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Law and Economics of Deregulation in Downstream Sector of the Nigerian Oil and Gas

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Abstract:
This article examines the downstream sector of the Nigerian oil and gas sector has in recent times, it has being operating at crossroads. With the huge amount of money spent by the Federal Government of Nigeria on subsidizing petroleum products into the country is causing economic dislocation. In remedying this malady, this article examines the policy of the government on total deregulation of the downstream sector from the law and economic perspective. Deregulation is a process of allowing the market forces to be the major determinant of petroleum prices. Law and economics otherwise known as the economic analysis of law is best viewed as a social tool that promotes economic efficiency. This article evaluates the economic efficiency of deregulation in light of existing laws and proposed laws coupled with recent social events. This article reveals arguments for and against deregulation but concludes that the adverse effect of deregulation is not ad infinitum but will bring about self-sufficiency and economic buoyancy.

Keywords*: Downstream, Oil and Gas, Law and Economics, Economic efficiency*

1. Introduction

It is largely evident to the blind that the Nigerian economy is dependent on revenue from the oil and gas sector. However, this much praised sector has being operating at crossroads over the years. Owing to the discovery of oil in 1956, Nigeria has being rated as the Africa's second largest producer of oil, eightieth largest exporter in the world and tenth largest oil reserves.[1] It earns over 90% of the nation's foreign revenue and 86% of the total revenue of the federal government. But it begs the question on why Nigeria's economy is still in doldrums irrespective of the huge revenues realized from the exploration and production of oil.

While most developing countries have improved their economy through the exploration of oil, Nigeria has being plagued with inefficiencies, corruption, abuse of natural monopoly power, mismanagement, smuggling, oil theft and excessive subsidising have significantly reduced the supply of petroleum products in the country. The oil boom of 1973-1974 emerged as a result of the rising wages and appreciating domestic currency which reduced profits from non-oil exports, thereby tilting the country from the production of non-oil traded goods to that of the exploration and production of oil.[2] However, there was a fall in international oil price in the 1980s which almost truncated the Nigerian economy. In the bid saving its economy numerous policies were formulated stating from the Stabilization Act 1982, budget-tightening measure 1984 and the Structural Adjustment Programme (SAP) 1986.[3] The main thrust of SAP was the deregulation of the Nigerian economy. This programme was rejected by majority of Nigerians owing to the anticipated hardship that will flow from such policy on Nigerians during that time and in the future. In our present Nigeria, any break in the availability and price rationality of petroleum products brings negative effects on both the standard of living of Nigerians and its economy. There has being the geometric increase in fuel price since 1986 which has led to the increase in of other things such as transportation, food, salary and wages etc. Significantly, it is imperative to assert that price review has not brought any achievement to the country but has only served as an avenue for subsidy scam and all sorts of economic crime. With the strong determination to solve the problems faced by the Nigerian oil and gas sector particularly in its downstream segments, experts have advocated for 'deregulation'. In the bid of emulating other countries the federal government is trying to privatise and liberalise the country's downstream sector.

This paper seeks to examine the law and economics of deregulation. In other words it seeks to show deregulation as a social tool for economic efficiency. Deregulation being a fundamental public policy must be examined as to its impact on the economy, Nigerian populace and the difference it would make. The law and economics of deregulation aims at showing whether such an

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[1] Omotoso G. (2010): 'A Voice of Sense for Nigeria', The Nation, Thursday, March 18, Vol. 5, No 1336

[2] Dappa Tamuno-Omi Godwin and Daminabo Dagogo: *Deregulation of the Nigerian Economy: the theoretical milieu*, Proceedings of the 1st International Technology, Education and Environment Conference African Society for Scientific Research (ASSR); Co-published by Human Resource Management Academic Research Society http://www.hrmars.com/admin/pics/218.pdf accessed December 13, 2014

[3] Ibid

economic policy reform is efficient and ripe for enforcement irrespective of whatever consequence that might emanate in the quest of achieving economic buoyancy.

2. Deregulation

Deregulation is the reduction or elimination of government power in a particular industry, usually enacted to create more competition within the industry.[4] It could be conceptualized as privatization, divestiture, and marketization of the economy.[5] In addition involves giving greater space to the private sector as the prime mover of the economy, contrary to emphasis on the dominance of public sector.[6] Deregulation is one of the essential aspect of price and market reforms which entrails both unshackling private sector development through the removal of government restrictions on private economic activity and divestiture of the state assets particularly public enterprises into private hands[7]. In essence deregulation means expunging government control either in a particular sector of the economy or the entire economy as a whole, thereby placing it in the hands of private individuals and allowing market forces (demand and supply) to dictate the economy.

The oil and gas industry comprises two parts: *upstream* which involves the exploration and production sector; and *downstream* which deals with refining and processing of crude oil and gas products, their distribution and marketing. The downstream sector which touches consumers through products such as gasoline or petrol, kerosene, jet fuel, diesel oil, heating oil, fuel oils, lubricants, waxes, asphalts, natural gas and liquefied petroleum gas (LPG) as well as hundreds of petrochemicals, has being largely advocated for deregulation. Despite all the arguments against deregulations, it has the following advantages:

- Increases economic efficiency
- Promotes plurality of operators and supply sources thereby ensuring sustainable steady supply of products
- Introduces a market economy
- It would force down fuel price through competitive market
- Discourages profiteering by few persons from the subsidy regime.
- Employment generation
- Infrastructural development
- Conservation of foreign reserve
- Propel the theory of economic advantage
- Eradicate corruption of subsidy
- Creating economic diversity

Furthermore, it has being assumed that economics based on private prosperity are better institutions for preserving individual freedom than economies where the productive apparatus is socially owned[8]. However, it is evident that the government's move in introducing deregulation leds to agitations from people and organized labour due to increase in petroleum price and scarcity of petroleum products.

3. Petroleum Pricing and Subsidy Problems: Is Deregulation the Panacea?

There has being inconclusive debates on deregulation as an economic reform policy that will serve as a cure for the issues pervading the Nigerian oil and gas sector. Subsidy refers to the money paid by the government to reduce the cost of producing goods and services so that their prices can be kept low[9]. In other words, the government assists consumers in paying the bulk amount of a commodity, thereby making the consumers pay less than the actual market price of the commodity in question. In applying the above definition to petroleum lingual, fuel subsidy involves when consumers will pay less than the pump price per litre of petroleum products.

Fuel subsidy and petroleum pricing issues dates as far back as 1966 during the regime of General Yakubu Gowon, to which there has being frequent increase in removal of petroleum subsidy and increase in fuel price. Owing to the dilapidated state of the Nigerian refineries, the federal government has resorted to importation of fuel, which prompted the emergence of the use of subsidy. The consequential effect of this 'subsidy' amounts to the loss of over N1.3 trillion per annum, which if such monies are channeled to other sectors, it will bring about economic and national development. The table below shows the chronological increase in petrol price from 1967-2012.

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[4] Definition of 'Deregulation' http://www.investopedia.com/terms/d/deregulate.asp accessed July 11, 2014

[5] ibid Dappa Tamuno-Omi Godwin and Daminabo Dagogo: Deregulation of the Nigerian Economy: the theoretical milieu pp. 3

[6] Ahmed A. (1993): *'Forward' to Central Bank of Nigeria: Perspective of Economic Policy Reforms in Nigeria*, Ikeja: Page Publishers Services Ltd

[7] Ayodele A.S. (1994): '*Elements of the Structual Adjustment Programme: Privatization and Commercialization'*, The Nigerian Journal Economics and Social Studies, Vol. 36, No.1

[8] Ijhaiya G.T. (1999): 'Privitization and Commercialization of Public Enterprises in Nigeria' in Killick T. (1989): Economic Development and the Adoptive Economy, Overseas Development Institute Working Paper, No. 31

[9] Hornby, A.S. (2005): Oxford Advanced Learners Dictionary New York: Oxford University Press, International Students' Edition

Year	Regime	Petroleum Prices
1967	General Yakubu Gowon	6 Kobo-9.5 Kobo
	General Olusegun Obasanjo	9.5 Kobo-15 Kobo
1986	President Ibrahim Babaginda	15 Kobo-70 Kobo
1993	Chief Ernest Shonekan	70 Kobo-N5.00
1994	General Sani Abacha	₦5.00-N11.00
1998	General Abdulsalami Abubakar	₦11.00-N20.00
1999-2007	President Olusegun Obasanjo	N20.00-N75.00
2009	Late President Umaru Yar' Adua	N75.00-N65.00
2012	President Goodluck Jonathan	N65.00-N97.00

Source: Afonne E. (2011): Politics of Oil Subsidy: The Cartel's Fraudulent Acts. (Updated by the present writer)

In furtherance of the above table, it can be succinctly put that petroleum prices increased due to the government measure on removal of fuel subsidy. It must however be borne in our minds that each time there was an increase in prices, there were public outcry and protest due to simultaneous increase of goods and service and economic dislocation in other parts of the Nigerian economy. Irrespective of the popular belief that Nigeria is blessed with abundant crude oil so we are meant to enjoy cheap fuel, the federal government has continuously insisted on deregulation. Divergent views over the policy of deregulation are worthy of note. Certain economists argue that fuel subsidy brings market distortions.[10] This is predicated on the fact that since the pump price is not a true reflection of the cost and economic value to be derived, the market is operating at an 'artificial' and unrealistic level.[11] Furthermore, on the prevalent issue of smuggling and oil theft, in which criminals steal oil and sells it at a higher price in neighboring counties, cripples the Nigerian economy significantly. In the bid of mitigating this huge loss to the economy, deregulation will allow for the forces of demand and supply to determine the price thereby bringing about a competitive market, with the effect of more revenue accruing to the government.[12]

Arguments for non-removal of fuel subsidy and continued regulation of the downstream sector by the federal government is predicated on the abysmal neglect of local refineries, poverty level in Nigeria, depreciation of the value of Naira to international currencies and unprecedented increase of corruption both in the oil and gas sector and Nigerian economic and political system. Majority of Nigerian have showed disgusted attitude towards this policy because any slight increase in fuel price results in high increase in the costs of goods and services.

In the recent case of Bamidele Aturu v Minister of Petroleum Resources[13], the Federal High Court delivered its judgment on March 19, 2013 nullifying the deregulation of the downstream sector. Preceding over the deregulation suit was Justice M. Bello who declared that the policy of deregulation was unconstitutional, unconscionable, illegal, null and void being in vicious violation of the provisions of section 6 of the Petroleum Act 1969[14], section 4 of the Price Control Act[15] and section 16 (1) (b) and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The federal government dissatisfied with the judgment has filed an appeal at the Court of Appeal in Abuja praying the court to set aside the judgment of the lower court and dismiss the respondent's claims.[16] This decided case is in no doubt an authority for those against subsidy removal and total deregulation of the downstream sector.

4. Law and Economics of Deregulation

At this juncture, it may trite to make some incisive comments in relation to above enumerated divergent views. If the general foundation of law and economics shows that law is best viewed as a social tool that promotes economic sufficiency, it then begs the question on how laws regulating the oil and gas sector have brought economic sufficiency to Nigeria. In the field of jurisprudence, Roscoe Pound has being celebrated for viewing the law as a tool for social engineering, hence owing to numerous problems that may arise in a society the law is seen as a saviour to restore peace and order in the society. The existing legislations concerning the Nigerian oil and gas industry cannot be seen as a tool bringing economic sufficiency to the country.

The Petroleum Act 1969[17] has being viewed as an obsolete law which requires imperative reforms. The federal government's policy on deregulation is nowhere to be found in the principal statute (Petroleum Act) to give it a statutory backing. This creates problem for complete deregulation to materialize in Nigeria. Under section 6[18] which stipulate thus:

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[10] BGL Financial Monitor 2010: Deregulation of the Downstream Petroleum Sector: Short term costs, lasting benefits http://research.bglgroupng.com/Documents/FinancialMonitor/Dereg%20Pet%20Sector.pdf accessed March 13 2013

[11] Ibid

[12] Ibid

[13] FHC/ABJ/CS/591/2009

[14] CAP P10 Laws of Nigeria 2004

[15] CAP P28 Laws of Nigeria 2004

[16] FG Heads to Appeal Court over Deregulation Suit http://www.thisdaylive.com/articles/fg-heads-to-appeal-court-over-deregulation-suit/146538/ accessed 17th July 2014

[17] Ibid

[18] Ibid Petroleum Act

1. The Minister may by order published in the Federal Gazette fix the prices at which petroleum products or any particular class or classes thereof may be sold in Nigeria or in any particular part or parts thereof.
2. The Minister may by notice in writing require any person appearing to him to have or to be likely to have access to information which is relevant to the fixing of any prices of the kind mentioned in subsection (1) of this section to supply that information to the Minister, and any person so required shall be legally bound to use his best endeavours to supply the information accordingly.

The penalty for non-compliance with the above provision is stipulated under section 13 (3) which states that:
Any person who contravenes any provision of an order made under section 6 of this Act shall be guilty of an offence and on conviction shall be liable to a fine not exceeding ₦2000.
The Minister of Petroleum Resources is saddled with numerous responsibilities which however sometimes makes the Ministry unaccountable for certain activities in the oil and gas sector. Leaving the price fixation of petroleum product to the federal government has caused more harm to the Nigerian economy in light of the recent incidents on fuel subsidy as at 2012. It is on this basis that the petroleum act is not economic efficient in light of the above provision. In addition, the penalty attached to contravention of section 6 which is a fine not exceeding ₦2000, is non-sensical and not a stiff penalty and cannot stand the real test of time. This means that the court may choose that the criminal pay a fine of ₦500 for an economic crime; and we boast that the second largest oil producer of oil in Africa is Nigeria. This same analogy applies to the Price Control Act under Section 6 stipulates thus:

1. It shall be unlawful for any person to sell, agree to sell or offer to sell any or employ any other person, whether or not that other person is of full age, to sell any controlled commodity at a price which exceeds the controlled price.
2. If any person contravenes subsection 1 of this section in respect of any controlled commodity:
a. He shall be guilty of an offence and shall
i. In the case of a retailer, be liable to a fine of not less than ₦200 and not more than ₦2000 or to imprisonment for less than six months, or to both such fine and imprisonment; and
ii. In the case of a manufacturer, wholesaler or major distributor, be liable to a fine of not less than ₦1000 and not more than ₦10,000 or to imprisonment for not less than twelve months, or both such fine and imprisonment;
b. The stock of the controlled commodity shall be liable to forfeiture.

The oil and gas sector is the backbone of the Nigerian economy and our laws are stipulating less stringent penalties for crimes done against. Assuming the penalties are well-stringent enough, applying the theory of law and economics, it would serve as a deterrent to other criminals and economical to the country in the sense that revenue derived from that sector as well as the fines paid by criminals will be channeled into developing other parts of the economy.
The 1999 Constitution as amended categorically stipulates in its section 16 (1) (b-c) that:
b. Control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
c. Without prejudice to its right to operate or participate in areas of the economy, other than the ***major sector of the economy, manage and operate the major sector of the economy.***[19]

It is well known that the constitution is the grundnorm and any law inconsistent with it will be treated as null and void. The above provision of the constitution, irrespective of how guaranteed that provision may appear, poses a huddle to the deregulation policy. The major sector of the Nigerian economy is the oil and gas sector, thus if the constitution has placed the management and operation of the oil and gas sector in the hands of the federal government, complete deregulation may be an exercise in futility. Our law makers must look for a way to further amend the constitution in the bid of allowing economic reforms become implementable.
The government's arguments for deregulation however are well founded. It aims at dismantling the natural monopoly of state owned enterprise such as the Nigerian National Petroleum Corporation (NNPC) by privatizing and deregulating price controls. In addition, there would be significant reduction in cost spent by the government in subsidising the sector which usually amounts to over $1.3 billion annually.[20] This is indeed an acute sabotage to the Nigerian economy. A beacon hope is elevated in the pending passage into law of the Petroleum Industry Bill which is still before the National Assembly. Under section 221 of the Bill, deregulation is the starting provision for downstream petroleum in Part V. It stipulates thus:

The pricing of petroleum products in the downstream products sector is deregulated to ensure
a. A market related pricing;
b. Adequate supply of petroleum product;
c. Removal of economic distortions; and
d. The creation of fair market value for petroleum products in the Nigerian economy
Furthermore under section 1 (f) of the Bill it states that:
The objectives of this Act are to: deregulate and liberalise the downstream petroleum sector

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[19] Emphasis mine
[20] Ibid, BGL Financial Monitor 2010: Deregulation of the Downstream Petroleum Sector: Short term costs, lasting benefits

It is glaring to the blind and hearing to the deaf that the Petroleum Industry Bill is comprehensive and has come to save the Nigerian economy. The law and economics of deregulation are entrenched in the PIB as the bill is placed within the general and common economic structure of Nigeria. It is intended to divest government's control and encouraging private investors into the industry to determine the price of petroleum products through market forces. In addition, the bill creates a new agency that will monitor the pricing of petroleum products, the Downstream Petroleum Regulatory Agency (DPRA)[21], hence reducing the workload of the Minister. Under section 226 of the Bill:

1. The Agency shall monitor:

a. The prices of petroleum products applying in the domestic market to ensure that there is no pricing collusion or manipulation; and

b. Any activity of any operator in the downstream petroleum sector that in the opinion of the Agency is likely to adversely affect the prices of petroleum products.

Moreover, in the bid of achieving completely deregulation, one must not forget the issue of self-sufficiency through rebuilding of local refineries. Owing to fact that our local refineries are not managed properly and production levels are at a sorry-state, need arises for importation of refined petroleum. The prices of imported fuel are caused by eight import-induced costs, which include[22]:

- Freight
- Lightering expenses
- Nigerian Port Authority Expenses
- Stock Finance
- Jetty Depot
- Storage Charges
- Landing cost
- Distribution margin

It is common sense that if our local refineries are up and running all the above listed costs will be displaced with. The Nigerian Labour congress (NLC) has suggested some alternatives to the planned deregulation on the effective and efficient rehabilitation of the local refineries. However, with attendant factors such as lack of persistent power supply, corruption, bureaucracy etc. sustaining this refineries have become practically impossible. The refineries in Port Harcourt were shut down in year 2000 owing to shortage of power to run them as well as other refineries in Warri, Kaduna etc. have dilapidated. However reports have shown that Nigerian refineries rise to 26%.[23] As at 2013, the combined average capacity utilization of Nigeria's four refineries which are Kaduna Refining and Petrochemical Company (KRPC), Port Harcourt Refining Company (PHRC 1&2) and Warri Refining and Petrochemical Company (WRPC) increased from 6.46% to 25.95%.[24]

Sequel to the movement for complete deregulation, the government aims at restructuring all state-owned refineries and storage depots and final acquisition by private investors. The innovative move of Dangote Group to build a refinery that would be producing 400,000 barrel has being largely welcomed by majority of Nigerians.[25] This would serve as a milestone for deregulation as it would drastically cut importation of oil and bring to an end the subsidy management system.

5. Conclusion

Nigeria is endowed with oil resources. However, in recent times the nation has being faced with a lot of challenges in the exploration of this resource. A way of solving this problem is the long debated government policy of 'deregulation'. In economic principle deregulation involves allowing private hands dictate the pace of the economy with little or no intervention from the government. There has being consistent increase in the price of petroleum product solely based on the need to stop subsidy and securing complete deregulation of the downstream sector in the Nigerian oil and gas industry. Despite agitations and protest from unions, labour congresses and private individual, it appears the deregulation policy is the only policy that can save the economy from total wreckage.

If the economic principle of the law of comparative advantage is taken into consideration which advocates simply that a nation should produce, consume and export the excess of her need in exchange for goods and services that she is less blessed with, will make Nigerian a hub for foreign investment. However, the reverse seems to be apparent as we export our crude for refining, hence importing what we already have at a higher price, thereby making the federal government to pay a larger amount (subsidy) for the commodity in the bid of making consumers buy the petroleum product at a reduced price from distributors. In other words, in economic principle, a situation of subsidy exits when consumers are assisted by the government to pay less than the market price for the product they are consuming. Notably, there would be no argument of subsidy where the barrel of oil delivered to Nigerian refineries covers the cost of production or will not arise until the cost of production is less than delivery price to the refinery. The point of deregulations is that of opportunity. We cannot continue to leave like this, as huge amount of money is spent on fuel subsidy.

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[21] See Section 43-72 of the Bill

[22] Ovaga, Okey H. (2012): 'Subsidy in the Downstream oil sector and the Fate of the Masses in Nigeria' ,Kuwait Chapter of Arabian Journal of Business and Management Review Vol. 1, No. 6

[23] Nigeria's refining capacity rises to 26% - Vanguard News http://www.vanguardngr.com/2014/04/nigerias-refining-capacity-rises-26/ accessed 17th July 2014

[24] Ibid

[25] Dangote's proposed refinery sees progress as India's EIL wins $139m contract http://businessdayonline.com/2014/03/dangotes-proposed-refinery-sees-progress-as-indias-eil-wins-139m-contract/#.U8fT-rFbi4w accessed July 17 2014

In applying the principles of law and economics, deregulation of the downstream sector is a policy that would bring about self-sufficiency and economic buoyancy. The economic menace of smuggling will cease if proper penalties are inserted in laws and also where private investors are allowed into the downstream sector. There would be no economic distortion and a fair market value for petroleum products will be created. The Petroleum Industry Bill has being well drafted to include this policy, thereby making it an economic efficient bill to be passed into law. We strongly urge the national assembly for the speedy passage of the bill and displace the obsolete laws.
Lessons should be learnt from the deregulation of the telecommunication and aviation sector. Nigeria now pay less for telephone services as opposed to the initial high prices because of competition. If deregulation is adopted into the downstream sector, competition is bound arises which will force down prices of petroleum products, thereby making a consumer exercise his/her freewill of choice to buy or not to buy from a particular distributor.
It is however highly recommended that, irrespective of how beautiful deregulation might seem, this reform must be done in consonance with the realities in other parts of the Nigerian economy. The reform must be timely and not at a time when poverty level is on increase. Be that as it may, the effect on the populace is short contrary to the lasting benefits of a deregulated economy.

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