Advisory Outlook

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Beyond the Petroleum Industry Governance Bill – Getting it Right

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In the first part of this article, we analysed the version of the Petroleum Industry Governance Bill (PIGB) passed by the Senate. The write up pointed out some areas of the Bill, which required further review from our perspective. In this concluding part of the article, we outline our proposed solutions to some of the issues highlighted in the first part of the article.

Back to Basics

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Is Nigeria the first country to restructure its oil & gas sector? Of course not. Two notable countries to have done this are Brazil and Norway. It is tempting to compare our restructuring exercise to Brazil's because we (Brazil and Nigeria) are both developing countries, but our situation in this context is more comparable to Norway because Brazil operated a legal monopoly for its National Oil Company (NOC) until the law was amended in 1997 to allow private companies to participate in exploration & production activities through concession contracts. That being said, let us look at Norway restructuring exercise to identify easy wins that can be adapted to Nigeria (it may be impossible to replicate everything Norway did due to each country's peculiarities).

The Norway Way

Den Norske Stats Oljeselskap AS ('Statoil") is Norway's NOC. It was formed in 1972 as a 100% government owned enterprise, and is considered comparable to private oil companies in terms of efficiency and governance. In 2001, Statoil embarked on an aggressive privatisation and restructuring exercise. Why did Norway do this? After all, Statoil had a pre-tax profit of $4.3 billion as at the end of 2000, and international operations in countries outside Norway.

Norway's justification for re-structuring was not entirely different from Nigeria. According to a Stanford Research Report on Sustainable Energy Development, Statoil's rationale for restructuring was underpinned by the need for an arm's length relation with the State (Norway), driven by the following factors:

- A recognition of the need to compete effectively abroad for long term survival, as the country's crude reserves were limited
- A belief that a stronger sense of employee identification with the company rather than the State, would improve performance
- 100% affiliation with the State limited the company from pursuing identified investment opportunities without bureaucratic bottlenecks
- An improved level of confidence from the Norwegian government, in the company's ability to manage itself.

Comparison with Nigeria

As part of the restructuring exercise of Statoil, the company listed 18.3% of its shares on the Oslo and New York Stock exchanges simultaneously on 18 June, 2001. Although the company would later dispose more government owned shares (leaving the State with 67%), one of the positive effects of this part privatisation, was that it prompted the company to make several organisational changes to satisfy corporate governance requirements of the stock exchanges, as well as European Union (EU) rules. Today, Statoil operates in over 30 countries, employs over 20,000 employees globally and is one of the largest gas suppliers to Europe.

To an extent, Nigeria's restructuring exercise is similar to that of Norway. It is true that the PIGB provides for divestment of 40% shares of National Petroleum Company (NPC) to the public over 10 years. However, there are gains to be made from listing of shares on both local and foreign stock exchanges, as this will open the company to diverse pool of investors, and strict corporate governance rules which would promote accountability and transparency. Although, the Bill provides that NPC will be subject to Code of Corporate Governance as issued by Securities and Exchange Commission, its enforcement will be very difficult if the shares of the company are not listed on the stock exchange.

Another area for comparison is in the board composition. In Norway, no civil servant is allowed to serve on the board of any state owned company. Based on the last version of the PIGB, the Nigerian Petroleum Assets Management Company and the NPC will have a representative of Ministry of Petroleum Resources on their respective boards of directors. While this is not necessarily a problem, there should be controls in place to prevent undue political influence by one government to another. Make no mistake, Norway still faces the challenge of government interference being the majority shareholder. However, the goal is to minimise this interference to the barest minimum.

There were other parts of the restructuring exercise such as the establishment of a state-owned gas infrastructure company (Gassco) to take over some of the Norwegian Continental Shelf (NCS) gas pipelines previously operated by Statoil. This was done in order to establish a framework that aligns with EU competition rules, and avoids conflict of interest. In the PIGB, there are no such specific plans for the Nigerian Gas Company (NGC). What will be the fate of NGC in the restructured oil and gas industry?

What about downstream?

This is where we leave Norway and head back to Nigeria. Norway's petroleum products are not uniformly priced. While the PIGB speaks of equalisation of petroleum products (by retaining the Petroleum Equalisation Fund (PEF), the fact that petroleum products are uniformly priced throughout the country, does not mean that the government subsidises this uniform price.

Equalisation schemes are not peculiar to Nigeria. In fact, many countries have one sort of equalisation scheme or the other and it is also not limited to the oil & gas sector. What does equalisation mean in this context? It is simply the transfer of fiscal resources across jurisdictions (states or regions) with the aim of offsetting differences in economic peculiarities. In Nigeria, it is necessary to account for the inequality in the transportation cost of distributing products throughout the country, since most of our petroleum products are imported. This puts the states farther from the point of importation/refining at a disadvantage.

Equalisation manifests in different ways, depending on the economy. For instance, Canada runs an equalisation transfer program for addressing fiscal disparities among provinces. Equalisation payments enable less prosperous provincial governments to provide their residents with public services that are reasonably comparable to those in other provinces, at reasonably comparable levels of taxation. Equalisation payments are determined based on the fiscal capacity of a particular province. Australia runs a horizontal fiscal equalisation (HFE), to compensate territories which have a lower capacity to raise revenue. The objective is full equalisation which means that each territory should have the capacity to provide services and the associated infrastructure at the same standard. Currently, the funds distributed to achieve HFE are the revenues raised from the Goods and Services Tax (GST).

Therefore, the primary purpose behind equalisation is equity. Obviously, there are other attendant benefits such as having some level of predictability upon which to base future planning, managing inflation in different territories, and making each region economically competitive.

Since we have established that equalisation is beneficial, how can we make it work better for Nigeria? Tight controls are needed to check any potential abuse by the beneficiaries. For instance, we understand that Petroleum Equalisation Fund Management Board (PEF(M)B) has introduced some measures to prevent abuse in the system by tracking the movement of trucks loaded with petroleum products across the country. The body is also looking at expanding its capacity to accommodate rail equalisation, in addition to the road transport equalisation already in place. PEF(M)B could go a step further in accountability and transparency by publishing names of blacklisted oil marketing companies on a periodic basis.

Finally, the Bill does not accommodate representation of the major private sector groups in the board composition of Nigerian Petroleum Regulatory Commission (NPRC). Currently, some of these major stakeholders are required to be represented on the board of Petroleum Products Pricing Regulatory Agency. It will be more beneficial to the industry if these groups are represented on the board of NPRC since it will be easy to obtain their buy-in into government policies.

Conclusion

We have offered some ideas for improvement and progress. Unfortunately, ideas are not enough to bring about the change we need, implementation is key. First thing first, the House of Representatives should consider the issues raised in this article in passing their version of the PIGB to facilitate a harmonised version of the Bill that will more effectively address fundamental governance and structural issues in the industry on a sustainable basis.

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