

NIMASA and the Regulation of the Maritime Industry in Nigeria

The news that a National Shipping Line is being planned has been received with mixed reactions. Even the disclosure by the Minister of Transport Mr. Rotimi Amaechi at the two-day maritime stakeholders conference that the Ministry of Transportation has adopted a private sector approach to establish the planned national shipping line has still not generated the confidence expected. Former President Obasanjo characteristically wasted no time in warning the Federal Government against the revival of a National Shipping Line. His comments on the failings of the Nigerian National Shipping Line (NNSL) sum it all up. He highlighted poor professionalism and high level corruption involved in the management of the defunct NNSL. He further added that '19 brand new ships were specially built for Nigeria, we did not take delivery of some of them until I left office in 1979. When I came back in 1999, NNSL had been liquidated with all the 19 ships gone as well as the five ships in existence. Two of the ships were missing for almost two years and it was discovered that one military man was using them all over the world with no accountability. Until NIMASA became a source where people steal money, nobody knew too much about it'.

A brief history on the establishment of the Nigerian National Shipping Line shows that prior to independence Nigeria saw the need to get involved in shipping by establishing a national shipping line with well defined objectives: 1. To project the good image of Nigeria abroad by flying the Nation's flag on the high seas and the world's seaports. 2. To promote the acquisition of shipping technology by creating and diversifying employment opportunities in the shipping industry. 3. To improve the country's balance of payments position by enhancing the earnings and conservation of foreign exchange. 4. To assist in the economic integration of the West and Central African sub-region and 5. To support the Nigerian Navy in the event of conflict.

The firm owned three vessels at its inception in 1961 and by 1964 it had increased its total count to 16 vessels. When the firm's vessel were beginning to wear out, the government ordered the construction of about 19 new vessels in 1977.

In the 1990s the firm hit hard times along with other local shipping companies and it had to auction off vessels in an attempt to stay afloat, before finally being liquidated in September 1995. In 1996, a new line was created called the National Unity Line (NUL) fully owned by the Nigeria Maritime Authority and boasting just one ship called MV Abuja. Just like its predecessor it died a natural, early death. The failings of the NNSL and NUL soon left a gap in the market where international shipping lines now dominate and suffocate competition in the indigenous maritime industry.

The Nigerian Maritime Administration and Safety Agency (NIMASA) mentioned by former President Obasanjo is the apex regulatory and promotional maritime agency in the country. Created from the merger of the National Maritime Authority and Joint Maritime Labour Industrial Council (former parastatals

of the Federal Ministry of Transport) in 2006 the agency was established primarily for the administration of maritime safety seafarers standards and security, maritime labour, shipping regulation, promotion of commercial shipping and cabotage activities and pollution prevention and control in the marine environment. The Agency also implements domesticated International Maritime Organization (IMO) and International Labour Organization (ILO) Conventions.

Unfortunately the recent scandals surrounding NIMASA have only brought to light that it had apparently become the cash cow of the maritime industry to be milked at random with corruption thriving unabated as millions of dollars were frittered away with nothing to show for such extravagant expenditure. The question now is do we really need a new national shipping line going by our history, especially now, even if it is privately owned?

We are a shipping nation no doubt but whether we have benefitted from this sector as we should rightly do is not even open to debate; we assuredly have not done so. The freight market for crude oil alone in this area is worth \$2.25 billion per annum and the imbalance/absence of Nigerian participation in this space prompted the passage of the Coastal and Inland Shipping (Cabotage) Act 2003. That in itself has not been a success. All the excitement about the Cabotage Act as with so much else in this country was not well thought out and came to nothing. The Cabotage Vessel Financing Fund (CVFF) established by section 42 of the Cabotage Act was an accumulated fund derived from the 2% surcharge on all vessel contracts involved in coastal trade and other tariffs, fines, fees and licences under the Act. The fund is collected for the purpose of promoting the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in domestic coastal shipping. Notwithstanding the good intent of the fund's establishment and accrual of a reported sum of between N40billion and N50billion over a decade on from its establishment, little or no transparency exists regarding its use and/or any criteria upon which it is to be evaluated against the achievement of its objectives as stated in the Cabotage Act.

Nigeria is certainly well known as an import dependent economy (as evidenced by Nigeria's balance of trade without oil exports) and as such the maritime industry is crucial to the sustenance of the Nigerian economy. However, before embarking on the proposed national line, we must look at expanding our port facilities and the regulatory agencies need to be carefully scrutinised and re-positioned as it cannot be a case of 'business as usual'. A review of all legal, institutional and regulatory frameworks with special consideration of our Nigerian peculiarities must be embarked upon.

Maritime matters are regulated by the following laws-

- *the Carriage of Goods by Sea Act 1926*
- *Admiralty Jurisdiction Act*
- *Coastal and Shipping (Cabotage) Act*
- *Nigerian Ports Authority Act*
- *Merchant Shipping Act and the*

Nigerian Shippers Council Act.

A cursory review of the Coastal and Shipping (Cabotage) Act 2003 for example indicates that it has failed woefully; that it was badly thought out and fundamentally flawed from the onset. One cannot but commend the intention to stimulate local participation in Nigeria's coastal trade however we cannot pick laws lock, stock and barrel from foreign jurisdictions and apply them here without taking into consideration our local peculiarities, our weaknesses and strengths. The Act provided that vessels operating in Nigerian waters should be built in Nigeria and owned by Nigerians or by companies wholly and beneficially owned by Nigerian citizens - S. 23 (1)(a) and crewed by Nigerians, -S. 23 (1) (e). These provisions were made knowing at the time that they constituted a target obvious to all that Nigerians were not capable of meeting and which to this day we have not yet risen to such demanding heights. Even at that the drafters of the law strategically provided for waivers to be granted by the Minister to foreigners operating cabotage vessels. As a result of these measures, where then did we find ourselves? Right back to square one where we all started from with little or no progress for indigenous operators.

On the issue of disbursement from the *The Cabotage Vessel Financing Fund (CVFF)* appropriate measures must be put in place with special provisions for monitoring the disbursed funds. The Cabotage Act is one law that needs to be revisited.

There is so much going for the country in the maritime sector where it is undoubtedly strategically placed to take advantage of its proximity to landlocked nations in the West African region. All over the world there are port cities that have become invaluable assets to their nations because of their efficiencies, specialised capabilities (whether for receiving large container vessels or for specialised (off) loading abilities) and/or where there is no alternative competition. That is the case for Nigeria because of our coastal positioning - Chad and Niger for instance have almost no alternative ports for trade other than ours. It therefore follows that by optimising capabilities at our ports (increasing port loading facilities, cutting down loading times, running a 24 hour port operations etc) they can become strategic trade centres that are unavoidable for the West African region, bringing much needed economic advantage and their positive effects on GDP.

Major cities in the world by the nature of their specialised ports and industries have the ability to attract trade and generate economic activity of both national and municipal significance. Shanghai in China is the world's largest port city by volume, receiving some 33.62 Million TEU (Twenty Foot Equivalent Container Unit) in 2013. Singapore is second with 32.6 Million TEU and other port cities of note are Hamburg Germany at 9.30 Million TEU, Port Said East, Egypt at 3.2 Million TEU and Durban, South Africa at 2.63 Million TEU. By improving and upgrading port facilities to accommodate larger vessels and optimising loading and offloading times Nigeria has an op-



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portunity to increase trade activity exponentially.

According to the United Nations Conference on Trade and Development (UNCTAD) Review of Maritime Transport in 2015 it is noted that Greece continues to be the largest ship-owning country, accounting for more than 16% of the world total, followed by Japan, China, Germany and Singapore. Together, the top five ship-owning countries control more than half of the world's tonnage. Five of the top ten ship-owning countries are from Asia, four are European, and one (the United States) is from the Americas. In South America, the largest ship-owning country continues to be Brazil, followed by Mexico, Chile and Argentina. The African country with the largest fleet ownership is Angola, followed by Nigeria and Egypt.

The Maritime Industry because of its size and nature, for a coastal nation such as ours, holds great economic advantage that is currently only second to our Oil and Gas Industry. However in the long run, with necessary attention to the current threats and weaknesses of the industry, it will surpass Oil and Gas in both economic earnings and as a potential employer of a large proportion of the Nigerian labour market.

Apart from representing such a significant part of the Nigerian economy locally, it is also reported that as much as 90% of Nigeria's external trade is done by Maritime transport and a good percentage of industrial activity in Nigeria is, unsurprisingly strategically situated around the port cities of Lagos, Warri, Port Harcourt and Calabar.

The maritime sector's potential involvement in multimodal transportation also represents a great opportunity for economic advancement and development with current transportation networks across the country being incapable of efficiently conveying people and products safely. The inland waterways can provide an opportunity for capable parties to create national routes along interstate waterways as an alternative to road or rail networks.

I do however believe that there is so very much more requiring attention at this point in time in the maritime sector and a new national carrier (mark 3) should not be the prime consideration.

On a positive note and a feat worth commending is that the Nigerian Navy has been involved in the construction of vessels and has disclosed that President Muhammadu Buhari will soon commission Nigeria's first set of locally constructed sea vessels into the Nigerian Navy fleet.