

# LEGAL FACTS

## **LEGAL AND REGULATORY FRAMEWORK FOR DEREGULATION AND PRIVATIZATION IN NIGERIA**

I have read a plethora of articles on the subject of deregulation and no less a number on the legal framework for deregulation. I recall the write up of Adedolapo Akinrele, captioned “Nigerian Energy Crisis: Legal Perspectives on Deregulation” (This Day Law, Tuesday, April 3, 2001). This article identified some institutional problems of the energy sector. I also read with equal interest the write up of Sampson A. Ebomhe, titled “Beyond the GSM Licence Auction.” (This Day Law, Tuesday, April 17, 2001) Mr. Ebomhe took a critical look at the powers and functions of the NCC, the regulator of the telecommunications sector, and came to the conclusion that the telecommunications industry is yet to be privatized in the strict sense of the word.

This view is informed by the fact that the NCC does not have adequate statutory powers necessary to effectively reform and regulate the sector. As a result government owned monopolies like NITEL and M-TEL are not subject to the regulatory powers of NCC.

These write-ups highlight some inadequacies that exist in the legal and regulatory framework of the current deregulation program of this government. Permit me to add my observations on some aspects of this vexed issue that have been generally overlooked. This is the process of moving from a regulated to a deregulated economy.

### **Understanding Deregulation**

Deregulation implies eliminating or reducing government’s regulation of business over a certain industry to permit freer markets and competition. A deregulatory policy attempts to reduce the burden of regulation. Regulation on the other hand refers to laws and rules that seek to impose outcomes that would not be reached by the operation of free market forces and private legal rights. Deregulation may take the form of abolition of regulatory controls, reducing administration, decentralisation of regulatory rule making, and making less interventionist laws

### **Moving From Regulation to Deregulation**

Deregulation is not a term of art to be used by any government as a political gimmick. Deregulation is a serious economic reform program like the infamous SAP (Structural Adjustment Program). As such, it has its “conditionalities,” formalities, processes, procedures and structures.

Deregulation as understood in the Nigerian context involves moving Nigeria from a public sector oriented economy towards a private sector driven economy that is more competitive, export oriented and market based. The aim is to achieve rapid, efficient and sustainable growth in the economy. Regulation and deregulation are two opposite ends of a pole. It is impossible to jump from one end to the other at one go. If one is moving from one end to the other there must be a transition process during which the old economic policies, legal, regulatory and institutional structures will give way to new ones. Nigeria is at the point of transition at the moment.

Getting to the end point, that is deregulation in the strict sense, require making hard decisions and reforms that will ultimately transform the economy into one that is efficient and market driven. Half measures may not work here. It is this process that has so far been overlooked by many, especially the government. What the government is attempting to do is to jump from regulation straight on into deregulation. The result is that we are trying to apply deregulation to structures designed for a regulated economy. This will not work. We will consider these steps here.

### **Steps to Deregulation**

A deregulation program that has any hope of success must follow a pattern that moves from formulation of a deregulation policy to reform of policies operated under a regulated economy, institutional reforms, legal and regulatory reforms and actual privatisation. These process will be broken down as follows:-

- Formulation of a blueprint for deregulation.
- Sectoral reform policy.
- Monetary, Fiscal and Financial Policy reforms.
- Restructuring the civil service.
- Justice Sector Reforms.
- Legal and regulatory framework.
- Actual privatisation, commercialisation, etc.