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Recent Developments in Nigeria's Electricity Industry

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Introduction

Nigeria's electricity industry has continued to evolve since November 2013, when major stakes in the generating companies (Gencos)[1] and distribution companies (Discos) were transferred to private investors.

The journey to sustainable growth has not been without its challenges. Though the industry is still far from meeting public expectations, there are notable developments which may aid the process.

This newsletter highlights some of the recent developments and their impact on the industry.

- **Inauguration of the Chairman of the Nigerian Electricity Regulatory Commission**

  The Minister of Power, Works and Housing, Babatunde Fashola, on behalf of President Muhammadu Buhari, inaugurated Professor James Adeche Momoh, as the third substantive Chairman and Chief Executive Officer of the Nigerian Electricity Regulatory Commission (NERC or The Regulator) in May 2018. The President had nominated Prof. Momoh for the position in April 2017 but the Senate only confirmed the appointment in May 2018. The inauguration ended the almost three-year period that the NERC had been without a substantive head; since the end of the tenure of the erstwhile Chairman, Dr. Sam Amadi in December 2015.

  Prof. Momoh has stated in public interactions that his vision is to bring best practices to the Nigerian Electricity Supply Industry (NESI) and ensure that it is a quality and reliable power supplier. An immediate issue that he faces is the "biannual review" of electricity tariff, scheduled for June 2018. He has stated that the tariff review will be tied to improvement in service delivery and operational efficiency on the part of the distribution companies. He has also recently affirmed that there would not be a significant increase in the bills paid by electricity consumers as anticipated, and that a committee of experts has been constituted to determine the actual cost of producing and supplying electricity to consumers.

- **A Bill for an Act to amend the Electric Power Sector Reforms Act**

  One of the issues that currently plague the NESI is inadequate collection from end-users, which may be as a result of the metering gap in the industry. Discos currently adopt estimated billing techniques to ensure collection from unmetered customers. This practice has generally been condemned by electricity consumers, who prefer to pay for only what they consume. In 2012, the NERC issued the NERC (Methodology for Estimated Billing) Regulation and directed all Discos to apply the methodology provided therein in estimating their customers' electricity usage, where necessary. Paragraph 6 of this Regulation specifies that unmetered customers *"shall be billed based on the "weighted average cluster load" which involves the subtraction of the entire metered load from the energy supplied to the feeder (33kV or 11 KV and others) and the application of an appropriately determined availability factor and correction of losses which is aggregated among the various number and classes of customers supplied by the feeder."* Notwithstanding the Regulation and the seeming compliance by the Discos, the concerns from consumers have not abated.

  In response to this, the House of Representatives recently initiated a bill to prohibit the issuance of estimated electricity bill to power consumers across the country. The Electric Power Sector Reform Act (Amendment) Bill, 2018 ("the Bill") seeks to *"… amend the Electric Power Sector Reforms Act to prohibit and criminalize estimated billing by Electric Distribution Companies and provide for compulsory installation of pre-paid meters to all power consumers in Nigeria…"* The Bill provides that electricity charges or billings must be based on prepaid metering and no consumer would be made to pay any bill without the installation of a prepaid meter in the consumer's premises. It also provides that electricity consumers may apply to the Discos for prepaid meters, pay the regulated fee (if any) and have the prepaid meters installed within 30 days of such application. Where the consumer is not metered within 30 days, the Disco is prohibited from refusing to connect the customer, disconnecting the customer in the event

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[1] The hydroelectric power stations were not sold but concessioned to private investors.

that the customer has been connected or estimating the customer's electricity bills. The Bill further provides that cases of illegal disconnection, refusal of the relevant Discos to connect a customer after application, un-metering within 30 days of a customer applying for a prepaid meter and estimated billing shall attract both civil and criminal liability, which includes both monetary fines and imprisonment.

While the Bill seeks to address consumer concerns, stakeholders (such as NERC and the Discos) are more cautious about its introduction. The Regulator has stated that it already has a regulation (cited above) that deals with the issue and the proposed Bill may bring disorder in the industry; as power consumers may lose their connection if the requirement of the Bill was applied without first addressing the financial challenges of metering. The Discos, via the Association of Nigerian Electricity Distributors (ANED), echoed this concern, pointing out that Discos might end up disconnecting supply to customers without meters in a bid to escape punishment.

It is clear from the above, that the metering gap in the industry continues to pose challenges for all stakeholders, and its resolution is important for improved liquidity and growth of the industry.

- **Introduction of the Meter Asset Provider (MAP) Regulations, 2018**

The metering gap for all distribution licensees was reported at 4,740,275 meters, as at 31 December 2017. In a bid to improve access to meters in the industry and ease the metering gap, the NERC, in March 2018, introduced the Meter Asset Provider (MAP) Regulation. The Regulation, which became effective on 3 April 2018, provides for the supply, installation and maintenance of electricity meters by approved third-parties. It introduces meter asset providers (MAPs) as a new set of service providers in the NESI and provides for third-party financing of meters, under a NERC-issued permit.

The Regulation further mandates Discos to engage the services of MAPs within 120 days from the effective date of the Regulation, towards meeting their 3-year metering targets as specified by the NERC. The bid process for contracting MAPs must be open, transparent and competitive to ensure that meters are provided at the least cost to electricity customers. The Regulation also directs investors to procure a minimum of 30 percent (a threshold that is subject to adjustment by the NERC as production volumes of local manufacturers increase) of their metering volume from indigenous meter manufacturers.

The current metering gap in the distribution segment of the power sector is a huge opportunity for the MAPs to tap into and ease the burden on the Discos in this regard. About 22 companies have received 'No Objection' approval from the NERC, so far. A 'No Objection' approval is granted to intending investors that qualify to participate in the meter procurement process in the NESI.

- **The Rural Electrification Agency's Energizing Economies Programme**

The Nigerian Rural Electrification Agency (REA) has been implementing an Off-Grid Electrification Strategy, with the primary objective of increasing electricity access to rural and underserved clusters. This includes fast tracking development initiatives towards achieving the overall objective of the Government's Power Sector Recovery Programme.

One of such initiatives is the Energizing Economies Initiative (EEI) that was launched by the Federal Government of Nigeria (FGN) to *"increase energy access and economic growth by assisting private sector developers provide clean, reliable and affordable power to economic clusters across Nigeria; such as markets, shopping complexes and agricultural/industrial clusters."* As part of this initiative, the REA is working with private sector developers to implement sustainable off-grid power solutions for economic clusters across the country.

In 2017, the REA conducted a baseline survey of the energy needs of four of the major markets in Nigeria – Ariaria International Market in Aba, Abia State; Sabon Gari Market in Kano State; Somolu Printing Community and Sura shopping Complex, both in Lagos State. The survey was carried out to scientifically identify the actual energy requirements of the markets, and assist interested developers to achieve this need within the REA's EEI programme. The survey indicated that, with 36.27 megawatts (MW) of stable electricity provided to these markets, economic productivity in the markets could expand and bring more prosperity to about 50,900 shop owners.

The REA has started implementing the electrification projects across the four markets, with projects in other markets already underway. Electricity generation for three of the markets is based on gas-fired power plants, while Kano State's Sabon Gari Market will be powered via solar power solutions. Furthermore, the projects are private sector driven, with private developers responsible for funding, generation, distribution, metering and collections. On the other hand, the REA is responsible for managing and facilitating all interactions with the various state and federal Ministries, Departments and Agencies.

The implementation of this initiative is not without its challenges. A key challenge is the potential conflict with the Discos that operate within the areas that these markets are situated. The conflict is with respect to the rights to distribute electricity within these areas. For instance, there is currently a dispute between the REA and Enugu Distribution Company Limited (EDCL) over the rights to distribute electricity in Ariaria International Market. EDCL has insisted that its electricity distribution license grants it the right to distribute electricity within the market and contends that the REA's projects impedes this right and its business. The situation is further complicated by the long-standing legal dispute between EDCL and Geometric Power Limited over the right to distribute electricity within the market as well as the NERC's recent issuance of generation and distribution licenses to new investors (working with the REA on the EEI) for the same area.

The issue may be replicated across the areas in which the REA's projects are situated. It is, therefore, in the best interest of the industry and electricity consumers that the stakeholders work together to resolve these disputes as the ultimate objective is the provision of reliable electric power to the public.

- **Dispute on Import Duty Tariffs on Solar Power Equipment**

  The Nigerian Government has repeatedly identified the importance of renewable energy, especially solar energy, in bridging the electricity generation gap in the country. The operators should, therefore, be given as much support as possible to deepen energy access for over 70million people with inadequate access to power in Nigeria.

  However, solar energy operators have been experiencing challenges with the importation of solar power equipment, particularly solar panels. The Renewable Energy Association of Nigeria (REAN), a leading private sector renewable energy group in Nigeria, recently held a press conference to highlight the anomaly of the Nigerian Customs Services (NCS) charging between 5% and 10% import duty on the importation of solar panels. This appears to be inconsistent with the 0% duty rate that is prescribed by the Customs and Excise Tariff (CET) Act for solar panels under the CET code 8541.4010.00 – *"solar cells whether or not in modules or made up into panels"*.

  The NCS, on the other hand, has stated that the CET code 8541 relates only to solar panels and that these attract the correct import duty rate of 0%. However, it stated that solar panels that incorporate add-ons and components such as electrodes and diodes cannot be classified under the CET code 8541, but are rather classified under the code 8502 (relating to power generating equipment), which attracts 5% import duty rate. The REAN has refuted this position, insisting that globally, solar panels are typically manufactured with these standard components fitted to the panels.

  This dispute is clearly counterproductive to the Government's vision to achieve 60% rural electrification by 2020 as well as the target of 8 giga-watts (GW) of off-grid generation by 2030 to support Nigeria's non-electrified population. It is, therefore, imperative that the dispute on the applicable import duty charges on solar power equipment is resolved by the stakeholders for the overall benefit of the power sector.

Conclusion

There is no doubt that Nigeria's electricity industry has continued to face various challenges since its privatization in 2013. This is unexpected for a sector in transition. However, the stakeholders must proactively work together to discuss and resolve these issues. It is only then that Government can realize its over-arching objective of restoring the sector's viability and improving the overall business environment.

For further enquiries on the above and information on how KPMG can assist you, please contact:

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