.

The paper has **seven** sections, excluding this short introduction. It starts by presenting a general background of the country which includes some key socio-economic indicators. Following this is a short analysis of social and economic policies affecting competition in Nigeria. Some brief discussion of the nature of the market in terms of its impact on competition follows. Analysis of policies of some selected sectors in terms of their linkages with competition and/or consumer protection follows. This will then lead to a section on the prevailing anti-competitive practices in the markets. Finally, an overview of the consumer protection law and/or policy in the country is presented before this paper is concluded.

## 1. General background

Nigeria is situated in the West African region and lies between longitudes 3 degrees and 14 degrees and latitudes 4 degrees and 140 degrees. It has a land mass of 923,768 esq. With a population of 144.7million people (year 2006 census), it remains the most populous country in Africa, and the annual population growth rate is 2.2%.[1]

The 144.7 million population is made up of about 374 pure ethnic stocks. Three of them, Hausa, Ibo and Yoruba are the major groups and constitute over 40 per cent of the population. In fact, about 10 ethnic linguistic groups constitute more than 80% of the population: the other large groups are Tiv, Ibibio, Ijaw, Kanuri, Nupe, Gwari, Igala, Jukun, Idoma, Fulani, Edo, Urhobo and Ijaw.

Each ethnic group has its own identifiable way of life, mode of dress, values, food and food habits, cultural predispositions for members to do or not to do certain things, and its shared mechanisms or patterns of socialising its members. Each group also has its systems of marriage and family organisation which are affected by the system of descent and, hence, the domination or parity of men and women in their societies.

Nigerians from different ethnic groups appreciate the diversity of cultural dances, food, handicrafts, drumming, songs, farm implements and practices, and other traits. For example, many Nigerians eat eba, pounded yam, 'amala' and even usi (starch) and akpu that do not traditionally belong to their cultures. They enjoy the Efik 'Edikang-lkong', the Hausa and Fulani tuwo, the Urhobo ukodo and the lgbo pepper soup.

[1] UNDP, Human Development Report Statistics, 2005 .

Just as many Nigerian men wear the Hausa 'babanriga' and Yoruba full traditional dress (agbada), so do many Nigerian women now put on the Urhobo and Itshekiri george wrapper and blouse. Many Nigerians now speak languages other than their own and also marry from ethnic groups outside their own. In addition, the Tee is an evolution of neutral traits adopted from cultures outside Nigeria, and to which local traits adapted. For example, many musicians and drummers from different ethnic groups have adapted themselves and their styles to pop and disco music and, lately, rap music.

Thus, the emerging national culture in Nigeria is little more than a rag tag of sorts. Yet, it is still obvious when you see or meet a Nigerian in the midst of other Africans and, of course, non-Africans.

Nigeria is bordered to the north by the Republics of Niger and The Chad. It shares borders to the west with the Republic of Benin, while the Republic of Cameroon shares the eastern borders right down to the shores of the Atlantic Ocean which forms the southern limits of Nigerian Territory. The about 800km of coastline confers on the country the potentials of a maritime power. Land is in abundance in Nigeria for agricultural, industrial and commercial activities.

The major climatic variable has been that of the amount of rainfall, as there are alternate seasons (wet and dry). The distinct characteristics of Nigerian topography are lowlands in the south, merging into hills and plateau in the central part of the country, while plains cover the northern part. Petroleum, natural gas, bitumen, tin, columbine, iron ore, coal, limestone, and lead are the natural resources Nigeria is abundantly endowed with.

**Government**

The Federal Republic of Nigeria consists of thirty-six states, and the administrative headquarters and capital city is Abuja located in the Federal Capital Territory, which is geographically situated in the middle of the country.

Effective participation in governance by all adults is assured through the sharing of powers, revenue and responsibilities between the three tiers of government, i.e. the Federal Government, the State Governments and the various Local and Municipal Councils of the federation.

**Economic environment/Major Features of the Economy**

The Nigeria’s Gross Domestic Product (GDP), as at 2006, amounted to US$103.3 billion (see table I.1). The agriculture sector-which contributed 43.67% to GDP and employed about 70% of the labour force, comprises of the following crops; livestock, forestry, and fishing. The mining and quarrying sector accounted for 26.0% of the GDP. Moreover, the manufacturing sector contributed 4.0% of the GDP. 26.3% of the GDP constituted the services sector which includes Transport, Communication, Utilities, Hotel & Restaurants, Finance & Insurance, Real Estate & Business Services and Producers of Govt. Services. Though government directly involves in direct productive activities at both the industrial and services sectors respectively, it concentrated in the provision of major infrastructural facilities and petroleum sub sector.

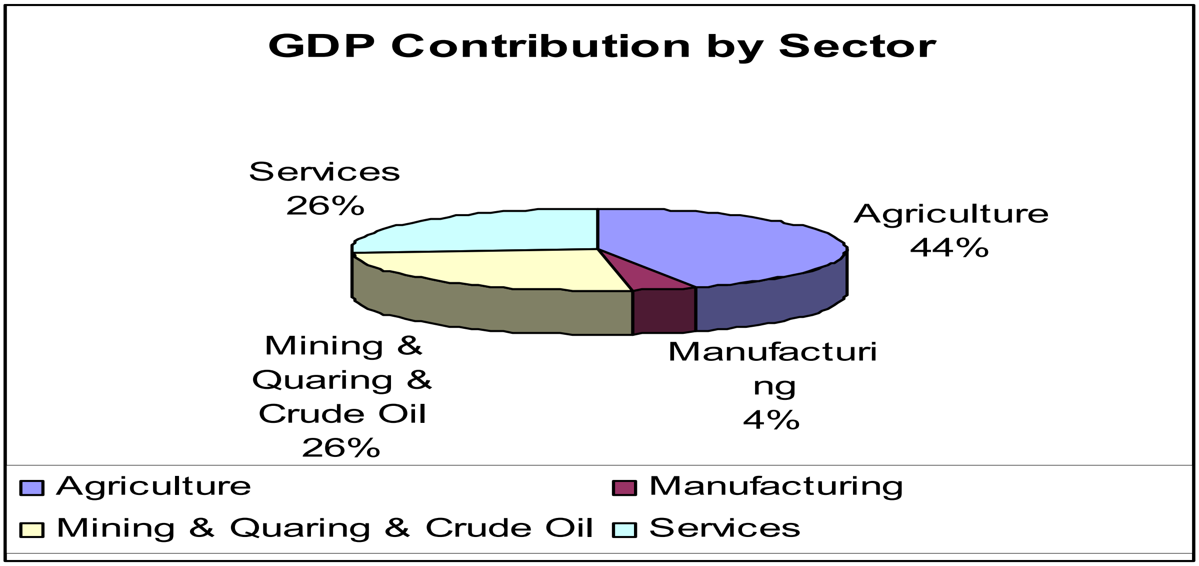
**Table I.1**
**Major Features of the Economy**

| | **2005** | **2006** |
|---|---|---|
| **General** | | |
| Population (2006 census) | | 144.7Miliion |
| Population Annual Growth Rate | 2.2 | |
| GDP (current US$) | | 103.3 billion |
| Per capital Income (current US$) | | 640.0 (Atlas Method) |
| Real GDP Growth Rate (%) | 6.51 | 6.03 |
| Oil GDP Growth Rate (%) | 0.50 | |
| Non-Oil GDP Growth Rate (%) | 8.6 | |
| *Of which Agriculture (%)* | 7.1 | |
| Consumer Price Index | 13.5 | |
| Foreign Reserves (US$) | | 41.96 billion |
| Inflation (%) | | 8.5 |
| Life Expectancy | 46.5 years | |
| Literacy (%) | 69.1 (age 15+) | |
| HDI Rank | 158 | |
| **Monetary sector** | **Percent** | |
| Average exchange rate (₦ /US$) | 132.15 | |
| Minimum rediscount rate | 13.0 | |
| Treasury bill rate | 12.2 | |
| Savings deposit rate | 3.7 | |
| Prime lending rates | 17.8 | |
| **GDP by sector** | **Percent of GDP** | |
| 1. Agriculture | 43.67 | |
| 2. Manufacturing | 4.04 | |
| 3. Mining & Quarrying (and Crude-Oil) | 26.01 | |
| 4. Services | 26.30 | |
| **Visible Trade (**Naira Million**)** | | |
| **Import** | **2,479,322.50** | **2,528,085.97** |
| - Oil Sector | 182,754.78 | 221,086.37 |
| - Non-oil Sector | 2,296,567.72 | 2,306,999.60 |
| **Exports** | **6,372,052.44** | **5,752,747.74** |
| - Oil Sector | 6,266,096.62 | 5,619,152.88 |
| - Non-oil Sector | 105,955.82 | 133,594.86 |

*Source: (i) World Development Indicators Database, World Bank, 2006; (ii) Human Development Report Statistics, UNDP, 2005; (iii) CBN Annual Report & Statement of Accounts Tables for the year 2006*

The Per Capital Income in Nigeria in year 2005 was about US$640. The Nigerian economy, which is divided into two parts namely (i) the middle-income oil-producing and (ii) the non-oil producing Nigeria, is ranked 158 out of the 177 countries covered by the United Nations Development Programme (UNDP) Human Development Index (HDI). About 70% of the Nigerian population lives on less than US$1 per day; the literacy level is 69.1%; about 30% of Nigerian children are malnourished; the infant mortality rate is 194 per 1,000 live births and life expectancy at birth is 46.5 years.

**Figure 1.1**




The Nigerian national currency is naira (₦). A four foreign exchange markets is a system being maintained by Nigerian government. These markets are: the official Dutch Auction System (DAS)-the largest of the four markets, which is a sealed bid multiple auction used by the Central Bank of Nigeria (CBN) in transaction with bureau de changes (BDC); the inter-bank market, which allows for freely negotiated foreign transactions amongst authorized dealers and through which foreign exchange is obtained from non-CBN sources; the bureaux de change and the non-official market.

## 2. Social and Economic Policies affecting Competition in Nigeria

### 2.1. Development Policy

#### 2.1.1 Poverty Reduction Strategy Paper

**National Economic Empowerment and Development Strategy (NEEDS, NEEDSII) and the Seven-Point Agenda of the President Yar`Adua.**

The Nigeria's reform program, which is being continued and developed further by the present Administration of President Yar`Adua, is based on the Country's home-grown poverty reduction program, the National Economic Empowerment and Development Strategy (NEEDS and NEEDSII). It focuses on addressing the structural and institutional weaknesses of the economy, tackling corruption and overhauling the public expenditure management.

The broad goals of NEEDS, NEEDSII and the Seven-Point Agenda are poverty reduction, wealth creation and employment generation through the development of an enabling environment for growth.

NEEDS is a medium-term economic strategy covering the period 2003 – 2007. It has been described as Nigeria's plan for prosperity, the vision for a greater tomorrow. Within that perspective, NEEDS focuses on four key strategies: reorienting values, reducing poverty, creating wealth and generating employment. These key visionary goals are, in turn, built into three major macroeconomic frame works, namely, empowering people, promoting private enterprise and appropriately reordering approaches to governance. The overall long-term vision of NEEDS includes social and economic transformation of Nigeria on a sustainable and competitive basis.

The following are therefore the strategies and instruments for achieving the NEEDS objectives:

- Drastic reduction in domestic cost structure especially infrastructure cost, to enhance a competitive investment climate necessary for production and exports;
- Aggressive promotion of exports and 'economic diplomacy';
- Harmonization of tariffs with the West African Economic and Monetary Union (UEMOA) and others to create the common external tariff (CET);
- Continue to use specific systems of import restrictions in particular circumstances to protect industries and critical sectors against unfair competition;
- Rationalising and strengthening institutions responsible for trade facilitation;
- Co-operation with other African and developing countries to ensure that the WTO trade negotiations address the concerns and interests of Nigeria and Africa, including leadership in the negotiation of Economic Partnership Agreements (EPAs);
- Reform customs and ports to drastically reduce turnaround time and transaction costs at the ports, enhance the prompt collection of government revenues and ensure customs clearance within a 48- hour time frame;
- Develop deep-sea port facilities, inland container depots, Free Trade Zones, and shipbuilding capacity to enhance coastal shipping, international trade and regional integration.

### 2.1.2 Structural Adjustment Programme

The Structural Adjustment Programme (SAP) was introduced in Nigeria in July 1, 1986. This was against a background characterised by structural imbalances, fiscal, foreign exchange, and balance of payment crises as well as external debt problems that defiled all forms of reform measures put in place before 1986 (NCEMA, 2004). The policy thrust of SAP, as stated in the basic document was on economic reconstruction, social justice and self-reliance through the alteration and re-alignment of aggregate domestic expenditure and production patterns for the purpose of restoring the economy back to the path of steady and balanced growth. With respect to the industrial sector, the SAP had recognised that the sector was under some problems which included the inadequacy of the supply of imported inputs culminating in capacity underutilization of plants, un-employment, scarcity of good and inflation, as well as the inadequacy of approved import licenses coupled with the thin spread of its allocation for the purchase of improved industrial inputs. It was also noted that there was a poor and un-reliable infrastructural facilities and generally a weak structure of the industrial sector coupled with the Naira over-valuation.

The major objectives in line with the policy thrust included:

(i) restructuring and diversifying the production base of the economy to complement crude oil sector;
(ii) achievement of fiscal and balance of payment viability;
(iii) laying the basis for a sustainable growth;
(iv) lessening the dominance of unproductive investments in the public sector; and
(v) improve the sectors efficiency level and intensify the growth potentials of the private sector.

In that regard, the SAP had the following elements *inter alia:*
(i) rationalization and privatization of public enterprises to encourage competition through liberalization and deregulation to reinforce the process of efficiency;
(ii) the stimulation of domestic production and the broadening of the supply base of the economy;
(iii) strengthening of the hitherto strong demand management devices;
(iv) the adoption of a realistic exchange rate policy through the floating exchange rate regime;
(v) rationalization and restructuring of tariffs to reinforce the prevention of industrial diversification;
(vi) improved trade and payments liberalization;
(vii) reduction of complex administrative controls simultaneously with a greater reliance on market forces; and
(viii) the adoption of appropriate pricing policies via the elimination of subsidies, particularly for petroleum products, social services and utilities.

In anticipation of the possible painful impacts of SAP as well as in response to protests against some of the moves, the government adopted some complementary policies aimed at alleviating some of the negative effects of SAPs, which include:

(i) The National Directorate of Employment (NDE), which was put in place in 1986 to seek ways of addressing the problem of mass unemployment;
(ii) Special SAP Relief Package, an extra-Budgetary package put in place in 1989 to provide, among other things, employment opportunities, improved health-care delivery and to reduce transportation problems;
(iii) Urban Mass Transit Programme, established in 1988 to alleviate the problems of transportation, particularly in the urban centre;
(iv) Community Banks, established in 1990 to provide effective banking services for the economies of the rural areas as well as micro-enterprises in the urban centres; and
(v) The Directorate of Food, Roads and Rural Infrastructure (DFRRI)), put in place in 1986 to foster the achievement of integrated rural development with a view to improving the quality of life of the rural dwellers thereby laying the foundation for self-sustenance development.

The SAP increased the country's access to foreign capital with the total debt stock rising from US$19.324 to US$23.164 billion, representing 19.87 percent growth (NCEMA, 2004). Nigeria, on October 10, 1989 introduced a maximum interest rate spread between saving and prime lending rate. This increased investor's access to credit, leading to an increase in the ratio of private sector investment to total investment from 22.3% in 1986 to 28.6% in 1989 (Obadan and Ayodele, 1995). The second-tier foreign exchange market, introduced in 1986 after abolishment of the 30 percent import surcharge and licensing system saw the naira depreciating by 66 percent to N1=US$0.64 (N1.56=US$1),[2] and declining further in value through July 1987, when the first and second tiers were merged. Large firms benefited from the second-tier foreign exchange market and enjoyed higher capacity use than smaller ones. The state also privatized many public enterprises by selling equity to private investors, while restructuring other parastatals to improve efficiency. The federal government encouraged private investment in the late 1980s, allowed foreign ownership in most manufacturing, and liberalized and accelerated administrative procedures for new investment.

## 2.2. Agriculture Development Strategy

### 2.2.1. Policy Framework

Ensurance of food security, promotion of domestic trade, enhancement of foreign exchange earnings, promotion of export diversification, enhancement of access to agricultural raw materials, encouraging participation in referential trade arrangements and promoting the use of modern technology and the quality of agricultural exports are the aims of Nigeria's Agricultural Policy.

The current economic programme, NEEDS, emphasizes food security and poverty reduction through measures to encourage private sector participation in the sector; facilitation of linkages between the agriculture and industrial sectors; modernization of the sector; and improvement of agricultural yields. The targets set under NEEDS include: minimum annual agricultural growth of 7%; a rise of agriculture exports to US$3 billion by 2007[3]; drastic reduction in food imports from 14.5% to 5% in 2007; an annual increase in cultivable land of 10%; promotion of environmentally friendly farming practices; and protection of all prime agricultural lands for continued production.

The strategies to attain these targets include: various presidential initiatives on specific crops and livestock; effective use of the trade preferences available to Nigeria; improvement of agricultural research and extension services; development of a private-sector-led input supply and distribution system; improvement of the infrastructural needs of the sector; adequate capitalization of NACRDB; promotion of multi-commodity development and marketing companies, managed by the private sector; support for all season farming; a programme for large-scale production of tree crop seedlings; and promotion of sound environmental rehabilitation and management.

### 2.2.2 Major crops in Nigeria

There is a wide range of climate variations in Nigeria, which necessitates it to produce a variety of cash crops. Food crops include cassava, yams, corn, coco-yams, cow-peas, beans, sweet potatoes, millet, plantains, bananas, rice, sorghum, and a variety of fruits and vegetables. Crops such as cocoa, citrus, cotton, groundnuts (peanuts), palm oil, palm kernel, benniseed, and rubber

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[2] The Library of Congress Country Studies; CIA World Factbook at website http://www.photius.com/countries/nigeria/economy/nigeria_economy_structural_adjustmen~10018.html

[3] Exports of cassava and related products are targeted to reach US$5 billion within ten years.

can be identified as being the leading cash crops. Cattle herding, fishing, poultry, and lumbering also contributed more than 2 percent to the GDP in the 1980s. Millions of cattle, sheep, goats, pigs, donkeys, horses and camels, mostly owned by rural dwellers compared to commercial companies are found in Nigeria. Fisheries output ranged from 600,000 to 700,000 tons annually in the 1970s. Estimates indicate that the output had fallen to 120,000 tons of fish per year by 1990. This was partly due to environmental degradation and water pollution in Ogoniland and the Delta region in general by the oil companies[4].

Fertilizer policies in Nigeria were also not consistent from a historical perspective as they changed from time to time in response to problems of leakages and arbitrage. However, two distinct periods can be identified, the pre-liberalisation of the fertilizer distribution process between 1990 and 1996 and the liberalisation period between 1996 and 2005. Government, though its agencies had the monopoly for fertilizer procurement and distribution before liberalisation and it can be argued that the amount of fertilizer procurement under the government monopoly era was based on the port, transport, warehousing, and blending capacity along with budgetary considerations and not on a free market demand[5]. There are many players in the supply of fertilizer in Nigeria, through local manufacturing or importation, although shortages of the commodity are not uncommon. The main constraints to fertilizer use are seen as high prices, low fertilizer quality and non-availability of fertilizer at the time required. As such, the commodity is subsidized, with the government's stated reason for fertilizer subsidies being that farmers cannot afford a free market fertilizer price.

### 2.2.3 Major Agricultural Imports and Exports

The major **Agricultural Imports** of Nigeria are wheat, rice, sugar, palm oil, milk, meat, and fish. The aforementioned imports have made Nigeria a net importer of foods. The needs of Nigerian agric-industries are met by the regular supply of these goods; they also guarantee food for Nigeria's households: 66% of the total expenditure represents non-poor households, while 78% represents poor households.

Cocoa beans, Fish/Shrimp, Rubber and cotton are the Nigeria's main **Agricultural Exports** and represent 37.8% share of total non-oil exports. Cocoa can be regarded as the largest agricultural foreign currency earning crop, even though growth in sales is slowed by the dominance of unorganized smallholder farmers since the abolition of the Nigerian Cocoa Board. Following liberalisation measures in the agricultural activities, import and export activities are largely free for both private and public players. Sea and air transport channels constitute the bulk of export routes.

### 2.2.4. Agricultural Contribution to Economic Activities

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[4] http://www.nationsencyclopedia.com/economies/Africa/Nigeria-AGRICULTURE.html

[5] Nagy JG and Edun O, 'Assessment of Nigerian Government Fertilizer Policy and suggested market-friendly policies', 2002.

In the Nigerian economy, agriculture plays a vital role; it accounted for about 43.67% of GDP in year 2005. 70% of the country's labour force is being employed by this sector despite the dominance of oil. More than 60% of national poverty comes from agriculture because most of the workers from this sector live below poverty line, thus the sector is crucial in national poverty reduction efforts. The export structure of the agriculture makes agriculture very important for the diversification of the economy.

### 2.2.5. Political Economy and Social Stratification Issues Affecting Agriculture

Nigeria's agricultural sector is an important element in the government's poverty reduction efforts because it employs 70% of the labour force and accounts for over a quarter of the GDP. As a result of reliant on vagaries of the weather and insufficient investment, agriculture sector has remained generally underdeveloped. Naturally, agriculture is largely a private sector activity. Government provide support to the sector in terms of the supply of inputs; provision of extension services; stabilization of market prices for certain goods through a strategic reserve programme; and provision of financial assistance at a limited level. For reasons of food security and to encourage value-added exports, import bans have been placed on several agricultural goods. (Though, export taxes apply to some agricultural products).

Butter; cheese and curd; edible vegetables and certain roots and tubers, edible fruits and nuts, vegetable oil; margarine; prepared or preserved meat products; sugar confectionery; food preparations containing chocolate; pasta; pastry; and rice are the most protected products (subject to a tariff of 100%). Moreso, wheat flour, sorghum, live or dead birds, frozen poultry and poultry products, cassava and cassava products, and fruit juice in retail packs, on food self-sufficiency, safeguard, or health grounds have been prohibited from importation.

For purposes of domestic food security and of local processing, the export of certain agricultural goods, according to Nigeria's Export Prohibition Act, is prohibited. Raw hides and skin, timber (rough or saw), unprocessed rubber latex and rubber lumps, rice, yams, maize, and beans are the agricultural products banned from export. Animals and related products are subjected to sanitary certificate, while the vegetable goods are subjected to phytosanitary certificate.

Inadequate infrastructure which weakens the bridge between producer and marketing centres; inaccessibility of fertilizers at affordable prices; widespread usage of rudimentary farm implements; shortage of farm workers due to urbanization; a complicated land tenure system, which create a poor environment for investment, especially for mechanized farming; weak linkages between research , extension services, and producers; inefficiency in ensuring stable prices to farmers; limited access to credit by farmers, especially small scale farmers, due to *inter alia*, collateral concerns, and unpredictable weather conditions; soil degradation; and the prevalence of tropical plant and animal diseases **are the reasons for the dismal performance of agricultural sector**.

Inadequate management of exchange rate policy overtime and the related poor price incentive for diversification into agricultural exports; the 'Dutch disease' effect of oil exploitation; taxation of agricultural exports; poor knowledge of potential markets; telecommunication problems; high tariff and restrictive SPS standards imposed by some trading partners; and fluctuating world prices of major cash crops *have been affecting the development of agricultural exports*. The afore-mentioned factors have resulted into low incomes in the agriculture sector and also accounts for the bulk of Nigeria's poor since the sector employs some 70% of the labour force.

Significant attention must be given to the development of agricultural sector in order to reduce poverty in Nigeria.

### 2.3. Industrial Policy

Transformation of the Nigerian economy from its rural and agrarian form to a modern and competitively industrialized one is the main policy objective of the Federal Ministry of Industry. To achieve this, the Nigerian government must encourage the private sector to play a pivotal role; provide services for the training and development of indigenous skills and manpower; and provide financial support.

Nigeria's current industrial policy thrust is anchored on a guided de-regulation of the economy and Government's disengagement from activities which are private-sector oriented, leaving Government to play the role of facilitator, concentrating on the provision of incentives policy and infrastructure that are necessary to enhance the private sector's role as the engine of growth. The industrial policy is intended to:

- Generate productive employment and raise productivity;
- increase export of locally manufactured goods; create a wider geographical dispersal of industries;
- improve the technological skills and capability available in the country;
- increase the local content of industrial output by looking inward for the supply of basic and intermediate inputs;
- attract direct foreign investment; and
- increase private sector participation.

The Nigerian Enterprises Promotion Acts which hitherto regulated the extent and limits of foreign participation in diverse sectors of the economy were repealed in 1995. The principal laws regulating foreign investments now are the Nigerian Investment Promotion Commission Decree and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree, both enacted in 1995.

Given the need to stabilize the banking and finance sectors, and promote confidence in these vital institutions, the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks decrees of 1994 were put in place. The Investment and Securities Decree was also promulgated to update and consolidate capital market laws and regulations into a single code.

Under the Privatisation and Commercialisation law of 1988, the government successfully sold its holdings in industrial enterprises and financial institutions, and such divestments were made by way of ‘Offers for Sale’ on the floors of the Exchange, so that ultimate shareholdings in such enterprises could be widespread. However, government retained full control of the public utility service corporations.

The 1997 Budget proposed the repeal of all existing laws that inhibit competition in certain sectors of the Nigeria economy. Consequently, with the promulgation of the Public Enterprises Promotion and Commercialisation Decree in 1998, private sector investors (including non-Nigerians) will now be free to participate in and compete with government-owned public utility service corporations in the areas of telecommunications, electricity generation, exploration of petroleum, export refineries, coal and bitumen exploration, hotel and tourism.

As a policy objective, the liberalization and deregulation of the exchange control regime is designed to facilitate and enhance trading activities. Items on the import prohibition list have been drastically reduced, with government opting to utilise tariff structures to protect end-user product pricing of local industries and discourage frivolous imports. In 1998, the import prohibition list was reduced to 11 items namely: maize, sorghum, millet, wheat flour, vegetable oils (excluding linseed and castor oils used as industrial raw materials), barites and bentonites, gypsum, mosquito repellent coils, domestic articles and wares made of plastic materials (excluding babies' feeding bottles), rethreaded / used tyres, gaming machines.

## 2.4. Trade Policy

### 2.4.1 Nigeria's Current Trade Policy

From the structural Adjustment Era in 1986, there was a significant shift in Nigeria's Trade Policy towards greater trade liberalization. This resulted in the adoption of the Structural Adjustment Programmes (SAP) in 1986 by the Nigerian Government. The main engine of development strategies for the Nigerian government and other developing countries is trade policy. This is because of the implicit belief that trade can create jobs, expand markets, raise incomes, facilitate competition and disseminate knowledge. The enhancement of competitiveness of domestic industries, with a view to , *inter alia*, stimulating local value-added and promoting a diversified export base , is the main thrust of trade policy. Creation of conducive environment to increase capital inflows, and the transfer and adoption of appropriate technologies are also being sought for by trade policy.

In order to ensure that the resultant domestic costs of adjustment do not outweigh the benefit, the government pursues the liberalization of its trade regime in a very measured manner. Reorientation of attitudes and practices towards modern ways of doing business are reforms which accompany this policy direction. The tariff regimes, which are the instrument of the trade policy, are designed in a manner which allows a certain level of protection of domestic industry and enterprise.

While this is the main trade policy framework to guide economic growth, the trade expansion, employment generation and poverty alleviation dimensions are now subsumed in the NEEDS, NEEDSII and Seven-Point Agenda of the President.

In the trade policy area, NEEDS seeks to deepen Nigeria's integration with the rest of the world and to maximize the benefits of strategic integration. Accordingly, regional integration and trade are the two instruments identified by NEEDS for maximizing the benefits of globalization. The trade policy objective under NEEDS is to lay a solid foundation for fully exploiting Nigeria's potentialities in international trade. While aspiring to the above, NEEDS has by no means overlooked the challenges which have so far hampered the realization of these potentialities. A number of constraints are identified, namely: the high cost of doing business; inadequate infrastructure; poorly implemented incentives, especially in regard to fiscal and tariff regimes; widespread smuggling, counterfeiting and dumping; lack of standardization, required for products to compete internationally; and unfavourable international trade rules. Under NEEDS, the trade policy thrust is to drastically reduce the uncertainty and unpredictability of the trade policy regime; harmonize trade practices with those of other Economic Community of West African States (ECOWAS) countries and hence facilitate full integration; respect obligations under multilateral and regional trading systems; and create a conducive and competitive environment in which Nigerian enterprises can thrive and effectively compete in the global and regional economy.

#### 2.4.2. Trade-Specific Measures Scheduled for Implementation

The measures include the following: the reduction of the uncertainty and unpredictability of the trade regime; reduction of tariff rates, as part of Nigeria's commitments under loan agreements with the IMF; the harmonization of Nigeria's tariff schedule with the ECOWAS common external tariff (CET); implementation of the ECOWAS protocol on free movement of goods and people; the operationalization of existing export processing zones (EPZs) and the establishment of new ones; the granting of export-processing status to factories that contribute to non-oil exports; the establishment of an export production village scheme; the negotiation of preferential trade agreements to diversify trade; the provision of incentives to encourage non-oil exports; the implementation of port reforms to ensure timely clearance of goods and eliminate malpractices; the replacement of the pre-shipment inspection scheme with inspection at destination; and the streamlining of the exchange rate regime.

**Other envisaged trade-related measures include** transforming the Consumer Protection Council into the Nigerian Trade and Competition Commission to handle issues relating to, *inter alia,* anti-trust and competition policy, contingency trade measures, and consumer protection; establishing an intellectual property commission and a bankruptcy commission; strengthening the capacity of trade-related institutions, including the Ministry of Commerce; enhancing awareness amongst policy makers and other stakeholders of Nigeria's multilateral and regional obligations and the opportunities that they present; improving the trade infrastructure (including roads); privatizing state-owned enterprises; and deregulating some service sub-sectors.

## 2.5. Privatisation Strategy

### 2.5.1 Privatisation Process

The origin of privatisation in Nigeria can be traced to the Privatisation and Commercialisation Decree of 1988, which came as part of the Structural Adjustment Programme (SAP). The Privatization and Commercialisation Decree of 1988 set up the Technical Committee on Privatization and Commercialisation (TCPC) to privatize 111 public enterprises and commercialize 34 others. By 1993, according to the submissions of the TCPC, 88 out of the 111 enterprises listed in the decree had been privatised. Based on the recommendation of the TCPC, the Federal Military Government promulgated the Bureau for Public Enterprises Act of 1993 which repealed the 1998 Act and set up the Bureau for Public Enterprises (BPE) to implement the privatization programme in Nigeria. This was followed by the Public Enterprise (Privatization and Commercialization) Act, 1999 which created the National Council on Privatization, whose functions included:

- Making policies on privatization and commercialization.
- Determining the modalities for privatization and advising the government accordingly.
- Determining the timing of privatization for particular enterprises
- Approving the prices for shares and the appointment of privatization advisers.
- Ensuring that commercialized public enterprises are managed in accordance with sound commercial principles and prudent financial practices.
- Interfacing with public enterprises, together with the supervising ministries, in order to ensure effective monitoring and safeguard of the managerial autonomy of the public enterprises.[6]

The Bureau of Public Enterprises (BPE) was established in terms of the Act as the secretariat of the National Council on Privatization. The functions of the bureau include:

- Implementing the council's policy on privatization and commercialization
- Preparing public enterprises approved by the council for privatization and commercialization.
- Advising the council on further public enterprises that may be privatized or commercialized
- Advising the council on capital restructuring needs of the public enterprises to be privatized.
- Ensuring the update of accounts of all commercialized enterprises for financial discipline.
- Making recommendations to the council in the appointment of consultants, advisers, investment bankers, issuing houses, stockbrokers, solicitors, trustees, accountants and other professionals required for the purpose of either privatization or commercialization.
- Ensuring the success of the privatization and commercialization exercise through effective post transactional performance monitoring and evaluation.
- Providing secretarial support to the council

The federal government in July 1999, adopted a three-phase privatization programme for the 1999-04 in order to:

- fully divest public shares in banks, cement companies, and oil marketing firms listed on the Nigerian Stock Exchange , during the first phase;
- fully divest state ownership in hotels, vehicle assembly plants, and other industrial, agricultural and service enterprises operating in competitive markets, as well as shares in major public enterprises in potentially competitive subsectors, such as the telecommunications company (NITEL), the national power company (NEPA) during the second phase;
- partially divest oil refineries during the third phase

The Federal Government is making use of the selected investment advisors to implement its privatization programme under the supervision of BPE. The divestiture are in two folds: the first has to do with very large PEs whereby a strategic investor is firstly selected, followed by the phased sale of shares to Nigerian investors on a broadly distributed basis across the country; the second fold has to do with the other PEs whereby privatization is directly offering of the state's

[6] Centre for Democracy and Development (CDD), Nigeria (2003), 'Privatization In Nigeria: Critical Issues of Concern To Civil Society'.

shares on the stock market to Nigerian investors. The sale of up to 51% of the share capital to strategic investors, and elimination of the long-term requirement of a residual shareholding by the Federal Government are allowed by the privatization procedures.

### 2.5.2 State Owned Enterprises in Nigeria

Out of the 1,500 public enterprises in Nigeria, the Federal government owns some 600, while state and local government own the remaining 900. 50% of GDP and 66% of overall employment in 1997 came from the public enterprises. In the early 1970s, when there was an oil boom, many of these public enterprises were established because of the strong belief of the government in power then that public companies were better than the private sector for accelerating national economic development. Despite this positive belief in the public enterprises, the latter's performance has been poor. Nigerian government has invested over US$100 billion in public enterprises with very low (0.5%) and in many cases negative returns. The third phase of the privatisation programme is ear-marked for the larger state-owned enterprises including the National Electric Power Authority (NEPA), Nigerian Telecommunications Plc. (NITEL), Nigeria Ports Plc. (NP Plc), Nigeria Airways, the Nigerian Security Printing and Minting Company Ltd (NSPMC), Nigeria Railway Corporation (NRC), Petroleum Refineries, the National Insurance Corporation of Nigeria (NICON), the Federal Airport Authority of Nigeria (FAAN) and the NSPMC (otherwise known as the Mint).

### 2.5.3 Monopolies and sectors still to be reformed

The design and pursuit of reforms in key subsectors, such as power (where the National Electricity Power Company (NEPA) is still a monopoly in electricity production), ports and railways (where government entities such as Nigeria Railway Corporation, Nigeria Ports Plc. Etc still retain relative monopoly over activities), oil and gas, and telecommunications (where the Nigeria Telecommunication Limited (NITEL) still have monopoly over fixed line communication) will be emphasised during third phase. The development of sectoral policies; structural diagnostic reviews; the review and design of more market-conducive legal and regulatory frame works; and major pre-sale restructuring, including unbundling are parts of the reforms.

## 2.6. Investment Policy

### 2.6.1. Investment Regime

Nigerian Government seeks to establish the private sector as the engine of economic growth, with the Government providing the enabling environment for private investors, both domestic and foreign, to operate in line with its developmental strategy. To achieve this development strategy, several measures have been put in place.

The Nigerian Investment Promotion Commission (NIPC) Act No.16 of 2995 is the main law governing investment. The NIPC, which succeeded the Industrial Development Co-ordination Committee, was established under the aforementioned law as a federal agency. Provision of necessary assistance and guidance for the establishment and operation of enterprises in Nigeria; initiation and supporting measures that enhance the investment climate in Nigeria; promotion of investment in and outside Nigeria; and assisting incoming and existing investors by providing support services are the main roles of the NIPC. The NIPC, as a centre, facilitates registration of companies, acquisition of business permits, and expatriate quotas and a host of incentives.

Investors, both domestic and foreign, under the NIPC Act, can participate in all sectors of the economy with the exception of the production of arms and ammunition, narcotic drugs, and psychotropic substances. Through a subsidiary that must be incorporated in Nigeria, foreign companies are permitted to operate in Nigeria. The Corporate Affairs Commission, under the Companies and Allied Matters Act of 1990 (as amended), regulates and supervises the formation, incorporation, and registration of companies in Nigeria.

Nigeria's investment regime offers a plethora of incentives, including tax holidays, reduced taxes, capital allowances, capitalization of expenditure, accelerated depreciation, import duty rebates, investment tax credits, repatriation of profits, and transferability of funds are the measures put in place by the Nigerian Government to in a bid to boost investment. Further investment opportunities are being created through the current privatization programme in addition to the aforementioned incentives. The latter can be negotiated on a case-by-case basis with both federal and local authorities.

### 2.6.2. State of FDI

The Foreign Direct Investment (FDI) inflows was US$1.0 billion in 1999 and increased to US$2.0 billion in 2003 thereby making Nigeria the fourth largest recipient of FDI inflows amongst African countries. The oil and natural gas subsector receive most FDI inflows. Due to the ongoing privatization and deregulation reforms, telecommunications services have also benefited from the FDI inflows. Several factors are hindering FDI inflows into Nigeria and various measures are being undertaken to address such factors and create favourable investment environment. Such factors include inadequate infrastructure, corruption, unstable regulatory and institutional environment as well as high crime rate and other security concerns. Measures being undertaken include rehabilitation of Socio-Economic Infrastructure, particularly electricity, telecommunications, railway/roads/airports and human infrastructure. These also include the establishment of the Anti-Corruption Commission, through the Anti-Corruption and other Offences Act of 2000. Most importantly, a new regulatory and institutional environment, administered by the NIPC has gone a long way in addressing these challenges[7].

Due to these FDI inflows, Nigeria has some MNC dominance in major sectors of the Nigerian economy, including manufacturing, construction, petrochemicals and telecommunication. However it is largely in the oil production and extraction industry where there can be concerns. Being the largest African producer of crude petroleum and the eighth largest exporter of crude oil in the world, Nigeria earns over 95 per cent of its export revenue from the oil and gas sector. [8] The major MNCs in today's Nigeria include the Anglo-Dutch Royal Shell (''Shell''), which is

[7] "The Challenges and Opportunities of the Investment Environment in Nigeria", paper presented by Dr. Julius J. Bala, NIPC at the International Meeting for the Promotion of Investment to Africa, Japan, Tokyo, February 26, 2003

[8] Journal of African Law, 52, 1 (2008), 89–113

the largest oil producer in Nigeria producing more than 40 per cent of Nigeria's total output. Corporations such as Exxon-Mobil, Chevron/Texaco, Ashland, Sun Oil, Conoco, Total, Agip International, Statoil and South Africa's Sasol (partnership with the Nigerian National Petroleum Corporation (''NNPC'')) also constitute some of the MNCs in the oil industry. The operational strategy for the MNCs is largely that there would be a parent company in Europe or the United States and a subsidiary incorporated as a Nigerian corporation, which then engages in joint venture partnerships with the federal government of Nigeria through the NNPC. The MNC maintains managerial control of the enterprise.

### 2.7. Public Sector Reforms

The public sector reform agenda focuses on the following: Restoration of professionalism in the Civil Service; Rationalization, restructuring, and strengthening of institutions; Privatization and liberalization in the sector; Tackling corruption and improve transparency in government accounts; Reduction in waste and improve efficiency of government expenditures; and Enhance economic coordination.

In line with NEEDS, between 2004 and 2006, a number of institutional and structural measures have been put in place to ensure the achievement of desired objectives. These measures include: Open and competitive tender arrangements for government contracts; Establishment of a due process mechanism to vet and eliminate 'fat' from government contracts; Massive anti-corruption campaigns involving all public officials, including the President; Public sector reforms to reduce, if not completely eliminate opportunities for corruption, especially through the Comprehensive monetization of benefits to public officers; A committed focus on privatization and auctions of Government licenses (leading, for example, to the liberalization of the telecommunications sectors).

## 3. Nature of the Market / Competition

### 3.1. Market Structure and Competition

#### 3.1.1 Structure of the market

About 4.7% of the total GDP is constituted by the manufacturing sector. The Nigerian manufacturing sector is fairly diversified. The Manufacturing sector (apart from petroleum refinery), produce paper and paper products, plastic products, textiles, beverages, tobacco products, chemical products, pottery, earthenware, food products, electrical machinery, fabricated metal products, non-metal mineral products, and transport equipment form Nigeria's main subsectors. 96% of the Nigerian enterprises are small or medium-sized, with the former employing less than 100 employees while the latter employ less than 300. Firms in the manufacturing sector in Nigeria are mostly privately owned and competitive and employ some 7% of the labour force. The domestic market largely consumes manufactured output, while a small fraction of the manufactured output is sold in international markets, West African sub-region inclusive.

Although there are no perfect markets anywhere in the world, the level of imperfection in the Nigeria market is apparently high. This is evidenced by the presence of monopolistic producers and distributors of goods and services apart from the natural monopolies (electricity and water supplies).

#### *3.1.1.1 Construction Sector: Cement Industry*

The construction sector, particularly the cement industry, is largely concentrated and Box 1 below can be used to draw inferences:

**Box 1: Competition in the cement industry**

About 80% of all the cement currently consumed in Nigeria is imported. There are about six (6) organisations in Nigeria with the capacity to import or manufacture cement. These are; the Lafarge Group, Dangote Cement, Flour Mills of Nigeria, Eastern Bulkcem (Eagle Cement), Ibeto Cement Company and the Cement Company of Northern Nigeria. Among these, Dangote has been and remains the biggest importer of bulk cement into Nigeria, even though this can be attributed to the Federal Government yearly allocation system that seems to favour Dangote with a quota of 6.5 million - 9 million MT per annum, against 3.2 million MT per annum shared out among the other four companies, excluding Ibeto Cement.

Lafarge, a French company, entered Nigeria more than ten years ago, promising to invest heavily in the Nigerian cement industry. It is now the leading supplier of imported cement, purporting that it emanated from its tiny Benin plant with the claim that the plant is producing at full capacity.

Source: http://www.nigerianadvocates.com/Page2.htm

#### *3.1.1.2 Power Sector*

Presently, electricity production and distribution is under a public sector power company, Power Holding Company of Nigeria (PHCN), which has an installed generating capacity of about 6GW but its actual available output is less than 2.5GW due to various challenges. However, a new generation capacity-build-up model under the National Integrated Power Project (NIPP) is envisaged to result in more than 10GW by 2010. Under the Electric Power Reform Act of 2005, focus is on liberalizing the sector and privatization of key assets of the dominant PHCN, while introducing independent power production. Available public capacity is expected to be supplemented by private captive generation serving industrial clusters and specific companies in the Cement, Steel and Oil & Gas sectors of the economy. There is a set of newly licensed independent power producers (IPP), expected to add more than 10GW if all come on stream before 2010-12. The Act also focuses on nurturing a wholesale market starting with a single buyer of electricity produced by PHCN and the IPPs for onward-sale to 11 distribution companies that would also be offered for sale. Eventually the ‘single-buyer’ model would be discarded for a ‘bilateral contract’ model with suppliers and buyers free to contract between themselves.[9]

#### *3.1.1.3 Telecommunication Sector*

[9] From Olivia Phillip International Consulting, ‘Nigeria: Electric Power Sector Report 2008”, at website http://www.marketresearch.com/product/display.asp?productid=1894663&g=1

The telecommunications sector in Nigeria has been registering growth over the years due to increase of subscribers in the mobile phone sector. The sector is relatively competitive with about five players, namely MTN Nigeria, Globacom, Zain Nigeria (formerly Celtel and Vmobile), Etisalat and M-tel. Despite the encouraging number of players, the Nigerian telecoms market has oligopolistic features with a few large operators having some control in the market. Among the large few operators, MTN Nigeria is the market leader owing to its market share, size and capacity. These factors are strong barriers that new entrants would have to contend with, hence, operators are somewhat shielded from competition. Further strengthening entry barriers may also be the huge capital required to set up and maintain infrastructure and equipment.

The fixed line sector remains under the hands of a State sanctioned monopoly, Nigerian Telecommunications Limited (NITEL). However, hopes are emerging that the sector will soon see the privatisation of Nitel. In August 2008, it was announced that the government had retained BNP Paribas to act as its adviser for Nitel's privatisation, while Vodafone of the UK expressed an interest in acquiring a stake in Nitel. There is also more scope for competition in the sector, as NCC has already approved almost 200 operating licenses for private providers of various telecommunications services, including Internet services providers. NITEL in turn has also approved eight private firms to be connected to its switching systems so as to provide more efficient service[10].

### *3.1.1.4 Financial Services sector*

The Nigerian financial system consists of both the informal and the formal market. Local money lenders, the thrifts and savings associations can be regarded as being part of the informal market. The informal market is poorly developed, limited in reach, and not integrated into the formal financial system. The formal financial system on the other hand consists of the capital and money market institutions, comprising the bank and non-bank financial institutions.

In that regard the money market segment of the financial system's major function is to facilitate the raising of short-term funds from the surplus sectors to the deficit sectors of the economy. In this category are discount houses, for which there are five discount houses currently in operation in Nigeria. The sector also includes commercial banks; a sector which has seen rapid growth following the active deregulation of the economy in 1986. The number of commercial banks rose respectively from 30 in 1986 to 64 in 1996. The commercial banks dominated the banking sector accounting for 82.6 percent of total assets and deposit liabilities as at 1996. Merchant banks also perform active roles in the market by catering for the needs of corporate and institutional customers by way of providing medium and long-term financing. By the end of 1996, there were 51 merchant banks in Nigeria. However, following the adoption of universal banking policy, most merchant banks converted to commercial banks.

Nigeria also adopted a system of community banks, a self-sustaining financial institution owned and managed within a community to provide financial services to that community. The National Board for Community Banks (NBCB) has issued provisional licenses to 1,366 community banks.

[10] Adedolapo Akinrele (2002), 'Privatisation And Deregulation In Nigeria', a Paper Delivered At The Workshop Organised For The Occasion of the Visit of The Canadian Minister For International Trade and His Delegation In Lagos, 21st November 2002.

Final license is issued by the CBN after operating for two years. Specialized banks or development finance institutions (DFIs) have been established to contribute to the development of specific sectors of the economy. They consist of the Nigeria Industrial Development Bank (NIDB), Nigeria Bank for Commerce and Industry NBCI), Nigerian Agricultural and Co-operative Bank (NACB), and Urban Development Bank (UDB).

The Nigerian Capital Market is a channel for mobilizing long-term funds. It is in this market where the Securities and Exchange Commission (SEC) serves as the regulatory authority of the market. Activities in the market have increased substantially over the years. There are six trading floors in Nigeria namely: Lagos, Kaduna, Port Harcourt, Ibadan, Kano and Onitsha. The Unit Trust Scheme, a mechanism for mobilizing the financial resources of small and big savers and managing such funds to achieve maximum returns with minimum risks through efficient portfolio diversification, has functioned since 1990 and there are now 14 Unit Trusts[11].

#### *3.1.1.5 Railways Transport sector*

The sector is monopolised by the government-owned Nigeria Railway Corporation (NRC) established in 1912 through the merger of the Lagos Government Railway and the Baro-Kano Railway. It became an autonomous public corporation through the Nigerian Railway Corporation Act of 1955, as amended in the Laws of the Federation of Nigeria 1990. Its performance has not been good, as at May 2002, NRC had only 67 functional locomotives, 218 coaches and 1,313 wagons, viewed against local demand for higher volume of passenger and freight services[12]. NRC is one of the targets for privatisation, through granting of a 15-25 year concession to interested investors based either on vertical integration with competitive access or separation of infrastructure and operations with open access to other train operators or finally, by vertical integration concessions with no access to other operators.

### *3.1.2 Level of competitiveness of the local firms*

Evidence shows that most of the local firms are less competitive in comparison to their foreign owned counterparts. This is evidenced by the shrinking contribution of the manufacturing sector to GDP, at 7%. Apart from scaling down, some manufacturing outfits have closed down following the introduction of liberalisation, as imports tended to drive them out of business. Trade liberalisation has, of course, led to the blossoming of the distribution sector and informal trade. Local firms point at unfair competition (dumping) from imports while commentators point at failure by local firms to adjust to competition due to obsolete technologies and outdated management styles. High transport costs, incessant power outage, high-import content in the raw materials (also due to the high transport cost), low labour (limited skills training) and capital productivity (use of obsolete technology), among others, make output by local firms less competitive.

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[11] From B.B Poyi, (2006), The Effect of Recent Changes In The Financial Sector Development In Nigeria, First Bank of Nigeria Plc.

[12] Adedolapo Akinrele (2002), 'Privatisation And Deregulation In Nigeria', a Paper Delivered At The Workshop Organised For The Occasion of the Visit of The Canadian Minister For International Trade and His Delegation In Lagos, 21st November 2002.

### *3.1.3 Existing or potential entry barriers*

For all practical purposes, there is free entry and exit for enterprises. In terms of legislation, there are no barriers to entry for most goods consumed by the population. There are few barriers to entry in Nigeria. In some cases, some enterprises were granted exclusive concessions among them Energy, Telecommunication and Tobacco. These were granted to attract investors and then protect their 'massive' investments. In most others it is simple red tape despites the existence of Nigerian Investment Promotion Commission (NIPC) Act No.16 of 1995 and Bureau of Public Enterprises (BPE).

Customs procedures in Nigeria can be regarded as one of the strongest entry barriers. Importers face excessively long clearance procedures and high unloading costs. This results in cargoes being kept waiting for clearance at the ports and at times delayed for several months even in case of critical raw materials. This also gives room for corruption tendencies.

Apart from these artificial barriers, there are natural barriers to entry, especially for foreign investors. These include official corruption, deteriorated infrastructure such as road network, insecurity of lives and properties, Niger Delta crises among others. Also, there is strategic barrier due to activities of Trade Associations

## 3.2. Competition Policy/Act (salient features of the Act, its coverage, state of enforcement, structure and functions of the agency).

In the year 2000, the Federal Government through the Bureau of Public Enterprises (BPE), set-up a competition and anti-trust reform steering committee to look into the needs for competition / anti-trust policy and reforms for Nigeria. The committee came-up with the draft policy and the draft bill called "Federal Competition Bill" which has been presented to the National Assembly in 2002.

In the immediate past tenure of the National Assembly, two different bills on Competition/Anti-Trust were reportedly passed by the Senate and the House of Representatives. Efforts to reconcile/harmonize the two versions of the bills have not been successful up to now. Hence, so far, competition or anti-trust issues are not being regulated by any known legislation in Nigeria.

There is however a draft competition bill that is under consideration by the National Assembly. Due to the recent privatization efforts, and anti-competitive practices by both public and private companies, including barriers to entry, abuse of dominant position, and price-and market-sharing agreements, the need for legislation has become salient. The draft bill addresses the aforementioned issues.

A Federal Competition Commission (FCC) is to be established under the draft bill. The functions of FCC are to initiate policy on competition; protect consumers by nurturing a competitive environment; monitor the abuse of market dominance and mergers, takeovers, acquisitions, etc; advise government; coordinate the activities of sectoral regulators; investigate violations; and initiate the resolution of disputes or complaints by issuing clear directive to violators and applying sanctions in the form of fines where necessary.

Contracts or agreements deemed to restrict trade or substantially lessen competition, such as through: restricting output or production; price-fixing; allocation of territory or division of market; collusive-tendering; and the denial of access to a market or a factor of production are prohibited by the bill. The bill prohibits persons in a dominant position in a market from abusing their position, but does not prohibit dominant position as such. Restricting the entry of any person into the market or any other market; preventing or deterring any person from engaging in competitive conduct in that market; and eliminating any person from the market are all prohibited by the bill. Moreover, arrangements to prevent or deter another person from selling a good at a price lower than that specified by the supplier; and withholding or preventing the supply of a good by the supplier are other forms of prohibited abuse. The draft bill also prohibits certain uncompetitive merger, takeovers, and acquisitions.

The President is allowed by the draft bill to declare prices of goods or services to be controlled, to remedy the effect of absence of or limited competition in a particular market or if it considered necessary or desirable in the interest of the users, consumers, or suppliers. The Commission can authorise contracts, arrangements, and restrictive practices that substantially lessen competition and beneficial to the public.

Court orders for the divesture of assets or share of a company in certain cases and the institution of criminal proceedings are the enforcement procedures envisaged under the bill. Persons may be required, by the Commission, to supply information, documents or give evidence; the Commission may also conduct searches. The Commission upon receiving a complaint from persons alleging that they have suffered or are likely to suffer an injury, as a result of violation or likely violation of any provision of the bill may conduct administrative hearings. Prior to the termination of the administrative hearings, a complainant may be granted leave to file an application promptly with the Court if the hearing officer considers that it is in the interest of Justice. The Commission’s determination or any part of it may be confirmed, modified, or reversed based on the review decisions by the Court. In relation to this matter, the Court would have the same power as the Commission.

## 4. Sectoral Policies

### 4.1. Power Sector

A major reform in the Power Sector is the enactment of the Electric Power Sector Reform Act, 2005 that removed monopoly power from National Electric Power Authority (NEPA) and subsequently to the unbundling of NEPA into 18 successor Companies and the formation of Nigerian Electricity Regulatory Commission (NERC).

With the on-going reform, coupled with the vigorous implementation of the seven National Integrated Independent Power Projects and conclusion of the Privatisation of the three power plants in 2007, NEEDS target of increasing electricity generation capability from 4200MW in 2004 to 10,000 by end of FY 2007 was nearly attained. Electricity supply remains a major challenge for private sector development and competitiveness.

## 4.2. Water Sector

The government of Nigeria has a national water supply policy whose aim is: Provision of potable water to all inhabitants of Nigeria by the year 2020. The objective is for all Nigerians to have access to adequate, affordable and sustainable sanitation through the active participation of Federal, State and Local Governments, NGOs, Development Partners, Private sector, Communities, households and individuals.

The present inadequate level of services should be increased to 120 liters per capita per day, and 60 liters per capita per day to urban, peri-urban and rural areas respectively by the year 2020. Increase the capacity of local, state and the federal government to assist communities to obtain basic water supply facilities that the communities themselves can maintain with the possible support of the private sector.

The policy thrust of NEEDS in respect of water is on participatory, integrated and sustainable water resource management, to meet the nation's water needs. The target is to increase water coverage to 70%.

Presently, there is no Apex Law or Government Agency regulating water sector in Nigeria. Activities in the water sector are presently being handled by the Federal Ministry of Water Resources at the Federal Level and State Water Board at the State Level.

## 4.3. Telecom Sector

Despite the fact that telecommunication services account for less than 1% of the GDP, they are the key element in the lowering of transaction costs in Nigeria. It is the responsibility of the Ministry of Communications to formulate and oversee the implementation of telecommunication policy. In 1992, the Nigerian Communication Commission (NCC) was established and it exercises direct regulatory oversight over the telecommunications industry. Nigerian Telecommunications Limited (NITEL), and other licensed private operators and service providers supply telecommunications services. A National Policy on Telecommunications was set out in year 2000 by the Government with the overriding objective of modernizing and rapidly expanding the telecommunications network and services in Nigeria. In order to expand the telecommunications network, more private operators are being allowed in the subsector.

The short term objectives of the National Policy on Telecommunications plan include:

- Implementing network development projects to ensure that the country meets and exceeds the ITU recommended minimum tele-density of one telephone for 100 inhabitants;
- Participating effectively in international telecommunications activities in order to promote telecommunications development in Nigeria, meet the country's international obligations, and derive maximum benefit from international cooperation in these area; Establishing a National Frequency Management Council (NFMC);
- Ensuring that the Government divests its interest in the State-owned telecommunications entities; Promoting competition to meet growing demand through the full liberalization of the telecommunications market; and

- Reviewing and updating telecommunications operators under the regulatory control of NCC are the short-term objectives of the plan.

In order to reap the benefit of from telecommunications liberalization, the nature and effectiveness of regulation remains crucial. In July 2003, a new Telecommunications Act was adopted. NCC's authority, under the new Act, has been extended to enable it to grant and renew communications licenses, and monitor and enforce compliance with license terms and condition by licensees. NCC is also responsible, under the new Act, for the promotion of fair competition in the communications industry, and for the protection of communications services and facilities providers from misuses of market power or anti-competitive and unfair practices by other services providers or equipment suppliers. License holders set tariff and charges which are subject to approval by NCC; a ceiling price is currently determined by NCC. Operators are allowed to manage their own infrastructure. However, NCC is acting as an arbiter in the event of any anti-competitive practices by the network services or facilities providers. All network services or facilities providers are obliged to allow interconnection with their communication systems for licensees that so request; all interconnection agreements are to be agreed upon between the relevant operators and registered with NCC.

## 4.4. Transport Sector

In 2003, a National Transport Sector Policy (NTSP) was developed. The policy aims to, *inter alia,* promote trade and transport services through an efficient and affordable integrated transport network, and transparent and streamlined administrative procedures based on modern management techniques; improve the safety, security, quality, and speed of movement of goods and people; increase the involvement of the private sector in the financing and operation of transport-related services; structure the infrastructure to ensure environmental sustainability and internationally accepted standards; build a strong financial base for the creation, maintenance, and upgrading of transport infrastructure; and promote public transport over private car travel. Nigeria has undertaken commitments in rail transport and maritime transport services under its GATS schedule.

A network of roads, railways, waterways, and seaports encompasses Nigeria's transportation sector. The sub-sector's direct share of the GDP was 2.5% in 2002. It is vital to improving competitiveness and to poverty reduction because this sector is a key infrastructural service. Consumer prices are affected by higher transport costs. Formulation and implementation of policies; provision of transport infrastructure; and development of skilled manpower in the transportation sector are the major responsibilities of the Federal Ministry of transport. In carrying out its responsibilities, the Federal Ministry of Transport is assisted by a number of parastatals. The main objective of policy initiatives in the subsector is to achieve a more effective, productive, and safe transport system.

### 4.4.1 The Shipping and Ports Sector

The Nigerian Ports Authority (NPA) is a fully owned Government parastatal established by the Port Act, 1954. NPA is more a palyer in the shipping transport sector than a regulator, with a total cargo handling capacity of about 25 million tons. In addition to this, there are over 128 private jetties and 11 Oil terminals in operation under the supervision of the Nigerian Ports Authority.

The Table below shows the main functions of the NPA as well as the scope for competition with private players[13]:

| S/N | Service | Description | How Service is Currently Provided |
|---|---|---|---|
| 1 | Stevedoring/Shore handling | Handling of cargo from ship side to storage, bonded facilities etc, and delivered to consignees | Partly by NPA and partly by private operators. |
| 2 | Groupage operations | Stuffing and un-stuffing of less container load | By shippers' lines who lease storage facilities from NPA |
| 3 | Pilotage/Towage | Towing vessels/crafts to required locations | By NPA |
| 4. | Dredging | Deepening, widening and maintaining the water channel for easy and safe passage of ships. This service is in two dimensions, capital and maintenance. | By NPA |
| 5. | Dockyard Services | Repairs and servicing of crafts/vessels By | Continental Ship-yard – A joint venture company of NPA with 60% and Dockyard Engineering Services Ltd of Switzerland with 40% |
| 6 | Plant and Equipment hire | Use of plant and equipment for cargo handling | By NPA and private companies |
| 7 | Supply of fresh water | Supply of fresh water to ships by hydrant, Tankers and barges | Supply of hydrant is done by NPA while those of tankers and barges is by private companies |
| 8 | Bunkering | Supply of fuel oil for ships' use | By private companies |
| 9 | Chandelling | Supply of food, beverages and groceries to ships | By private companies |
| 10 | Haulage | Movement of cargo out of the ports | By private companies |
| 11 | Port Security | Security of cargo, life and property | By police, NPA security, personnel, Navy and Customs |
| 12 | Environmental repairs/protection services and maintenance of static port facilities, harbour waters | Protecting the environment from degradation caused by human, economic and natural activities in the ports, roads and sidings, rail network, lighting ware houses, sheds, etc. | By NPA |

Nigeria accounts for about 68% of the total maritime trade in West Africa through its seaports. NPA has 8 major Ports and 11 Oil Terminal with 128 private jetties operating within the Port system. There are 102 hard quay berths, 62 Buoys and over 650 units of different cargo-

[13] http://www.bpeng.org/NR/rdonlyres/2BD5297A-AECA-4FDE-952C-036D84439930/0/NigerianPortsAuthority.pdf

handling plant and equipment, yielding a total cargo-handling capacity of over 35 million metric tones. A network of rail, road and water transportation serves the Ports.

The Nigerian Shippers Council (NSC) and The National Maritime Authority (NMA) perform directory regulatory roles in the sector. The NSC operates under the Federal Ministry of Transport and is established under the Nigerian Shippers Council Act, 1997. The Primary objective of the Council is to protect the interest of its clients, shippers, vis-a-vis the port and the shipping lines. The NMA was established by Decree 10 of 1987, under the Federal Ministry of Transport. Its objective is to implement Nigerian's shipping policy. The Authority is specifically tasked with promoting the establishment of Nigerian Shipping companies and the implementation of the 40:40:20 rules under the UNCTAD code of conduct for Liner Conference.

### 4.5. Financial Services Sector

In sub-Saharan Africa, the Nigerian financial system is among the largest and most diversified. The financial services are overwhelmingly dominated by the deposit banks. 51% of the total non-bank assets and deposit liabilities constitute ten of the largest banks.

Institutions regulating and supervising the financial services sector include:

- The Central Bank of Nigeria (CBN), which is the highest regulatory and supervisory authority;
- the Ministry of Finance, which cooperates with the CBN on monetary matters;
- the Nigerian Deposit Insurance Corporation (NDIC), which complements the functions of the CBN by providing deposit insurance to boost confidence in the banking system;
- the Securities Exchange Commission (SEC), which seeks to promote an orderly and active capital market;
- the National Insurance Commission (NAICOM), which regulates and supervises the insurance industry;
- the National Board for Community banks (NBCB), which seeks to support the establishment and operation of community banks; and
- the Financial Services Regulation Coordination Committee, which seeks to coordinate the supervision of all financial institutions.

### 4.6. Health Services Sector

Nigeria has a Health Sector Policy, whose thrust includes:

- Strengthening of the National Health System;
- Improving the availability and management of health resources;
- Reducing the disease burden and improving physical facilities (HIV/AID, Malaria, Tuberculoses and STD); and
- Improving financial access to good quality health services.

There are no sector regulatory authorities in the health services sector, given that regulation is done at the Ministerial level through the Federal Ministry of Health and State Ministry of Health at the Federal and State level respectively. In terms of health service provision, the sector is open to competition for both government and private investors and is highly competitive.

## 5. Anti-Competitive Practices

### *5.1 Abuse of Dominance:*

Firms in power, manufacturing and commodity sectors often use their market power to increase prices above competitive levels. In some cases, consumers are exploited due to high cost of goods and services compared to quality of products offered for sale. Also some firms engage in predatory pricing with the intention of forcing competitors out of the market. Dominants firms also engage in acts of price discrimination, granting questionable discounts among other acts. The two boxes below give examples of two cases that can be attributed to dominance and its abuse.

**Box 2: Abuse of dominance in cement importation industry**

Dangote, Nigeria's largest importer of bulk cement, has four bagging plants in the country: the Lagos Cement Terminal at Apapa Port, the Aliko Inland Terminal at Lagos, one in Onne/Port Harcourt and one in NPA Area 1 Port Harcourt with a combined production of 3 million MT per annum. With its overriding influence on the Obasanjo regime, Dangote Cement always managed to seize cement import quotas of between 6.5 and 9 million MT per annum. Keeping hold of so much import quota enabled Dangote to limit what was available to other operators. Dangote regulated how much of their cement import quota to use and when to use it and so has successfully been manipulating market prices. Dangote Cement did not only tyrannize other producers but also succeeded in frightening away would-be new entrants into the cement industry with bogus claims. These claims included wild production and expansion figures that were never met but were accepted by the Obasanjo government as a basis for the issuance of import quotas.

*Source: http://www.nigerianadvocates.com/Page2.htm*

**Box 3: Court orders MTN, Celtel to compensate subscribers**

A Federal High Court in Lagos, Nigeria, has decided that the two-some Global System for Mobile communications (GSM) operators, MTN and CELTEL, must compensate their subscribers over poor quality of service experienced as at 31 January 2008.

The regulator, Nigerian Communications Commission (NCC) had issued a directive to three GSM operators including Glo Mobile, MTN and Celtel, for offering below the average quality of service based on Key Performance Indicator (KPI) to pay compensation of N175 (US$1.60) per subscriber of over 10 million affected.

However, attempts by two GSM operators, MTN and Celtel to evade the payment of compensation to subscribers have been thwarted. The two GSM operators had approached the Court, requesting for an interlocutory injunction to restrain the Commission from implementing its earlier decision, upon which it recently directed the two operators to pay US$1.6 per subscriber for the month ended January 2008.

*Extracted from BizCommunity.com 31 Mar 2008*

### *5.2 Collusion and cartels*:

One of the most serious anti-competitive conducts in major markets in Nigeria is tacit collusion and cartels. These anti-competitive conducts are most visible in commodities, manufacturing, GSM telecommunication and petroleum products marketing markets. A good example is given in Box 4 below by allegations of bid-rigging in the petroleum refining industry.

**Box 4: Allegations of bid rigging and collusion in the Petroleum Refining Industry**

The Bureau of Public Enterprises, the agency charged with the sale of government-owned businesses, revealed that for the sale of the oil refinery in Kaduna and Port Harcourt, Blue Star won the competitive bidding. However, Blue Star itself was a consortium made up of two companies (Dangote and Otedola) and River State government, revealing that the transaction itself had signs of collusion and price-fixing. Foremost, the two business companies were strong competitors in their own right who teamed up to make a bid, thus eliminating any stronger competition. In addition to this, acting in concert with the Rivers State government effectively neutralizes local opposition and assures government support. However there could be nothing illegal about any of these moves in the absence of competition legislation, but in its presence the consortium should have been disallowed from bidding solely on the ground of collusion and unfair advantage.

Furthermore, the BPE use of the term "competitive bidding" is highly questionable. For one, Blue Star Consortium never participated in the bidding process leading to the sale of the Kaduna Refinery. The shady process that led to its emergence is fraught with loopholes that any innovative businessman will exploit for unfair advantage. For example the China National Petroleum Corporation (CNPC), which was offered the right of first refusal in the Kaduna Refinery, had offered $102 million for the firm. This, according to BPE, could not match the reserve price. This paved the way for Dangote to offer $160 million to buy the plant. The process was, however, not thrown open to a competitive process. It is very possible that Dangote had asked the Chinese to low ball so it can still get KRPC on the cheap, implying that a case of price-fixing can be legitimately made against Blue Star.

Source: Michael Oluwagbemi , 07/19/2007 at http://www.chatafrikarticles.com/articles/831/1/How-Dangote-Is-Double-crossing-Nigeria/Page1.html

Of great concern is the roles of trade associations in preventing competitive pricing in their industry. Indeed, virtually all products markets in Nigeria are regulated by trade associations, which set entry barrier and fix price for their products.

### *5.3 Anticompetitive Mergers and Acquisition:*

Dominance and collusion due to merger & acquisition is more visible in manufacturing and financial sectors. Concern about mergers and acquisitions in the absence of competition regulation is that potentially anti-competitive mergers are allowed to pass through unchecked.

### *5.4 Misleading/False Advertisement*

In Nigeria today, most of the promotional advertisement by firms in various sectors are very deceptive, false and misleading. Producers often use the period of their promotional competition to exploit consumers and to make quick profit to the detriments of vulnerable consumers.

Box 6 below given an example of a newspaper denouncing misleading/false advertisement

**Box 6: CPC Declares NBC`s Refresh and Recharge` Promo Fraudulent**

The Consumer Protection Council (CPC) on Tuesday July 22, 2008 declared the "Refresh and Recharge" sales promotion being run by the Nigerian Bottling Company (NBC) as fraudulent. Consequently, the Agency has directed the bottling giant to discontinue the promotion and its advertisement forthwith to avoid untoward consequences, just as it advised consumers to be wary of the antics of the promoters of the package.

The CPC, in a statement signed by the Assistant Director of Public Relations, Mr. Abiodun Obimuyiwa, noted that it had been inundated with complaints from consumers on the perceived dubious nature of the promotion.

It added that despite its earlier correspondence to the firm on the problems associated with the redemption of the prizes, nothing meaningful was done to redress the situation.

*The Punch, Wednesday, July 23, 2008, page 17*

## 6. Consumer Protection Policy

### 6.1. Existing Consumer Protection Laws

In Nigeria today, there is no single codified document where the rights of consumers are contained. In exchange, there are several legal enactments establishing certain institutions charged with the responsibilities of determining or regulating specific areas of consumable goods and services.

**Prominent among these consumer legislations are**:

- The Consumer Protection Council Act No.66 of 1992
- The Weights and Measures Acts 1974
- The National Agency for Foods & Drugs Administration and Control (NAFDAC) Act No. 15 of 1993
- The Food and Drugs Act 1974
- The Counterfeit and Fake Drugs and Unwholesome Processed Foods (miscellaneous Provision) Act 1999
- Nigerian Civil Aviation Authority (NCAA) Act No.49 of 1999
- Standard Organisation of Nigeria (SON) Act
- Federal Environmental Protection Agency (FEPA) Act
- Nigerian Electricity Regulatory Council (NERC) Act
- Trade Malpractices Act 1992

Despite this statutory protection framework, the level of practical protection has remained rather low. This is because the laws are yet to take care of some vital aspects of consumer protection. Two of such areas are compensation for the victims of defective products or services and the right to satisfaction of basic needs.

### 6.2. Consumer Protection Policy – State of its Implementation, Consumer Awareness and Existence of Consumer Organisations.

With the exception of the Consumer Protection Council Act, all the other existing consumer related legislations are criminal law based, which are aimed at punishing the offender and not to compensate the victim. The level of implementation of the Consumer Protection Council Act is very low. This is also worsened by the absence of consumer awareness and the absence of small claims courts for consumers redress. Relative to the size of Nigeria, there is a small number of active consumer protection organisations.

**7. Conclusion**

This paper, which is the baseline paper for the Country Research Report only presents the current scenario regarding competition regime in Nigeria and since the paper mainly uses available literature from secondary sources, more work needs to be done in the Country Research Report (CRR) of this initiative to fully address the issues covered in this paper.

The following are the conclusions from various sections of this paper.

1. Absence of competition law is discouraging potential investor from investing in the Nigerian economy. This is manifested in the low earnings from non-oil sector export compared with earnings from import in the same sector. Also low contribution of manufacturing sector to GDP is due to lack of strong competition from the sector.

2. The Nigeria Development Policies contained some strategies and instruments that promotes competition, but not adequately.

3. Limited competition in the agricultural sector is as a result of Government protectionist policy which prohibits importation and exportation of certain categories of agricultural products. Also the agricultural sector has remained generally under-developed.

4. The Nigeria Industrial Policy has achieved little despite its main objective of transforming the Nigerian Economy from its rural and agrarian to a modern and competitively industrialized one. This is manifested in the less than five percent contribution of manufacturing sector to the GDP.

5. Government policy for a very strong competitive Nigeria Economy is manifested in the Nigeria's trade policies. Worthwhile mentioning is the Government measure to transform the Consumer Protection Council (CPC) into the Nigerian Trade and Competition Commission (NTCC) to handle issues relating to *inter-alia* anti-trust and competition policy, contingency trade measures and consumer protection.

6. The Nigeria Privatisation and Regulatory Policies have rarely created any form of competitiveness in the nation's economy. The policies, rather than alleviating poverty, have since worsened the poverty level in most cases and widened the income gap. The policies have only proven successful in achieving further concentration of economic wealth in the hands of a few people and multinational firms.

7. Of all the major sectors, only oil and natural gas as well as GSM telecommunications received most FDI inflows. The attractiveness of the two sectors to foreign investors can

be attributed to the fact that both the oil & gas and GSM telecommunication sectors are highly lucrative for profits. However, the sectors are prone to anti-competitive activities by the players.

8. Presently, there is no Competition Law in Nigeria. Government is committed to enacting a law though there is no consensus on the institutional arrangements for the competition agency. Efforts have been made to incorporate consumer protection elements into the Competition Bill, and would result in a hybrid agency to implement it.

9. In the immediate past tenure of the National Assembly, two different bills on Competition/Anti-Trust were reportedly passed by the Senate and the House of Representatives. Efforts to reconcile/harmonized the two versions of the bills have not been successful up till date. Hence, Competition or anti-trust issues are not being regulated by any known legislation in Nigeria.

10. There is no competition in the power sector at present. Power Holding Company of Nigeria (PHCN) still dominates the market for Power generation, transmission and distribution. More players are expected to enter the market soon. Limited competition exists in the telecommunication sector. There are a few fixed-line telecom companies, GSM service providers and Internet service providers. The tariffs/prices are high, probably as a result of limited competition.

11. Despite the presence of some statutory consumer protection framework, the level of practical protection has remained rather low. This is because the provisions of the laws are inadequate, as they are yet to include some vital aspects of consumer protection.

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