

SECURING REGULATORY STABILITY FOR INTERNATIONAL GAS COMMERCIALISATION AND LNG PROJECTS: THE NIGERIAN EXPERIENCE

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Overview

Recent experiences pertaining to international oil companies and host country governments who (at the time of promoting gas production and commercialization projects) may have sought to assure and guarantee incentives and fiscal terms by law or other regulatory means, portends that such stabilisation frameworks are not only considered when dealing with 'irrational' 'dictatorial' resource-rich regimes. Rather, the applicability of such stability provisions, including the potential implementation of a host government's constitutional powers to act in a non-discriminatory manner for the public interest, as well as pay adequate and required compensation or refrain from direct and creeping expropriation or deal with security threats to the viability of a project, comes with the inherently dynamic and long-term duration of gas industry ventures. For instance, the questions arising from the proposed amendment to the Nigerian Liquefied Natural Gas (NLNG) Project's enabling law on one hand and the renegotiation of Israel's Gas Framework for the Leviathan gas fields following a Supreme Court annulment on the other hand, exemplifies the multidimensional aspects of securing regulatory and commercial stability for international gas projects. The Nigerian scenario is however exacerbated further by socio-political agitations and insecurity in the Niger Delta which hosts her vast gas reserves and projects. In an increasingly global gas market, where new paradigms of short-term and flexible LNG supply arrangements are becoming more popular, there is growing competition for investment capital and market share. Thus, gas producing countries can no longer afford to be perceived as prone to commercial and infrastructural insecurity or regulatory uncertainties.

Countries such as Nigeria with a dire need for adequate and reliable gas supply to domestic power generation albeit in the context of prolonged institutional reforms, while facing considerable international demand-side shocks and local insecurity challenges will have to remain resilient to keep their global market share and traditional buyers. The NLNG project (an incorporated joint venture (IJV) owned by the Nigerian National Petroleum Corporation, Shell Gas BV, Total and ENI) is Nigeria's leading gas commercialisation export project. It was also the 4th biggest global LNG supplier (about 8.3% of market share) in 2015, although produced 1.8 million tonnes less in 2016 mainly due to domestic unrest in the Niger Delta region and operational maintenance factors. The NLNG project continues to withstand several challenges relating to the constitutionality and implications of provisions in the Nigeria LNG (Fiscal Incentives Guarantees and Assurances) Act Cap N87 2004 (the "NLNG Act"). The NLNG Act was originally a military government decree issued in 1990 and amended in 1993, but now part of the Laws of the Federation. It provides among other things for specific fiscal incentives, guarantees and assurances and seeks to preclude future legislative amendments during the lifespan of the project without the written consent of relevant shareholders to the IJV. The provisions apparently pitch the corporate shareholders against certain socio-political interest groups, especially those seeking to ensure the enactment of new laws and regulations that would impose community development levies or charges on the NLNG. While the government is in dire need for the revenues received from LNG exports as oil export earnings plummet, it also needs to consider relevant trade-offs and implications of not effectively addressing the security threats to the viability of the NLNG project as well as socio-political agitations demanding for an amendment to the NLNG's law-based guarantees and assurances.

Generally, before upstream operators commit to international gas commercialisation projects, it is imperative to (i) have contracted all or most of the gas molecules under a reasonably stable and reliable regulatory and commercial framework; (ii) ensure *ex ante* confirmation of suitable long-term credit-worthy buyers or spot-market; and (iii) expect an efficient pricing and import-export allocation mechanisms in host producing country. Additionally, project structuring usually requires some guarantees and stabilisation provisions which are in rare cases provided by a 'special' legislation or a foundational contractual framework. Thus, such government-backed special law results in debates and questions regarding the constitutional, economic and socio-political costs and implications. This paper aims at examining the regulatory framework of the NLNG project in the context of emerging and increasingly international and dynamic gas markets. It considers the various past and recent contentions following the NLNG Act, as well as the implications of providing stability and certainty for international gas commercialisation projects. In this

regard, it also considers the highlighted risks to demand and supply-side aspects of the security of gas supply in the global gas market. It argues that even where commissioning challenges and construction slippages are not deterrents to efficient supply of LNG; insecurity and regulatory uncertainties affecting feed-gas supplies and transportation aspects of the value chain can be very costly for both public and private stakeholders and could result in avoidance or a country's depiction as a high-risk prone environment by future and prospective investors with scarce investment capital in a fast-growing gas industry.

Methods

An analytical and critical approach is adopted in examining the economic and regulatory implications and risks to providing regulatory stability and certainty for international gas commercialisation projects.

Results

The results and thoughts gathered from writing and presenting this paper will form part of ongoing research and studies relating to the development of the most sustainable and efficient institutional framework for managing the demand and supply-side risks and trade-offs as essential factors in the security of gas supply to the evolving international energy industry.

Conclusion

The dynamics of securing affordable gas supply to an increasingly global and interconnected energy markets are changing dramatically. In the medium to long-term, there is a growing tendency for an oversupplied and more short-term flexible supply arrangements to gas markets, especially via LNG. These trends could make it more difficult for traditional project developers and producers to secure long-term commitments from traditional buyers. Project economics and high-cost estimates for gas commercialisation projects in comparison to alternative energy sources like 'oil' and 'coal' as well as the rise of renewables are similarly relevant factors in the unfolding scenarios. Also, risks such as regulatory and fiscal framework uncertainties, security breaches and geopolitical or socio-political controversies are very critical. In Nigeria, unresolved political and legal debates, as well as threats of insecurity and physical blockades of LNG shipments have recently hampered the operations existing projects and delayed the development of additional liquefaction capacity. Despite its socio-political implications and costs, the NLNG's contractual framework, including the controversial guarantees and assurances may have enhanced its ability to respond to demand shocks from regions like North America and its capacity to remain viable as a supplier in the evolving gas market. However, without a pragmatic and conciliatory approach to resolving the long-standing legal and socio-political disputes, as well as security risks by all stakeholders, the NLNG and other commercialisation ventures facing similar scenarios may be in danger of losing out in the evolving global energy market dynamics.

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