DETERMINING THE PRICE OF PMS FROM A LEGAL STANDPOINT: REGULATION OR DEREGULATION?

Abstract

Nigeria`s oil sector is divided into 3 main segments: Upstream, Midstream and Downstream. The upstream sector focuses on exploration, the midstream sector handles storage and transportation and the downstream sector refines oil products into finished goods and markets the refined products. Due to price volatility in the 70`s, Nigeria established regulatory agencies and frameworks to control the price of Premium Motor Spirit (PMS) and subsequently introduced fuel subsidies in 1973 as a response to price increment, fuel subsidies were to ensure a low and stable price for PMS. However, these regulatory strategies failed to attract competition and investment in the oil sector but brought about corruption and mismanagement. To address this, Nigeria has made efforts to deregulate the downstream sector. A significant step was the passage of the Petroleum Industry Act (PIA) 2021, which aimed to deregulate fuel prices and move towards a market-driven economy for PMS. The PIA introduced a system where PMS prices would be determined by dynamic market forces, rather than government regulations. However, the implementation of the PIA's provisions has been weak. This article seeks to critically examine the PIA's pricing system for PMS, investigate laws hindering deregulation, and provide recommendations to address existing loopholes. The study discovered corrupt practices in the oil industry, such as locally refined fuel being priced similarly to imported fuel.[1] Ultimately, the article advocates for deregulation as the solution to Nigeria's petroleum sector challenges.

Keywords: Deregulation, PIA, PMS, Downstream, Fuel Subsidies, Pricing System

1. Introduction

In the 1970s, a severe global petroleum shortage led to a sharp increase in the price of petroleum, causing a significant economic shockwave worldwide.[2] The government implemented fuel subsidies to mitigate the repercussions of the escalating global inflation era, thereby introducing a subsidy regime formalised by the Price Control Act. By the 1980`s there were economic barriers that arose prompting the government to give consideration to deregulation, this brought about the establishment of the structural adjustment program. However, price increases become frequent, often sparking protests and unrest, as the government struggled to strike a balance between economic realities and societal pressures. The subsidy regime persisted, but corruption and inefficiencies became rampant due to the existence of subsidy. The government made several attempts at deregulation, but these were met with mixed results. By 2010, the government intensified efforts to deregulate the petroleum sector, involving the removal of price controls and the reduction of subsidies. Deregulation, nevertheless, could not be achieved with the presence of regulatory agencies and legal regime existing at the time by the federal government and they include the following:

- NNPC was the sole importer of oil in the Nigeria. It remained a monopolized corporation in the Nigeria while it served as the national oil company.

- The existence of the Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003 gave the government the authority to regulate the price of oil in Nigeria.

- The Petroleum Equalization Fund was established by decree 9 (1975), the main function was to guarantee a uniform price structure for petroleum products across Nigeria by compensating marketers for costs associated with transportation products to filling stations, thereby also preventing deregulation at its peak.

In response to this, the federal government enacted the long-standing petroleum bill to encourage deregulation. The Petroleum Act (PIA) was enacted in the year 2021 to introduce a free-market pricing of petroleum system, dismantle the long-standing monopolistic structure and promote competition in the petroleum sector. The Products Pricing Regulatory Agency (PPPRA) was abolished to eliminate price controls and allow market forces to determine prices and the equalization fund was dissolved. The Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) was created by the act through the merger of 3 bodies including the PPPRA, Equalization fund and the formerly existing Department of Petroleum Resources. The national oil company has been privatised according to the

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[1] Inemesit M Akpan, 'Downstream Deregulation Policy And Availability Of Petroleum Products In Nigeria: A Study Of Akwa Ibom State, 2015–2022' Shared Seasonal International Journal and Topical of Topical Issues (2024) 10(1) < https://mail.globalacademicstar.com/download/article/downstream-deregulation-policy-and-availability-of-petroleum-products-in-nigeria-a-study-of-akwa-ibom-state-2015-2022.pdf> accessed 12 July 2024.

[2] Endre Domonkos, 'The Impacts Of The 1973 And 1979 Oil Crisis On Central And Eastern European Countries' (2023) Gradus 10(1) < https://real.mtak.hu/169960/> accessed July 12 2024.

provisions Petroleum Industry Act (PIA) 2021 and will now be addressed as the NNPC Ltd. These were the key changes that were brought by the Act. This article however investigates the following challenges preventing total deregulation of the downstream sector.

2. Meaning of Regulation and Deregulation

It is important to note that deregulation of oil price is only possible when certain steps are taken to further deregulation of the downstream sector and regulation of price on the other hand is only possible in a deregulated regime. The regulation of Petroleum Motor Spirit prices is facilitated by the federal government`s establishment of a multifaceted framework, comprising statutory provisions, specialised agencies, and a price modulation mechanism, which collectively oversee, govern and dictate the pricing dynamics of PMS within a country. A good example of a regulated strategy is the fuel subsidy. What is Fuel subsidy? Fuel subsidy is a government initiative that reduces the cost of fuel for consumers by covering a portion of the expense. This is typically achieved through government funding, which bridges the gap between the market price and the lower, subsidized price.[3] In essence, fuel subsidy is a financial support system that keeps fuel prices artificially low, making it more affordable for citizens. This can be accomplished through various means, including: Direct financial assistance to fuel suppliers, tax breaks or exemptions, price controls or caps, and government-funded price stabilisation funds. Conversely, Deregulation entails the dismantling of PMS within these government price controls and modalities, thereby liberating the economic forces to dictate the prices of PMS, unconstrained by artificial barriers, and mitigating the propensity for monopolistic practices. [4]Without the existence of regulation, there can however be no deregulation. Therefore, both terms are to have a meeting point of understanding. Deregulation is mostly attributed to the downstream sector.[5]

3. Critical Examination of Key Provisions Introducing Deregulation by the Petroleum Industry Act (PIA) 2021

The PIA stipulates that the pricing of petroleum products, encompassing both the wholesale and retail segments, shall be governed by unregulated market forces.[6]The Nigerian National Petroleum Corporation Act (NNPC) of 1977, cap. N123, Laws of the Federation of Nigeria, has been formally repealed and subsequently, the Nigerian National Petroleum Corporation has been effectively dissolved in accordance with the provisions of section 54(3) of the PIA. Pursuant to section 53(3) of the PIA, the ownership of shares in NNPC Ltd is exclusively vested in the Federal Government of Nigeria, with the ministry of finance serving as the custodian of these shares. This arrangement suggests that the government retains significant control and influence over the operations and management of NNPC Ltd, which raises questions about the categorizing it as a private entity owned by private individuals. While the PIA has introduced reforms aimed at transforming NNPC into a commercially-driven entity, the fact that the government retains ownership and control of the shares implies that the state still wields considerable power over the organization. This level of government involvement may undermine the principles of private sector ownership and management, which typically imply that there is no total deregulation at play at the downstream sector in Nigeria. This legislative action has resulted in the cessation of NNPC`S existence as a statutory entity.

Furthermore, section 311(1) (f) of the PIA has effectuated the repeal of the Petroleum Products Pricing Regulatory Act (PPPRA) and its agency, thereby terminating its legal status and operational mandate. The defunct PPPRA had the obligation of setting prices to be accompanied to petroleum products in Nigeria, instead the Act provides that the dynamic economic forces will determine the price of PMS. Consequent upon the repeal of the Petroleum Equalization Fund (PEF), the levying of net surplus revenues from oil marketing companies shall be discontinued forthwith, and correspondingly, the disbursement of payments to oil marketing entities shall also be terminated. This implies that the erstwhile mechanism for collecting and distributing net surplus revenues from oil marketing entities has been abolished, and the associated payment obligations have been extinguished. The cumulative effect of these legislative actions is the comprehensive overhaul of the regulatory framework governing the petroleum industry in Nigeria, paving the way for the establishment of new entities and the redefinition of roles and responsibilities within the oil sector. The Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) referred to in the act as the 'authority' has been established as a new regulatory entity succeeding the PPPRA.[7] The NMDPRA is responsible for regulating and supervising the midstream and downstream petroleum sectors, ensuring a more streamlined and effective oversight of the industry. The section 31(f) of the PIA has sparked debate due to its ambiguous language regarding the Nigerian Midstream and Downstream Petroleum Regulatory Authority`s power to enforce a framework for the pricing and tariff of PMS and gas. This raises questions on the balance of free market principles and regulatory intervention.

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[3] Ovaga, H, 'Deregulation Of Downstream Oil Sector In Nigeria: Its Prospect' *Journal of Social Science and Public Policy* (2010) 2(1) < https://www.cenresinjournals.com/wp-content/uploads/2020/03/page-115-129111.pdf> accessed 12 July 2024.

[4]Will Kenton, `Definition of deregulation` (Investopedia, 6 April 2022) <http://www.investopedia.com/terms/d/deregulate.asp> accessed 12 July, 2024.

[5] Olushola, O, `Deregulation of downstream petroleum Industry: An overview of the legal quandaries and proposal for improvement in Nigeria` (Science Direct, 4 April 2021) <https://www.sciencedirect.com/science/article/pii/s2405844021009518 > accessed 12 July, 2024.

[6] Petroleum Industry Act, 2021, s 205(1).

[7] Petroleum Industry Act, 2021, section 29.

4. The Need for Total Deregulation in Nigeria-Current Status of the Downstream Sector

The downstream petroleum sector in Nigeria is presently operating under a state of partial deregulation, necessitating a comprehensive deregulation to enable market forces to dictate the pricing of PMS. The existence of modular refineries and four conventional refineries (Warri, Port Harcourt and Kaduna) presents an opportunity for competition, yet none of these refineries are constantly being supplied with crude oil for refining purposes. These refineries might not produce in vast quantities, although their operationalization would foster competition, leading to diverse pricing structures, reduced inflation and enhanced oil availability. However, the recent directive by the President of Nigeria, Bola Ahmed Tinubu, to supply PMS to Dangote refinery, in response to subsidy-related hardships, raises a concern about the lack of equal opportunities for other operational refineries. This selective supply arrangement hinders competition and perpetuates monopolization. Notwithstanding, the privatization of NNPC, its four subsidiary refineries in Nigeria remain under government control and management, potentially undermining the benefits of deregulation. The Price Control Act still remains in effect, granting the government the legal authority to regulate and fix the prices and other essential commodities.[8] This means that the government still has power to intervene in the pricing of fuel, if deemed necessary and it will be illegal of the government not to fix prices as authorized by the price control Act. In the case of *Femi Falana v Price Control Board & AG of the Federation*,[9] the applicant approached the court to seek a determination on whether the price control board was fulfilling its statutory duty under section 4 of the price control act. Specifically. The applicant sought to know if the board was imposing prices on specified goods, including petroleum products as mandated by law. The applicant argued that the board`s failure to fix prices for certain goods including petroleum products was illegal and contravened by section 4 of the Price Control Act. The judge upheld the applicant`s claim and granted all the reliefs sought, holding that the board has failed to carry out its statutory duty.

Nigeria's refineries have a daily refining capacity of 18 million litres of petrol, which falls short of the country`s daily demand of approximately 40 million litres. As a result, the Nigerian economy is heavily reliant on imported petroleum products, despite having local refineries that operate at a rate of less than 40% of their installed capacities. One would expect that the limited quantity of locally refined petroleum products would be marketed at a lower price point, making them more accessible to Nigerians. However, this is not the case because both locally refined and imported petroleum are sold at the same rate, negating the potential benefits of local refining. This raises questions about the pricing strategy employed in the industry. The lack of diversity in pricing can be attributed to the corruption that pervades the oil industry in Nigeria. The downstream sector, which encompasses the refining, transportation, and marketing of petroleum products, remains largely regulated. The influence of oil mafias and corrupt practices hinders the effective governance and control of the industry. These corrupt leaders manipulate the system to maintain a uniform price structure, ensuring that both locally refined and imported products are sold at the same rate. This practice deprives Nigerians of the opportunity to purchase locally refined products at a lower cost, thereby perpetuating the country`s dependence on imports. Therefore, total deregulation of the downstream sector is crucial to promoting competition, increasing efficiency and preventing oligopoly.

5. Benefits of Deregulated Economy

Furthermore, while comparing the benefits of a deregulated and regulated regime, it is quite conspicuous that a deregulated regime has more advantages than disadvantages. The benefit of a deregulated regime includes the following;

- Foreign Investment; The absence of regulatory constraints in the deregulated oil sector affords investors unparalleled autonomy, liberating them from governmental interference and empowering them to capitalise on new market entrants, customer relationships, and business prospects, thereby catalysing uninhibited investment and economic expansion..

- Availability of petroleum resources; Under a regime governed by the principles of market economics, the petroleum sector is subject to privatisation, whereby private enterprises assume control over entire value chain, from production to distribution and sales. This paradigm shift fosters an environment conducive to increased oil availability, as private entities are driven to optimise supply, invest in infrastructure and respond to market forces to maximize profitability.[10]

- Healthy Competition: A deregulated economy fosters a competitive landscape by attracting a surge in private and foreign investors, which in turn sparks creativity and innovation, as market forces dictate the flow of

[8] Price Control Act, Laws of the Federation 2004, section 1.

[9] *Femi Falana v Price Control Board & AG of the Federation (FHC/L/CS/869/2023, Federal High Court, Lagos Judicial Division, 2023).*

[10] Funsho, K, 'Deregulation of the oil and gas industry in Nigeria' Economic and Financial Review (2004) 42(4) < https://dc.cbn.gov.ng/efr/vol42/iss4/3/> accessed 12 July 2024.

capital, businesses are incentivized to innovate and differentiate themselves, leading to a vibrant ecosystem of entrepreneurship, growth and progress.

- Subsidy: Government can alleviate their financial strain by eliminating subsidies allowing market dynamics to drive growth and innovation, and freeing up resources for more pressing public priorities.

- Dynamic Pricing: By allowing market forces to dictate prices, the economy can benefit from flexible pricing that responds to fluctuations in supply and demand, promoting stability and equilibrium in the market.

When government control is exerted over the pricing of petroleum commodities and production processes, it often has a detrimental impact on the industry. This can lead to a range of negative consequences, including:

- Underutilization: Government price controls can result in underutilization of production facilities, as companies may not be incentivised to produce at full capacity.

- Poor Innovation and Growth: Overregulation can stifle innovation, as companies may be less likely to invest in research and development, and growth may be hindered by restrictive policies.

- Corruption: Government controls can create an environment conducive to corruption, as individuals and companies may seek to exploit loopholes and manipulate the system for personal gain. Subsidy for instance has been an opportunity for corrupt officials in Nigeria to mismanage funds. This is a significant concern in Nigeria`s petroleum industry, where corruption has been a long standing issue

- Obsolete and low maintenance of oil refineries: Government control can lead to neglect and poor maintenance of refineries, resulting in outdated and inefficient facilities. This can have serious consequences, including reduced production capacity and increased environmental risks.

- Scarcity of petroleum products: Perhaps most concerning, government control can lead to scarcity of petroleum commodities, as production and distribution may be hindered by restrictive policies and inefficient operations. This can have far-reaching impacts on the economy and citizen`s daily lives.

6. Comparison of Other Deregulated Economies with that of Nigeria

Canada: Canada`s oil price deregulation, implemented in 1985 under the western accord, marked a significant shift towards a market-based approach to oil pricing. [11]This move allowed oil prices to fluctuate based on global supply and demand dynamics, stimulating investment in the oil industry and contributing to economic growth and job creation. This act contributed to its emergence as a leading oil producer and exporter, with provinces like Alberta, rich in oil sands, experiencing substantial economic expansion. Nevertheless, the industry is undergoing a transformation, navigating complexities such as volatile global oil prices, increasingly stringent environment regulations and the shift towards more sustainable energy alternatives.

USA: The 1970`s saw the introduction of price controls on oil and gasoline in response to rising prices and shortages. However, these controls led to unintended consequences, including supply imbalances and black markets. Recognizing these failures the US government began to dismantle regulations, starting with the expiration of price controls on domestic crude in 1981.[12]It is also important to note that oil ownership in the US is a mixture of both private companies and public entities. The government also deregulated the oil pipeline industry, promoting competition and efficiency in transportation. [13]These changes led to a largely market-based system for oil and gasoline prices, where prices are determined by supply and demand rather than government intervention. Deregulation had significant impacts, including increased investments in the oil and gas industry, leading to higher domestic production and reduced reliance on foreign oil. Consumers experienced both benefits and challenges, with lower prices during periods of oversupply offset by higher prices during periods of scarcity. Environmental concerns also arose, leading to increased focus on regulations related to air pollution and climate change. Ongoing considerations including state-level regulations, market power and energy security. While the federal government has largely deregulated the oil markets, some states has implemented their own regulations, and concerns about market concentration and anti-competitive behaviour continue to be monitored. Ensuring a stable and secure energy supply remains a priority, even

[11] Canada Energy Regulator, 'Market Snapshot: 30th Anniversary of the Deregulation of Canada's Natural Gas Prices' (2015) <https://www.cer-rec.gc.ca/en/data-analysis/energy-markets/market-snapshots/2015/market-snapshot-30th-anniversary-deregulation-canadas-natural-gas-prices.html > accessed 12 July 2024.

[12]Doren, PV, 'A Brief History of Federal Energy Regulations' (downsizing government.org, 2016) < https://www.downsizinggovernment.org/energy/regulations> accessed July 12 2024.

[13] Electric Choice, 'Timeline and History of Energy Deregulation in the United States' (electric choice.com,2022) < https://www.electricchoice.com/blog/timeline-history-energy-deregulation/> accessed 12 July 2024.

in a deregulated market. Overall, the deregulation of oil prices in the US has had a profound impact on the energy industry and the economy, bringing both benefits and challenges.

7. Conclusion and Recommendations

The Petroleum Industry Act (PIA) 2021 provides a robust framework for deregulation, but its efficacy is contingent upon implementation. The absence of implementation would render the act redundant. Although the attainment of full deregulation may be a formidable challenge, incremental progress is essential to initiate the process. The Price Control Act, which remains in force, contravenes the principles of deregulation by empowering the government to fix prices of PMS, thereby creating ambiguity and undermining the act`s efficacy. To ensure the successful implementation of a free-market economy for PMS, the government must make necessary amendments to relevant legislations, ensuring that the laws are precise, unambiguous and consonant with the evolving dynamics of the contemporary society. The imperative of deregulation in the petroleum sector is unequivocal, as it is essential to catalyse competition, investment and availability of petroleum commodities in a country like Nigeria. Notwithstanding the presence of indigenous refineries, Nigeria has been beset by a persistent increment in fuel prices which is attributable to the pervasive corruption in the Nigerian government. It is a common misconception that refineries are not working in Nigeria, but yet a significant portion of the Nigerian budget is allocated to the maintenance of these refineries which contradicts the assertion that the refineries are inoperable. However, if though operative and the refineries happen to be producing small quantities, why is it such that these refineries sell PMS the same price as though there are imported like the others, the underlying question is on the difference of price that does not differentiate a locally produced fuel with those being imported. Corruption needs to be eradicated in the oil sector to solve these underlying questions and ensure that a deregulated economy is achievable.