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Nigeria*

– *Adedeji Babatunde Abiodun*[1 †]

The Federal Republic of Nigeria consists of 36 states and 774 local government administrations. The administrative headquarters and Capital City is Abuja, located in the Federal Capital Territory, which is geographically situated in the middle of the country.

With a population of over 136 million, Nigeria is obviously the largest market in sub-Saharan Africa with reasonably skilled and potential manpower for efficient and effective management of investment projects within the country.

PROFILE	
Population:	136.5 million***
GDP (Current US$):	58.4 billion***
Per Capita Income: (Current US$)	350 (Atlas method)*** 860 (at PPP.)**
Surface Area:	923.8 thousand sq. km
Life Expectancy:	51.6 years**
Literacy (%):	66.8 (of ages 15 and above)**
HDI Rank:	151***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Economy

Nigeria's economy could be aptly described as most promising. It is a mixed economy and accommodates all; individuals, corporate organisations and government agencies, to invest in almost all economic activities. Since 1995, the Federal Government of Nigeria has introduced some bold economic measures, which have had a salutary effect on the economy. The Government has been liberalising and privatising some sectors that were hitherto state monopolies, with the purpose of introducing competition. So, the country now actively engages in the promotion and protection of competition in its markets.

Competition Evolution and Environment

Nigeria's current industrial policy thrust is anchored on a guided deregulation of the economy and the Government's dis-engagement from activities, which are market-oriented. This leaves the Government to play the role of facilitator, focusing on the provision of incentives, policy and infrastructure, which are necessary to enhance the private sector role as the engine of growth. The industrial policy is intended to:

- generate productive employment and raise productivity;
- increase exports 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 FDI; 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 and inhibited competition, were repealed in 1995. The principal laws regulating foreign investments now are: *the Investment Promotion Commission Decree No. 16 of 1995* and the *Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree No. 17 of 1995.* Both laws promote competition in the economy.

Given the need to stabilise the banking and finance sectors, and promote confidence in these vital institutions, the *Failed Banks (Recovery of Debts) and Financial Mal-practices 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

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industrial enterprises and financial institutions, and such divestments were made by way of 'offers for sale' on the floor of the Exchange, so that ultimate shareholdings in such enterprises could be widespread. However, the Government retained full control of the public utility service corporations.

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

Competition Law and Policy

At present, Nigeria is yet to develop its competition law. Efforts are currently being made to draft the competition law. Nonetheless, competition cases or issues in various sectors of the economy are handled at present, directly or indirectly, by the following regulatory institutions, among others:

1. The Nigerian Investment Promotion Commission (NIPC);
2. Nigerian Communication Commission (NCC);
3. Central Bank of Nigeria (CBN);
4. Securities and Exchange Commission (SEC);
5. Consumer Protection Council (CPC);
6. Special Trade Malpractices Investigation Panel;
7. National Agency For Food and Drug Administration and Control (NAFDAC);
8. Standards Organisation of Nigeria (SON);
9. Petroleum Products Pricing Regulatory Agency (PPPRA);
10. Nigerian Civil Aviation Authority (NCAA);
11. National Broadcasting Commission (NBC);
12. National University Commission (NUC); and
13. Nigeria Tourism Board (NTB).

The Nigerian Investment Promotion Commission Decree No. 16 of 1995

This decree established the Nigerian Investment Promotion Commission (NIPC) as the successor to the Industrial Development Co-ordination Committee (IDCC). The NIPC is an agency of the Federal Government of Nigeria, with perpetual succession and a common seal, which means the Commission's leadership structure will always have a successor after expiration of tenure of office of the incumbent leader. This is specially established, among other things, to:

- coordinate, monitor, encourage and provide necessary assistance and guidance for the establishment and operation of enterprises in Nigeria;
- initiate and support measures, which shall enhance the investment climate in Nigeria for both Nigerian and non – Nigerian investors;
- promote investments in and outside Nigeria through effective promotional means;
- register and keep records of all enterprises to which the NIPC Decree legislation applies;
- identify specific projects and invite interested investors to participate in those projects;
- provide and disseminate up-to-date information on incentives available to investors;
- assist incoming and existing investors by providing support services; and
- evaluate the impact of the Commission on investment in Nigeria and recommend appropriate remedies and additional incentives;

Securities and Exchange Commission Act No. 45 of 1999

The Investment and Securities Act No. 45 of 1999 was promulgated on May 26, 1999. The Act repealed the Security and Exchange Act of 1998. The new Act promotes a more efficient and virile capital market, pivotal to meeting the nation's economic and developmental aspirations in this new millennium.

Among the various roles of the Commission is to register and regulate securities exchange; capital trade points; futures; options and derivatives exchanges; commodity exchanges; and any other recognised investment exchange.

Anticompetitive Business Practices

Trade Malpractices Decree 1992

This law pinpoints certain offences relating to trade malpractices and sets up a Special Trade Malpractices Investigation Panel to investigate such offences. The law is violated by any person who:

- falsely labels, packages, sells, offers for sale or advertises any product so as to mislead as to its quality, character, brand, name, value, composition, merit or safety;
- for the purpose of sale, contract or other dealing, uses or intends to use any weight, measure or number which is false or unjust;
- sells any product by weight, measure or number and delivers to the purchaser a less weight, measure or number than is purported to be sold;
- advertises or invites subscription for any product or project which does not exist.

Sectoral Regulation

Telecommunications Sector

The Nigerian Communications Commission (NCC) is the National Regulatory Authority for the telecommunications industry in Nigeria. The broad business purpose of the NCC, as derived from the enabling Decree 75 of 1992, is to facilitate private sector participation in telecommunications service delivery, coordinate and regulate the activities of the operators to ensure consistency in availability of service delivery and fair pricing.

The objectives of the NCC are to**:**
- promote effective competition in the market, to ensure fair pricing of good quality of telecommunications services;
- encourage massive investment in the telecommunications Sector;
- extend availability of telecommunications services to all Nigerians; and
- protect licensees and the public from the unfair conduct of other providers of telecommunications services, with regard to the quality of service and payment of tariffs.

Whilst functions of the NCC include:
- licensing telecommunications operators, and facilitating private sector participation and investment in the telecommunications sector of the Nigerian economy;
- establishing and supervising technical and operational standards and practices, as well as type approval of equipment for operators, overseeing the quality of service provided by operators and setting terms for the interconnection of different networks;
- ensuring that promoting competitive pricing of such services and combating the abuse of market power protects the interests of the consumer of telecommunication services; and
- mediating between operators, carriers and consumers.

***Energy Sector*[2]**

The National Electric Power Authority (NEPA) is the Government-owned utility responsible for generation, transmission and distribution of electricity throughout Nigeria. It has an installed generating capacity of 5,800 MW (0.05 kW per capita). However, NEPA has only 1800 MW to 2300 MW of available generating capacity: a level that is inadequate to meet the current demand. Furthermore, because of a 50 percent level of technical and non-technical losses, rates below the cost of service, and inadequate collection performance; NEPA financial resources are drained, leaving it unable to invest in expansion and to support system improvements.

Despite the lack of capital, NEPA has an ambitious growth plan to expand service access to reach 85 percent of the population by the year 2010; renovate its generating plants and transmission systems; and add 2000 MW of new generating capacity by 2003. Generating capacity has gradually been increased to achieve the set target. In addition, several reform programme in the electric power sector is part of the Government's plan to achieve the target. Reform is needed, however, to attract foreign investment. Changes required include modifications in the electricity law; creation of a regulatory framework; and the commercialisation and unbundling of NEPA.

The Power Holding Company of Nigeria (PHCN) has been incorporated in July 2005 as an initial holding company as provided in the Electric Power Sector Reform (EPSR) Act 2005. Since its formation, PHCN took over all NEPA assets and liabilities as NEPA finally transforms to PHCN.

The ongoing reform in the power sector is now attracting foreign investments as many foreign companies are competing with the local ones to take over the functions, assets and liabilities of the defunct NEPA. Now that power sector in Nigeria has been fully privatised, events in the next 12 months will see private companies engaging in developing competitive electricity markets, enforcing

Box 51.1: Consumers Protest Cellphone Services

On September 19, 2003, for the first time in the history of Nigeria, consumers in the Telecommunication Sector (GSM Phone Sub Sector) organised themselves to protest against poor services provided by the MTN, ECONET (now Vodacom) and NITEL (Mtel), the three GSM Phone Service Providers in Nigeria, working in collusion.

Consumers switched-off their handsets nationwide, on September 19, 2003, to protest against the poor services and abuses of the three GSM Phone companies: arbitrary deduction of credits, uncompleted calls, poor signals, high tariffs, interconnectivity problems, constant changes in contract terms, misleading advertisement on new services and per minute billing charges, among other abuses.

With the successful one-day protest, the three GSM service providers, as reported in the press, lost millions of Naira due the one-day protest and were forced to improve on their services and terms since then.

Consumers were able to coordinate themselves through text messages exchanged amongst them.

According to a survey conducted by the Consumers Association of Nigeria on September 19, 2003, and reports of the protest monitored in both print and electronic media, the one-day protest was a total success as some 80-90 percent of GSM Phone consumers in Nigeria switched-off their handsets in compliance with the boycott directives.

Source: Survey conducted by the Consumers Association of Nigeria (CAMON) on 19th September 2003

2 http://www.usaid.gov/our_work/economic_growth_and_trade/energy/energy_governance/pubs/ps/nigeria_netp.pdf

performance standards, consumer rights and obligations and indeed other matters as would enhance the overall efficiency of the electric power sector in Nigeria.

Consumer Protection

The Consumer Protection Council has been established in Nigeria under decree No. 66 of 1992 with the objectives to:

- provide speedy redress to consumer complaints through negotiations, mediation and conciliation;
- seek ways and means of removing, from the market, hazardous products; and cause offenders to replace such products with safer and more appropriate alternatives;
- publish, from time to time, a list of products whose consumption and sale have been banned, withdrawn, restricted, or not approved by the Nigerian Government or foreign governments;
- cause an offending company, firm, trade association or individual to protect, compensate, provide relief and safeguards to injured consumers or communities from adverse effects of technologies that are inherently harmful, violent or highly hazardous;
- organise and undertake campaigns and other forms of activities, that will lead to increased public consumer awareness;
- encourage trade, industry and professional associations to develop and enforce, in their various fields, quality standards designed to safeguard the interests of consumers; and
- encourage the formation of voluntary consumer groups or associations for consumers' well being.

In the exercise of its functions, the Council is empowered to apply to court in preventing the circulation of any product, which constitutes an imminent public hazard; and/or compels a manufacturer to certify that all safety standards are met in their products

Box 51.2: Proposal to Transform Consumer Council into Nigerian Trade and Competition Commission

The Federal Government of Nigeria is planning to transform the '*Consumer Protection Council (CPC)'* into a new commission known as '*Nigerian Trade and Competition Commission (NTCC)'*. The Permanent Secretary of the Federal Ministry of Commerce made this official disclosure on September 27, 2004.

The proposed Commission (NTCC) according to the Permanent Secretary, is expected to handle all issues relating to *Consumer Protection, Competition Policy, Anti-dumping, Unfair Trade Practices and Weights and Measurements Administration*.

The Federal Permanent Secretary said that the Bill for the transformation of 'Consumer Protection Council (CPC)' into 'Nigerian Trade and Competition Commission (NTCC)' has reached an advanced stage at the National Assembly and is yet to be passed.

The proposed NTCC has effectively addressed calls by various stakeholders and Civil Society Organisations for a Nigerian Competition Law.

Source: Bulletin of Consumer Affairs Movement of Nigeria (CAMON), Vol. 1, No.2, Aug-Sept 2004

Concluding Observations and Future Scenario

Nigeria is gradually forging ahead in its quest for putting in place a competition regime in the country. There has been a departure from the earlier proposal to transform the Consumer Council into the Trade and Competition Commission (see box 51.2). Now that the final copy of the proposed Nigerian Trade and Competition Commission (NTCC) bill is almost ready at the National Assembly, events within the next six months will see the President assenting to the bill to usher in a new competition regime in Nigeria. By implication, by the year 2006, Nigeria is certain to join other countries in the World with a competition regime.

† ***Adedeji Babatunde Abiodun*** *is the Founder Coordinator-General of CAMON. (Founded CAMON in 1995). He is also a Board of Trustee member of: All Nigeria Consumer Movements Union (ANCOMU). His professional interests/activities are: Consumer Protection, Competition, Trade, Environment and Sustainable Development. He has attended International seminars/workshops sponsored by: Consumers International, CUTS and UNCTAD on issues like: Consumer Protection, International Trade, Competition and Sustainable Development.*