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TRANSFORMING ROAD INFRASTRUCTURE IN NIGERIA – RE-VISITING THE PUBLIC PRIVATE PARTNERSHIP OPTION

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ABSTRACT

All over the world, the demand for critical infrastructures clearly outstripped the supply and most countries are continually tinkering with various measures to address the deficit. Infrastructural situation in Nigeria especially road network is pathetic. Decades of poor maintenance, underinvestment and outright abandonment by successive regimes have left the country with an outrageous infrastructure deficit. The abysmal infrastructure deficit in Nigeria is, unarguably the direct consequence of leadership failure - successive regimes in Nigeria have failed to take proactive action to march the boom in the country's population growth over the years with corresponding development in road infrastructure and allied services. Current estimates of Nigeria's road infrastructure deficits put the figure in excess of \$300b (over N40trillion). Against this background and given the growing shortfall in government revenues as a result of the recent downward swing in oil prices, various governments around the world are shifting part of the burden of providing infrastructures especially road and railway to the private sector in what is now widely known as Public-Private Partnership (PPP). This paper places analytical spotlight on the philosophy behind this growing trend and strongly recommend a re-invigorated and improved engagement with the private sector by government in PPP options in order to meet the challenge of developing and maintaining road transport infrastructure beyond the means available to government.

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INTRODUCTION

The significance of road infrastructure to an economy cannot be overemphasized. Indeed, the Draft National Transport Policy of Nigeria (FGN, 2010) aptly captured the importance of effective and efficient road infrastructure to include among other things:

- stimulates national development and enhances the quality of life for all;
- allows markets to operate by enabling the seamless movement of goods and people;
- provides vital links between spatially separated facilities and enables social contact and interaction;
- provides access to employment, health, education and services;
- alleviates regional inequality and fosters national integration;

- increases access to markets and links local, regional, national and international markets; and
- promotes economic development by increasing access to labour and physical resources thus facilitating the realization of a country's comparative advantages.

Road infrastructure plays a critical role in the entire transportation chain. It connects other modes of transportation and permeates all aspects of modern economic activities in the economy (Adesanya, 1998). Road transport infrastructure has enormous influence on economic growth and development, and social cohesion. Roads are ubiquitous and provide connectivity to numerous destinations and enable mobility across the country. It is estimated that road transportation accounts for about 90 percent of the national passenger and freight services and provides access to rural areas where majority of the economically active segments of the population lives (Fagbemi, 2006; MOT, 2009). Economic development literatures are replete with evidences of correlation between the quality of a country's road infrastructure and its growth potential (Islam *et al.*, 2006; Khalid, 2006; Odeleye, 2002).

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This derives from the ease of mobility of goods to markets and the ability of skilled labour to move to areas of demand. The extent to which a country's land mass is traversed by road network is an index of the degree of mobility of the people, goods and services within the country; and the quality of the road network measures the ease and cost of mobility (Hesse and Rodrigue, 2004). Over the years, successive governments in Nigeria have developed a national road policy with emphasis on road construction but without adequate maintenance framework. At present, the national road network is still grossly inadequate and the state of existing roads remains poor. The roads are deteriorating at an alarming rate and the cost of maintenance has become a major strain on government's finances. The federal government has therefore identified efficient road transport infrastructure as a necessary precondition for achieving its Vision 20:20:20 (MOT, 2002). In its vision to propel the Nigerian economy to rank among the top twenty economies in the world by the 2020, government recognizes the place of an efficient road transport infrastructure as well as its role in providing and managing the nation's roads.

To achieve this, government has sought a paradigm shift from the hitherto scenario where road infrastructure is seen as a pure public good to be provided solely by government. The federal government in its draft new national transport policy now seeks to engage the private sector where appropriate in order to make improvements and meet the needs and aspirations of better roads for the citizenry. In this paper, we shall place analytical spotlight on the rationale behind this policy move and what must be put in place to attract private investors to participate effectively in this vision. The rest of the paper proceeds as follows: Following this introduction, section 2 takes an overview of the Nigerian road network. In section 3, we will review road administration and management in Nigeria while in section 4 we discuss the Public-Private Partnership (PPP) initiative in road transport transformation in Nigeria. In section 5, we review the challenges and opportunities in road infrastructure concessions in Nigeria while in section 6 we recommend policy options for improving the impact possibilities of PPP model in road infrastructure development in Nigeria and thus conclude the paper.

Section 2 – Overview of Nigerian Road Network

The colonial era marked the origin of modern road transport system in Nigeria. Records of integrated national road network development in the country dates back to 1925 when the Road Board was established by the colonial administration (Adesanya, 1998). The Board was responsible for the formulation of blueprints for trunk road network, connecting major administrative and trade centres. According to Uzor (2011) the road network was geared essentially to meet the exportation of cash crops, such as groundnuts, cocoa, cotton and palm produce and to the importation of cheap, mass produced consumption goods. Consequently, most of the roads constructed during the colonial era lead South-North, from the coastal area of the south to the hinterland. East-West transportation roads were not considered necessary because the flow of goods was from the inland to the coast for shipping to Europe where they are processed. These early transport systems were planned in the most economic way possible, as

typified by the narrow roads which later proved inadequate to accommodate heavy vehicles and increased mobility on the roads. Moreover, the roads were mainly single lane with dangerous bends, no road signage and with poor drainage system. Following the re-orientation of national goals, road transport became one of the instruments of unification of the country and an important tool for social and economic development. The discovery and development of petroleum resources from the 1950s had significant impact on the nation's social and economic growth, putting increasing demands on the national road network (Uzor, 2011). Thus, economic growth and development necessitated the continuous expansion and improvement of roads across the country by successive administrations after the nation attained independence in 1960. The country presently has a total of estimated road length of almost 200,000 kilometers (MOT, 2012). At 2005 prices, this road network was estimated to have a replacement value of N5.567 trillion (MOT, 2012). Nigeria presently has the largest road network in West Africa and the second largest south of the Sahara. The country's strategic location and size results in four routes of the Trans-African Highway network using the national road system. These are the Trans-Sahara Highway to Algeria; the Trans-Sahelian Highway to Dakar; the Trans-West African Coastal Highway (which connects Nigeria westwards to Benin, Togo, Ghana and Cote d'Ivoire with feeder highway to landlocked Burkina Faso and Mali); and the Lagos-Mombasa Highway.

It should be noted that road construction in Nigeria received major boost in the 1970s when foreign exchange earnings from oil surged. From the oil boom era, a significant proportion of government capital expenditure was dedicated to road construction at both the national and states level. Road construction became a major thrust of government development policy and an index of assessing government performance (Fagbemi, 2006; Uzor, 2011). Consequently, the national road network grew from its total length of 6,500 km in 1960 to 10,000km in 1970. The national road network further grew to 29,000km in 1980 and is presently estimated to cover a distance of 200,000km, out of which 38,980km is paved and 161,020km is unpaved (MOT, 2012). The national road network comprises 34,123km Federal roads, 30,500km States roads, and 128,577km Local Government roads. A greater proportion of the nation's national road network (67 percent) is classified as local government roads. These include community and village roads that are not developed. State roads account for 16 percent, while federal roads represent 17 percent. Federal roads which carry the heaviest volume of traffic estimated at well over 70 percent are the main truck routes that link the nation's thirty six states the Federal Capital Territory (MOT, 2012).

Section 3 - Road Administration and Management in Nigeria

The Federal Ministry of Works is the apex government organ responsible for road administration and management in Nigeria. It metamorphosed from the colonial creation of Public Works Department (PWD). In 2003, it was split from the erstwhile Federal Ministry of Works and Housing. The Ministry currently has six departments namely: Department of Federal Highways Construction and Rehabilitation;

Department of Federal Highway Planning and Design; Department of Engineering Services; Department of Planning, Research and Statistics; Department of Administration; and Department of Finance and Accounts. The Ministry also has two Parastatals: Federal Roads Maintenance Agency (FERMA) and Office of the Surveyor-General of the Federation (OSGOF). At the state level, state ministry of works oversee road administration and management while the department of works handles the responsibility at the local government level (MOT, 2012).

Over the years, competing developmental needs and dwindling government revenue somewhat slowed the momentum of road construction witnessed during the oil boom era. Also, increased traffic volumes culminated in deterioration and failure of some portions of the national road networks, thus emphasis shifted to road maintenance. The financial and technical requirements for effective road maintenance, rehabilitation and reconstruction have become enormous such that the pace of maintenance can no longer match the deterioration. This derives from inadequate routine, periodic and emergency maintenance. Another factor that has been adduced for accelerated road failure in Nigeria is poor initial design and construction (Fatunde, 1998; Ikporupko and Filani, 2000). Road design and standards have not kept pace with increasing traffic volumes and vehicles weights. There is apparent case of poor coordination and enforcement of standards in road construction and maintenance due to lack of a coherent national road policy. In some areas, there are no clear road markings, safety barriers, and signage to adequately inform road users on the nature and state of the roads. These factors have reduced the useful life of the roads with attendant increase in the operating cost of vehicles and high accident and casualty rates (Uzor, 2011).

In a bid to urgently check the deterioration of the national road network, the federal government established the Federal Road Maintenance Agency (FERMA) in 2002 as a Parastatal of the Federal Ministry of Works. The Agency is the country's first ever institutional mechanism for monitoring and maintenance of all federal roads. It assumed responsibility for the planning and implementation of maintenance of federal roads across the network whilst major improvement schemes remained with the Federal Ministry of Works. FERMA's core mandate include: maintenance of federal trunk roads network; entering into road concession contracts for the purpose of executing relevant projects; and setting guidelines for the working of concessions contracts. The agency also makes policy recommendations to the federal government on matters relating to the maintenance of federal trunk roads, amongst others. Prior to the establishment of FERMA, other government intervention agencies were at one time or the other involved in road maintenance in the country. To mention but a few, the Directorate of Food, Roads, and Rural Infrastructure (DFRFRI) in the late 1980s constructed approximately 60,000km of new rural roads in the country. Although the agency did well in opening rural communities and villages and linking them with national road network, it did not achieve much in maintaining paved segments (Oni and Okanlawon, 2006). In the era of the Petroleum Trust Fund (PTF) in the early 1990s, part of the Fund's mandate was road maintenance. The Fund also could not adequately maintain roads in the country due to the multi-

faceted nature of its mandate as an all purpose intervention agency. The failure of these intervention agencies to address the decay in the national road network informed the establishment of the Federal Roads Maintenance Agency (FERMA), an agency specifically dedicated to federal road maintenance (MOT, 2012). At state levels, various state governments have replicated the agency to address the challenge of dilapidating roads in their various jurisdictions either in the form of direct labour or road maintenance agency. The Federal Roads Maintenance Agency (FERMA) has come under intense criticism in recent times due to its inability to maintain the fast deteriorating federal roads in the country (Oyedele, 2012).

The agency on its part has severally admitted that it has difficulties meeting the pace of road infrastructure decay due to a number of factors which include environmental conditions such as erosion. The menace of erosion and its impact on roads manifest as a result of poor road designs which did not make provisions for drainages. The agency also has funding constraints as it requires about N120 billion annually to effectively discharge its duties expeditiously. In 2009, FERMA received N6.5 billion; in 2010, the agency got N20 billion while in 2011, the agency got N45 billion (MOT, 2012). In a bid to meet the challenge of road maintenance in the country, the federal government is now proposing to subsume the functions of FERMA into a new Federal Highway Authority which would assume executive responsibility for the improvement, maintenance and operation of the high networks, whilst the Ministry of Works would retain the overall policy role. These changes, together with proposal for the creation of a Federal Road Fund, are intended to improve the condition of the nation's road infrastructure.

Section 4 – The Public-Private Partnership Initiative on Road Transport Transformation

4.1 What are Public Private Partnerships (P3s)?

There appears to be no consensus in the literature on the precise meaning of public-private partnership. It has been defined as a legally-binding contract between government and business for the provision of assets and the delivery of services that allocates responsibilities and business risks among the various partners (Alitheia, 2010). In a P3s arrangement, government remains actively involved throughout the project's life cycle. The private sector is responsible for the more commercial functions such as project design, construction, finance and operations. P3s involves a contract between a public-sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project (Harris, 2003). In some types of P3s, the cost of using the service is borne exclusively by the users of the service and not by the taxpayer. In other types (notably the private finance initiative), capital investment is made by the private sector on the strength of a contract with government to provide agreed services and the cost of providing the service is borne wholly or in part by the government (Scottish Parliament, 2001). Government contributions to a P3s may also be in kind (notably the transfer of existing assets). In projects that are aimed at creating public goods like in the infrastructure sector,

the government may provide a capital subsidy in the form of a one-time grant, so as to make it more attractive to the private investors. In some other cases, the government may support the project by providing revenue subsidies, including tax breaks or by providing guaranteed annual revenues for a fixed period (Scottish Parliament, 2001). Typically, a private-sector consortium forms a special company called a “special purpose vehicle” (SPV) to develop, build, maintain and operate the asset for the contracted period. In cases where the government has invested in the project, it is typically (but not always) allotted an equity share in the SPV (Grant, 2006). The consortium is usually made up of a building contractor, a maintenance company and bank lender(s). It is the SPV that signs the contract with the government and with subcontractors to build the facility and then maintain it. In the infrastructure sector, complex arrangements and contracts that guarantee and secure the cash flows and make P3s projects prime candidates for project financing. A typical P3s example would be a hospital building financed and constructed by a private developer and then leased to the hospital authority. The private developer then acts as landlord, providing housekeeping and other non-medical services while the hospital itself provides medical services.

Modern P3s is believed to have begun in Britain in 1992 when the Conservative government of John Major introduced the Private Finance Initiative (PFI) which became the first systematic programme aimed at encouraging public–private partnerships (Harris, 2003). This innovative programme focused on reducing the Public Sector Borrowing Requirement. The Labour government of Tony Blair, elected in 1997, continued with the PFI but sought to shift the emphasis to the achievement of “value for money,” mainly through an appropriate allocation of risk. Since then, P3s have been used to develop large electric power projects, transportation infrastructure networks including roads, railways, transit systems, seaports and airports. They have also been used in the water, wastewater and gas sectors, as well as for asset-based projects in health care, education, coastal facilities and defense. Examples of such projects abound in the United Kingdom, Australia, Ireland, the province of British Columbia, Canada, India, USA and countries of Latin America and Caribbean (Alitheia, 2010; Jones, 2002; Fulmer, 2009).

4.2 Public Private Partnerships (P3s) Models

There are various variants of P3s models in use globally. Some of these are:

Design-Build (DB) or “Turnkey” contract: The private sector designs and builds infrastructure to meet public sector performance specifications, often for a fixed price, so the risk of cost overruns is transferred to the private sector. (Many do not consider DB’s to be within the spectrum of P3s).

Service Provision (e.g., Specific customer services or operation & maintenance) contract: A private operator, under contract, operates a publicly-owned asset for a specified term. Ownership of the asset remains with the public entity.

Management contract: A private entity contracts to manage a Government owned entity and manages the marketing and provision of a service.

Lease and operate contract: A private operator contracts to lease and assume all management and operation of a government owned facility and associated services, and may invest further in developing the service and provide the service for a fixed term.

Design-Build-Finance-Operate (DBFO): The private sector designs, finances and constructs a new facility under a long-term lease, and operates the facility during the term of the lease. The private partner transfers the new facility to the public sector at the end of the lease term.

Build-Operate-Transfer (BOT): A private entity receives a franchise to finance, design, build and operate a facility (and to charge user fees) for a specified period, after which ownership is transferred back to the public sector. This has been used in telecommunications service contracts.

Buy-Build-Operate (BBO): Transfer of a public asset to a private or quasi-public entity usually under contract that the assets are to be upgraded and operated for a specified period of time. Public control is exercised through the contract at the time of transfer.

Build-Own-Operate (BOO): The private sector finances, builds, owns and operates a facility or service in perpetuity. The public constraints are stated in the original agreement and through on-going regulatory obligations.

Build-Own-Operate & Transfer (BOOT): The Private Sector builds, owns, operates a facility for a specified period as agreed in the contract and then transfers to the Public.

Operating License: A private operator receives a license or rights to build and operate a public service, usually for a specified term. This is similar to BBO arrangement and is often used in telecommunications and ICT projects.

Finance Only: A private entity, usually a financial services company, funds a project directly or uses various mechanisms such as a long-term lease or bond issue.

From the foregoing, it is obvious that public-private partnerships span a spectrum of models that progressively engage the expertise or capital of the private sector (Estache and Serebrisky, 2004). At one end, there is straight contracting out as an alternative to traditionally delivered public services. At the other end, there are arrangements that are publicly administered but within a framework that allows for private finance, design, building, operation and possibly temporary ownership of an asset.

4.3 Road Concessioning in Nigeria

In Nigeria, the 25 Year Strategic Vision for the Road Transport System provided for the concessioning of the some major roads in Nigeria (FGN, 2002). This type of PPP arrangement for road transport system seems very popular in Africa. In this type of contract, the operator (private enterprise) leases assets from the public authority (government) while the latter provides major investments (World Bank, 1994 and 2000). Many countries in Africa have

adopted this PPP arrangement for some of their major road networks. A concession, simply put, is a government grant for specific privileges. As defined in the ICRC Act 2005 (FGN, 2005), infrastructure concession means “a contractual arrangement whereby the project proponent or contractor undertakes the construction, including financing of any infrastructure facility and the operation and maintenance thereof and shall include the supply of any equipment and machinery for any infrastructure and the provision of any services”. Basically, infrastructure concession allows participation of the private sector in financing the construction, development, operation and maintenance of public infrastructure, development project or network for a stated period. The concession process allows private investors and operators to inject much needed capital into upgrading and maintaining infrastructure. In some types of infrastructure concessions, the cost of using the service is borne exclusively by the users of the service. In other types (notably the private finance initiative), capital investment is made by the private sector on the strength of a contract with government to provide agreed services and the cost of providing the service is borne wholly or in part by the government (Harris, 2003; Alitheia, 2010).

The first federal road to benefit from this type of P3s arrangement in Nigeria is the 110km dual carriageway Lagos-Ibadan Expressway which has been concessioned to B-Courtney Consortium for 25 years. The concession is a PPP project between Bi-Courtney and the Federal Ministry of Works under the Design-Build-Operate-Transfer (DBOT) scheme. Under the DBOT arrangement for this road, there will be no monetary costs to the government (Uzor, 2011). The concessionaire (B-Courtney) is expected to modernize the highway by providing services and facilities to improve safety and security of motorists such as vehicular parking areas for heavy duty vehicles; rest areas with eateries and conveniences; emergency communication equipments, clinics, and emergency ambulances. Other facilities to be provided by the consortium are electronic traffic control and enforcement measures; highway lighting between 7 pm and 6 am through the installation of a gas-fired plant; overhead pedestrian bridges at designated locations; modern toll points with electronic tolling system and obligatory/informative signs and markings.

The scope of work includes the full reconstruction of the existing carriageways from Lagos to Ibadan; expansion of the carriageway into a limited access eight lanes divided highway between Lagos and the Shagamu interchange and Ibadan; the provision of new drainage system, recessed service areas, lay-by emergency parking areas, footbridges in heavy pedestrian areas and weigh bridges (MOT, 2012). Upon completion, the project will enter the operations/maintenance stage and the road will be fully maintained to a pre-determined level of service (Service Level Agreements – SLAs). Part of the maintenance arrangement will be the appointment of highway maintenance managers and ensuring that their numbers are displayed at sections of the highway for the benefit of road users. The Lagos-Ibadan Expressway was constructed and inaugurated in August 1978 as a direct link between Lagos (the commercial hub of the country), Ibadan and other parts of the western states and beyond.

The road which was constructed 30 years ago at a cost of N170m also provides links leading to the eastern and northern parts of the country. Following the example set by the federal government, the Lagos State Government entered into a concession agreement with Lekki Concession Company Limited to deliver essential road infrastructure and services along the Lekki Peninsular. The Lekki Roll Road Concession is a Public-Private Partnership (PPP) scheme and uses the Build-Operate-Transfer (BOT) model of infrastructure delivery. The Concession is for a period of 30 years, following which the assets will be transferred to the Lagos State Government. The first phase of the project entails the upgrade, expansion, maintenance, and tolling of the existing approximately 50 km along Lekki-Epe Expressway, which is the primary road artery linking Victoria Island, Lagos, with the Lekki Peninsular. The company will also construct three toll plazas along the expressway and will be responsible for the operation and maintenance of the toll road during the concession period. The second phase entails the construction of approximately 20km of the Coast Road on the Lekki Peninsular (Uzor, 2011).

To fast-track road infrastructure development in the country, the federal government intends to bring other economically viable roads in the national road network under the PPP initiative. Thus the following highly traffic roads, with approximate distances are targeted for concessioning and other forms of PPP initiative based on economic indicators: Port-Harcourt-Enugu Dual Carriageway – 221km; Warri-Sapele-Benin Dual Carriageway – about 110km; Construction of New Lagos-Iseyin-Kaiama-Konkwaso-Kaoje-Kwambe-Argungu-Sokoto Road – 1,020km; Enugu-Onitsha Dual Carriageway – 125km, Onitsha-Owerri Dual Carriageway – 102 km; River Niger Bridge at Nupeko – 1km; River Benue Bridge at Burukku – 1km (MOT, 2012).

4.4 Legal Framework

The legal framework for the operation of infrastructure concessions in Nigeria is principally the Infrastructure Concession Regulatory Commission (Establishment, etc) Act 2005 (FGN, 2005) and the Public Procurement Act 2007 (FGN, 2007). These laws set out the requirements for competition and private sector participation in all public procurement as well as specify requisite approvals for all PPP contracts.

Infrastructure Concession Regulatory Commission (ICRC)

ICRC drives and regulates infrastructure concessions in Nigeria. The Commission was set up in 2008. The ICRC Board consists of one member from each of Nigeria’s six geopolitical zones. By the provisions of the ICRC Act, ex-officio members that also serve on the Board include the Secretary to the Government of the Federation, the Attorney General of the Federation, the Minister of Finance, the Governor of the Central Bank and the D-G of ICRC. Essentially, the ICRC is empowered to:

- Provide general policy guidelines, rules and regulations for the operation of P3 projects in Nigeria.

- Take custody of every concession agreement entered into by the Federal Government and any of its agencies
- Ensure efficient execution of concession contracts
- Ensure strict compliance both with the Act and with the terms of the concession contract.

Scope of Concessions

Under the ICRC Act 2005 (FGN, 2005), the scope of opportunities for investments in infrastructure in Nigeria exists in virtually every sector of the economy:

- power plants
- highways
- seaports
- airports
- canals
- dams
- hydroelectric power projects
- water supply
- irrigation
- telecommunications
- railways
- land reclamation
- environmental remediation and clean-up projects
- inter-state transport systems
- industrial estates or township development
- housing
- government buildings
- tourism development
- trade fair complexes
- warehouses
- solid waste management
- satellite and ground receiving stations
- ICT networks and database infrastructure
- Education facilities
- Health facilities
- sewerage
- Drainage
- Dredging
- and other infrastructure and development projects as may be approved, from time to time, by the Federal Executive Council

4.5 Contract Agreement, Contract Management and Dispute Resolution in Public-Private Partnership

Several parties are involved in the implementation of a PPP project. They include government, project sponsor(s), banks and other financial institutions, experts, suppliers, off-taker(s) and third parties (Kumar, 2002). As already stated, a special project company called SPV may also be established for the purposes of project implementation and its operation. The details of implementation and payment arrangements are negotiated between the parties involved and are documented in a number of written agreements signed by them. If an SPV is established, it is at the centre of most of such agreements. In other words, the SPV negotiates the contract agreements with most of the parties involved in the process. According to ICRC (FGN, 2005) if the establishment of an SPV is not required, the concessionaire (or the private project company which sponsors the project) is at the centre of such agreements and

negotiates the contract agreements with the other parties including the government involved in the process. Among the agreements executed between an SPV (or the concessionaire/private project company) and other parties, the two most important are the contract agreement with the government and the agreement with the financiers. In fact, the contract agreement with the government forms the basis for subsequent agreements with other parties, for example, an off-take agreement in case of a toll road.

Contract Agreements: Contract agreements between the contracting authority in government and the concessionaire may be contained in a single document or may consist of more than one separate document. It is difficult to generalize all possible contents of such agreements as they vary due to difference in legal and regulatory provisions from one country to another, type of PPP model and the nature of involvement of the public sector, implementation arrangements (including financial matters), operational and various sector specific resource High-level Expert Group Meeting on Public-Private Partnerships, utilization, technological and other matters. According to Global Legal Group (2007) there are, however, certain global key elements that are expected to be covered in all PPP contract agreements. The preparation of contract documents can be a major administrative task in PPP development and may also require a considerable amount of time. The availability of standardized contract documents or model contract agreements with the provisions of model clauses can be of great help in this respect.

It helps considerably in streamlining the administrative process by reducing the time in preparing such documents and getting them cleared from the concerned government agencies. Model concession/contract agreements or MCAs also help in this regard. The agreements in a typical PPP arrangement may include the following: SPV (Project company) Output Input supply agreement, Labour agreement, Other Supply/Procurement Agreement, Third party Agreement, Insurance Agreement, Escrow Agent Agreement, Operation and Maintenance Agreement, Engineering Procurement Construction (EPC) Concession Agreement, Project Development Agreement, License and Permit Obligations, Shareholders Agreement, and so on. Further, generally acceptable terms of a PPP agreement must include a preamble, the interpretation and Definition clauses for purposes of identification of the parties, their responsibilities and clarity of the transaction (GLG, 2007).

Contract Management: The contract management is an important activity in PPP programme/project administration. A management process needs to be in place from the onset to ensure timely completion and operation of a project. The contract management process not only helps to fix responsibilities, but also allows timely response to any deviation in project implementation or operation from the provisions in the contract agreements and thus helps to avoid disputes between the parties at later stages. The contract management is required by the implementing agency, regulator and the government. The main tasks include:

- i. Formalization of management responsibilities by organization and at different levels

- ii. Monitoring of project delivery (construction phase) by implementing agency
- iii. Management of variations during project implementation (time schedule, change of design and specification, etc)
- iv. Monitoring of operational aspects and service outputs after project implementation (implementing agency and regulator)
- v. Maintaining the integrity of the contract (implementing agency)
- vi. Fiscal obligations of the government (concerned ministry of the government)
- vii. Financial matters related to debt servicing (concerned bank or the government)

Separate monitoring frameworks need to be developed for the construction and operational phases. A mechanism also needs to be in place to gather, collate and analyze the required information for these frameworks on a regular basis, and to feed that information to the relevant authorities according to their requirements. The information requirement for different agencies is different. As such, the implementing agency, regulator and the government may also establish separate monitoring frameworks to serve their own specific needs. However, the monitoring frameworks need to be based on performance indicators mentioned in the contract/concession agreement and other requirements of the administrative procedures related to PPPs.

Dispute resolution

The legal basis for the settlement of disputes is an important consideration in implementation of PPP projects (Global Legal Group, 2007). Private parties (concessionaire, financiers and contractors) feel encouraged to participate in PPP projects when they have the confidence that any disputes between the contracting authority and other governmental agencies and the concessionaire, or between the concessionaire and other parties (for example, the users or customers of the facility), or between the private parties themselves can be resolved fairly and efficiently. Disputes may arise in all phases of a PPP project namely, construction, operation, and final handover to the government. The agreed methods of dispute resolution between the parties are generally mentioned in the contract agreement as allowed under the legal framework of dispute resolution in the country. The legal framework for dispute resolution may be embodied in a number of legal instruments and relevant rules and procedures of the country. The legal instruments may include the private contract law, company law, tax law, competition law, consumer protection law, insolvency law, infrastructure sector laws, property law, foreign investment law, intellectual property law, environmental law, public procurement law or rules, acquisition or appropriation law, and various other laws. The commonly used methods for dispute resolution according to Global Legal Group (2007) include:

- (i) Conciliation and mediation
- (ii) Non-binding expert appraisal
- (iii) Review of technical disputes by independent experts
- (iv) Arbitration
- (v) Legal/Court proceedings

It is important that the settlement mechanisms are in line with the international practices, particularly when large-scale investments from a foreign private sector, is expected (Grant, 1996). Generally, the contract agreement(s) specifies what methods of dispute resolution would be followed to settle any disputes arising between the parties and the rules and procedures to be followed for that. The United Nations Commission on International Trade Law (UNCITRAL) quoting from Global Legal Group (2007) has prepared a Legislative Guide on Privately Financed Infrastructure Projects. The Guide provides guidance on clauses related to dispute resolution that may be considered for inclusion in the contract document.

Benefits of PPP Option in Road Transport Infrastructure in Nigeria

The global economic and financial crisis that started in 2007/08 has brought about renewed interest in PPP in both the developed and developing countries. Many countries including Nigeria are facing constraints in their public finances and fiscal space. The task of delivering critical infrastructure can no longer be left for the government. Therefore, many countries are now increasingly turning to the private sector as an alternative and additional source of funding to meet the funding gap required in infrastructure development and delivery especially roads. For Nigeria, there are a number of benefits accruable to the road transport sector in the PPP option. These include:

- (i) 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 while the private sector takes responsibility for non-core functions such as operating and maintaining the roads.
- (ii) Improve cost-effectiveness. By taking advantage of private sector innovation, experience and flexibility, P3s can often deliver services more cost-effectively than traditional approaches. The resulting savings can then be used to fund other needed services and infrastructures. The huge amounts invested in road transport development over the years by government without commensurate results show that private sector participation could be the elixir the country needs in this direction.
- (iii) Increase investment in road infrastructure. Investments in Nigerian roads and other public assets have traditionally been funded by the government and, in many cases have added to levels of overall public debt. P3s can reduce government's capital costs, helping to bridge the gap between the need for infrastructure and the government financial capacity.
- (iv) Reduce public sector risk associated with road sector development and maintenance by transferring to the private partners those risks that can be better managed by the private partners. For example, a company that specializes in operating buildings may be better positioned than the government to manage risks associated with the changing demands of commercial real estate or for roads better maintenance and collection of tolls on the roads.

- (v) Deliver capital projects faster, making use of the private partner's increased flexibility and access to better financial and technical resources.
- (vi) 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.
- (vii) 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.
- (viii) The P3 approach 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 a road for 25 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. Maintenance costs can sometimes be deferred in response to budget pressures, which can reduce the value of an asset over time.
- (ix) P3s give the private sector access to secure, long-term investment opportunities in road sector development. Private partners can generate business with the relative certainty and security of a government contract. Payment is provided through a contracted fee for service or through the collection of user fees – and the revenue stream may be secure for as long as 25 years or more.
- (x) Private sector partners can profit from P3s by achieving efficiencies, based on their managerial, technical, financial and innovation capabilities. They can also expand their P3 capacity and expertise – or their expertise in a particular sector – which can then be leveraged to create additional business opportunities. For example, a company can market its experience in other jurisdictions, once it has established a track record of working successfully with the public sector.

Section 5 – Challenges and Opportunities in Road Infrastructure Concession in Nigeria

Opportunities abound in public-private partnership in road infrastructure development in Nigeria (Yahaya, 2008). However, available statistics seem to suggest that the full impact possibility of PPP arrangement in road transport sector development is yet to be realized. It is therefore, logical to conclude that road infrastructure concession in Nigeria is fraught with challenges. Some of these are systemic being products of the socio-political environment. Others arise from lapses in the legal framework and operational environment (Oyedele, 2012). Some of these challenges include:

Corruption

Corruption is a major problem in Nigeria. As a respected elder statesman once lamented, it is not just that officials are corrupt but that corruption has almost become official (Godwin,

2008). However, much has been made of the issue of corruption. Although corruption is not exclusive to Nigeria, daily headlines of monumental corruptions involving top government officials in Nigeria have given the country a very bad image among the comity of nations. However two agencies (EFCC and ICPC) are currently combating corruption in Nigeria full time.

Bureaucratic Inefficiency

Another challenge inherent in Nigeria's investment environment is bureaucratic bottlenecks. Contrary to the media claims of Corporate Affairs Commission (CAC) and the Nigerian Investment Promotion Council (NIPC), processing of business documentation in Nigeria still progresses at snail speed. Conducting a business name availability search, for instance, which is expected to take a few minutes still takes days and weeks. Similarly, anyone trying to obtain basic information (such as say a tourist guide or an investment guide) from a ministry or agency that ought to have such material in stock may find himself or herself being directed back and forth from one ministry or agency to the other in an endless ding dong mostly because some people are unable to know what they ought to do or what they should do.

Multiple Taxation

A curious tax regime still operates in Nigeria due largely to internal revenue generation competition, and the multiplicity of Ministries, Departments and Agencies (MNAs) often resulting in multiple taxes which take a heavy toll on business and investment.

Political Instability

Political instability was more prevalent in the period before 1999. This raises the risk of administrative expropriation by successive governments. It also often results in fear of the ability of government to honor its contractual obligations or counterpart funding obligations. This discourages private investors especially for capital-intensive projects like road infrastructure development.

Economic Instability

Economic instability which is the cumulative effect of political instability, inflation and/or policy inconsistencies for which Nigeria is known also raises the red flag in the minds of serious investors and constitutes a bad advertisement for prospective investment in a capital intensive area like road infrastructure development.

Insecurity

Insecurity remains a major challenge. Nigeria is a huge country with a turbulent political history. Although the country has enjoyed relative stability since 1999, religious intolerance, intense competition for political power, Niger Delta militancy, kidnapping for ransom, road safety issues and, more recently, terrorist-style bombings by Islamic insurgents (Boko Haram) have led to substantial unease among the citizens and consternation among prospective investors. However, contrary to popular opinion, Nigeria is certainly no more dangerous than most African countries and substantially safer than many.

Negative Perceptions and Stereotyping

Nigeria and Nigerians are often victims of negative perceptions and stereotyping by foreigners. Every country has within its population the good, the bad and the ugly. Unfortunately, bad eggs in Nigerian communities at home and abroad create an image problem for the nation which is foisted on the silent majority of law abiding citizens who, as a consequence, are exposed to harassment and hostility. Nigerians are also guilty of self condemnation. Many Nigerians easily say negative things about the country in self-righteous indignation. In many online forums, Nigerians write revolting things about Nigeria without caring about who reads it. This trend is unknown among the citizens of any other nation who are circumspect about what they write or say about their country no matter the circumstance.

Lack of Access to Financing

Nigerian banks are in the main not investor friendly. Interest rates are still comparatively high in Nigeria and even to access loans with the high rates involves excruciating processes and hard to meet conditions.

Lack of Investment Awareness and information

There is lack of international awareness of investment opportunities in Nigeria. The ICRC Act 2005 only allows the Commission to publish the list of projects eligible for infrastructure concession contracts "in the Federal Gazette and three national newspapers having wide circulation in Nigeria and such other means of circulation". Invariably, the international media on which most prospective foreign concessionaires depend for information are ignored.

Crime

Nigeria has a record of violent criminal activity and poor crime detection for which it is classified as unsafe by foreigners. However, the crime rate in Nigeria relative to the population is not higher than the global average. The crime rate in Nigeria may in fact not be as high as the crime rate in South Africa but Nigeria receives more negative publicity. The vast majority of visitors to Nigeria have a safe and crime free experience.

Budgetary Inconsistencies

Federal Budgets often do not reflect the most critical points of need. Of the N4.6 trillion appropriated for 2014, 56% would be expended running the government, 23.7% on infrastructure and development projects under the capital programme, while 9% and 11% respectively was allotted to debt service and statutory transfers respectively.

Section 6 - Policy Options and Conclusions

Given the weak investment and regulatory climate in the country, it will not be easy to attract the required private investment in the road transport sector. Moreover, the nature and size of the privatized transport operations and infrastructure in the country is not very encouraging for

private sector investment in a highly capital-intensive nature of the road transport system. However, in view of the enormous benefits that will accrue to the country from a revitalized and well maintained road transport system, there is need for the government to take urgent actions to ensure that all the planned concessions in the road transport development roadmap are implemented. Of course, this is easier said than done. This may require various forms of incentives – financial, economic, commercial and regulatory to attract private investors to the sector. Specifically,

- i. The government should develop a template that defines the rules of engagement for public-private partnership in the road transport system following international best practices.
- ii. The government should develop a regulatory framework for the sector. In this case, there is need to enact the Road Transport Bill that has been sent to the 7th National Assembly. Without an enabling regulatory framework, it will be difficult for interested private investors to come on board.
- iii. Government should muster the will to see through all her planned and proposed course of actions for revitalizing and modernizing the road transport sector. There are several plans on ground but the will to implement them are usually lacking. Good economic policies and plans like revitalizing and maintaining the road transport system should not be truncated on the altar of politics.
- iv. Government should ensure stable macroeconomic environment. Business cannot thrive in an atmosphere of instability, social upheaval, threat to lives and property and disregard to rule of law. Investors cannot invest in a country where they are not sure of the security of their investment. In this direction, government should take urgent action to stamp out the Boko Haram insurgents who have been terrorizing innocent citizens and scaring away potential investors to the country.
- v. Government should also provide other critical infrastructures like energy that support business including revitalizing the railway transport system to complement road transportation.

Conclusion

The adverse consequences the country is facing today as a result of past neglect of the road transport infrastructure - in terms of the high cost of road transport services, the carnage on our roads and the unprecedented and rapid deterioration of our roads is a pointer to the grim reality that there can be no better substitute to the public-private partnership in development road transport infrastructure in Nigeria. It is noteworthy that government has recognized the role of public-private partnership in developing and maintaining road infrastructure as enunciated in the 25 Year Strategic Plan for Transport Development in Nigeria. It is time to walk the talk by ensuring that all impediments to private sector investment in the road transport sector are removed. Only a credible public-private partnership can unlock the enormous potentials in the road transport system in Nigeria and the sooner this is done, the better for the road infrastructure and indeed the better for the economy of the nation.

REFERENCES

- Adesanya, A. 1998. Transport Development, in *Nigeria in 2010*. Ibadan: Nigeria Institute of Social and Economic Research (NISER), 181-193.
- Alitheia, C. 2010. Public Private Partnerships (PPPs) – The Effective Mechanism for Delivering Infrastructure, available at: www.thealitheia.com/newsletters/Alitheia%20Capital%20REInsight%20-%20Nov%202010.pdf (accessed 5th January, 2015).
- Alokan, O. 1995. The road freight industry in Nigeria: new challenges in the era of structural adjustment, *Transport Review* 15(1): 27-41.
- Akintoye, A., Taylor, C. & Fitzgerald, E. 1998. Risk analysis and management of Private Finance Initiative projects, *Engineering, Construction and Architectural Management*, 5(1), pp. 9–21.
- Estache, A. and T. Serebrisky, 2004. “Where Do We Stand on Transport Infrastructure Deregulation and Public- Private Partnership?” *World Bank Policy Research Working Paper* 3356
- Fagbemi, T. 2006. Intermodalism as a veritable strategy for integrated transportation system in Nigeria, presented at the 7th National Council on Transport, Nigeria, Kano. p. 12-18
- Falade, F. 1999. Road-Rail-Ferry-Air Coordination, presented at a workshop *Urban Transportation and Traffic Management*, at the University of Lagos. p. 25-28
- Fatunde, O. 1998. “*Spatial Analysis of Multimodal Movement of Port-Oriented Freight within Nigeria*”. An unpublished Ph.D Thesis, Department of Geography, University of Ibadan, p. 63-66
- Federal Ministry of Works and Housing, 1999. *Survey of Road Conditions in Nigeria*, Federal Ministry of Works and Housing, Abuja, 13-47
- Federal Government of Nigeria, 2002. 25-Year Strategic Vision for Nigerian Transport System (Final Report), Report Prepared for the Federal Ministry of Transport, Abuja.
- Federal Government of Nigeria, 2005. Infrastructure Concession Regulatory Commission (Establishment, etc) Act 2005, Abuja, Government Press
- Federal Government of Nigeria, 2010. Draft National Transport Policy of Nigeria, Abuja, Government Press.
- Federal Government of Nigeria, 2007. Public Procurement Act, Abuja, Government Press
- Fulmer, Jeffrey, 2009. What in the world is infrastructure?. *PEI Infrastructure Investor* (July/August): 30–32.
- Global Legal Group, 2007. The International Comparative Legal Guide to PFI/PPP Projects: A Practical Insight to Cross-Border PFI/PPP Projects Work, available at: www.iclg.co.uk/khadmin/Publications/pdf/1027.pdf (accessed 2nd November 2014).
- Godwin, A. 2008. Infrastructure Development, Key to Economic Growth. Available at <http://www.thenigeriabusiness.com/eco205.html>. Accessed on August 22, 2014.
- Grant, T. 1996. “Keys to successful public-private partnerships”, *Canadian Business Review*, Vol. 23 No. 3, pp. 27-8.
- Harris, S. 2003. “Public private partnerships: delivering better infrastructure services”, A Working Paper Presented at the Workshop Organized by Inter-American Development Bank in Washington, DC, available at: www.pppcentrum.cz/res/data/001/000167.pdf (accessed 22 November 2014).
- Hesse, M.; Rodrigue, J. 2004. The transport geography of logistics and freight distribution, *Journal of Transport Geography* 12(3):171-184.
- Ikporupko, C.; Filani, M. 2000. Transport Coordination in Nigeria: trends and Issues, *The Nigerian Geographical Journal New series* 3(4):29-42.
- Islam, D.; Dinwoodie, J.; Roe, M. 2006. Promoting development through multimodal freight transport in Bangladesh, *Transport Review* 26(5): 571-591.
- Jones, D. 2002. “Policy development in Australia for public private partnerships – what more is there to do?”, paper presented at a Seminar on Providing Value for Money Through Public Private Partnerships: The Lessons Learnt So Far from Economic and Social Infrastructure Projects, 26 June, available at: www.claytonutz.com/downloads/PPP%20paper%2026%20June%202002.pdf (accessed 22 November 2014).
- Khalid, N. 2006. Port development in a multimodal environment: the Malaysian experience, presented at the Port Development & Investments World Summit, Shanghai, 27-28 July, 2006. 15 p.
- Kumar, S. 2002. Intermodal transportation: Needs strategies and competitive ramifications. Available from internet: <http://www.bell.mma.ed/skumar/intermodal>.
- Ministry of Transport, 2012. *Master plan for an Integrated Transportation Infrastructure*. Federal Ministry of Transport. Abuja, 133-137.
- Odeleye, J. 2002. Public-private participation to rescue railway development in Nigeria, *Japan Railway and Transport review* 23(1): 42-49.
- Oni, S. 2000. Encouraging a multimodal Transport System in Nigeria, presented at a seminar titled *Towards a Competitive and Sustainable shipper-friendly shipping Environment*. P 15-22.
- Oni, S.; Okanlawon, K. 2006. Nigeria’s transport infrastructural development: an integral part of the national economic empowerment and development strategy (NEEDS), *Journal of Social and Policy Issues* 3(2): 7-13.
- Oyedele, O. A. 2012. “The Challenges of Infrastructure Development in Democratic Governance” Being Paper presented at the FIG Working Week 2012 - Knowing to manage the territory, protect the environment, evaluate the cultural heritage - Rome, Italy, 6-10 May 2012,
- Oyeweso, S. 2011. Provision of Infrastructure Foister Development. Being Paper delivered at the 1st Year Remembrance of Engr. Bola Lashengbe at Leisure Spring Hotel Osogbo on October 13, 2011. Available at <http://www.osundefender.org/?p=21066>. Accessed on August 22, 2014.
- Yahaya, A.D. 2008. “New mission and role of the state (public sector) in relation to the private sector and civil society”, Pan African Conference for Chairmen of National Commissions for Administrative Reforms, Tangier (Morocco) 25-27 February, pp. 1-22.
- Scottish Parliament, 2001. Public–Private Partnerships and the Private Finance Initiative: A Review of *Recent Literature*. Edinburgh: Scottish Parliament Information Centre.
- Uzor, E. S. 2011. “Transforming Road Infrastructure in Nigeria”, *Zenith Economic Quarterly*, Vol. 7(6), pp 23-30.
- World Bank, 1994. “Infrastructure for Development” *World Bank Report*, World Bank, Washington, D.C
- World Bank, 2000. “Sustainable Transport: Priorities for Policy Reform” *World Bank Report*, World Bank, Washington, D.C.