



Challenges of Infrastructure Concession and Regulation in Nigeria: Points of View of a Regulator

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1. Introduction:

I am greatly delighted to be in your midst at this year's National Engineering Conference and Annual General Meeting with the theme **“Building Resilient Infrastructure to promote Sustainable Industrial Growth”**, organized by the Nigerian Society of Engineers. I am particularly pleased with the theme of the conference. It is not only apt but very timely. To most of us present here today, I am not a strange face, having spent many years as a member of our distinguished Society of Engineers. Therefore, I am most delighted to see many of my friends and colleagues here present, and all the invited guests who have spared their time to attend this all-important event.

Permit me to acknowledge that the Nigerian Society of Engineers has over the years, metamorphosed into a vibrant and ideas-generation platform for

engineering the social and economic changes needed to fast-track the growth and development of our great country. I must therefore commend the efforts of the leadership of the Society for this excellent initiative and in particular, for being able to sustain the dialogue platform over the years in spite of the obvious challenges usually associated with such endeavours.

Distinguished ladies and gentlemen, the **Theme** for this year's conference is nothing but a clarion call on all of us to rise up to the occasion and join hands with the present administration to tackle the problem of infrastructure deficit in the country. It has been revealed that 80% to 90% cases of insecurity facing our nation today are directly linked to the huge infrastructure deficit. No doubt, with the right infrastructure provision such as steady power supply, good roads, efficient hospitals, effective educational facilities, agricultural support facilities, effective research and development institutions making new discoveries, our challenges as a nation will be greatly minimized.

However, my assignment this morning is to share my thoughts on an important subject that equally affects us as a nation – **“Challenges of Infrastructure Concession and Regulation in Nigeria: Points of View of a Regulator”**. In a nutshell, what the organizers of this year's conference have done, is simply asking me to share with you the challenges we at the Infrastructure Concession Regulatory Commission face in regulating infrastructure concession in the country. Unfortunately, they may have gotten a clue of the enormity of the problem and probably suspecting that the topic alone could take a whole day to exhaustively address it, hence the limited time allocated to me.

Having said that, let me start by provoking our thoughts on the severity of infrastructure problem in the country. Today, Nigeria is ranked among nations with most high infrastructure deficits. As a nation, we require not less than \$30bn (about N9.47tn) investment annually for the next ten years to close the huge infrastructure gap that exist in the country. This amount almost equates our 2019 national budget, which means, even if the total national budget is devoted to solving the problem of infrastructure, it still won't be enough, and what will then happen to the recurrent expenditure of government, salaries and wages of government workers, overheads, etc. This situation is better imagined than experience.

The Nigerian economy in the last three decades has persistently been weakened by socio-economic constraints brought about mainly by our decaying infrastructure, a situation which inhibit the nation's productive capacity and its ability to create jobs and reduce poverty. The impact is felt in the low living standard and general well-being of the people.

2. PPPs and the Establishment of ICRC

Given the huge amounts needed and the drive necessary for development, the Nigerian government does not have the requisite capability and resources to achieve this on its own and has thus among other options embarked upon the use of Public Private Partnerships (PPPs), for infrastructure delivery. PPP simply refers to an arrangement between the government and a private entity, where the private enterprise supplies infrastructure assets and services that traditionally have been provided by the government. This will enable government to channel its

energy and resources to other vital areas that require greater attention of the government.

Recognising the need to promote sustained infrastructure development, rapid economic growth and improve competitiveness, the Federal Government established the Infrastructure Concession Regulatory Commission (ICRC) through the ICRC (Establishment, etc) Act, 2005 to regulate PPP endeavours of the Federal Government. This was aimed at addressing Nigeria's physical infrastructure deficit which hampers the transformation of the economy. Thus, the establishment of the ICRC by the Federal government marked a significant policy thrust for tackling the infrastructure challenge in Nigeria.

The Commission was established as a regulatory agency to facilitate engagement of the private sector by Ministries, Departments and Agencies (MDAs) of the Federal Government in initiating, developing, financing and implementing PPP projects in a transparent, competitive and sustainable manner. By so doing, it aims to achieve value for money for Nigeria while creating the appropriate enabling environment for the delivery of quality infrastructure. The Commission also has the added responsibility of ensuring compliance with all agreements legally entered into by the private sector with any agency of the Federal Government of Nigeria in the financing, operation and management of infrastructure and allied services.

Although the ICRC Act relates only to infrastructure projects at the Federal level and States governments have the right to develop their own policies and legal frameworks, the ICRC is of the view that it is in the overall interest of the Nigerian economy that a coherent policy, regulatory and institutional environment be

developed across the country to facilitate effective collaboration between public authorities, sharing standards and the growth of a robust market projects in the country. The expectation of ICRC was that the outreaches will enable the country develop a framework for the sharing of ideas and experiences and facilitate effective cooperation and collaboration between states and federal agencies in implementing PPP projects in the overall best interest of our common economy.

Nigeria's policy on PPP has been designed to the effect that it will develop regulatory and monitoring institutions so that the private sector can play a greater role in the provision of infrastructure, whilst ministries and other public authorities will focus on initiating, planning and structuring projects. The private sector will be contracted to manage some public services, and to design, build, finance and operate some infrastructure. It is the Government's expectation that private participation in infrastructure development through PPPs will enhance efficiency, broaden access, and improve the quality of public services. This policy statement sets out the steps that the Government will take to ensure that private investment is used, where appropriate, to address the infrastructure deficit and improve public services in a sustainable way; and it will ensure that the transfer of responsibility to the private sector follows international best practice and is achieved through open competition.

3. Why the PPPs Option?

Distinguished ladies and gentlemen, in order to bridge the growing gap between the cost of infrastructure needed and resources available, and to ensure that the infrastructure is delivered as efficiently and cost-effectively as possible, the key

question is how to deliver cost-efficient investment. In this context, PPPs are a growing element of public sector procurement globally. Consequently, the wide infrastructure gap in Nigeria coupled with small and depleting government resources and the urgent need for alternative funding led to the growing demand for private sector participation in infrastructure.

Besides, many countries including Nigeria now recognize that the public and private sectors can work together in a new and innovative ways to deliver public services. Usually in the past, key public service assets in Nigeria, such as roads, power stations and water treatment plants were not only financed from public funds but also managed and operated by public agencies or ministries. Lack of funding and poor management has often resulted in the progressive deterioration of these assets and in poor quality services that do not reflect the needs of the public. Often, costs have been greater than expected because of corruption, poor planning or inefficiency.

Also, sometimes there are conflicts between government's role in regulating services and enforcing compliance with its own standards or regulations, and its role in providing the services itself. Management of these services has frequently been made difficult by inadequate budgets. PPP addresses these conflicts and the perennial lack of adequate funding to maintain assets properly. It separates the government's role as customer or regulator from the role of the service provider. PPP also allocates project risks between the government and the private sector in a way that minimizes their cost and creates strong incentives for efficiency in management and quality of service delivery.

However, it should be noted that PPP procurement is one of several options of procuring infrastructure. But consideration must be given as to whether a project is suited for a PPP structure, and whether there is strong political support for a PPP solution. But the principal reason for using PPP option is that where the project is suitable, they can deliver better value for money than the alternatives. Indeed, there is evidence that the more comprehensive and institutionalized the PPP framework, the greater the chance of success of the PPP projects in delivering value for money. Besides, another compelling reason for the PPPs option is that PPP schemes combine the best capabilities of public and private sectors for mutual benefits, and in the overall best interest of the economy. All assessments of PPPs option must be considered within the context of these overriding objectives.

4. Benefits of PPPs for Government and Citizens

Distinguished ladies and gentlemen, the benefits of a successful PPP to a country are huge. A successful PPP sets the tone for future PPPs, boost investors' confidence and the government international credibility. On the other hand, a failed PPP not only generates political embarrassment and negative publicity, it could also potentially damage or stall a government's private sector development strategy. Nevertheless, some of the key benefits of PPPs for the government and citizens include:

- **Improve service delivery:** PPPs provide an opportunity to improve service delivery by allowing both sectors to do what they do best. Government's core business is to set policy and serve the public. It is better positioned to do that when the private sector takes responsibility for non-core functions such as operating and maintaining infrastructure.

- **Improve cost-effectiveness:** By taking advantage of private sector innovation, experience and flexibility, PPPs can often deliver services more cost-effectively than traditional approaches. The resulting savings can then be used to fund other needed services.
- **Increased investment in public infrastructure:** Investments in hospitals, schools, highways and other provincial assets have traditionally been funded by the State and, in many cases, have added to levels of overall debt. PPPs can reduce government's capital costs, helping to bridge the gap between the need for infrastructure and the State's financial capacity.
- **Reduce Public Sector Risk:** Public sector risk is reduced by transferring to the private partner those risks that can be better managed by the private partner.
- **Improve budget certainty:** Transferring risk to the private sector can reduce the potential for government cost overruns from unforeseen circumstances during project development or service delivery. Services are provided at a predictable cost, as set out in contract agreements.
- **Make better use of assets:** Private sector partners are motivated to use facilities fully, and to make the most of commercial opportunities to maximize returns on their investments. This can result in higher levels of service, greater accessibility, and reduced occupancy costs for the public sector.

In addition, the PPPs methodology also encourages a "life cycle" approach to planning and budgeting, through the use of long-term contracts. For example, a company that agrees to operate and maintain an infrastructural facility for 30 years

will have to ensure that the asset remains in a certain condition and, therefore, must include maintenance costs in its budget for the life of the agreement. By contrast, public sector maintenance costs can sometimes be deferred in response to budget pressures, which can reduce the value of an asset over time.

However, in spite of the huge benefits of the PPP model across the global, its application in Nigeria as a procurement methodology, like in other jurisdictions, has not been without challenges. To this we will now turn.

5. Some Key Challenges of Infrastructure Concession and Regulations in Nigeria

In Nigeria, like many other countries, Public-Private Partnership (PPP) has been appreciated as an important way out for infrastructure development. Though there have been successes in institutional and regulatory framework, other critical issues like transaction expertise, PPP financing facilities are yet to be boosted in the country. There is also the need to have a strong incentive for the executing agencies that will bring more bankable PPP projects for the private sector. So far, the ICRC has taken custody of over 72 PPP contracts signed by the government with a total investment value of over ₦3.2 trillion, representing private capital investment in the provision of public infrastructure across sectors of the economy, and many projects are in the pipeline. However, many of the PPP projects that were awarded earlier before the establishment of ICRC, commonly referred to as “*legacy projects*” are not performing well as expected due to weaknesses in transaction process but efforts are on-going to address the issues. Other concession and regulatory challenges include:

a) Lack of Financial Capacity by the Government

Infrastructure as we are aware remain a catalyst for socio-economic growth and development, especially for Emerging Markets and Developing Economies (EMDE). Unfortunately, the magnitude of resources required to turn around infrastructure in African cannot be afforded by any single government. In Nigeria, infrastructure development has been largely funded from the fiscal budgets, which is highly volatile, inadequate and often receives a larger brunt of fiscal retrenchment in times of financial crises, in addition to its exposure to potential mismanagement and corrupt practices. The national fiscal budgets have therefore been the principal sources of financing infrastructure development in Nigeria; hence it has become a yearly ritual to wait for capital infusion through the fiscal budget to rehabilitate, repair or replace dilapidated assets, rather than maintain the infrastructure.

Distinguished Ladies and Gentlemen, it is a well-known fact that the Nigerian government has in the last decade spent huge sum of money through direct budgetary allocation, on basic infrastructure in such sectors as agriculture and water resources, transportation, education, health, power generation and distribution. Contrary to expectation, these expenditures, often determined by political and other considerations, has neither been matched by commensurate increase in the stock of capital goods, nor in the services that they provide.

There is therefore a gradual recognition that budgetary allocation may not be the best way to finance and execute infrastructure projects. Such considerations as cost efficiency, equity, allocation efficiency and fiscal prudence, have increasingly played a role in determining the financing methods that will meet the need of

modern, efficient infrastructure that delivers cost effective public services for accelerated and sustained economic growth.

You will agree with me that with the current state of declining financial resources this option is becoming less and less feasible and unreliable, thereby accelerating infrastructure deterioration. The IFC has therefore suggested that Public-Private Partnerships (PPPs) can make a significant difference in the quest for infrastructure growth in developing country, because of its potential to unlock much more than finances — but can also bring in expertise and efficiency, helping government ensure that resources are wisely allocated in addressing the most urgent challenges of development. Hence finances for infrastructure concession is critical for the successful execution of PPP transactions in Nigeria. This explains why public sector collaboration with the private sector in the funding of infrastructure in Nigeria cannot be wished away. The National Integrated Infrastructure Master Plan (NIIMP) document expects PPPs to play a significant role as one of the critical sources of financing to address critical infrastructural gaps in the country.

PPPs are not only a desirable vehicle for the development of Nigeria's infrastructure but the only cost-effective solution in closing the infrastructure gap in the country. The involvement of the private sector in the development and financing of public facilities and services in Nigeria has increased substantially over the last one decade. For instance, the Infrastructure Concession Regulatory Commission (ICRC) since its inception has taken custody of 72 signed PPP contracts in sectors such as Aviation, Agriculture, Sea Ports,

Inland Container Depots, Information Technology, Social Infrastructure (building complexes), Hydro Electric Power, Telecommunication Infrastructure, Healthcare, Urban District Infrastructure, Marine Security, Housing Development, and Iron Ore Mining. These contracts are at various level of implementation nationwide, whereas well over 91 projects are currently at development and procurement stages. The contracts at implementation stages are valued at over ₦3.2 trillion, representing private capital investment in the provision of public infrastructure.

Ladies and Gentlemen, PPP as an alternative procurement method has been successfully utilised by most developed countries of the world to solve their infrastructure problems. In Africa today, lesson abound in countries like the South Africa, Kenya, Zambia, Uganda, Ghana, etc, who have strategically incorporated this model into their national economic blue print.

b) Low of Capacity and Transaction Know-How in MDAs

First, getting the MDAs and the private sector partners to abide by the PPP Policy Guidelines has been a great challenge. In collaboration with the Offices of the Secretary to the Government of Federation, Head of the Civil Service of the Federation, Federal Ministry of Finance, and Ministry of Budget and National Planning, the Commission is championing the establishment of PPP Units and building the capacity of key infrastructure MDAs. Conceptually, these PPP Units will become and remain the reservoir of institutional knowledge for PPPs in the MDAs.

c) Insufficient Public Acceptance of PPP as a Critical Alternative to Infrastructure Provision

This is borne out of limited understanding of the numerous advantages of the PPP model as a way out of the present infrastructure dearth. Massive awareness is needed among the Nigerian public and policy makers on the viability of this alternative source of funding infrastructure in Nigeria. The Nigerian public is currently not aware of these benefits, in terms of efficiency that could be brought in by the private party, availability of the service or assets for public use, and value for money which would come to government. In addition, the government remain the rightful owner of such asset which will eventually return to it at the expiration of the contract term.

A major constraint in this regard is the perception of the public concerning public goods which are believed to have been provided by tax payers money as a statutory responsibility of the government. However, the government may not have the requisite finances to fund the project implementation which explains the partnership with the private investors who also must recover its investment with some margin of profit, and then return the asset back to government.

Despite the growing acceptance of public-private partnership as a legitimate means of providing municipal services, a great deal of mistrust and misunderstanding continues to exist in all three sectors of the partnership – in the public and private sectors, and among community members. While education and communication may go a long way to reduce resistance, in some cases there may be intractable obstacles to a PPP.

The ICRC have done greatly in the area of sensitization, but much is still needed to scale up the acceptance level by the public and public office holders, especially in terms of stakeholders' consultation and relationship management over the life of the project.

d. Political and Policy Uncertainty

As a Commission, we have done tremendous work to build up confidence within the community of investors, locally and internationally. In 2017, the ICRC partnered with the World Bank Group to launch the first ever PPP contract disclosure portal meant to disclose PPP transactions at all levels, as it progresses to assure investors of the government's stand on transparency in procurement and management of public assets procured through PPP. Political and policy uncertainty is a great challenge to infrastructure concession, because no investor will be willing to invest his hard-earned capital if the returns on investment do not provide sufficient compensation for the perceived level of risk inherent in a particular market.

One of the criteria usually considered by investors before investing in any infrastructure asset especially using the PPP model is the degree of uncertainty as to how the government will react as a counterpart. In an ideal situation, the confidence of prospective investors can be built up if a period of macroeconomic stability exists and this is properly combined with regulatory and structural reforms.

Notwithstanding, as a market with limited history of private investment in public infrastructure, what we have done in Nigeria as a Commission is to encourage our counterparts in government to assume some level of risks in order to demonstrate government's commitment to the project to build up the stock of successful infrastructure executed through PPP in order to attract more investment and project financiers into the economy

e. Other Related Challenges

Amidst our efforts, as PPP infrastructure regulator, in laying down the ground rules for practitioners in the PPP sphere, other challenges beyond the issue of finance have continued to constitute a clog on the wheel of Commission's progress. Some of the challenges with negative impact on infrastructure concession and development include:

- Lack of a reliable pipeline of well-developed projects
- Insufficient public sector capability to design and implement PPP projects
- Non-Availability of long-term financing with attractive interest rates for investment and for project development
- Nigeria's poor credit rating and negative perception of insecurity, corruption and weak governance frameworks
- Inconsistency and frequent changes to legal and regulatory framework
- Inadequate economic incentives in some sectors to encourage private sector investment
- Difficulties in contract specification and administration
- Lack of tendering and contracting capacity

- Inconsistently enforced policies and unpredictable regulatory regimes that exposes investments to high risk
- Difficulty in the enforcement of contract and protracted legal process with huge impact on investor appetite.

In addition, the PPP model in Nigeria is overtly constrained by bottlenecks inherent in the system which include arbitrary cancellation of PPP contracts by political office holders, lack of respect for terms and conditions of contract agreements, disrespect for court orders, policy summersault and the get-it-now syndrome which has affected the growth and development of PPPs in Nigeria.

6. Some Solutions to Infrastructure Concession Challenges

These include:

- Strong political will and transparency by engaging reliable and reputable sponsors, experienced concessionaires and Transaction Advisers.
- Bankable and acceptable Business Case with Financial Model to appeal to the interest of prospective investors.
- Establishment of long-term financing and refinancing mechanisms for viable projects
- Assurance of macroeconomic stability, policy consistency and positive perception
- Adequate fiscal incentives to encourage private sector investments in infrastructure, such as granting pioneer status, duty exemptions, etc.
- Clear legal and regulatory framework for private financing of infrastructure and unambiguous process for infrastructure development

- Independent, fully-equipped and well-functioning PPP Units to build capabilities and manage financing of PPPs
- Structured capacity building initiatives for public sector stakeholders and implementation teams within MDAs
- Preparation of properly researched and structured pipeline of projects by credible, experienced players in order to attract the needed finance.
- Reliable and independent judicial process that will provide enforcement and give investors' confidence in case of litigations

7. Concluding Remarks

Distinguished ladies and gentlemen, to solve some of the key challenges of severe infrastructure deficiencies that constrain the growth of our economy as well reap the benefits of PPPs, we must take some steps. First, the private sector must play a lead role as it does in other transition economies with demonstrable results. But the private sector must be prepared to engage in an open and truly competitive procurement process. We must also engage in an effective partnership in which risks are shared in a way that makes both commercial and economic sense and results in the best value for money outcome for all participants and for the economy.

Secondly, we must strengthen and deepen our domestic financial and capital market to play its investment role effectively and efficiently. In this regard, the leaders of our banking and finance sector must strive to be more innovative and think long term in developing the capacity to promote and support investment in

the infrastructure sector by providing credit instruments that will meet the financing needs of project proponents.

On its part, the public sector authorities must strengthen institutional and regulatory environment that provides open and transparent processes and procedures and a level playing field that promotes competition and ensures that investors are able to earn fair returns for the risks they take. Our judiciary and dispute resolution processes must also inspire confidence that contractual obligations will be discharged expeditiously and fairly.

Besides, we must all commit to address the challenge of corruption, which remains a critical factor that has consistently undermined our capacity to actualise our enormous potential and had impeded our country's economic progress. Therefore, making PPPs work in our country requires the buy-in and active support and cooperation of all parties including public authorities, and so we appeal to all stakeholders to help in achieving that desired result.

With the current level of infrastructure deficit in our economy, and the need to address the situation, it is hoped that the public and private sectors of our economy would seize the opportunities provided by evolving global partnerships to create enduring infrastructure delivery in Nigeria.

No doubt, the bane of our national development has been a dearth in infrastructures. This should change. Government is determined to make PPPs attractive by enabling investors to recover investments over a reasonable period of

time, by capacity building for public officers and by protecting user publics. Government is also committed to harnessing of resources in both the public and private sectors to secure optimal outcomes.

Also, PPP arrangement should be designed and adapted to the specific characteristics of the asset at stake, as well as to the peculiar abilities of all partners involved in the project. In order to guarantee value for money (VFM), the relative strengths and weaknesses of each PPP scheme should be considered. Depending on the sector of application, some models are better suited than others in delivering targeted outputs and in ensuring accurate risk management. Choosing the wrong model or inaccurately evaluating the risk management capacities of each party may have extremely costly consequences and a negative impact on public accounts.

Undoubtedly, no nation can truly be great without workable, qualitative and affordable infrastructure services. If Nigeria must live up to its bidding in the committee of nations, there must be true commitment towards infrastructure growth and development. Political office holders must exhibit political will towards supporting the current administration's drive at bridging the infrastructure gap in the country. Considering the huge domestic and foreign debt profile of the Nigerian government, and the amount needed to upgrade public infrastructure in the country, leveraging the option of PPPs is imperative.

Consequently, the surest and safest alternative is the effective and maximum utilization of Public Private Partnership which has been applied in many developed

countries to grow their infrastructure. In partnering with the private sector to grow infrastructure, government must strengthen the existing legal and institutional framework to support the process. The regulatory capacity of the ICRC must also be strengthened to enable it effectively deliver on its mandate. The ICRC Act, 2005 is being reviewed in line with current realities to empower the Commission to discharge its mandate effectively and efficiently.

The future is bright if stakeholders in both public and private sector can synergize efforts to reap the enormous benefits of PPPs in the interest of Nigerians and Nigeria.

Thank you very much for listening