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The Nigerian Power Sector Legal/Regulatory Framework – Key Financing Considerations



PRESENTATION BY
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THE WALDORF HOTEL, LONDON

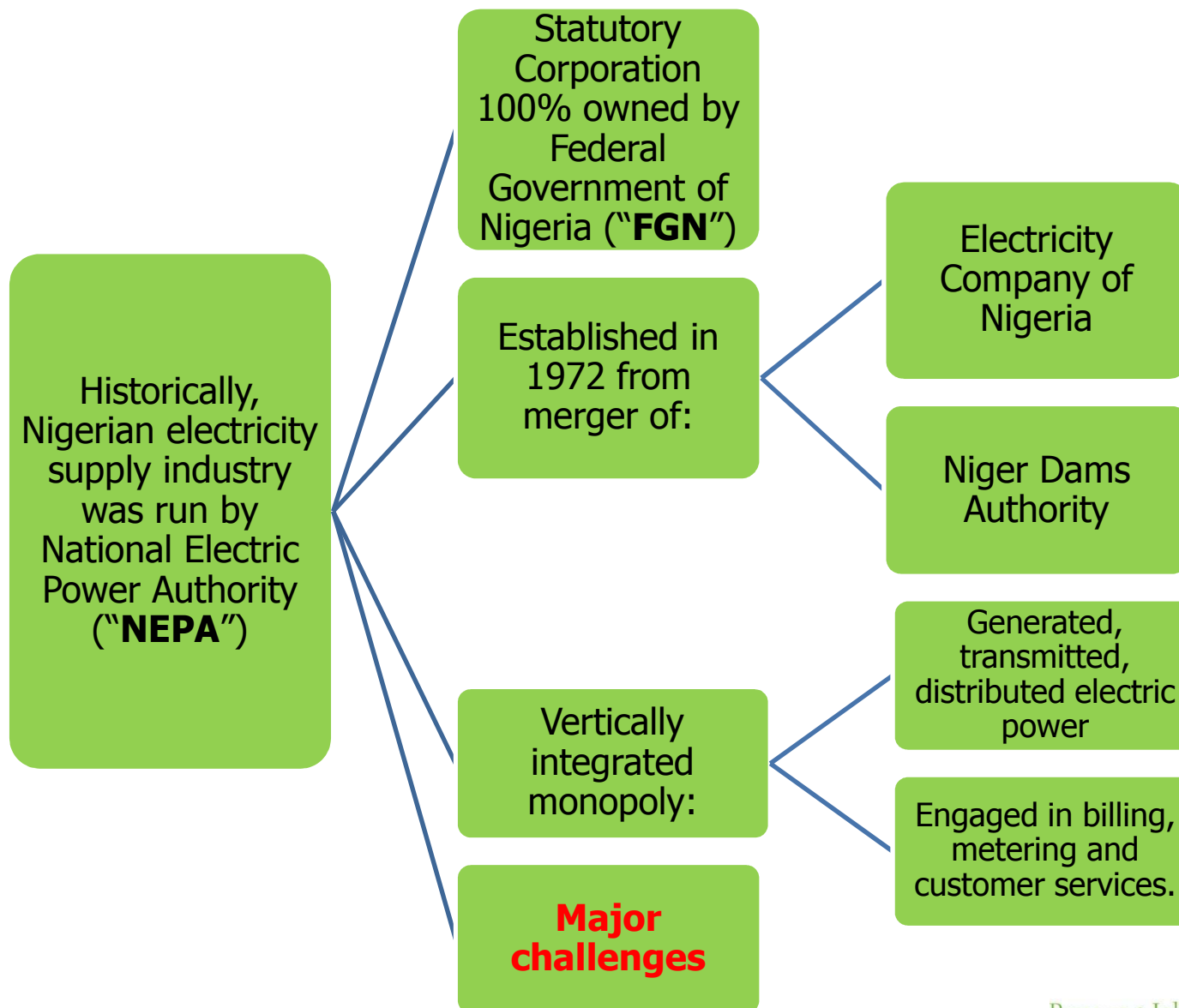
OUTLINE

1. OVERVIEW OF NIGERIAN POWER SECTOR, REGULATORY FRAMEWORK & GOVERNMENT POLICY

2. REFORMS: PRIVATISATION

3. KEY FINANCING CONSIDERATIONS

OVERVIEW OF NIGERIAN POWER SECTOR



OVERVIEW OF NIGERIAN POWER SECTOR (Contd.)

MAJOR CHALLENGES

- Lack of adequate investment;
- Aging infrastructure;
- Unmotivated workforce – low capacity development, unpaid salaries;
- Systemic Corruption;
- Bureaucracy and inefficiency;
- Huge supply/demand gap – high cost of alternative means of power generation;
- Inefficient billing/collection systems.

REFORM IMPERATIVES

- Negative impact on industrial and economic growth;
- Est. 100m people out of current population of >150m without electricity;
- Est. available capacity of 4500 MW; well below current suppressed capacity of about 10,500MW;
- Est. \$3.5bn annual investment required for power generation alone; over next few years, to meet the set target of 40,000MW by 2020;
- Private sector participation necessary to improve efficiency; investment in infrastructure & bridging the power demand/supply gap.

OUTCOMES

- Efficient Electricity Supply Industry;
- Market-determined pricing;
- Private sector-driven industry;
- Transition to fully competitive market structure

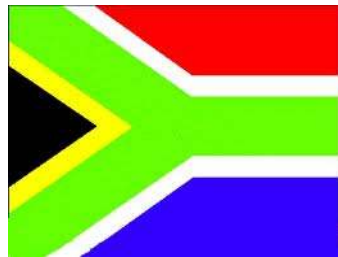
OVERVIEW OF NIGERIAN POWER SECTOR (Contd.)

Comparison with other Leading African markets:



EGYPT

Population:	circa 80M
Generating Capacity:	17,000 MW
Av. Per Capital Consumption:	<u>1,866KwH</u>



SOUTH AFRICA

Population:	circa 45M
Generating Capacity:	40,000 MW
Av. Per Capital Consumption:	<u>7,808KwH</u>



NIGERIA

Population:	>150M
Generating Capacity:	4,500 MW
Av. Per Capital Consumption:	<u>236KwH</u>

OVERVIEW OF NIGERIAN POWER SECTOR (Contd.)

Electricity (Amendment) Decree & NEPA (Amendment) Decree of 1998:

- lifted NEPA's monopoly,
- allowed private participation in electricity generation (IPPs)

In 2000, FGN established Electric Power Sector Implementation Committee ("EPIC") to:

- review Nigerian Power Sector
- prepare road map for reform of the industry.

EPIC proposed:

- regulatory reforms – separation of policy maker (ministry) and independent regulator (NERC).
- unbundling NEPA from vertically integrated monopoly into different businesses.
- privatisation of unbundled business units NEPA.
- Transfer of legacy liabilities to separate entity.

OVERVIEW OF NIGERIAN POWER SECTOR (Contd.)

Recommendations of EPIC culminated in:

enactment of Electric Power Sector Reform Act 2005;

transition from NEPA to PHCN;



unbundling of PHCN into 18 successor companies (comprised of 6 GenCos and 11 DisCos and the Transmission Company of Nigeria ("**TCN**")); and

transfer of the assets, as well as employees and relevant contracts from PHCN to the successor companies via transfer order instruments in accordance with the EPSRA.

Establishment of Nigerian Electricity Liability Management Company Limited by Guarantee ("**NELMCO**").

Establishment of Nigerian Bulk Electricity Trading Plc ("**NBET**"), the bulk trader.

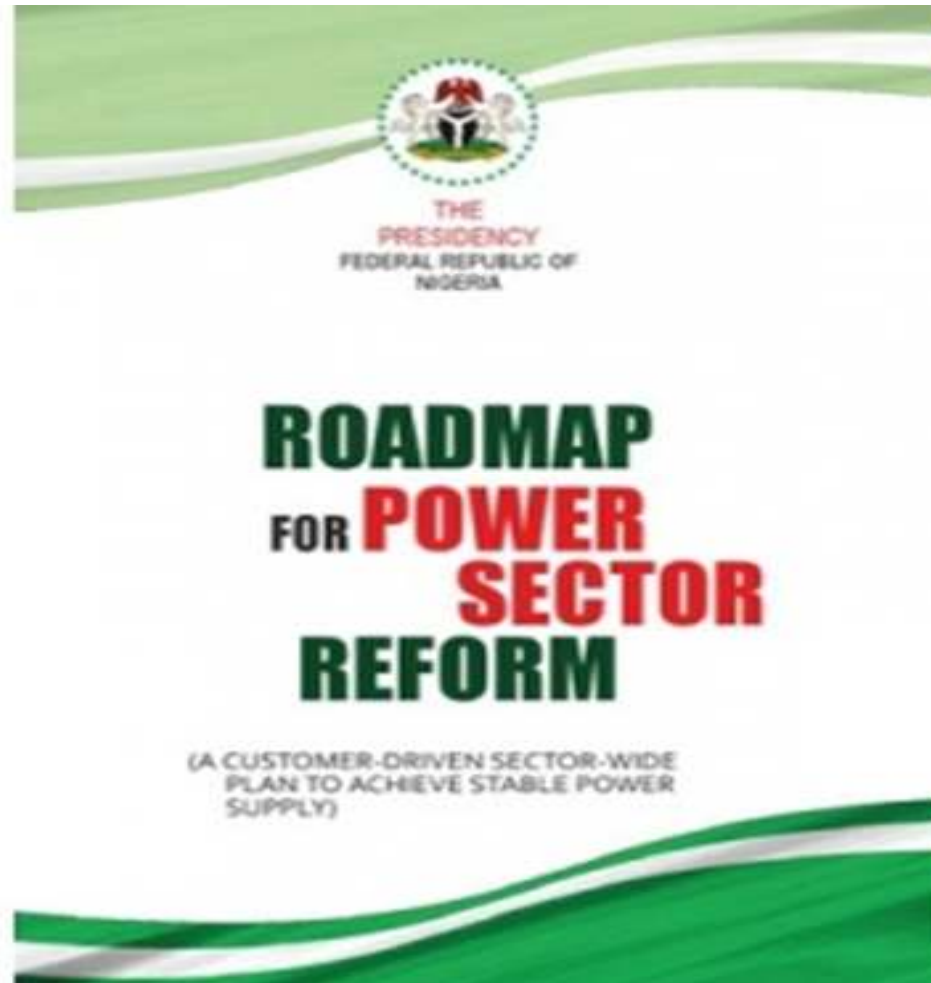
In 2004, FGN initiated Nigerian Integrated Power Project ("**NIPP**") under which 10 power plants have been established with a view to increasing the country's power production capacity and improve the transmission network.

NIPP assets are held by Niger Delta Power Holding Company.

NIPP assets not part of on-going privatisation.

Proposed separate process for the privatisation of NIPP assets.

REFORMS – PRIVATISATION



REFORMS –PRIVATISATION (Contd.)

1998-2004

Break up of monopoly of NEPA & entry of private sector investors in power generation sub-sector **through IPPs**



2004-2010

Enactment of EPSRA; unbundling of PHCN into 18 separate successor companies – 6 GenCos, 1 Transco and 11 DisCos

NIPP – gas-fired power plants and transmission lines



2011+

Privatization/ Concession/ Management Contracts for PHCN successor companies & NIPP Assets
Transition period under Bulk Trader & Payment Support Mechanisms before competitive market

REFORMS –PRIVATISATION (Contd.)

FGN
currently
in process
of
privatising:

Concession of 2 Hydro Companies, which own 3 GenCos plants;

Outright sale of FGN stake in 3 thermal GenCos; and FGN 51% majority stake in Geregu GenCo;

Sale of 60% stake in 11 DisCos;

Transaction documents signed in February 2013 (except Afam GenCo & Kaduna DisCo);

25% deposit paid by preferred bidders of 5 GenCos and 10 DisCos;

Payment of 75% balance and final handover awaited within 6 months of signing transaction documents;

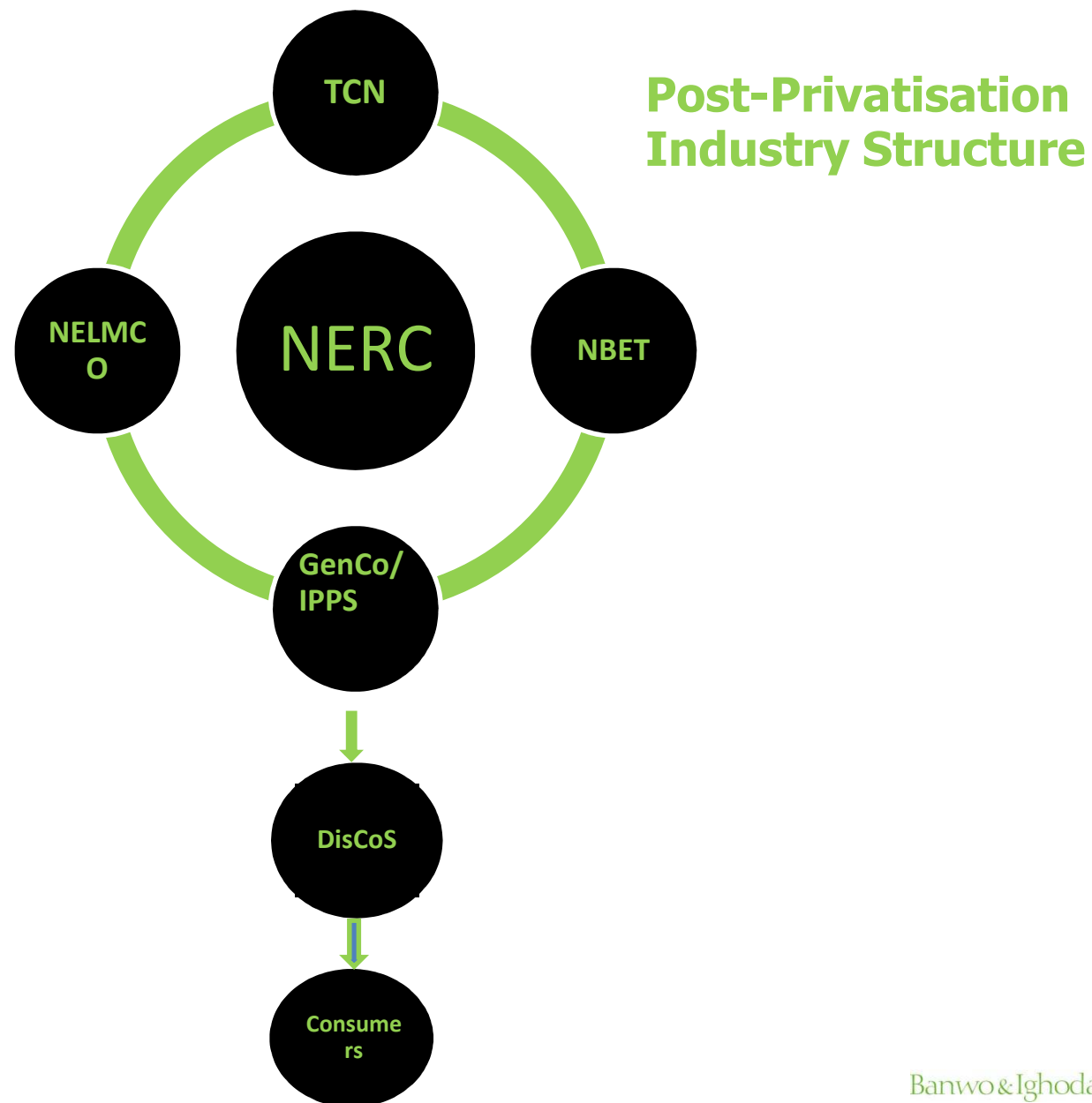
Awarded management contract in respect of TCN to Manitoba.

REFORMS –PRIVATISATION (Contd.)

Preferred bidders of 5 GenCos and 10 DisCos currently seeking to raise financing (onshore/offshore) to fund remaining 75% of acquisition cost/ concession fees

Under privatisation guidelines, bidders permitted to debt finance up to 70% of the acquisition price/ concession fees.

REFORMS – PRIVATISATION (Contd.)



REFORMS – PRIVATISATION (Contd.)

□ Envisioned Market Progression:

TRANSITION PERIOD	MEDIUM TERM	LONG TERM
<ul style="list-style-type: none"> • Progressing privatisation of remaining PHCN and all NIPP assets • Licencing of more IPPs • NBET assuming PHCN power purchasing duties: <ul style="list-style-type: none"> • signing PPAs with most GenCos/IPP; backed by necessary payment support arrangements • Signing Vesting Contracts with Between NBET and DisCos 	<ul style="list-style-type: none"> • Fully privatized Power Industry • Withdrawal of payment support arrangements/ bilateral contracts among GenCos and DisCos • Increased competition among GenCos and IPPs • Market pricing of gas and other fuels • Gradual deregulation of pricing 	<ul style="list-style-type: none"> • End of generation gap • Sufficient transmission and distribution infrastructure • Fully established payment and collection processes • Supply quality and standards achieved • No DisCo monopolies • Establishment of fully liberalised & competitive market

KEY FINANCING ISSUES

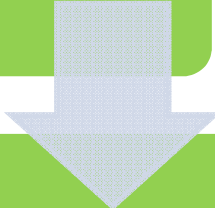
**Short unexpired
residue of term
of most GenCo
and DisCo
licences and
uncertainty of
licence
renewals
(Section 71(10)
EPSRA).**

**Robustness of
payment
support
arrangements –
no FGN/World
Bank payment
support / partial
risk guarantees
for DisCos.**

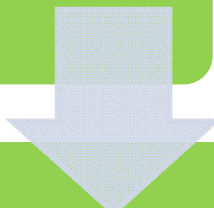
**Certainty in tariff
methodology (MYTO)?
How to ensure that
discretionary powers
exercised by NERC
with respect to
changes to MYTO
methodology should
be restricted to
prescribed procedure
and review periods in
the MYTO**

KEY FINANCING ISSUES (Contd.)

Labour Matters – payment of huge legacy liabilities (bidders not involved in the process and not CP to handover) and need to retain key staff but bidders don't yet have management control.



Lack of information/relevant disclosures from BPE e.g in respect of material assets of GenCos/DisCos – insufficient due diligence & yet no management control for bidders.




Insufficient warranties (generally beyond title warranties) and indemnities in Transaction Documentation – is “as is where is” basis the right approach?

KEY FINANCING ISSUES (Contd.)


Prevention of asset-stripping and other material adverse changes between signing of Transaction Documents and Handover – need for management control by preferred bidders after payment of 25% deposit; no MAC as CP for closing/handover?



Escrow account controlled by BPE to exclusion of preferred bidders.



Debt/security restrictions – BPE consent required for debt; preferred bidders cannot charge assets of GenCos/ DisCos (company law rules against financial assistance?)



Gas supply risks for GenCos/ effectiveness of Domestic Gas Supply Obligation on gas producers?

KEY FINANCING ISSUES (Contd.)

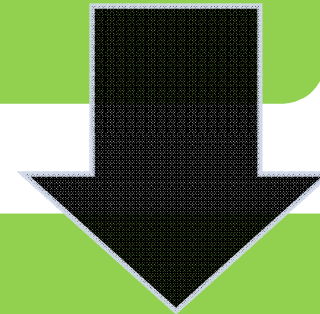
NBET failure to supply electricity (lack of sufficient DisCo compensation in Vesting Contract);

Responsiveness of FGN to the investor key concerns?

- no clear FGN support for key underlying aspects of MYTO, including levels of power supply, long-term support of regulated returns, etc
- no explicit indication of FGN support for take-off, solvency and/or sustainability of various FGN-owned entities that are critical to power sector, including NBET, TCN, NELMCO, Nigerian Gas Company Limited, and Gas Aggregation Company Nigeria Limited

KEY FINANCING ISSUES (Contd.)

Increasing capacity of Nigerian financiers to grant required funding but still insufficient



Possible reticence of international financial institutions (considering their perception of political, economic and security risks)

Let's discuss...

