

Digital Mobile Licence Auction Success Story: The Lessons and Challenges therefrom

Between January 17 and 19, 2001 Nigeria made record by successfully holding Africa's first spectrum auction for the provision of second generation digital mobile telephony services. Three Digital Mobile Licences ("**DML**") were on offer and each of the Licences had a reserve price of US\$100,000,000.00. There were 5 Bidders for the Licences and at the conclusion of the Auction each of the Licences was sold at US\$285,000,000.00.

The Auction exercise was acknowledged even by the losing Bidders to have been very transparent and well organised. Local and international commentators have applauded the organisation and integrity of the exercise and the amount raised for each of the Licences far exceeded the projections of Government and other industry stakeholders.

What were the ingredients and support pegs for this success story and what are the challenges and lessons therefrom? In carrying out this analysis, it is important to understand and relate the success to the auction processes and mechanism.

Auction Processes and Mechanics

Broadly and quite roughly, the DML Auction Processes may be divided into three – the Pre-Auction processes, the Auction preparation processes and the Actual Auction exercise. The **Pre-Auction processes** involved

- Preparation and subsequent modification of the Information Memorandum and Licence documents;
- Submission of Application documents by prospective Bidders;
- Pre-Qualification of and conduct of due diligence on prospective Bidders

The **Auction preparation processes** included

- Preparation and distribution of Auction documentation to qualified Bidders e.g. Bidders' Participation Notice and Bidders' Information Pack and the Supplemental thereto;
- Conduct of Mock Auctions – both the Nigerian Communications Commission's ("**NCC**") and the Bidders' Mock Auctions; and

- Bidders' Briefing and debriefing Sessions.

The **Actual Auction** of course refers to the conclusive exercise that was held between January 17 and 19, 2001.

DML Success Factors

The major factors of the DML success story may be reduced primarily to three, viz:

(i) Total commitment to transparency and professionalism on the part of everyone connected with the exercise. A significant evidence of this professionalism was an almost obsessive adherence to timelines and deadlines by the managers and organisers of the Auction;

(ii) Hard, consistent, rigorous work and preparation by all parties, most times, running into weekends and continuous 24 hours working periods;

(iii) Communications. This term is used in the technical sense to represent the convergence of Information Technology, Telecommunications and Broadcasting. In regard to the DML success story, emphasis was on Information Technology and Telecommunications.

These factors would be discussed in reasonable detail on their own and while analysing the roles of the different parties to the success story.

Parties to the DML Success

There were four parties to the DML success, viz:

- The Federal Government of Nigeria [**FGN**];
- NCC;
- NCC's Consultants; and
- The Bidders

The NCC's main Consultant was Radio Spectrum International while the Auction Specialists was Charles River Associates. The Legal Consultants were Paul Usoro & Co, Chief Afe Babalola SAN, OFR and the US Law Firm of Skadden Arps, Meagher & Flom.

Parties' Roles to DML Success

(a) Federal Government of Nigeria

FGN's most significant contribution to the DML success was in allowing NCC and its Consultants to use their professional judgement in conducting the Auction, without any interference from Government officials. NCC made all decisions that were required on the Auction processes, of course, with the support and assistance of its appointed Consultants and Advisors.

It is not very usual for Nigerian Governments, at all levels, to be so detached from a process and allow its nominated institution and its appointed Consultants to manage the processes. For allowing (a) NCC the free hand to organise and manage the DML Auction and (b) professionalism and transparency to be the overriding consideration for the exercise, the Federal Government deserves all the accolades and credit it has got for the exercise.

(b) NCC

The DML Auction was really an NCC event and the Commission and its officials were in fact and deed the Auction's chief organisers and managers. In all respects, NCC and its officials deserve all the praises and encomiums they have received for the transparency and organisation of the exercise.

In discussing NCC's significant contributions to the DML success, at least six elements are identifiable, viz:

(i) NCC was guided by total transparency, objective standards and professionalism and these were reflected in the decisions that it made and in the appointment of its Advisors for the Auction. Performance standards and experience clearly guided NCC in the appointment of its Consultants; patronage and nepotism were not given room in this regard.

Freed of those negative and retarding considerations, NCC had no qualms in expecting and demanding the highest standards of professionalism and work performance from the Consultants. As a follow up to this state of affairs, NCC sought for the Consultants' advice and comments in regard to most if not all issues relating to the Auction, prior to making final decisions, because it had faith and confidence in them.

It was of course the prerogative of NCC to make final decisions on all matters connected with the Auction, and in typical Nigerian establishment fashion, it could do so without the inputs of its appointed Consultants. NCC however departed from that beaten path and requested almost always for the Consultants' inputs and by so doing, the processes for decision-making were enriched and the final decisions quite robust, capable of implementation and defensible.

(ii) NCC's decision-makers were accessible on 24-hour basis and in fact insisted on constant and continuous communication and feedback from the Advisors at any time of the day or night. Most decisions were required to be made quite urgently and it was a major consideration that most of the decision-makers and/or contributors towards the decision-making should be reached at any time of the day or night.

The NCC Chief Executive, Engr Ernest Ndukwe, was notable in this regard. He particularly instructed the Consultants to reach him on phone on any issue relating to the DML Auction at absolutely any time of the day or night in the office or at home or on his mobile cellular telephone. It was also quite routine for him to call the Consultants for consultations at any time of the day or night, quite a number of times waking them up from sleep at the hours around midnight. Pushed to such limits, the Consultants were themselves motivated to give their professional best.

(iii) Flowing from the second element above is the fact that NCC's officials were hands-on managers who were involved in all of the Auction processes while not getting in the way of the Consultants' work. They insisted on knowing and understanding every detail and aspect of the assignment and following up on the processes. At the same time, the Consultants were allowed unhindered room to provide their professional services.

Nothing illustrates this graphically as the actual Auction. For the conduct of the Auction, there was an Auction Control Team [**ACT**] made up of the Consultants (represented by 6 persons) with the NCC Chief Executive as the seventh Member. However, the Consultants who were members of ACT made all the routine decisions during the Auction and the NCC officials were quite unobtrusive in this regard even though they, particularly the Chief Executive, were aware on real-time basis of even the minutest details in regard to the processes and contributed to the decision-making processes. That synergy and trust between the Commission and the Consultants smoothed the way, in no small manner, for the success of the Auction.

(iv) NCC must also be commended for being flexible and willing to accommodate the views of prospective Bidders and to provide them with reassurances and required comfort. It is quite rare in Nigeria for Governments and/or its institutions to sincerely solicit the opinion of stakeholders and to take such opinion into consideration in the formulation of policies and processes. Sometimes these institutions and governments are held hostage by the psychological fear of not wanting to be weak or tentative and therefore do not review or reconsider expressed positions even when superior logic call for such reconsideration and review.

NCC chose this unbeaten path and actively courted and showed absolute respect for the views and feelings of industry stakeholders, particularly the prospective Bidders. NCC's conduct in turn gave the Bidders confidence to participate in the Auction processes and reassured them that the Commission as the industry regulator would, post-auction period, always regulate and act on the basis of reason, logic and industry best practices as contrasted with the arbitrariness and pig-headedness that is most times, and perhaps, deservedly, associated with government departments, institutions and practices.

In fact, some of the modifications to the Information Memorandum and the Licence document were consequent upon such consultations and reconsiderations by NCC. The Supplemental Information Pack was, for example, a specific product of the interface between NCC and the qualified Bidders during the Bidders' Debriefing Session on the eve of the Auction proper. There would be more on this in another part of this Paper.

(v) NCC also showed professionalism and its respect for Bidders and other stakeholders through its strenuous efforts to meet timelines and deadlines, particularly after the publication of its first version of the Information Memorandum. As much as possible, NCC kept to the tentative timelines indicated in the Information Memorandum and this created certainty in the minds of industry practitioners and stakeholders, particularly for planning purposes.

This adherence to timelines was also evident in the conduct of the actual Auction. The Bidders were impressed and expressly commended the Commission and its Consultants, after the Auction, for adhering to its given timelines for the different auction tasks and assignments e.g. the start and end times for the respective rounds. The Bid Forms were always submitted to the Bid Teams at the precise times earlier notified to them and were also collected at the precise times fixed for collection. Most of the Bid Teams, being made up in part of regional/international operators were quite impressed with this aspect of the arrangements.

(vi) As a corollary to the last two success-factors is the fact that NCC was always very prompt in responding to prospective and qualified Bidders' queries and inquiries. Most of the Q&As which NCC formulated and posted on its website were products of Bidders' queries and inquiries and no query or inquiry was considered by NCC as too trivial to merit a response.

(c) Consultants

Two significant issues must be mentioned in regard to the Consultants:

(i) Like NCC, the Consultants were guided by total transparency, objective standards, professionalism and a passion for success. To their credit, there was no incident or even an allegation of corruption, divided loyalty, or partiality in relating with any of the Bidders or prospective Bidders. They applied even standards in offering professional advice and services to NCC and in conducting the Auction.

The passion for success most of the times meant working very long and continuous 24-hour periods. NCC officials and the Consultants, for example, worked continuously and without any break from 9.00 a.m. on Friday, November 17, 2000 through to 7.00 a.m. on the following day, Saturday, November 18, 2000 to ensure that the first version of the Information Memorandum was ready and posted on the NCC website that Saturday morning.

This was not an isolated instance. Another significant instance that is worth recording was the preparation of the Supplemental Bidders' Information Pack. The Bidders' Information Pack was prepared and distributed to the qualified Bidders on January 13, 2001. However, between that date and January 16, 2001, there were several significant modifications to the Auction Rules. Activities on January 16, 2001 started for the Consultants, at 8.00 a.m. with preparations for the Bidders' Briefing Sessions and Mock Auction scheduled for that day, NCC's Press Briefing and preparation for the actual Auction scheduled for the following day.

NCC's Press Briefing, Bidders' initial Briefing Session and their Mock Auction took the entire day, without any break. The Bidders' Mock Auction ended at about 9.00 p.m. and was followed promptly by a debriefing session during which some of the modifications to the auction rules were further explained to the qualified Bidders, mostly by the Consultants. Some of the qualified Bidders quite rightly raised at the debriefing session which started at 10.00 p.m. and lasted for about one hour, the issue of codifying all the bits and pieces of auction rules' modifications into a single document for reference purposes. NCC explained to the qualified Bidders that desirable as such a project was, it was constrained for time and would not be able to carry it out.

However, at the NCC/Consultants de-briefing session, at about 11.30 p.m. that night, after the Bidders' debriefing session, that issue was again raised and the dominant view was that a Supplemental Bidders' Information Pack was necessary to encapsulate all the auction rules modifications which were effected between January 13 and 16, 2001. It then fell on 2 of the ACT members to prepare the 21-page Supplemental document that night, for the review of the other ACT members and the Commission in the morning of January 17, 2001 before the commencement of the Auction proper at 8.30 a.m. The

good news is that this feat was accomplished even though it meant working all through that night and preparing, in between, for the Auction. The Supplemental document was in fact distributed to the Bidders on Day One of the Auction. It required total commitment and a passion for success and excellence on the part of all the parties to go through that rigorous and punishing schedule.

(ii) The Consultants worked together as a team throughout the Auction processes. This teamwork was evident right from the preparation and publication of the Information Memorandum through to the conduct of the Mock and actual Auctions. The two members of ACT who collaborated, for example, to prepare the Supplemental Bidders' Information Pack represented two different Consultancy Firms and disciplines. Amongst the Consultants, there was also mutual respect and deference to each person's specialisation and areas of core competence.

In that sense, they complemented each other while working as a team. This synergy was very important for the smooth running of the Auction processes. As an adjunct to these issues, there was seamless synergy and communication between the Consultants and NCC. This partnership was important for the success of the DML Auction.

(d) The Bidders

Without the Bidders, there would have been no auction. The Information Memorandum in fact required that there be a minimum of 5 Qualified Bidders for the Auction to hold and that minimum was met. The most significant contribution by the Bidders to the DML Auction success was therefore in having faith in the processes and consequently participating, notwithstanding justified widespread scepticism.

The Bidders were not just docile participants; they were very active in their participation and demonstrated this by being quite forthcoming with suggestions and queries on the processes, and these in turn strengthened the Auction exercise. As earlier mentioned, most of their queries and suggestions necessitated reviews of the Information Memorandum, Licence Documents, and Auction Rules.

The Bidders were equally forthcoming in giving additional details and explanations on themselves, particularly during the pre-qualification stage. The Bidders' Mock Auction provided Bidders the opportunity to test the efficacy of the processes and Rules and the limits of the Auction Control Team's alertness.

One of the Bidders, in particular, with its team of Auction specialists, broke all the auction rules in the Information Memorandum during the Mock Auction and in the process not only kept the ACT members

very alert and even more prepared for the actual Auction, but also highlighted some of the alleyways and loopholes in the Auction Rules. All of these assisted NCC and its Advisors in refining the processes and making it even more resilient and robust.

The role of Communications

Communications [particularly information technology and telecommunications] occupies a major niche in the DML success story. E-mail was the major mode of communication between the Consultants [i.e. amongst themselves], between them and NCC and prospective Bidders and between NCC and the prospective and Qualified Bidders. Information and data in regard to the Auction were mostly disseminated through NCC's website and this ranged from the posting of the Information Memorandum and Licence documents right through to the very efficient and admirable release of each Bid Round result during the Actual Auction, within five to ten minutes of the conclusion of the Rounds.

All of these were possible because

(i) All the Consultants and the core NCC officials were proficient on computer usage and this was most evident in the preparation of all the documentation for the Auction processes and during the actual auction exercise. At no stage during the processes was a Secretary required to prepare any of the documents, ranging from the Information Memorandum and Licence document right up to the Bid Forms and Message documents. They were all prepared and processed by the Consultants personally;

(ii) Everybody connected with the exercise had faith in the Internet system. They all had efficient e-mail access and were regular in checking and replying their mails and also had a culture of checking constantly for updates and information at the NCC website.

The gains from this maximal use of information technology processes cannot really be quantified. For one, it greatly enhanced the transparency of the processes, particularly in regard to the timeous release of the Rounds results during the actual Auction. Second, the Consultants having to do all the word and data processing by themselves protected the confidentiality and integrity of the processes and also considerably saved time and costs which would have been incurred and expended through the use of Secretaries.

Lessons of the Auction Exercise

Several lessons may be drawn from the success of the DML Auction exercise and these include the following:

(i) **First**, the Nigerian State made up primarily of its economic, political and social systems, can indeed work efficiently and effectively provided we have the political will to make it work and also establish structures and institutions, rather than *ad-hoc* solutions, and strengthen them for this purpose. It required political will on the part of Government not to subvert the Auction processes and to allow NCC, as an institution, to midwife and be totally responsible for the processes.

What is also required for the Nigerian State to work and produce the kind of results obtained from the DML Auction is the enthronement of professionalism and transparency in all facets of our life. As earlier mentioned, these twin principles played unsurpassed roles in ensuring the success of the DML exercise and their threads were woven round the entire process, without a break, right from the appointment of Advisors up to the conduct of the actual Auction.

(ii) **Second**, Nigerian professionals are as good and in some instances, better than their foreign counterparts and NCC officials are a clear demonstration of this fact. They were hands-on managers of the processes and made final decisions in all aspects of the exercise. They are representative of the Nigerian hard-core professional managers and advisers. If they could successfully and triumphantly manage the intricacies of the DML processes and take the hardheaded decisions that needed to be made in this regard, it is then submitted that Nigerian professionals in other areas and institutions, if given opportunities and motivations, can contribute greatly in turning the Nigerian economy and situation around.

The competence of the Nigerian professionals was also on display in regard to the DML Legal Consultancy. Nigerian professionals handled not less than 95% of the legal consultancy assignment for the DML Auction wholly and entirely. The Initial Information Memorandum was the only document that was jointly handled by the US Law Firm and Nigerian Legal Consultants. The Licence Document was entirely and wholly the product of Nigerian professionals and so were the day-to-day legal support and advice for the entire processes and the several modifications to the Information Memorandum, including but not limited to the preparation of the Supplemental Bidders' Information Pack. There has been no negative commentary on the competence and capabilities of these Nigerian Legal minds. To the contrary, there has been consistent and continuous commendation and praise for them and their work products.

(iii) **Third**, an open transparent process is possible in all facets of Nigerian life if only officials, managers and administrators of the processes, including Consultants and Advisors thereto, (a) do not have personal vested interests, and/or (b) are not distracted by third parties with such vested interests; and (c) are not too pompous and

inflexible to accommodate alternative viewpoints and reach objective decisions.

The bane of transparency in Nigeria is more often than not the vested interests of officials and managers of the resource allocation processes. These interests may either be direct and personal or attributable i.e. those of their friends, associates or relations. Such vested interests usually induce officials and/or managers of the processes to subvert the procedures and attempt to steal advantages over other competitors for the national resource. It is the absence of these vested interests amongst the managers and administrators of, and Advisors for the DML auction that facilitated its success.

Transparency also means that the officials and managers of the resource allocation processes should take into consideration the views and concerns of the relevant stakeholders. In particular, they should be willing and able to accommodate alternative suggestions, hold dialogues with the stakeholders and proffer superior logic to counter these stakeholders' suggestions and views. All of these however require an open environment where resource allocation plans, information and methodologies are published and stakeholders are invited to make inputs thereto. Greater openness on the part of resource allocation managers is required in this regard and of course they must develop the patience to dialogue and hold discourses with stakeholders and the Nigerian public.

(iv) **Fourth**, communications infrastructure development and information technology education is paramount for the Nigerian State. Perhaps a starting point should be the introduction of Electronic Government at all levels of Governance but most immediately at the Federal Government level. In very simple terms, it means that Internet must connect Government departments and institutions, to themselves, the Nigerian public and the outside world. It means that all Government officials should have Internet and e-mail access and the departments and institutions must have websites for dissemination of information and news.

This of course requires massive education at all levels in information technology and its uses. In other words, not only must there be information technology education at the three formal levels of education, there must be immediate adult education to dispel the fear and phobia of the computer from the adult minds and psyche. These fears operate at various levels and it includes the fear that has been expressed by very senior Government officials, of the likely loss of employment by most workers if massive computerisation is introduced to Government ministries and departments.

Officials with that mindset must understand that the market for skilled information technology practitioners is literally untapped in

Nigeria and all that is required is a retraining and retooling of those able-bodied and mentally alert officials who otherwise would be redundant from (a) a phasing out of their ancient manual or electronic typewriters; and (b) the introduction and education of their bosses in the personal use of computers and information technology processes. Forward-looking private sector companies and industries are well ahead in this regard and, certainly, the public sector can learn from them.

Infrastructure development is also very urgent and key in this regard. Currently, reasonably easy Internet access is possible in Nigeria's economically viable urban centres, notably, Lagos and Abuja. Backbone development would expand the network to other Nigerian localities and also provide the required bandwidth for efficient and fast Internet access and downloading of large files and documents.

Post-DML Auction Challenges

The DML Auction success lessons pose several challenges, in the post-DML Auction era, to at least 3 classes of persons, *viz*:

- (i) **NCC**. The Commission's challenges are in four major areas:
 - **First**, NCC must act as a midwife for the institution of a transparent regulatory environment for the Communications industry, specifically through (a) the legislation of an enabling law; and (b) preparation and publication of Regulations, Guidelines, etc. Without such enabling law, Regulations and Guidelines, the DML Auction success would merely remain an *ad-hoc* exercise without the grounding and necessary roots, support and structures to sustain future licensing and regulatory processes. Such legislation, regulations and guidelines would introduce certainty and predictability to the licensing and regulatory processes and that would constitute the beginnings of building sustained structures and institutions [as opposed to *ad-hoc* solutions] for the regulation of the industry.

There are plenty of lacunae in the subsisting NCC Act and a consensus has developed amongst industry practitioners on the need for a comprehensive Communications Act. Apart from the absence of a befitting enabling legislation, the industry, as at date, does not have Regulations and/or Guidelines. All of these must urgently be developed and used by NCC for the regulation of the industry. NCC as the industry regulator is well positioned, with the requisite experience, knowledge and depth to midwife these processes.

- **Second**, NCC must strengthen its regulatory structures and processes through manpower development and the establishment

of permanent structures and processes therefor. Such structures include Monitoring units, a well-equipped Registry and the institution of Spectrum assignment processes [and the processes for other technical issues e.g. type approval]. NCC is very deficient in these areas at the moment even though, most commendably, efforts are on going to remedy this. These structures would further provide certainty to the regulatory processes and eliminate *ad-hoc* procedures, which, by their nature, are susceptible to abuse, tentativeness and corruption.

- **Third**, NCC has the challenge of building on the DML success in regard to its licensing and regulatory activities. The openness and transparency that has been so widely acclaimed in the DML processes must be introduced and institutionalised in all aspects of industry regulation and licensing processes. NCC must inform industry stakeholders of its plans at the formulation stages and hold discourses with them prior to concretising and, perhaps, legislating or publishing them. This is very relevant in regard to its rule-making processes, modification of licence conditions, licensing activities, etc.
- **Fourth** and finally, NCC has the challenge of regulating the DML Licensees [and other operators] as they roll out their networks. As the industry regulator, NCC must be firm in policing the activities of not only the DML Licensees but also all other operators and service providers. A significant provision in this regard in the DML Licence is the network obligations, which require Licensees to spread their network to the 6 geopolitical zones of the country within a specified time, at the pain of pecuniary penalties. Nigeria's very low teledensity requires that NCC be strict in enforcing these provisions if an improvement must be recorded immediately in this regard.

(ii) **DML Licensees.** The Successful DML Bidders have the challenge of rolling out their networks as fast and as efficiently as their Licences require and providing qualitative services, beyond Nigeria's economically viable urban centres and at affordable cost to the consumers. According to the Licence timetable, they are expected to provide commercial services in or about May 2001. The Licence also expects them to assist in the build-out of Nigeria's alternative trunk transmission network. The success of the DML Licensees is hinged partly on their determination and motivation and partly on the firmness of NCC as the industry regulator.

(iii) The **Nigerian State and its institutions** has the challenge of replicating the DML success story in other areas of the Nigerian economy by, amongst others, building, empowering and sustaining institutions and defined processes [rather than *ad-hoc* processes and institutions] for the reformation and development of the Nigerian

economy. The economic areas that require immediate attention in this regard include energy, oil and gas, power and, privatisation sectors.

(iv) **Nigerian professionals** have the challenge of building on the DML success and repeating it in other assignments and areas. This requires training and retraining of Nigeria's pool of professional expertise, particularly in specialised fields and areas.