Funso Doherty
Lagos Nigeria
email: fd@funsodoherty.org

4th May, 2023

The Office of Public-Private Partnerships
Ground Floor, Administrative Building
Governor's Office, Lagos House,
Alausa-Ikeja Lagos

Attention: Mr. Ope George; Special Adviser, Office of Public Private Partnerships
Via email: ope@ppplagos.com
Cc: info@ppplagos.com

Dear Sir,

OPEN LETTER ON PROPOSED PUBLIC-PRIVATE PARTNERSHIP ON SUSTAINABLE TRANSPORT

Background

Last week, Oando PLC, a private sector company, announced that it has commenced implementation of a Public Private Partnership (PPP) arrangement with the Lagos State Government through the Lagos Metropolitan Area Transport Authority (LAMATA). This partnership with LASG was confirmed by the Lagos State Governor in a Statement on the Subject.

Acccording to the Company's disclosure, the PPP, which builds on a Memorandum of Understanding (MOU) it signed with Lagos State last year, provides for Oando to deploy an "Electric Vehicle and Infrastructure Ecosystem" including electric mass transit buses, charging stations and other supporting infrastructure. The Company anticipates that it may ultimately roll out up to 12,000 buses and will "..,transition the current combustion mass transit buses to electric, starting in Lagos State and eventually across the country".

Oando Group's Chief Executive, Mr. Adewale Tinubu commented that "Public Private Partnerships have been critical to getting the project to this point and will continue to fuel our expansion across the entire country".

Issues of Public Concern

These reported developments raise a number of issues that are of grave public concern:

1. There is very limited transparency around this PPP initiative. Given its proposed scale, public significance, potential cost and possible impact, the disclosures made by LASG are manifestly inadequate.

2. The terms of the MOU entered into by LASG with Oando have not been disclosed, including whether it is binding or non-binding, and what commitments are being made by, or required of, either party under the MOU and/or any subsequent and related agreements.
3. Lagos State's laws stipulate that:
    a) The Office of Public Private Partnerships (PPP office) is mandated to "ensure that PPPs for the provision and development of public infrastructure or public assets in the state are in accordance with prevailing Government policy and public interest".

    b) Concession Agreements are subject to approval by the House of Assembly. Concession Agreements are defined in the PPP law as "any agreement between the Government and any person, firm, company or limited liability partnership for the construction, maintenance, operation or management of public infrastructure, assets and facilities over an agreed period of time".

    c) Both the PPP office and LAMATA fall within the designation of "procuring entities" under the LASG public procurement law which generally provides for open competitive processes for significant procurements of goods and services.

It is not evident from the information so far disclosed in the public domain, that these laws and provisions relating to PPPs were either complied with, or not applicable, prior to commencing this partnership. It is alarming that, according to the recent disclosures, the partnership is now considered to have moved forward into a pilot operational phase, by virtue of Oando having taken delivery of some buses and other operating infrastructure.

4. Oando PLC, the parent of the Group, is a publicly listed entity. Accordingly, there is substantial information about the Group and its affairs in the public domain, including:
    a) The Group has not filed audited accounts since 2020 fiscal year. It is currently in default on its regulatory obligation to file audited accounts for both 2021 and 2022.

    b) In its most recently published (2020) audited accounts filed with the Stock Exchange, Oando reported very substantial losses for both 2020 and 2019 of N140bn and N207bn respectively. Its current liabilities far exceeded its current assets by N578bn and it had negative Shareholders Funds (i.e. net liabilities) of N67bn as at December, 2020. In its report, Oando's independent auditor expressed the opinion that there was Material Uncertainty regarding the Group's ability to continue as a Going Concern.

    c) In 2021, Oando PLC reached a settlement with the Securities and Exchange Commission in which it committed to pay a monetary penalty and to improve its Corporate Governance and Internal Controls. This was pursuant to sanctions that had been imposed on it by the SEC following investigation of petitions received against the Company

In light of these matters, which are matters of public record, LASG's choice of Oando as its partner for this initiative, is baffling.

Imperatives

In PPPs, commitments are made and/or resources deployed on behalf of the public in arrangements that are intended to advance both public and private interests. Consequently, wherever they are to be employed, there is an increased need for transparency, due-diligence and demonstrable good faith. Disclosure and engagement are standard global practices that help foster public confidence and acceptance in PPPs.

I hereby call on the PPP Office, the Public Procurement Agency and LAMATA to stay further action on this proposed partnership, to shed more light on it and address these concerns before proceeding further.

The public needs to understand the nature and scope of this initiative as well as the procedures undertaken by LASG to ensure due process, value for money and accountability. In all such initiatives, it should be seen that the public interest is protected and served in accordance with applicable laws of the State.

Yours faithfully,

Funso Doherty

Cc: HE, Babajide Sanwoolu, Governor, Lagos State
Rt. Hon Mudashiru Obasa, Speaker, Lagos State House of Assembly
Mr Fatai Onafowote, Director-General, Lagos State Public Procurement Agency
Ms. Abimbola Akinajo, Managing Director, Lagos Metropolitan Area Transport Authority
Mr. Moyosore Onigbanjo (SAN), Hon. Attorney-General & Commissioner of Justice