

***Investment Advisory Series***  
***Series B, number 9***

***Best Practices in Investment  
for Development***

How to utilize FDI to improve transport infrastructure – ports:  
Lessons from Nigeria



United Nations

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**BEST PRACTICES IN  
INVESTMENT FOR  
DEVELOPMENT**

**CASE STUDIES IN FDI**

**How to utilize FDI to improve  
transport infrastructure - ports:**

**Lessons from Nigeria**



**UNITED NATIONS  
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## PREFACE

The *Investment Advisory Series* provides practical advice and case studies of best policy practice for attracting and benefiting from foreign direct investment (FDI), in line with national development strategies. The series draws on the experiences gained in, and lessons learned through, UNCTAD's capacity-building and institution-building work in developing countries and countries with economies in transition.

Series A deals with issues related to investment promotion and facilitation and to the work of investment promotion agencies (IPAs) and other institutions that promote FDI and provide information and services to investors. The publications are intended to be pragmatic, with a how-to focus, and they include toolkits and handbooks. The prime target audience for series A is practitioners in the field of investment promotion and facilitation, mainly in IPAs.

Series B focuses on case studies of best practices in policy and strategic matters related to FDI and development arising from existing and emerging challenges. The primary target audience for series B is policymakers in the field of investment. Other target audiences include civil society, the private sector and international organizations. Series B was launched in response to a call at the 2007 Heiligendamm G-8 Summit for UNCTAD and other international organizations to undertake case studies in making FDI work for development. It analyses practices adopted in selected countries in which investment has contributed to development, with the aim of disseminating best practice experiences to developing countries and countries with economies in transition. The analysis forms the basis of a new technical assistance work programme aimed at helping countries to adopt and adapt best practices in the area of investment policies.

For Series B, UNCTAD's approach is to undertake case studies of a pair of developed and developing or transitional economies that exhibit elements of best practices in a selected issue. Country selection follows a standard methodology, based primarily on the significant presence of FDI and resulting positive outcomes.

The *Investment Advisory Series* is prepared by a group of UNCTAD staff and consultants in the Investment Policies Branch, under the guidance of James Zhan. This study of the Series B was prepared by Thanos Pallis with inputs and assistance from Aimilia Papachristou. Valuable guidance and local insights were provided by Stanley Yitnoe. The report was finalized by Cam Vidler and Silvia Constain. Contributions and comments were received from Chantal Dupasquier, Jan Hoffmann, Vincent Valentine, and Joerg Weber. The report has also benefited from views of current and former Government officials, the domestic and foreign private sector and academics. The programme receives financial support from the Government of Germany.

Geneva, October 2011

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## **ABBREVIATIONS**

BPE	Bureau of Public Enterprises
FDI	Foreign direct investment
ITOs	International terminal operators
MOU	Memorandum of Understanding
NCP	National Council on Privatization
NIPC	Nigerian Investment Promotion Commission
NMASA	Nigerian Maritime Administration and Safety Agency
NPA	Nigerian Port Authority
PA	port authority
PPIAF	World Bank Public-Private Investment Advisory Facility
TEU	Twenty-foot equivalent unit
RFP	Request for Proposals
TNC	Transnational corporations
TSRC	Transport Sector Reform Committee
WBPRTK	World Bank Port Reform Tool Kit

## Nigeria



### KEY FACTS TABLE

Nigeria			
	1981-1990	1991-2000	2001-2010
<b>Population (million)*</b>	8.7	11.2	154.1
<b>Annual GDP growth (%)*</b>	-1.7	2.3	8.4
<b>GDP per capita (\$)*</b>	685.1	305.8	87107
<b>GDP by sector (%)</b>			
Services	20	22	20
Industry	51	52	10
Agriculture	29	26	70
<b>FDI inflows (annual average) (\$ million)</b>	608.1	1569.3	4657.6
<b>FDI outflows (annual average) (\$ million)</b>	120.9	292.5	542.9
<b>FDI inflows (% of GDP)</b>	0.01	0.05	0.04
<b>FDI inflows (% gross fixed capital formation)</b>	0.05	0.48	0.44
<b>Exports of goods and services (% GDP)</b>	0.19	0.41	0.38
<b>Imports of goods and services (% GDP)</b>	0.19	0.33	0.29

Source: UNCTAD, FDI/TNC database and GlobStat database.

Note: Simple annual average.0

\* Data are for 1990, 2000 and 2010 only



## I. INTRODUCTION

### A. Importance of port infrastructure

The international trading system relies on the fast, low-cost movement of goods through global value chains. Maritime transportation systems are the most cost-effective way to ship freight over long-distances. Yet maritime transportation relies on effective and efficient ports to load and unload cargo. Combined with other transportation infrastructure, access to high-quality port infrastructure helps determine a country's integration with international trade flows. Moreover, ports can host a range of value-added services and thus provide significant direct economic benefits to host countries. Despite their importance, ports in many developing countries are characterized by underinvestment, low productivity, inefficient use of resources, high user prices, long delays, and ineffective services. In response to these problems, a rising number of developing countries have reformed governance models and introduced private investment and management in formerly State-dominated ports.<sup>1</sup>

Foreign direct investment (FDI) in port infrastructure is an attractive policy option for many developing countries, although it is not without its challenges. The most prominent form of FDI in ports has been to concession bulk cargo and container terminals to transnational corporations (TNCs) otherwise known as international terminal operators (ITOs), who take responsibility for investment and operation over a defined period of time. Compared to public entities and local investors, ITOs have significant economies of scale, access cheaper financing, possess cutting-edge technology, and employ advanced management and operational practices. Yet, the policy challenges associated with introducing private investment, including FDI, should not be underestimated. These challenges include, among others, establishing the necessary legal and institutional framework, restructuring port entities, managing the bidding process, negotiating with ITOs, and providing fair and effective regulation throughout the life of the project.

Nigeria has been selected as a case study of a developing country that has exhibited best policy practices in attracting and benefiting from FDI in port terminals. The country's broad-based port reforms over the past decade resulted in 25 port terminal concessions to private operators. The most significant of these concessions, including the largest container terminal in the country, were allocated to ITOs. Private and foreign participation in the industry has been associated with significant improvements in port performance. This report reviews the reforms and concession process to identify lessons for other developing countries.

### **1. Introducing FDI in port terminals: opportunities and challenges**

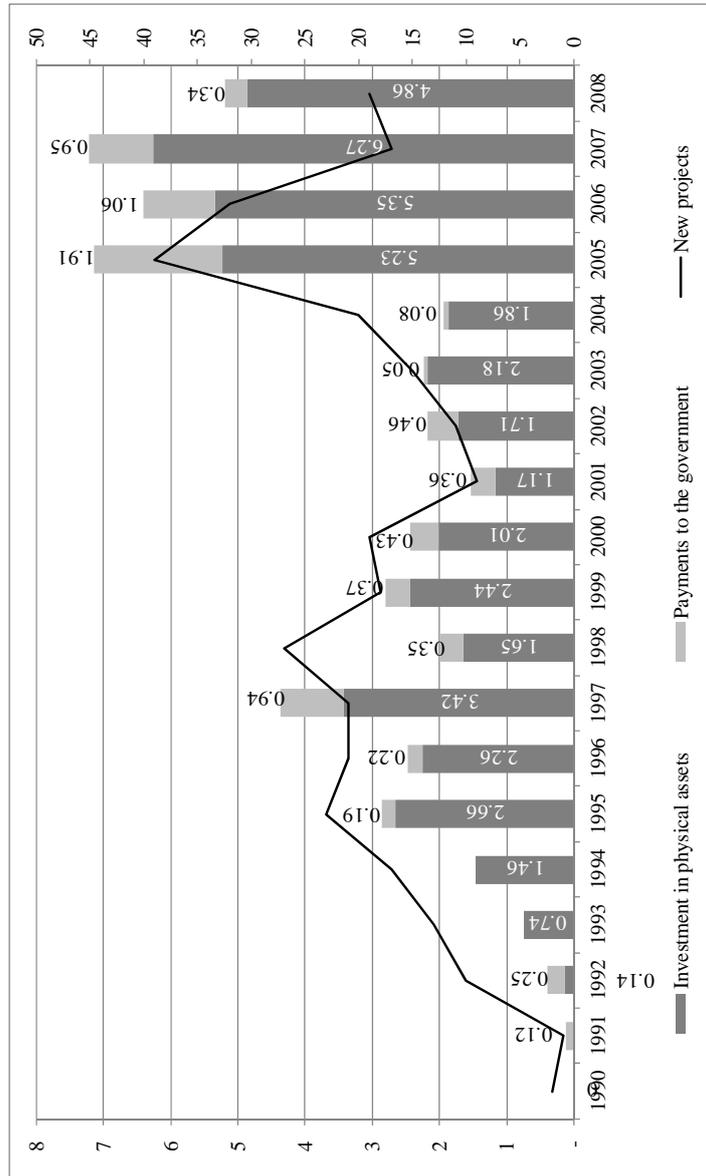
Maritime ports are nodes within global shipping networks that host a number of core services. Services to users include ship reception; loading, unloading, and transshipment (from one ship to another) of bulk and containerized cargo; as well as warehousing and delivery of goods via inland transport modes. These services are supported by upstream port infrastructure, including for example, docks, port land, navigation aids, breakwaters, and dredging to maintain waterways. In the case of most major ports, a public port authority (PA) is responsible for overall port administration, while specific activities and infrastructure may be divided between public and private entities.

Over the past few decades, there has been a radical transformation of the maritime shipping industry, with significant implications for port services. In addition to the containerization of cargo, which began in the mid-twentieth century, rising ship specialisation and size and a number of technological breakthroughs have made the port industry much more capital intensive. Conventional services now involve modernized infrastructure and equipment, and information technology plays a prominent role. Ports around the world have made substantial investments and have started to offer more specialized and value-added services (Notteboom and Rodrigue, 2005). These changes have improved

the speed, efficiency and effectiveness of port services and have supported the rapid growth of international trade. Associated with this trend has been the rise of a number of horizontally and vertically integrated ITOs with an interest in bulk and container terminals operations around the world, as well as major shipping lines.<sup>2</sup>

Despite these changes at the global industry level, many ports in developing countries remain completely State-run, often with implications for port performance. Financial constraints can prevent government authorities from investing in modern equipment and information technology,<sup>3</sup> while Government responsibility for both port management and operations can limit responsiveness to the ever-changing service demands of modern maritime shipping. While many developing countries still follow public port models, others have introduced reforms that promote private sector involvement, particularly in the operation of port terminals. This has been seen as a means to secure capital for port modernization, as well as better organizational, management, and operational outcomes. Figure I.1 further shows a significant rise of private investment in port infrastructure, particularly since 2005. Empirical evidence from India shows that private port terminals are performing far and consistently better than State-run terminals, and even setting new performance benchmarks that are almost at par with neighbouring international ports (Deshmukh, 2006). Also, the port tariff of private ports is more flexible, and generally lower than State-run ports (UNESCAP, 2002).

Figure I.1. Private sea port investment has taken off over the past decade



Source: World Bank PPI Project Database.

Internationally, and particularly in developing countries, the majority of private sector involvement in port terminals has taken the form of FDI from ITOs. In both Africa and South Asia, for example, ITOs are responsible for over 90 per cent of privately handled containers (Drewry, 2010). The potential benefits of FDI when compared to domestic investment include better access to capital, more sophisticated knowledge and expertise, more advanced technology, and larger economies of scale. The opening of port opportunities to foreign investors helps host countries select the most cost-effective terminal investor with the highest capacity to shoulder long-term financial risks. Box 1.1 presents a detailed look at the ITO landscape, as well as drivers of their investment behaviour.

#### **Box I.1: ITO landscape and drivers of FDI**

ITOs are a sub-group of infrastructure TNCs whose core activity is to invest in port terminals. Typically they provide and operate terminal superstructure, most notably the equipment for unloading or loading bulk and container cargo from ships. ITOs may also be involved in related activities in support of this core function. The five largest ITOs include Hutchison Port Holdings (Hong Kong), APM Terminals (Denmark), PSA International (Singapore), DP World (Dubai) and Cosco (Hong Kong), together making up 54 per cent of world container port throughput in 2009.

For analytical purposes, ITOs can be divided into two groups based on their motivation for investing in port terminals. The first group of ITOs specializes in port terminals and follows horizontal strategies, searching for profitable opportunities to expand geographically. The second group are vertically integrated, and are motivated primarily by the need to secure maritime trade routes and access to landside operations for shipping lines. They tend to target locations of high strategic importance of shipping lines and focus on providing them with low cost services.

/...

**Box I.1 (concluded)**

Some ITOs of the second group are associated with major shipping liner companies.

Beyond their internal advantages and strategies, FDI flows from ITOs are determined by the features of host countries and regions. The existence of economic opportunities, including local and regional market size, and the likelihood of trade growth, is of foremost importance. The most attractive opportunities are ports with significant potential to emerge as gateway ports to inland trade routes, or as major transshipment points. Economic opportunities, however, need to exist within an accommodating policy environment. The port policy framework must be open and conducive to private investment. Since ITO often work closely with public port authorities, the level of policy stability and regulatory transparency is very important, both at the time of entry and throughout the life of a project. Similarly, ITOs also want assurances that public authorities will support their investments by facilitating labour restructuring, ensuring adequate levels of security at the port, and maintaining and improving broader port infrastructure, as well as inland transportation routes. Other aspects of the policy climate play a role as well, including the presence of fiscal incentives, and broader macroeconomic and political stability.

*Source:* Drewry (2005, 2010); Valentine (2007); UNCTAD (2003).

Moving from public to private port terminals requires a change to the port governance model. A port governance model can be understood as the allocation of key ownership, management and operational responsibilities for activities within a given port complex. Due to a lack of consensus on the best model and the diversity of local contexts,<sup>4</sup> there are several ways in which private terminal operators can be introduced, each with different implications for the split of public and private responsibilities. The World Bank Port Reform Tool Kit (WBPRTK), for example, outlines four stylized models of port governance based on the role of the PA (Table I.1.).

Table I.1 Public-private role in port management

Activity	Port	Administration	Nautical Management	Nautical Infrastructure	Port Infrastructure	Superstructure (equipment)	Superstructure (buildings)	Cargo Handling /Stevedoring	Plotage	Towage	Moorng Services	Dredging	Other Functions
Public Service Port													
Tool Port													
Landlord Port													
Private Service Port													
Port													
Administration													
Nautical Management													
Nautical Infrastructure													
Port Infrastructure													
Superstructure (equipment)													
Superstructure (buildings)													
Cargo Handling /Stevedoring													
Plotage													
Towage													
Moorng Services													
Dredging													
Other Functions													

Public Responsibility  
Private Responsibility

Source: World Bank (2005)

Whereas “public service” ports allocate all terminal-related activities to the PA, in the “tool” port model, a private operator is introduced to perform cargo handling and stevedoring activities. Yet, underlying infrastructure, buildings, and equipment, remain under the ownership and responsibility of the PA.

In the landlord model, a private operator takes on responsibility for the majority of port terminal activities, including provision of buildings and equipment. In all three of these models, the PA remains responsible for port administration (including regulatory functions), land ownership, and broader port infrastructure. In contrast, “private service” ports allocate all these responsibilities to a private entity. Since it maintains long-term government control and ownership while providing a role for private investment and operation, the landlord model is the most common form of governance for large and medium-sized ports throughout the world.

Based on the choice of model, the relevant legislative and institutional adjustments must be made for private entry. Legislation to facilitate the privatization of certain port assets may be necessary, and the PA may need to be restructured. These are not easy tasks. Restrictions and delays can develop due to constraining bureaucratic cultures and practices that are resistant to change. Even if these barriers are overcome, another common challenge is to engage in labour reform in a way that reverses unproductive and inefficient structures in State-run corporations, without undermining the social sustainability that is as critical as the economic sustainability for the ultimate outcome of a reform process.

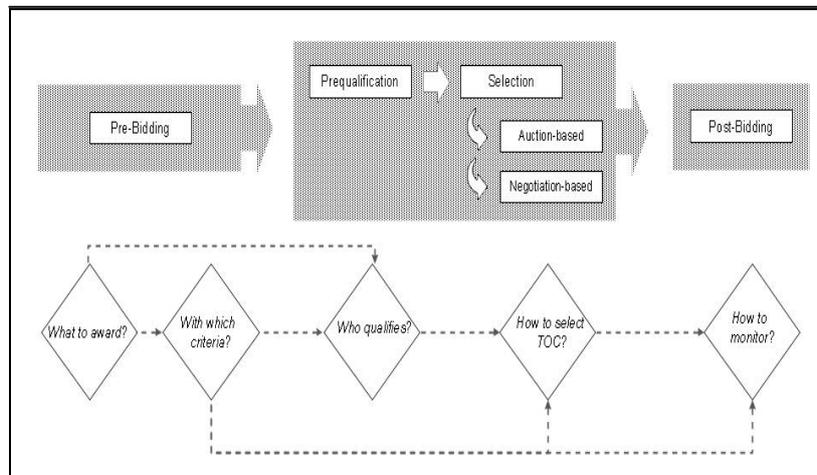
With the governance model put in place, the next step is to select a form of entry for private entities to deliver port services. The form of entry is closely associated with the governance model and it affects the sharing of financial and other risks. In the case of tool ports, private firms are contracted to deliver narrow cargo handling services with little or no investment in physical assets. Financial risks rest with the PA. For true private service ports, the private entity has full ownership over port assets. This can occur

through a comprehensive privatization of the PA or through certain greenfield port projects. In these cases, financial risks are fully borne by the private investor. Outright sales of port assets are rare, and have been observed in only a few countries (e.g. the United Kingdom).

In between these two extremes are concessions, where a private entity is granted the right to operate port terminals for a number of years according to the terms of a contract. The terms of the concession contract outline the sharing of investment responsibilities and financial risks, payments (if any) to the government for the use of land or pre-existing infrastructure, as well as specific development plans. As such, the contents of the contract depend on the specific parts of a port to be transferred and the stage of site development. Concessions are the most common form of private entry, particularly in ports that follow the landlord model.

The process of granting concessions for port terminals can be divided into three phases, including pre-bidding, selection, and post-bidding (figure I.2). In the pre-bidding phase, the awarding authority decides on the specific awarding procedures and makes this information available to interested candidates. In this phase, the rules of the game are defined, such as whether a site is to be awarded as a whole or split into two or more terminals, whether this will be done in phases, whether the terminal will be multifunctional or dedicated to only one type of cargo, and whether the terminal will be dedicated to a single user or available to all. At this point, the awarding entity will also have to decide on the division of risks and investments.

**Figure I.2 Schematic overview of port terminal awarding procedures and relevant issues**



Source: Notteboom et al. (2010).

During the awarding phase, candidates are screened, bids are evaluated, and the most appropriate candidate is selected. The challenge here lies in making the right choice given the parameters set in the pre-bidding phase. Prequalification of bidders is often a first step and consists of an initial selection of companies out of the pool of interested candidates. Common conditions for prequalification include: minimum financial capacities of bidders, experience over time in port operations, and level of global operations. Final selection generally takes place on the basis of direct negotiations and/or auction-like structures, where the terminal is assigned to the bidder with the highest 'score' on a number of criteria, such as the details of the business plan evaluation or the price offered to the government for the use of existing assets. The highest bidder may still be required to enter negotiations at this point.

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Concession procedures have a significant effect on the ability to attract domestic and foreign bidders. By ensuring transparency, restricting discrimination and exclusivity, or limiting concessions to clearly defined periods, Governments can increase the number of bidders and the likelihood of securing high quality bids (De Langen and Pallis, 2007). On the other hand, concession procedures can introduce entry barriers in a number of ways, including through lengthy administrative procedures, or the requirement of existing capabilities and historical track records.

In the post-bidding phase, a legally binding contractual agreement is signed with the selected candidate and monitoring and enforcement practices during the contract term are set. Independent monitoring can be established at the terminal, port, region, or country level. Ensuring that both investor and Government are respecting the terms of the contract is important because concessions are of lengthy durations and renegotiations of particular terms are not uncommon. Accordingly, there also needs to be an independent body that can help resolve any disputes between the two parties. National courts, independent commissions or international arbitration can serve this function. If performance outcomes are expected to rely on terminal operators competing with one another, competition oversight may also be necessary. Failure to address these follow-up matters can jeopardize the outcome of an otherwise promising project.

The extent to which private investment in port terminals leads to positive outcomes requires an assessment of several variables. Priority variables include core financial performance of a terminal, waiting times, cargo throughput, user prices, quality of port services, and effects on public finances. Other effects of concern to Governments may include the impact on employment, supply chain integration, upstream and downstream businesses, and transfers of knowledge and technology to the local economy.

## **B. Learning from the case of Nigeria**

By the late 1990s, the publicly operated port system in Nigeria, one of the largest countries in Africa, was notoriously inefficient and costly. Prompted by this poor performance and acting in line with global developments, the country reformed its port governance and adopted the landlord model. By 2006, Nigeria had concessioned 25 port terminals across the country to private investors and operators. The most significant of these concessions went to foreign investors, namely the Apapa container terminal in the Lagos port complex, which handles the majority of the country's international container trade. Through these concessions, the Nigerian port system has received substantial investments and injections of technology and management expertise. This has led to dramatic productivity increases and expanded cargo throughput. As a result, access to international shipping lines has improved and overall clearance time for goods has dropped. This positive experience has led the Nigerian Government to consider further port developments, such as the new Lekki terminal, which was under consideration in early 2011.

The reform process and subsequent entry of private terminal operators in Nigeria provides an interesting case study in best policy practices. Nigeria's experience is particularly impressive when compared with the challenges faced by other countries in Sub-Saharan Africa, which have traditionally been slow to involve private terminal operators (Leigland and Palsson, 2007). This trend has reversed in recent years as Nigeria and others, including Mozambique, Tanzania, Cameroon and Madagascar, have pursued significant reforms. Yet, programmes such as these are not a priori successful. In Kenya and Gabon, for example, container terminal management contracts and concessions have been abruptly cancelled.

By reviewing the reform process and outcomes in Nigeria, this report examines key determinants of Nigeria's success, not just in terms of the policy framework itself, but with regard to ways to

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overcome challenges during the formulation and implementation of this framework. In addition to highlighting best practices, the study discusses why some policies have failed to be as effective as anticipated, and how these problems may have been avoided. Drawing from this analysis, the report distils lessons for other developing countries seeking to introduce private and foreign investment into their port systems. The lessons are presented as practical policy recommendations that, when appropriately adapted, can be applied in different contexts.

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#### Notes

<sup>1</sup> For a series of UNCTAD monographs prepared in collaboration with the International Association of Ports and Harbors (APH), see <http://www.unctad.org/Templates/Page.asp?intItemID=3410&lang=1>

<sup>2</sup> In 2009, for example, ITOs operated 53 per cent of the world's container port capacity, with the rest were operated by public sector or local operators (Drewry, 2010).

<sup>3</sup> In the early 2000s, capacity usage at West African ports reached 80 percent (Drewry, 2005), with serious problems forecasted due to the growth of containerized trade. Gantry cranes to serve large-scale containerships were found in very few ports, and capital-intensive dredging was lacking (Ocean Shipping Consultants, 2009).

<sup>4</sup> See the examination of experiences of ports in 15 countries in 14 different studies that culminated in the publication Brooks and Cullinae (2007). Also see Brooks and Pallis (2011).



## II. THE CASE OF NIGERIA

The reforms that have taken place in Nigeria's ports over the past decade (table II.1) entailed the adoption of a new port governance model and the selection of a process to allow and enable entry by domestic and foreign terminal operators. The whole process was part of a strategy to overcome a number of deficiencies observed in the pre-1999 period.

**Table II.1. Timeline of port reforms in Nigeria**

1999	Privatization and Commercialization Act No 28/1999 creating National Council on Privatization (NCP) and the Bureau of Public Enterprises (BPE)
	NPA Act No 38/1999 allowing private operators to contract with Nigerian Port Authority (NPA)
2000	Creation of the Transport Sector Reform Committee (TSRC) within the NCP
2001	BPE Commissions Ports Modernization Project Study with funding from World Bank
2003	BPE contracts third-party transaction advisors to perform due diligence, prepare bidding materials and advise on negotiations
2004	First of four bidding and negotiation rounds initiated
2005	Effective date of first concession
2006	Last terminal transferred from NPA to concessionaire

### A. Pre-reform conditions

Prior to the recent reforms, Nigeria's port system was primarily under State ownership and operation. The country's two largest port complexes (Lagos and Port Harcourt), together with two smaller ones at Warri and Calabar, serviced the maritime needs of the country as public service ports; owned, managed and operated directly by the Nigerian Port Authority (NPA). Although several lighter ports (e.g. Onne) were governed under the landlord model, allowing some private involvement in terminals, they made up only a small share of the country's maritime trade.

Throughout the 1990s, the country's major ports were suffering from poor performance and high congestion. Among the widely reported problems were a) highly centralized decision-making, b) overstaffing, c) corrupt practices, d) underinvestment, e) limited integration with inland transportation, and f) insecurity of cargo.<sup>1</sup> As a result, Nigerian ports ranked low in efficiency and demanded excessive charges compared to other West African seaports. Moreover, ships were experiencing serious delays due to congestion. Container traffic in particular was being constrained by aging terminal infrastructure, slow clearance procedures, and limited storage space. In 2001, for example, the Port of Lagos was only clearing 100 containers per day, compared to the expected 500 to 600. Port users and the NPA were increasingly diverting cargo to other ports in Nigeria, as well as those in neighbouring countries. As a decongestion measure NPA converted Lagos-bound vessels to smaller Nigeria ports in the Eastern part of the country.

These problems led to significant stakeholder pressure on the Nigerian Government to implement changes to its port system. The local business community, motivated by firms involved in importing and exporting, complained that their competitiveness was being undermined. International stakeholders, notably major international shipping lines, also voiced their dissatisfaction with the status quo, feeling that the Nigerian Government held the key to improving maritime shipping throughout West Africa. Steady agitation by these groups for positive change was a major factor behind the Government's ultimate decision to drastically reform Nigeria's port system.

## **B. Initiation of reforms**

The early stages of Nigeria's port reforms were characterized by clear objectives and strong political leadership. Aiming to make a clear break from the past, the government's reform agenda for the sector sought to improve service delivery by a) enhancing management capabilities, b) creating a conducive institutional, legal and regulatory framework, and c) and developing private sector participation in financing, management and operations

of port facilities. These objectives were paired with a focus on operating targets, such as decreased costs to port users, faster cargo clearance and vessel turnaround, and reduced pressure on government finances. By achieving these targets, Nigeria would emerge as a hub for international shipping and trade in West and Central Africa, not only boosting the country's economic development prospects, but enhancing the country's geopolitical position in the region as well.

The achievement of these objectives required significant legal, institutional, and organizational reforms that could not be achieved without strong political leadership to bring the necessary government agencies on board. After the 1999 election, the new President made these reforms a top policy priority (Mfon, 2006; Abiodun, 2010). Public agents at lower levels committed to this agenda and helped ensure its adequate implementation. There were two key events at this early stage: the creation of a legal and institutional framework for privatization and the passing of legislation redefining the mandate of the NPA.

The new Government adopted and enacted *Privatization and Commercialization Act No. 28/1999*, which had been promulgated by the military government the year before. This legislation provided for the privatisation and commercialisation of State-owned enterprises in a number of explicitly mentioned sectors, including the port industry. The Act also created the National Council on Privatization (NCP) and its secretariat, the Bureau of Public Enterprises (BPE) (box II.2). The high-level NCP was responsible for approving privatization and commercialization programmes, as well as details of their implementation. The BPE acted as a secretariat, charged with providing technical advice and following the NCP's directives. In addition, the Decree required the BPE to hire experienced third party advisors to conduct technical assessments of targeted State enterprises, identify privatization options, and work with the BPE to attract and negotiate with potential investors. In the context of the port industry, this legal and institutional framework made the transfer of NPA assets to private investors possible, and provided a clear methodology towards this end.

**Box II.1: Privatization institutions**

**National Council on Privatisation (NCP)**

*Established under:* S.9 of the Privatisation and Commercialisation Act 28/1999

*Consists of:* Government's Vice-President; Minister of Finance; the Attorney-General and Minister of Justice; the Ministers of Industry and National Planning; the Central Bank Governor, the Secretary to the Government of the Federation, the Special Adviser to the Head of State, Commander-in-Chief of the Armed Forces on economic affairs, and four other members appointed by him, and the Director General of the Bureau of Public Enterprises.

*Powers:* a) Approve policies on privatisation and commercialisation, the entities to be privatised or commercialised, and the time frames involved; b) approve guidelines and criteria for valuation of public enterprises and the choice of strategic investors; c) approve the legal and regulatory framework for the enterprises to be privatised; d) approve the appointment of advisers and consultants as well as the budgets of the council and bureau; e) and receive regular reports from the bureau on programme implementation;

**Bureau of Public Enterprises (BPE)**

*Established under:* S.12 of the Privatisation and Commercialisation Act 28/1999

*Functions:* (1) Implement the NCP's policy on privatisation; (2) prepare public enterprises approved by the council for privatisation; (3) advise the council on further public enterprises that may be privatised; (4) advise the council on the capital restructuring needs of the public enterprises to be privatised; (5) carry out all activities required for the successful issue of shares and sale of assets of the public enterprises to be privatised; (6) make recommendations to the council on the appointment of consultants, advisers, investment bankers, issuing houses, stock brokers, solicitors, trustees, accountants and other professionals required for the purposes of privatisation; (7) advise the council on the allotment pattern for the sale of the shares of the public enterprises set out for privatization; (8) oversee the actual sale of shares of the public enterprises to be privatised

/...

**Box II.1 (concluded)**

by the issuing houses, in accordance with the guidelines approved, from time to time, by the council; (9) ensure the success of the privatisation exercise taking into account the need for balance and meaningful participation by Nigerians and foreigners in accordance with the relevant laws of Nigeria; and (10) perform such functions with respect to privatisation as the council may, from time to time, assign to it.

**Privatisation advisers**

*Established under:* Privatisation and Commercialisation Act 28/1999

*Functions:* The privatisation advisers are the financial and technical advisers to be appointed under the Decree by the government to undertake diagnostic studies of all enterprises slated for privatisation. The terms of reference oblige them to: a) assess the value of the affected enterprise; b) evaluate strategic privatisation options for each affected enterprise; c) identify more serious strategic investors, if those who had already expressed their interest to invest are considered inadequate for the purpose, and d) assist BPE in evaluating bids and negotiating with the identified strategic investors.

Initially, the NPA was to be fully privatized. However, this objective was revised as outlined in the 1999 *Ports Act*. The Act, which amended the 1954 *NPA Act*, kept the NPA as a public entity, but allowed it to unbundle aspects of its activities and to enter into agreements with private entities to provide port services, including the operation of port terminals. Despite its new role, the NPA remained under the jurisdiction of the Ministry of Transport. In 2000, a special Transport Sector Reform Committee (TSRC) under the chairmanship of the Transport Minister was created within the NCP. Membership of the TSRC was drawn from key stakeholder agencies, including the NPA. In turn, the TSRC created a sub-committee within the NPA. Together, the NCP and the Ministry of Transportation would coordinate and detail the changes that would accompany the introduction of private investment in the port system.

### **1. The endorsed port model and mode of private entry**

Despite general agreement within the NCP and Ministry of Transport on the need to introduce private involvement in the country's ports, they were still undecided on the specific model of port governance and the corresponding mode of private entry. As a result, the NCP decided to seek experienced advice. It requested partial funding from the World Bank Public-Private Investment Advisory Facility (PPIAF) to commission a study that would develop a more detailed port reform strategy for the Ministry of Transport. In 2001, Dutch consultancy Royal Haskoning was hired to prepare a diagnostic *Ports Modernization Project Study*. The consultants were tasked to (a) conduct a detailed technical and financial due diligence on the NPA and all major ports; (b) identify ways to increase the involvement of the private sector in the financing and operation of port services and operations; and (c) define a revised role for the NPA, particularly with respect to shifting from operational to regulatory and administrative tasks. The consultants reviewed previous studies, and followed it up with their own research.

Reviewing the most commonly used alternatives to the government's port management model, the study recommended the adoption of the "landlord" model, one of the alternatives that had been provided by the World Bank Port Reform Tool Kit (WBPRTK). Towards this end, the study proposed the development of a comprehensive framework, covering key themes, such as the restructuring of the NPA, a bid tender strategy, and a new legal and regulatory framework for the entire port sector.

This model would split the duties of the NPA so that it could concentrate on the landlord aspect of its mandate, including ownership and administration of the land, port planning and development of port infrastructure, leasing and concessioning of port land, provision of nautical services, such as vessel traffic management, and management of the channels and waterways, including lighting and dredging activities. The study also recommended splitting of NPA into three autonomous regional port authorities with slim corporate headquarters.

In this context, private companies would bid on concessions (with the details of transactions to be formulated at a later stage) for certain port operations and services. Most importantly, this included terminal operation, cargo handling, stevedoring, warehousing, and delivering. Companies would be responsible for investments in the construction, purchase, and ownership of superstructure and equipment related to these activities. To meet all of these responsibilities, private companies would be expected to engage permanent personnel and provide sufficient training for them to reach minimally adequate skill levels. As a consequence, the NPA workforce could be streamlined in consultation with labour unions. The process of selection was to be via an international competitive bid for the available concessions to operate as private port terminals, paying royalties and levies to NPA and the Federal Government.

The study also suggested that the quality of port services be reinforced through intra-port competition, with privately operated port terminals competing against one another within the same port complex. In the larger port complexes, there was room for several terminals servicing similar cargoes, creating significant potential for a competitive environment. This mechanism would give operators incentives to make additional investments without mandating them directly, as that was considered an unrealistic requirement at the time. However, the decision on the precise split of the port terminals, and the types of cargoes that they would serve, was left to the NPA, given their knowledge of the situation in existing facilities.

The Federal Government accepted the report's main recommendations. Several reasons supported the choice to implement a landlord model with concessions for private port terminal operators (Table II.2). Improving the ports under a public service or tool port model would require funds that the Government did not have readily available and that capital markets were unlikely to provide, even if the NPA was fully corporatized as a State-owned enterprise. At the other pole, full privatization was out of the question due to public concerns over loss of control over strategic infrastructure. The landlord model, by contrast, seemed to enjoy broad stakeholder support, as expressed, for example, through

consultations between the NPA and Nigeria's Port Consultative Council.

**Table II.2: Choosing forms of private entry: An NPA perspective**

<b>Option</b>	<b>Constraint</b>	<b>Verdict</b>
Privatise ports by outright sale	General public opinion against this choice	Rejected
Invest funds into ports	Finance not readily available	Rejected
Corporatize ports to enable them to raise money through the capital market	Public sector management discourages general investment from capital market	Rejected
Concession port (terminals)	Transfer of operational obligations to private sector/retention of public ownership	<b>Accepted</b>
Lease finance of Greenfield Port Requirement	Restrictive/selective process; strategy difficult to manage	Limited acceptance (services to oil & gas)

*Source:* Etomi, S. (2009).

*Note:* The choice of Private *Forms of Entry* as indicated in the table pre-dated Etomi's presentation in 2009

### C. Implementation of reforms

Having set the institutions to orchestrate port reforms, the port model to apply, and the form of private entry, governmental institutions proceed in a process of implementing reforms. In December 2003, with the diagnostic study completed and its 'upstream' recommendations endorsed by the national administration, the NCP authorized the BPE to begin the concession process in accordance with the Privatisation and Commercialisation Act of 1999. Along with third party transaction advisors, they detailed the technicalities of the process, set the criteria, and invited bidders through international calls for tenders. Preferred bidders negotiated with the Government and contracts were signed between the investors and the NPA detailing the terms of investment and operations. Within two years from the call for bids, nearly all private operators had signed concession agreements and started operating the respective terminals. To support their operations, the Government had invested in port and surrounding infrastructure and had streamlined a number of public port-related services, including customs.

The successful attraction of a number of capable foreign and domestic investors is due to a number of factors. Most important were economic factors, notably the presence of underserved demand for gateway and transshipment cargo handling services. Some of the foreign ITOs that emerged as preferred bidders also had links to shipping companies looking to expand service to West Africa. Yet these economic opportunities could not be realized without an appropriate policy framework, a transparent bidding and negotiation process and a willing partner in the Government to help development of a competitive Nigerian port sector. The existence of a clear privatization framework with empowered institutions and the use of third party technical expertise gave investors confidence in the validity of the process and the information used to formulate their bids. Moreover, calls for tenders were done in the open through the public media and post-bidding negotiations involved a number of key stakeholders, including from the NPA, the bidders, the transaction advisors, and labour representatives. Finally, the investment prospects were also improved by the Government's

commitment to improve a number of framework conditions, including infrastructure and government services, and to actively address labour restructuring.

### **1. Hiring of transaction advisors and preparation for the bidding process**

The first step taken by the BPE was to engage Canadian-based transaction advisors CPCS Transcom to provide technical support and assist with the implementation of the port reforms (Borha 2010). As required by Nigeria's privatization law, the firm was hired to conduct financial due diligence of the terminals to be concessioned, seek proposals from domestic and international investors, and develop key documents, including the Request for Proposals (RFP) and concession agreements. In addition, CPCS was tasked with drafting a new legal and regulatory framework for the port sector, including the creation of an independent regulator.

Within the first four months, the due diligence was completed and detailed plans written up to guide the concession process. Their work was in line with a pre-defined mandate based on enhancing economic efficiency, stimulating intra-port competition, promoting foreign and domestic investment, and maximizing financial returns for the Federal Government of Nigeria. Workshops were organized around the country by the BPE to inform maritime stakeholders and the general public on the nature of the reforms, while their website published details of the due diligence work and bidding procedures.

In total, 25 terminals across eight ports were carved out for concessions, the largest of these being the Apapa container terminals in Lagos. For the major concessions, foreign and domestic operators were free to bid for any or all of the terminals up for concession.<sup>2</sup> Provisions were made so that no operator could be awarded all the terminals within a single port, so as to avoid anti-competitive behaviour. Given that much of the underlying infrastructure and even some super-structure were already in place, the concessions were typically arranged under a rehabilitate, operate and transfer (ROT) model, with a requirement to pay commencement, lease and cargo throughput fees to the Government.

The terminals would be operated on a common user basis (i.e. open to all shippers, shipping lines and consignees of cargo), while the company was responsible for maintenance and other improvements necessary to enhance capacity and competitiveness. The concession terms were to range from 10-25 years.

Potential bidders would be pre-qualified based on a minimum ability to undertake operations, with preference given to candidates with global experience in terminal operations. Next, the bids would be evaluated based on two separate proposals. First, a technical proposal with a development and investment plan for assessment by the transaction advisors. Second, a financial proposal to the BPE stipulating the value of the commencement, lease and throughput fees offered to the Government. Once a financial bid was selected, the interested party would enter into direct negotiations with the BPE to finalize the concession contract.

## **2. Initiation and management of the bidding process**

The bidding process was divided into four separate rounds. The first round began in September 2004, with the issuing of an RFP for terminals in the Lagos port complex. This included the Apapa container terminal, which was expected to attract the most interest due to the magnitude of the operations and potential for future growth. This was followed by the second round, which comprised terminals in the Port Harcourt port complex. Round 3 and 4 included terminals in Tin Can Island, Onne, Calabar, Warri and Koko port complexes. Policy-makers stuck to the original plan, largely respecting the timetable for the completion of the concessions. Due diligence on pre-qualified companies and the submission of technical and financial bids were completed with minimal delays.

As noted, both domestic and foreign investors were invited to place bids. Given the preference for investors with global experience, especially in the case of the Apapa container terminal, the BPE targeted major ITOs. This objective was consistent with Nigeria's broader development strategy, which emphasizes the role of FDI in driving economic growth and improving basic infrastructure (box II.2)

### **Box II.2 FDI Trends in Nigeria**

Prior to independence in 1960, Nigeria's economy was dominated by foreign-owned enterprises. Concerned with their political and economic influence, the Nigerian government began implementing restrictions and promoting indigenous and state-led enterprises. Many foreign firms and investors divested over this period.

The Government began to engage in FDI promotion and facilitation activities. In 1995, the regime was liberalized even further with the Nigerian Investment Promotion Commission (NIPC) Act, allowing 100 per cent foreign ownership of companies in all sectors aside from petroleum, and creating the NIPC as a designated investment promotion agency. That same year, a law on foreign exchange passed guaranteeing the free transfer of funds in and out of the country, as well as currency convertibility. Under Nigerian law, investors also have a legal right to compensation in the case of expropriation and it must be based on the national interest for for a public purpose.

Since the early 2000s, FDI attraction has been a cornerstone of Nigeria's development strategy. While the majority of inflows over the past decade have gone to the petroleum sector, the Government committed to facilitating FDI in other sectors, including basic infrastructure. In addition to the country's ports, there is a significant FDI presence in telecommunications and, most recently, in the power sector. Infrastructure investors, come under sector-specific legal and regulatory frameworks and, in the case of privatizations, engage directly with the BPE to negotiate their conditions of entry and treatment.

Source: UNCTAD (2009)

Initially, the BPE received 110 expressions of interest, including investors from Europe, Asia and North America. Over the entire process, 13 terminals up for competitive bidding received a total of 59 bids, while the other 12 were allocated through direct negotiations with former leaseholders. The bidding and negotiations yielded commitments of \$1.7 billion in fees to the Government and an additional \$700 million in physical investment (table II.3). Nearly all preferred bidders had some form of foreign participation in leading or supporting roles.

The largest of the transactions was a 25-year rehabilitate-operate-transfer (ROT) concession for the Apapa Container Terminal in Lagos, which went to a consortium led by A.P. Moller Terminals (APMT) of Denmark. The winning bid included commitments worth \$1 billion in fees to the Government and \$240 million in new buildings and equipment.<sup>3</sup> APMT is a leading ITO and subsidiary of Maersk, the world's largest shipping company. APMT and other preferred bidders were primarily motivated by the growth in West African trade, which was outstripping the capacity of existing gateway and transshipment port services in the region (box II.3).

### **Box II.3 Investor perspectives**

Nigeria's port terminals represented significant economic opportunities for foreign investors, particularly in the case of the Apapa container terminal in Lagos. Nigeria makes up around 40 per cent of West Africa's growing economic output, and the port in Lagos is well positioned as a major transshipment and gateway port to the Nigerian market, as well as land-locked Chad and Niger. The potential as a high volume gateway port limited investment risks associated with facilities dedicated exclusively to transshipment. As a result, there were a number of lucrative opportunities for private investors to rehabilitate and upgrade aging and out-dated terminal infrastructure.

In addition to serving rising demand for shipping services in West Africa, certain terminal operators were also motivated by their corporate

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**Box 11.3 (concluded)**

links to international shipping lines. For instance, APMT's parent company, Maersk, had developed major shipping operations covering West African trade routes. Yet, at that time, port bottlenecks were making it difficult to accommodate growing cargo traffic and the larger container ships used by Maersk. Although it would remain a common user terminal, APMT's investment in the Apapa would help reduce capacity constraints facing Maersk's West African operations. A similar pattern can also be observed in the consortium that secured the bid for container operations at Tin Can Island Port B, which included shipping interests Bolloré and Zim Integrated Shipping Services.

The widespread use of joint-ventures as a vehicle for investment in Nigeria's port terminals is notable. For local companies, collaborating with foreign entities was a way to integrate into broader international shipping networks. For their part, foreign companies wanted to take advantage of knowledge on the operating conditions of local markets and to integrate in local transportation and business networks. These mutual interests drove a number of collaborations

*Source:* Interview with APMT and NPA

Table II.3: Transactions in Nigerian Ports

Terminal	Location	Terminal Operators/ Preferred Bidders	Local/Foreign Participation	Bidding Round	Contract Duration (years)	Financial Bid (US\$ million)	Physical investment (US\$ million)
Apapa Container Terminal	Lagos	A.P. Moller Apapa Terminal Ltd.	A.P. Moller Terminals (Denmark), local participation	1	25	1,061	239
Tin Can Island Port 'C'	Tin Can Island Port	Sifax Nig Ltd. Ports & Terminal Operators Nig Ltd.	Sifax Nig Ltd. (local), Bremenports (Germany) Ports & Terminal Operators Nig Ltd.	3	10	104	65
Port Harcourt 'A'	Harcourt	Operators Nig Ltd.	(local), P&O Nedlloyd (UK)	2	15	91	78
Tin Can Island Port RoRo	Tin Can Island	Comet Consortium Tin Can Island Container Terminal Ltd	Comet Shipping Agency Nigeria (local), Eurogate Int. (UK) and MSC (Switzerland) Bolore Group (France), Zim Integrated Shipping Services (Israel), local participation	3	15	87	10
Tin Can Island Port 'B'	Tin Can Island	Intel's Nig Ltd Ecomarine Ltd.	Intel's Nigeria Ltd (local), foreign partners West African Group (South Africa)	-	25	38	21
Onne FOT A Calabar New 'B'	Onne Calabar	Intel's Nig Ltd Ecomarine Ltd.	Intel's Nigeria Ltd (local), foreign partners West African Group (South Africa)	4	10	30	24
Onne FLT B	Onne	Intel's Nig Ltd Greenview Dev. Nigeria Limited	Intel's Nigeria Ltd (local), foreign partners Dangote Group (local)	-	25	30	14
Apapa Terminal 'E'	Lagos	Apapa Bulk Terminal Ltd.	Flour Mills Nigeria Limited (local), Atlantic Bulk Carriers Mgt. (Greece)	-	25	25	34
Apapa Terminal 'A'	Lagos	Apapa Bulk Terminal Ltd.	Flour Mills Nigeria Limited (local), Atlantic Bulk Carriers Mgt. (Greece)	-	25	19	6

Table II.3 (continued)

Terminal	Location	Terminal Operators/ Preferred Bidders	Local/Foreign Participation	Bidding Round	Contract Duration (years)	Financial Bid (US\$ million)	Physical investment (US\$ million)
Orme FLT A	Orme	Brawal Nigeria Ltd.	Brawal Nigeria Ltd. (local)	-	25	17	3
Tin Can Island Port 'A'	Tin Can Island	Josepdam & Sons Ltd.	Josepdam & Sons Ltd. (local), Techserve, South African Sugar Company (South Africa)	3	10	14	84
Apapa Terminal 'C'	Lagos	ENL Consortium Limited	ENL Nig (local), Haastrop Line WA, Nig (local), Dublin Port Company (Ireland), ICIL (Ireland), Civil & Coastal (South Africa)	1	10	14	10
Port Harcourt 'B'	Port Harcourt	BUA Ports and Terminals Ltd.	BUA Group Ltd. (local), AFEC-Antwerp Port Consultants (Belgium)	2	20	12	34
Apapa Terminal 'D'	Lagos	ENL Consortium Limited	ENL Nig (local), Haastrop Line WA, Nig. (local), Dublin Port Company (Ireland), ICIL (Ireland), Civil & Coastal (South Africa)	1	10	12	11
Apapa Terminal 'B'	Lagos	Apapa Bulk Terminal Ltd.	Flour Mills Nigeria Limited (local), Atlantic Bulk Carriers Mgt. (Greece)	-	25	12	22

Table II.3 (concluded)

Terminal	Location	Terminal Operators/ Preferred Bidders	Local/Foreign Participation	Bidding Round	Contract Duration (years)	Financial Bid (US\$ million)	Physical investment (US\$ million)
Lilypond ICD	Lagos	A.P Moller	APM Terminals (Denmark), local participation	3	10	10	15
Warri New 'B'	Warri	Local Group Julius Berger Nig Ltd.	Local Group, Bremenports (Germany)	-	25	7	7
Warri Old 'C'	Warri		Bremenports (Germany)	-	25	6	-
Koko Port	Koko	Gulfainer Bel consortium	Local group, Gulfainer (UAE)	4	10	3	-
Warri Old 'A'	Warri	Intels Nig Ltd	Intels Nig Ltd. (local), foreign partners	-	25	3	11
Calabar New 'A'	Calabar	Intels Nig Ltd Addax Logistics Nig Ltd.	Intels Nig Ltd. (local), foreign partners	-	25	3	7
Calabar Old Port	Calabar		Addax Petroleum (China)	-	25	2	-
Warri New 'A'	Warri	Global Infrastructure Ltd.	Global Infrastructure (India)	-	25	2	
Warri Old 'B'	Warri	Associate Maritime Services	Associated Maritime Services (Nigeria), foreign partners	-	10	2	1
<b>TOTAL</b>						<b>1,683</b>	<b>732</b>

Source: World Bank and PPIAF, PPI Project Database; Kruk (2008).

Note: Value in \$US million according to net present value at a 10 per cent discount rate. Values rounded to nearest million.

### **3. Terms of the concession agreements**

Draft concession agreements were negotiated between the NPA and the private terminal operators.<sup>4</sup> By the end of 2006, 20 had been completed, with the others completed shortly after. Following approval of each agreement and its terms by the President of Nigeria through the NCP, the BPE certified their compliance with the port reform and modernization strategy by acting as a “confirming party” to the contract. The concession agreements<sup>5</sup> cover a number of issues over the project lifespan, including:

- the effective date and term of the concession;
- guidelines on the use of the concession property, including details on maintenance, provision of utilities and designation of common use areas;
- operating conditions, such as tariff setting, payment of fees to the NPA, performance standards, and use of labour;
- division of port service obligations between the parties (e.g. responsibility of NPA to maintain waterways and facilitate access to the site by terminal operators)
- reporting requirements, including accounting records, planning and investment reports, as well as quarterly reports on cargo and vessel traffic
- contingencies in cases of default;
- processes for termination of the contract, including with respect to compensation;
- governing laws and dispute resolution procedures, including recourse to binding arbitration in an international forum.

Specific details to inform these commitments were provided in a number of appendices. These outlined, for instance, a breakdown of fees to be paid to the Government, the operator’s

investment and development plans, the value of the superstructure assets purchased from the government and those to be brought in by the operator; a staffing and succession plan; as well as an initial schedule of tariff rates for cargo handling, storage and delivery. By addressing these matters in very specific terms, terminal operators and Government could better understand the division of risks between them. Moreover, the agreements provided a basis and mechanism for resolving potential disputes between the parties.

Several elements in the contracts are worth highlighting. The first relates to operations pricing and performance. The contracts outline an initial ceiling on tariff rates and a transparent, non-discriminatory pricing policy that includes publication of rates, announcement of any preferential rates, and transparent handling of complaints. Reference is also made to pre-defined free storage time for cargo in transit to neighbouring countries (i.e., transshipment). The ceiling on tariff rates was to be phased out over time as competition was endorsed as the main tool for ensuring reasonable rates.<sup>6</sup> This arrangement gives terminal operators pricing flexibility, while protecting port users from dramatic price increases. As a landlord port, the NPA remains responsible for determining the tariffs of marine services and the use of the harbour. The contracts also included performance standards, with maximum mandated waiting times for cargo handling and review by the NPA every two years.

Lease fees were a second important aspect of the contracts. These were based on the terminal operator's financial bid. To enter the market, terminal operators had to agree to an initial payment (commencement fee), a fixed annual payment of a sum in equal instalments in each operating year (lease fee) and a throughput fee, which would depend on cargo traffic. Terminal operators had to provide a guaranteed minimum tonnage to be handled per year, while they would receive excess discounts on the case of any excessive cargoes. Terminal operators were required to submit a performance bond to guarantee the full and timely performance of their financial obligations.

Third, the terminal operators committed to detailed 5 year development plans based on their technical bids. The plans outlined

the scheduling of investments in infrastructure, equipment, tug boats and barges, plans for land use allocation and provision of any dedicated areas such as warehouses. Changes or expansions of these plans would require consultation with the NPA.

A fourth part of the agreements that would prove to be significant concerns labour issues. The contract gave terminal operators significant hiring freedom and most did not inherit the labour contracts of the NPA. The Nigerian Government initially planned to terminate all stevedoring contracts, setting a date at which point they had to vacate the premises. Intense opposition from the Maritime workers union of Nigeria led the Government to revise its decision and seek a negotiated settlement. Some of these workers would have the opportunity to work for the new terminal operators, but overall, previous employment practices had resulted in significant overstaffing, which would initially require an estimated 75 per cent reduction in port workers. The International Labour Organization (ILO) activities also contributed to the final agreement.<sup>7</sup> The dock labour force of about 13,000 was disengaged and paid severance of around 2.6 billion Nigeria Naria (approximately \$2 million), and the Nigerian Ports Authority downsized its workforce in stages from 13,000 to around 4,000.<sup>8</sup> Although the Government was required to reverse its initial approach, it followed through on its commitment to facilitate workforce restructuring with minimal delay.

While the agreements allowed terminal operators to significantly reduce the workforce, they had to commit to detailed employment policies (e.g. organogram and expected personnel to be used for managing the port terminal), training schemes and employment opportunities for Nigerian nationals. Foreign managers could be hired on a condition that reasonable efforts are also made to hire locally.

Finally, the NPA committed itself in the contracts to act in order to keep the ports open to access by sea and by land and for use by the terminal operators. It retained responsibilities for the maintenance of the berths, canals, breakwaters and navigation aids; as well as the timely and efficient provision of maritime services (i.e. pilotage, towage, and shifting of vessel services required by all

vessels intending to call at the terminals), and dredging, which is vital for the hosting of bigger vessels. The NPA would perform these activities either directly or through the licensing of competitive suppliers of such services, in a way that guaranteed a positive effect upon the performance of the operations.

#### **4. Handover of terminals**

The majority of agreements took effect in 2006, and concessionaires quickly took over operations. The handover process included joint surveys of fixed assets, the sale/transfer of spare parts consumables and moveable assets, and the removal of all other moveable assets not to be handed to operators. It also included an inventory of cargo being handed to operators along with terminals, the addressing of insurance requirements, and moreover the termination of existing contracts and agreements with clients.

To perform its role as port landlord, the Nigerian Government made a number of improvements to the framework conditions, including port and transportation infrastructure, as well as government services. These were done both before and during the entry of new terminal operators to facilitate and support the modernization process. The NPA embarked on a rehabilitation of infrastructure and general improvement of port conditions. At the APMT operations in Apapa, for instance, this included reducing congestion by clearing 7,000 abandoned containers that had been stored there. The Ministry of Transport was further involved in projects to improve maritime port infrastructure, covering areas such as road construction, berthing facilities, dredging of channels, and storage facilities.

By limiting bottlenecks for gateway cargo, recent improvements to the country's broader transportation infrastructure have also facilitated port terminal operations. The costs of land transportation in West Africa are among the highest in the world, although road infrastructure is expanding, including through an African Development Bank supported Multinational Highway project that would, among other things, better link Nigeria and Cameroon. Within Nigeria, a 150km municipal highway is planned for the Port Harcourt area. The Government has entered into

concessions with foreign and local investors to construct and operate in-land storage depots, included bonded facilities that could hold containers in case of delays in customs clearance. One of these depot projects has secured approval to build a rail link to Apapa container terminal in Lagos.

The terminal handovers were also associated with efforts to improve Government service delivery at the port. The security situation, for instance, was assured prior the entry of the concessionaires by the Nigerian Maritime Administration and Safety Agency (NMASA) (Mfon, 2010). To simplify the operating environment, a Government taskforce review recommended reducing the number of public agencies present in the port to only five, in line with international best practice.

Before the reforms, 29 government agencies had been involved in inspection and clearance, and 19 signatures were required to clear a container at the Apapa terminal, resulting in a slow, bureaucratic and often corrupt process for cargo clearance and a major bottleneck for the entire port system (UNCTAD field interviews). The government also signed concessions with foreign and local private inspection companies to implement comprehensive destination inspection schemes, supported by agreed investments in fixed, mobile and tunnel x-ray scanners, and computerised risk analysis.

The Government made efforts to streamline customs services according to international best practice. In 2004, the President set up a task force on customs reform. The work of this task force led to a major reorganisation and the appointment of a new management team charged with ‘changing the way customs works’ and reducing problems such as corruption. Subsequently, a special unit was created to monitor practices within the agency, leading to the dismissal of several customs officers. The new management team has also revised the Customs’ clearance procedures to speed up the process, signing a Memorandum of Understanding (MOU) with the NPA to demonstrate their commitment to improving customs at Nigeria’s ports. Yet major challenges still remain in this area.

## **D. Successes and challenges**

The reform of Nigerian ports through concessions and the establishment of the landlord model of port governance has yielded very positive results, even in the early days of the implementation. Despite strong contributions in terms of port performance, government finances and knowledge transfer, a concessioning programme on the scale of Nigeria's is likely to face some challenges during implementation. These issues continue to prevent Nigeria's port operations from reaching their full potential. In particular, they point to the need for a clear regulatory framework and independent body to monitor, regulate and resolve disputes between private and public port actors about their respective rights and obligations. Longstanding plans for an independent transportation authority to perform these functions for the port sector have been mired in parliamentary delays for several years. Yet despite room for improvement, the benefits of the reforms have overwhelmed the shortcomings.

### **1. Positive outcomes**

Positive outcomes associated with Nigeria's port reforms and the entry of private operators include:

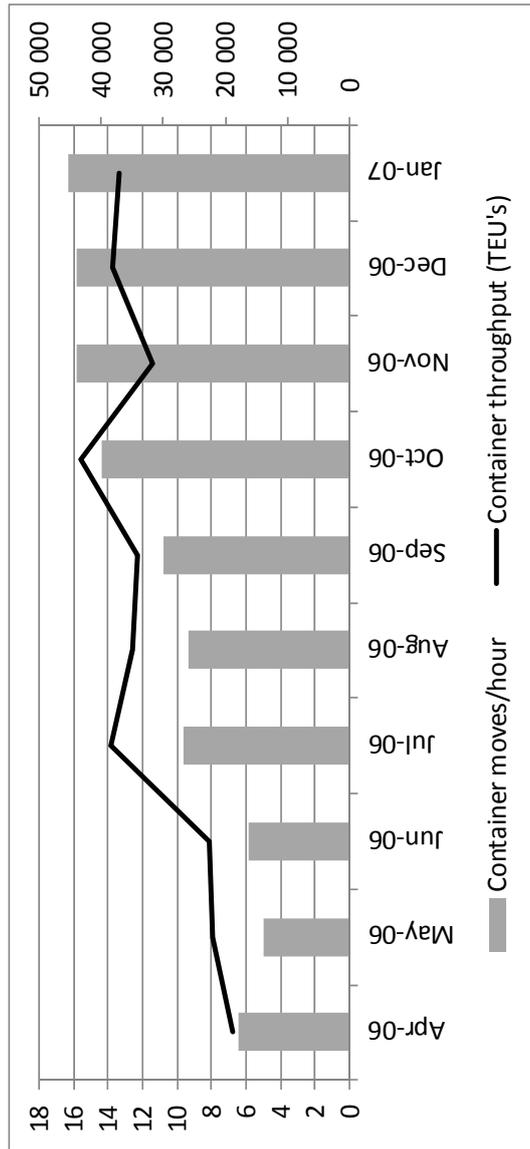
- Substantial investments in physical capital, in line with the development plans;
- Injection of management and expertise, leading, along with investments, to productivity improvements
- Throughput expansion
- Reduction in cargo clearance delays
- Improved connectivity to international shipping networks, facilitating international trade and opportunities to develop a logistics hub

- Contribution to public finance from initial sale and subsequent lease and cargo fees
- Knowledge transfer to local operators and employees
- Setting a positive example to promote further developments in the sector, such as the new greenfield Lekki port project

In total, the concession programme yielded over \$900 million in physical capital commitments by private terminal operators. These investments have largely been realized and have resulted in new or upgraded buildings and equipment, operational improvements, as well as new health, safety and training programmes for staff. In the case of the largest project, the Apapa container terminal, APMT has so far invested \$180 million to upgrade facilities and buy new cargo handling equipment, resulting in the doubling of terminal capacity. The latest investment programme is on stream for completion in 2011, and includes yard resurfacing and further equipment purchasing to triple the terminal's original handling capacity to 600,000 TEUs (Twenty-foot equivalent unit) annually.

Investments in facilities and handling equipment have significantly improved the productivity of Nigeria's ports. For instance, average waiting time for vessels at Nigerian ports dropped from 2.17 days in 2003 to 1.6 in 2010. Vessel turn-around time dropped from 7.9 hours in 2003 to 4.7 hours in 2007, before rising again to 5.4 in 2010. Productivity increases are particularly notable in the case of the Apapa container terminal. New equipment and other improvements more than doubled the number of container moves per hour within the first six months, leading to a proportional rise in container throughput (figure II.1).<sup>9</sup> Vessel wait times dropped dramatically and the terminal's operating hours were extended (table II.4). Since the reforms, there has been a 30 per cent increase in the number of vessels calling at the port.

Figure II.1. Rising container productivity at Apapa terminal expands throughput



Source : NPA, APM Terminals.

**Table II.4: Reduced turnaround times and extended operating hours at Apapa Container Terminal**

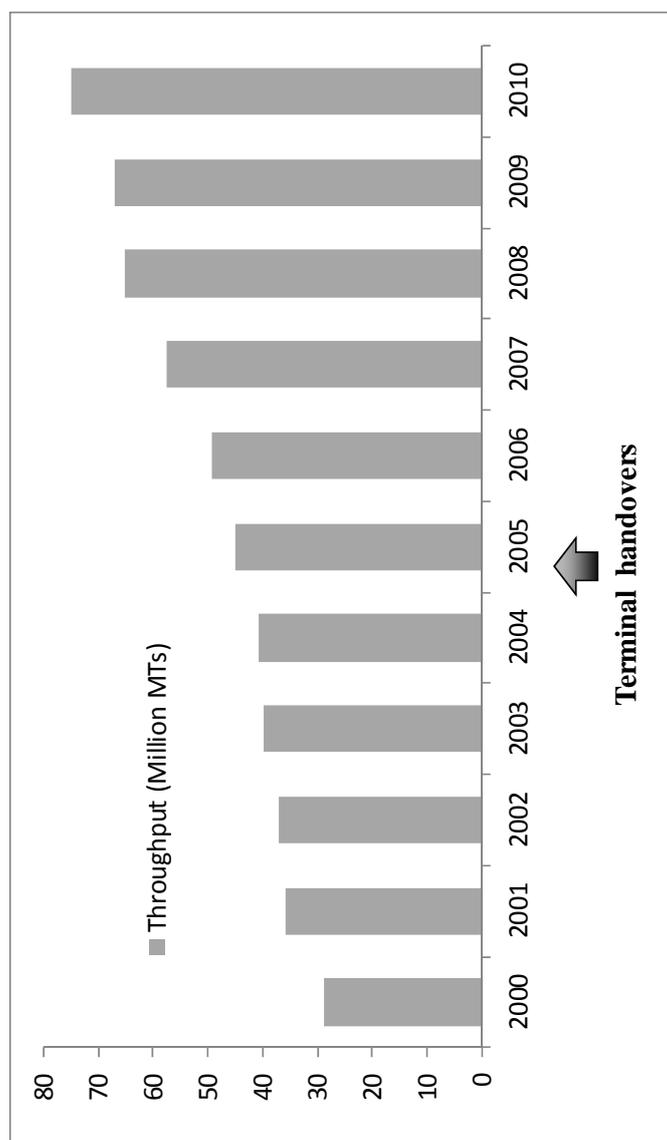
	<b>Pre-concession</b>	<b>Post-concession (2008)</b>
<b>Average vessel wait time</b>	<b>14-28 days</b>	<b>0-24 hours</b>
<b>Working hours per day</b>	<b>12 hours</b>	<b>24 hours</b>
<b>Working days per week</b>	<b>5 ½ days</b>	<b>7 days</b>

*Source:* NPA Handbook; APM Terminals Bulletin

Improvements in port performance have also been associated with reforms to the cargo clearance process, including the customs services. Computerization,<sup>10</sup> the use of scanning machines and improved personnel training have reduced the clearance time of goods down to one to 10 days, down from up to six months in 2004. This has had positive effects on congestion levels, particularly at the Apapa terminal, which handles the majority of the country's international trade. With fewer delays and faster turnaround time, shipping companies have developed confidence in Nigeria's port operations and schedule reliability, enabling them to avoid congestion surcharges.

Since the handover of terminals to private operators in 2006, cargo throughput of all types has grown at a faster rate than prior to the reforms. Largely due to the Apapa terminal, total container throughput in Nigeria rose from 656,000 TEUs in 2006 to 999,000 TEUs in 2009 and from around 50 million MTs to more than 70 million MTs (Figure 11.2).

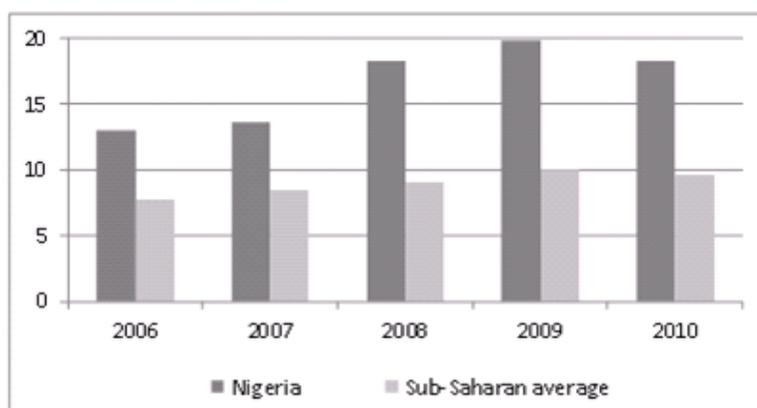
**Figure II.2. Port reforms have led to sustained rises in total throughput**



Source : NPA, APM Terminals.

More broadly, the reforms have integrated Nigerian ports into international shipping networks, providing more access to international trade opportunities. From 2007 to 2009, Nigeria's score in UNCTAD's Liner Shipping Connectivity Index<sup>11</sup>, rose at a significantly higher rate than the Sub-Saharan region as a whole (figure II.3). Rising connectivity has made it faster and less costly for exporters and importers to move products in and out of the country, and has facilitated the development of associated logistics activities.

**Figure II.3. Nigeria is integrated in international shipping networks (Index)**



Source : NPA, APM Terminals.

The concession programme has had a positive impact on public finances. As noted, the agreements saw private terminal operators commit to \$1.7 billion in commencement, lease and throughput fees to the NPA over the lifetime of the project. By the end of 2009, the Government had collected \$401 million, including 97 per cent of commencement fees owed by terminal operators, 81 per cent of lease fees and 87 per cent of throughput fees. In two cases, terminal operators faced a financial penalty for not meeting their guaranteed throughput. The unpaid balances reflect disagreements regarding the performance of the government's obligations according to the concession agreements (discussed below).

The entry of foreign terminal operators is associated with the application of more advanced technologies. As a result, local partners and Nigerian workers have accumulated new skills and knowledge. For instance, the introduction of sophisticated cranes and new information management systems have required intensive training of local employees. At the Apapa terminal, APMT uses a state-of-the-art crane simulator for training purposes, the first of its kind in West and Central Africa. Aside from a handful of managerial positions being allocated to expatriots, the majority of the labour force is locally sourced. In addition to more technical training programmes, they benefit more generally from exposure to international best practices used by leading ITOs. Through labour turnover, these newly acquired skills and knowledge are disseminated to the local economy.

The success of the concession programme, as well as the continued growth of regional trade, has encouraged the Nigerian Government to seek further opportunities for private port terminal development. The most significant of these is the construction of the 1 million TEU capacity Lekki container port, a greenfield project worth \$850 million. The project, involving a Singapore-based investor, is expected to commence in 2012 and will have a deeper draught than Apapa, allowing it to handle the world's largest container ships. Given the higher capital investments associated with a greenfield project, the project will be eligible for incentives under the free zone regime. Positive outcomes from the first round

of port concessions gave existing and potential investors the confidence to pursue more substantial projects.

## **2. Challenges**

Despite successful overall outcomes, a number of isolated problems have emerged that suggest room for improvement. These have tended to relate to alleged failures on the part of certain terminal operators or the Government to adequately perform their roles. The intention here is not to pass judgment on these contentious and complicated issues, but to highlight the challenges that may be encountered by such ambitious reform efforts. In Nigeria, problems include:

- Failure of certain operators to fully implement investment and development plans or fulfil financial obligations to the Government
- Problems with the state of assets and property handed over by the NPA
- Shipping tariffs higher than pre-concession levels
- Slow response by NPA to port infrastructure and maintenance needs
- Concerns about anti-competitive behaviour
- Industrial action over implementation of a new labour regime
- Continued delays and problems with customs and cargo inspection

There have been some alleged cases of terminal operators of the NPA failing to perform their obligations under the concession agreement, although there has been no legal action to date (UNCTAD field interviews). In a minority of cases, terminal operators have not followed through on their investment and development plans. In one instance, refurbishments and expansion projects required to increase terminal capacity were significantly delayed, certain safety and security systems and technical training

programmes were not implemented (UNCTAD field interviews). Also, there have been a few cases where terminal operators have not fully performed their financial obligations to the Government. This is related to alleged problems and delays with the transfer of moveable assets, utilities and terminal property from the NPA. Several operators have also expressed their concern that ceilings on shipping tariffs remain fixed at pre-concession levels, despite clauses in the concession agreements to review pricing every two years.

Growth in the use of Nigeria's ports since the reforms has put pressure on the Government to make investments to expand broader port infrastructure. Given the trend towards larger vessels in West African shipping routes, significant sums need to be invested in dredging to increase the depth of the ports. The NPA has been slow to respond to this need as there have been delays in the allocation of funds. This despite one of the advantages of landlord port models being a constant revenue stream for port authorities to secure soft loans for major capital investments. Moreover, maintenance at ports could be improved. Problems with fenders and quay walls, for example, limit berthing space and prevent concession areas from being fully operational. Requesting even minor work is often hindered by bureaucratic procedures. There is also a need to construct new main roads.

Operationally, there have been some concerns expressed regarding competition issues. Initially, there was fear that the entry of APMT would allow its parent company, the Maersk Group, to gain an effective monopoly on quay and landside operations, as well as the ocean freight market, bearing in mind that Maersk-related companies are major players in West Africa. Some shippers have petitioned the Government to complain about charges related to the transfer of containers from the port to bonded inland terminals. It is not clear if these claims have merit, but this demonstrates the importance of proper monitoring by Government authorities.

Although negotiated severance packages helped facilitate the initial restructuring, not all labour issues have been resolved. Dockworkers belonging to the Maritime Workers Union of Nigeria have engaged in industrial action, citing a negative working

environment and allegedly anti-labour practices implemented by private-sector terminal operators. Beyond the conditions of service, they point to delays in the implementation of the Dockworkers Minimum Standard agreement and new service contracts. These issues could lead to on-going disputes and undermine port operations.

Although there have been some improvements, customs and cargo clearance at Nigeria's ports are still a major bottleneck. There is a need for agents to embrace international standards, such as the use of sample inspections, and to enhance cooperation with terminal operators to streamline cargo tracking. Cutting the number of required procedures and the number of involved agencies would also reduce the potential for corrupt practices. The creation of a Presidential Committee to improve cargo clearance is a promising step forward.

### **3. Need for an independent regulator**

These problems point to the need for continued cooperation and communication between operators and the NP. Ultimately, however, there is a need to create an independent regulator that can monitor and resolve these issues.

Already, terminal operators and public authorities have developed a healthy culture of cooperation and coexistence. The BPE, for instance, established a port-privatization monitoring team that is in regular discussions with terminal operators to identify areas for improvement. For its part, the NPA is in constant contact with terminal operators. By communicating early and often, they try to identify problems before they emerge or escalate. Yet certain issues have still required political intervention, as demonstrated by the recent dispute over a potential port development levy that reached the Senate. An independent regulator should be in place to resolve disputes and regulate pricing and competition, allowing the NPA to focus on its core obligations as a landlord.

When Nigeria decided to implement a landlord port model, there were also plans to create a National Transport Committee (NTC) that would fulfill monitoring and regulatory functions across

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all transport sectors, including ports. Indeed, the transaction consultants helped draft legislation to create the new institution. However, the Bill ran into major obstacles in parliament, preventing the regulator from being in place before the handover of the terminals to concessionaires. Since then, the Government has sought to create a regulator specific to the port industry. In 2009, an 11-member technical committee was put together to propose details of a National Independent Port Commission, which will be incorporated into a forthcoming Port Industry Bill.

The Government also recently commissioned a review of Nigeria's port reforms and the performance of terminal operators. It is expected that this process will shed additional light on on-going challenges and provide valuable input into the development of a solid legal and regulatory framework to sustain what has largely been a successful port reform programme.

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### Notes

1 Various news sources; Mohiuddin and Jones (2006); Suleiman (2010).

2 10 of the smaller port terminals would be allocated through direct negotiations with private operators already under lease with the NPA. Many of these did not possess the necessary minimum scale to generate competitive interest or could not expand due to physical constraints.

3 APM Terminal's bid was more than five times the next highest offer (\$202 million, from International Container Terminal Services Inc). Winning bids of this magnitude are not unusual in port concessions around the world, particularly in recent years. See Rodriguez et al. (2011).

4 The agreements took the form of "leases" between the NPA and the private terminal operator.

5 See UNCTAD (1998) "Guidelines for Port Authorities and Governments on the privatization of port facilities".

6 As of early 2011, the tariff ceiling remained in place.

7 The ILO was involved in a number of African countries in enhancing financial governance of social security schemes, including Nigeria.

8 See UNCTAD (1998) "Guidelines for Port Authorities and Governments on the privatization of port facilities".

9 In 2009 a new record was set, when the operator moved 2,249 containers in 47.3 hours when working the 2,890 TEU capacity ship, Maersk Pembroke - a year before a vessel of this size would have taken 144 hours to complete.

10 The UNCTAD developed computerised customs management system ASYCUDA was used. It provides for Electronic Data Interchange (EDI) between traders and Customs in handing manifests and customs declarations, accounting procedures, transit and suspense procedures, taking into account the international codes and standards and is configured along national characteristics of customs regimes, tariffs and legislation.

11 Based on measures of number of ships, container carrying capacity, largest container ship, number of services, and number of shipping companies that provide regular container shipping services from and to a country's ports. The index is published under <http://unctadstat.unctad.org/TableViewer/tableView.aspx?ReportId=92> where more details about its calculation can be found.

### **III. BEST PRACTICE LESSONS FROM NIGERIA**

The experience that Nigeria has had in the development of its port infrastructure and management provides examples for policymakers on actions that other countries may follow when designing and implementing similar reforms.

#### **A. How to move from public to private port terminals**

The decision to seek private investment in port infrastructure generally brings with it a series of steps, issues and elements that combined, determine the success of the process. The steps and sequencing adopted by Nigeria provide a useful roadmap in moving from public to private port terminals.

##### **1. Identify potential for private port investment**

For private investment to take place there must be market opportunities. ITOs are looking to invest in ports with significant potential as a gateway or transshipment points. This depends on the region's integration with global shipping networks and the growth in international trade flows. In any case, Governments should perform due diligence on their port assets in order to estimate the commercial opportunities offered.

Nigeria's ports, particularly its container terminals in Lagos, represented clear economic opportunities for ITOs. International trade was projected to grow significantly in Nigeria and the West Africa region for economic and demographic reasons, providing a lucrative market in gateway and transshipment services. International shipping lines had a direct interest in removing bottlenecks at Nigerian ports through investments by their terminal operating subsidiaries. The BPE and its third-party advisors completed commercial and financial due diligence on terminal assets to identify specific concession opportunities and assess the potential for competitive bidding. This information was also used to help bidders produce their technical and financial bids.

## **2. Establish legal and institutional framework for private participation**

Privatizations and subsequent contracts between government agencies and private investors must be underpinned by a strong framework to ensure transparency and sustainability. Often, existing port legislation precludes the port authority from selling assets or contracting with private terminal operators. Legislative changes and new institutions may be a prerequisite.

In part to prepare the ground for the port reforms, in 1999 the Nigerian Government passed a law on privatization, creating the cabinet-level NCP and its secretariat, the BPE. It provided the legal basis for the State to sell assets to private investors and to engage in concession agreements. Rules were outlined for the BPE to follow when administering a tendering process. That same year, a new Ports Act was passed, providing a legal basis for the NPA to contract with private terminal operators to provide cargo handling services. The previous legislation had stipulated, with some exceptions, that the NPA be the sole provider of port services.

## **3. Create a high-level body to catalyze and coordinate reforms**

Reforming public ports to introduce private terminal operators is a complicated process involving major changes across a number of public agencies and policy areas, such as finance, infrastructure, transportation and labour. Political leadership is vital. The creation of an executive-level group with clear goals and access to top decision-makers can provide vital political will and effective coordination.

Nigeria's port reforms were catalyzed by the NCP which, among others, consists of the Vice President and the Minister of Finance. The NCP created a Transport Sector Reform Committee under the chairmanship of the Minister of Transport, which would help coordinate the reform process with the NPA. The BPE also organized and coordinated stakeholder meetings to ensure buy-in by government agencies including the NPA.

#### **4. Carefully diagnose needs and formulate new port model, drawing on external knowledge if necessary**

The introduction of private port investment usually requires significant changes to the structure of port governance. The Government must decide on the division of activities between private terminal operators and the port authority, the mode of private entry, the tendering process, and the subsequent regulatory framework. This poses challenges for many developing countries where bureaucratic capacity can be limited. International technical support is an effective way to ensure that best practices are implemented. It is also important to select a model that is acceptable to a range of stakeholders, while recognizing that not everyone will be satisfied with the outcome.

The Government of Nigeria worked closely with international institutions and independent advisors to devise their new port governance model and to outline the concessioning process. After announcing its intention to privatize port terminals, the BPE received funding from the PPIAF, an arm of the World Bank, for a study by international port consultants. The study made several recommendations, including adopting a landlord model of port governance, reserving cargo handling for private terminal operators. Another recommendation was to concession terminals to separate operators so as to ensure competition, even within the same port. After consultations with stakeholders and consideration of various options, the Government adopted the majority of the recommendations, providing clear objectives and a strategy to implement the reforms.

### **B. How to promote and negotiate FDI entry**

#### **1. Establish a strong and stable foreign investment regime**

With significant investments in immovable port facilities, foreign terminal operators want to be assured that their investments are protected. Concerns about the local legal system can be

attenuated by including recourse to international arbitration in contracts between the State and investors.

Nigeria began to liberalize its foreign investment regime in the late 1980s. Companies with full foreign ownership are allowed in virtually all sectors, with the exception of petroleum activities. There is free transfer of funds to and from the country, as well as currency convertibility. Investors are given a legal right to compensation in cases of expropriation, which must first pass a public interest test. Over the past decade, the Government has targeted FDI for the infrastructure sector, with major successes in the power, telecommunications and now ports. The BPE and its technical advisors act as a single contact point for foreign investors, which helps to limit the number of agencies involved and to maintain Government credibility.

**2. Fiscal incentives are unnecessary, except in the case of certain greenfield projects**

Since in most cases private entry involves bidding on State assets or concession rights, there is no need to provide fiscal incentives above and beyond the general tax regime. Ultimately, the investors willingness to take on the project will be reflected in the financial bid. In cases of greenfield port development, however, there may be justification for special tax treatment, depending on the public good characteristics of the port infrastructure.

In Nigeria, terminal operators fall under the general tax regime. In their financial bids, the companies committed to pay the Government certain levels of commencement, lease and cargo throughput fees. These bids were adjusted to account for future income tax obligations to the Government. On the other hand, the more recent proposal for a major container port at Lekki in Lagos State, as a greenfield project, will be eligible for free zone tax incentives. These incentives reflect the fact that the investor will be shouldering the majority of the financial risk.

### **3. Appoint independent transaction advisor to help manage the concession process**

To access technical expertise, public agencies responsible for the bidding process may hire an uninterested third-party that can perform due diligence, develop market opportunities, communicate with investors and facilitate bids. This promotes transparency, accuracy and enhances the Government's credibility and bargaining power with investors.

The BPE hired a third-party infrastructure advisory firm to undertake diagnostic studies of the NPA's terminal assets, assess their value, evaluate concession options, identify investors, and advise the BPE on the selection and negotiation of bids and agreements. The transaction advisors also developed legislative proposals for the creation of an independent transportation regulator. Access to this international expertise and experience helped the Government engage leading ITOs in the bidding process.

### **4. Allow for the widest possible expression of investor interests – select through phases**

When the scale of a port terminal is large enough to gather broad interest, a competitive bidding or auction process should be used to determine which investor can offer the best deal in terms of investment commitments, delivery of port services, price levels or contribution to public revenues. It is therefore important that the process be relatively free of barriers that could limit the number of bidders, such as costly administrative procedures or restrictions on types of bidders. At the same time, however, investors need to demonstrate certain minimum capabilities to be eligible to bid. The challenge is to balance this with the need to maximize competitive bidding.

To find this balance, Nigeria organized the bidding process into four stages. First, potential investors were invited to express their interest. Of these, due diligence was performed to pre-qualify bidders. To ensure minimum capabilities, bidders were required to have previous experience with terminal operations. Second, a

technical proposal was submitted by the bidder outlining an investment and development plan for the port terminal. Assuming that the technical bid was accepted, the third stage was the submission of a financial proposal with the amount to be paid to the Government in commencement, lease and throughput fees. Finally, preferred bidders were selected and they negotiated with the NPA to finalize the details of the concession agreement. This multi-step approach allowed the investors to enter the initial bidding stages with minimal administrative hurdles.

Although competitive bidding is usually the preferred choice, there are cases where direct negotiation may be more appropriate. In Nigeria, some of the smaller terminals to be concessioned were already being operated by private firms under previous arrangements. Rather than terminate these arrangements, which could interrupt service delivery, the NPA simply negotiated new conditions including, for example, the scale and duration of operating rights and fee structures. Had these negotiations failed, other interested parties would have been sought.

#### **5. Set and follow clear procedures and timelines for bidding**

Transparency throughout the bidding process is very important. When the public has access to credible information, it is easier to keep policymakers accountable and the process enjoys more legitimacy as a result. Transparency is equally valuable for investors, as a more legitimate process is more likely to result in outcomes that are politically sustainable in the long-run. Moreover, transparency limits opportunities for corrupt practices. To ensure transparency, Governments should publicly outline tendering procedures and timelines, as well as the respective roles of key government agencies.

The bidding process for Nigeria's port concessions met high standards of transparency. The BPE communicated details on the due diligence and bidding process to stakeholders and the public by holding workshops and posting information on their website. With very few exceptions, the timelines for pre-qualification, bid evaluation and negotiations were followed closely.

## **6. Ensure that contracts address key issues throughout lifetime of project**

Significant effort should go into the preparation and finalization of concession or lease contracts between public entities and investors. These contracts outline the rights and obligations of each party and the distribution of risks between them. It is important to address a wide array of issues and contingencies in these contracts, as this limits the potential for disputes during the life of the project, which in some cases can be up to 30 years. Disputes can result in costly legal proceedings or re-negotiation, service disruption or divestment. The specific elements covered in an agreement will depend on the model of private participation, as well as the envisioned regulatory regime. For instance, a model relying on competition may preclude the need for set user prices to be part in the contract.

The contracts used between the NPA and private terminal operators covered a number of areas over the lifespan of the project, including: the date and term of the concession; guidelines on the use of the concession property; operating conditions, including tariffs, payments to the NPA and performance standards; service obligations of the NPA, such as maintaining waterways; reporting requirements; contingencies in cases of faults or to terminate the contract; and dispute resolution procedures, including access to international arbitration. Specific details were included in a number of appendices. Initially, terminal operators had to commit to a tariff ceiling and to their initial investment plan. But with Nigeria's new port model relying primarily on intra-terminal competition to encourage investment and keep prices in check, the tariff ceilings are to be removed over time and future investment plans fall largely within the discretion of the operator.

## **C. How to facilitate project implementation and ensure positive long-term outcomes**

### **1. Proactive management of the labor force adjustments**

Shifting from public to private terminal operation is likely to involve changes in the skills and knowledge base of the workforce as private terminal operators apply international and modern standards. Governments have a major role to play in this process and should be involved in the earliest stages where short-term displacement may occur, while new posts are created by new investments and increased throughput in the medium and long term.

While in Nigeria the terminal operators did not inherit the labour contracts of the NPA, the Government did appoint a multi-agency executive-level task force to negotiate settlements with the trade unions. The International Labour Organization provided technical assistance, and the workers that stayed on are mostly local and have benefited from exposure to international best practices. Additionally, greater exposure to international labour standards has led to action on the side of workers seeking to improve their labor standards, and the dramatic increase in throughput creates more qualified and formal sector jobs.

### **2. Strengthen infrastructure and government services within the port complex**

Governments have a strong presence in ports through their regulation of international trade and involvement in providing hard and soft infrastructure, such as maintaining waterways, providing security and customs clearance. The performance of terminal operators and success of the reforms will depend in part on how well these services are provided. Often, the Government may even be bound by agreements with the operator to provide certain services. Adequate resources and communication between operators, the Port Authority and other Government agencies are essential to positive long-term outcomes.

To support the port programme, the Nigerian Government improved service delivery in the port and upgraded framework conditions. It created a task force on customs reform, leading to a new management team and a special unit to monitor practices within the agency. The customs agency signed an MOU with the NPA to demonstrate their commitment to improving the situation at the country's ports. The number of public agencies in the port was reduced from 29 to five to reduce overlap and red tape, while investments were made in new technology to speed up cargo clearance. Significant investments have been made in road construction, berthing facilities, channel dredging and storage facilities. Despite these efforts, there is still room for improvement. Poor maintenance has been a problem, and the NPA has had difficulty accessing certain funds for major capital investments.

### **3. Appoint an independent institution to monitor and follow up on project implementation and operations**

Private investments in port terminals are characterized by complex terms and conditions between the operators and public agency. Positive outcomes for the host country depend on Government efforts to monitor a project's development and operations, and to take action if the agreement is breached. On the other hand, investors want to be reassured that public agencies fulfill their obligations and that any dispute is resolved impartially and in a transparent manner. To address these issues governments may create an independent institution that can monitor project developments and regulate the behavior of private and public port actors according to the agreements. In some arrangements, this institution will also be responsible for reviewing and regulating prices and/or competition in the sector.

Creating a new institutional and regulatory framework usually requires significant legislation, which can stretch the capacities of weak political systems. It may take years before the final law is passed. It is important to start this process as early as possible in the reform process. However, it is unrealistic to expect all details to be finalized prior to the implementation of a concession

programme. In the meantime, the parties must monitor each other. A regular schedule of consultation is valuable in this respect. It is also advisable to the Government to perform ad hoc reviews of port performance.

In Nigeria, there were initial plans for the creation of a Transport Commission to monitor and regulate the port sector, giving it jurisdiction over prices and competition in terminal operations. But the bill was blocked in Parliament. More recently, a bill for a port-specific agency was drafted and presented. The delay in creating this institutional framework has meant that the NPA and BPE have been responsible for monitoring the concession agreements and setting tariff ceilings. This is insufficient and has led to confusion among maritime stakeholders. In the short-term, the Minister of Transportation initiated an official review of the port reforms and their outcomes.

#### **4. Build on and promote positive experiences**

A successfully executed port privatization programme can help persuade firms to make additional or new investments, with higher levels of commitment and risk exposure. Positive outcomes also facilitate public and Government support for future projects, while one bad case may be enough to block them politically. Governments should promote and disseminate positive experiences to potential investors through organs such as investment promotion agencies.

Nigeria's successful port concession programme has led to significant interest in a number of new projects, the most notable being the Lekki Port in Lagos State. A greenfield project, it will be able to handle 1 million TEU of container cargo per year, roughly doubling the national capacity.

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