

The Economics of Deregulation and Ramifications for Law and Development

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Abstract:

The notoriety of deregulation as a result of the need to liberalise the economy for the purpose of enabling market forces shape effectiveness and reduce inefficiencies in the markets has generated a lot of definitions for the term. Deregulation becomes a necessary policy by the government when it becomes important for certain utilities handled by government to be handed over to private investment. The purpose of deregulation highlights its advantages in a capitalist economy; however, this grandiose economic concept is not without its downside of exploitation. The implementation of the policy of deregulation and its economics has ramifications for the law encompassing socio-economic provisions of the law. Implications for human rights have socio-economic dimensions and may run counter to constitutional provisions with individual socio-economic rights for nations that have adopted the Universal Declaration on Human Rights into their domestic legislations and the Universal Declaration on Human Rights as an international legal instrument itself. The way forward remains that; for certain public sector utilities, government and private participation, as well as a transparent and level-playing system are necessary for the development of the society.

Keywords: deregulation, liberalization, development, law, socio-economic rights

1. Introduction

The notoriety of deregulation as a result of the need to liberalise the economy for the purpose of enabling market forces shape the effectiveness and reduce inefficiencies in the markets has generated a lot of definitions for the term. Certain definitions for deregulation have arisen. Investor Words defines it as the removal of government controls from an industry or sector to allow for a free and efficient marketplace; the Free Dictionary defines it as to free from regulation, especially to remove government regulations; Izibili and Aiya (2007) say to deregulate means to do away with the regulations concerning financial markets and trades; for Braide (2003), deregulation is seen as desirable in freeing government of its concurrent control and involvement; Akinwumi, et al (2005) see deregulation as the removal of government interference in the running of a system among others. Following from these definitions is the staple assumption that the involvement of the government through regulations stands in the way of the market as an organism growing, weathering its challenges, cutting down inefficiencies and directing market forces in ways to make the provision of goods and services not only accessible but derivable of value.

Generally, deregulation becomes a necessary policy by the government when it becomes important for certain utilities handled by government to be handed over to private investment, stream down bottlenecks, rules and regulations bordering the sectors of the utilities, limit the improbabilities in the regulated sector occasioned by rent-seeking behaviour and ensure efficiencies by encouraging competitiveness and a fair price regime through relaxation of regulations believed to hamper growth and development. What otherwise would have been a laudable initiative by its introduction in markets responsible for providing public utilities and services have, at certain times, turned out to be Herculean in implementation. For instance, the province of Ontario began deregulation of electricity in 2002 but pulled back due to public out lash at the resulting price volatility. This is in part because of public misconception of the policy as that inimical to the welfare of the citizens because of the initial pain of adjusting to corrections in the sector, a misunderstanding of the concept of deregulation from liberalisation to protect public interest as one of the primary responsibilities of the government and distrust of government motives arising from the stifling

effect of corruption in governance. The recent Nigerian example is classic just at the wake of the new year in 2012 when the government announced the removal of petroleum subsidy that resulted in protests demanding the prosecution of the cartel enriching itself at the expense of the government, an audit of the petroleum ministry, an account of how subsidy funds were spent, how the funds mounted in figures within the space of a year, et al.

2. Deregulation and Liberalization

An opening has been made of what deregulation is in definition but certain clarifications are necessary in the light of the fact that the concept being fairly novel to the public needs some 'de-confusion'. This can be attempted by clarifying what deregulation is not. Deregulation is not the absence of government control through regulations otherwise the idea of government is defeated and governance can as well be left to businesses. The motor and truck industry in the U.S. was deregulated by the Motor Carrier Act of 1980 but the same Act provided guidelines for a modicum of order in the industry and the protection of public interest so the core objective of private investment do not make a mess of the core objective of quality service delivery in an accessible way to the public which was the initial idea of deregulating the industry. The deregulation of the telecommunications industry in Nigeria ushered in the Nigerian Communications Commission Act establishing a regulatory agency of the government to oversee the activities in the industry for best practices and service delivery.

Second, deregulation only confers ownership and management of the deregulated industry on private investors but the oversight function of control rests with the government (Ehiametalor, 2005). The recent shake-up in the banking industry in Nigeria is an example. Commercial banks are private investments but for the protection of the public and public monies handled by commercial banks, control of the financial sector to prevent industry malpractices and promote international best practices, and the midwifery of the economy, the Central Bank of Nigeria charged with the overall responsibility of overseeing the industry waded into the impending banking crisis by firing corrupt Chief Executives, tracking beneficiaries of non-performing loans, filing charges against them in court and imposing a tenure limit on Chief Executives of banks in pursuance of its mandate.

What deregulation is not opens our eyes to another relatively novel concept which I think appropriate in deregulation discourses. Liberalisation fits appropriately as it has all the trappings of deregulation but in a properly defined way to include opening entry requirements into an industry formerly hedged by the government, relaxing operational rules, introducing innovations in productions and management techniques in such ways to promote efficiencies and effective utilization of resources as well as to improve by contributions from the industry the overall economy. Ashfaq H. Khan and Yun-Hwan Kim (1999) used deregulation, privatization and liberalization all together, Ernest and Young (1988), and Johnston (1998) preferred deregulation and privatization, and privatization respectively and Sayuri Shirai (2001) is of the view that '...liberalization *takes* place..., mainly taking the form of...deregulation'. So, when we talk about deregulation we are in fact talking about liberalization.

The purpose of deregulation highlights its advantages in a capitalist economy including the attraction of foreign direct investment, the efficient operation of a capitalist economy based on a free market enterprise (Izibili and Aiya, 2007), improvement of the overall economy through properly spelt out ways, opening the market to competitors and North, (1990) and Haveman, et al, (2001) are of the opinion that deregulation has strong face validity as a critical change in the rules governing how firms compete, enhancing industry experience to ensure a robust and well-balanced market. In fact, Klepper & Graddy, (1990) and Walker, et al (2002) opine that the effect of deregulation on the rules of competition imply that new firms compete through innovation in ways that are strongly analogous to competition in the early stages of industry development, to address the problem of scarcity (Ajayi and Ekundayo, 2008), among other purposes of deregulation. However, this grandiose economic concept is not without its downside of exploitation. The literature lists a few negatives of deregulation to include price manipulation (Rodrigues, et al, 2010) in favour of industry players, removes the provision of certain services from the reach of the economically lower class (Ajayi and Ekundayo, 2008) especially education as far as the provision of education by private industry participants is concerned. This automatically ostracizes those who cannot afford the astronomical

fees required by private education providers. A third disadvantage is the fact that quality may not be so assured in the light of the profit-making goal of private investment. The method of reducing production cost may result in compromising on quality assurance as private investment may not always have access to a large purse which a well-managed government may possess, to afford high production cost till stability and break-even is achieved.

The thrust of this angle is not to make a case for the glorification of deregulation and the plausibility of entrusting the management of public utilities into the hands of private investment, rather to voice two issues as arguments for government involvement in public enterprises. First, allowing deregulation to make a clean sweep of all aspects of the economy in the belief that enterprises are better and efficiently managed by private investment than when left to government is paving the way for big-business governance. Not all players in a deregulated industry are equal or should be expected to be at par. The analogy of incumbents and entrants rivalry by Madsen and Walker (2007) sheds more light on the comparative advantages enjoyed by incumbents as a result of participating in the industry before deregulation and before entrants began participation. This imbalance in positions although allowing of competition, sets certain players above others. These favoured incumbents stand a better chance of being patronized for share ownership and equity participation by high government officials both serving and retired. Certain implications abound for government policies issued by government officials with conflicts of interest in a corrupt environment where policies would tilt in favour of businesses against the public, businesses where public officials own share or equity participation. The result is the same when businesses lobby the government for policies to favour them. Does deregulation therefore limit or eradicate rent-seeking? Without conceding a negative answer, the answer is at best moot.

Secondly, with endless cash in the hands of big-businesses not only to influence political candidates with the profiteering interest of big-businesses at heart or to sponsor candidates into elective and public offices, office holders in time become stooges of big-businesses and one of the arguments against government engaging in public enterprises comes for debate again: big-businesses are profit oriented and should a stooge of big-businesses be in charge of making policies, policies to make profit for big-businesses stand a better chance of being passed to milk the public of money for big-businesses while the public are not only deprived of utilities, which becoming unaffordable, gets out of reach and are also left with nothing but their survival instincts, this bearing repercussions for the stability of the polity.

Third, as deregulation can exclusively function in a capitalist economy, the negative derivatives including pronounced class system of proletariat and bourgeoisie accentuates the ills of capitalism over its benefits.

3. Government and Businesses: Similarities for Enterprise Participation

It is the position of this contribution that government can participate and adequately well too in enterprise production and provision just as much as private investors. Certain similarities in structural attributes between government and businesses cream to the top. First, business activities are circumscribed by laws just as the activities of government. The Companies and Allied Matters Act of Nigeria stipulates provisions on incorporation, corporate governance as regards directors, share participation and transfer, corporate capital etc. Going further the Investments and Securities Act of Nigeria continues basically to prescribe rules on companies' securities and investment guidelines. In the same vein, legislations establishing government agencies and institutions prescribe rules within which actions of government through its officers derive validity and legality.

Second, businesses have a capacity for self-sustenance, endurance and self-succession through an effective system structured on sound corporate governance and financial practices, ethical practices structured on international best practices and consistent profit-post. Same goes for the government when run on the principles of good governance, financial responsibility, transparency and accountability.

Third, businesses make profit just as government make revenue. In fact, the term 'internally generated revenue' has become more notorious recently in arguments for government's responsibility to carry out more capital projects and still fulfil its role of adequately remunerating its civil servants by raising the minimum wage. The nomenclature may be different but the intrinsic idea is the same.

Four, businesses have alter-egos and officers recognised by Companies Acts to carry out the activities of business organizations just the same way government has officers carrying out its activities.

Five, businesses borrow, are indebted, declare bankruptcy and have creditors and these affect governments too. An example remains Greece. The striking difference lies in the fact that governments do not liquidate as businesses do. They would rather print more worthless currencies, like Zimbabwe, to keep the façade of an economy going. This borrows argument for an addition that businesses fail just as government enterprises fail.

Two similar structures with similar potentials for growth in enterprises are presented to de-emphasize overtly harping on deregulation for private investment especially public utilities originally reserved for government. It is not infallible to use the idea of corruption in government as the reason for inefficiencies in utilities provision to push forward the policy of deregulation. It has been shown that government do not hold exclusive reserve to corruption as businesses are not immune. The difference for inefficiencies is that professionals and skilled technicians are employed by businesses to reduce the risk of inefficiencies that may liquidate the business as well as the stick of job insecurity. At other times, businesses may not be so fortunate. Enron, USA poses a classical example. The case to be made instead is to reduce corruption by a deliberate, articulate and practical and efficient mechanism in governance, employ professionals and skilled technicians in handling government enterprises, co-opting foreign and international assistance in the training of skilled technicians and professionals, incorporating the practicalities of good governance and all the trappings of transparency, accountability and responsibility.

4. Ramifications for Law and Development

Implementing the policy of deregulation and its economics has ramifications for the law encompassing socio-economic provisions of the law. Implications for human rights have socio-economic dimensions and may run counter to constitutional provisions with individual socio-economic rights for nations that have adopted the Universal Declaration on Human Rights into their domestic legislations and the Universal Declaration on Human Rights as an international legal instrument itself. Some constitutional provisions have rendered these socio-economic human rights provision as non-justiceable hence their argument for violating its provisions or tacit non-compliance. However, global experience has begun to render this position stale and untenable in the light of the fact that evidence shows a correlation between the stability of government and the development of both the economy and the economic lives of the citizens. What when deregulation is implemented? Arguments in favour abound of economic opportunities of job creation but are the arguments strong when job creation is paired against the profit-making purpose of business participation in deregulated government concerns? Businesses create jobs where their profit margin is not threatened by a magnanimous recruitment campaign, otherwise, two ugly issues stare us in the face. One is the delay or non-payment of salaries as and when due with welfare implications for workers who would not be able to meet their financial obligations. Second, wages may be down-scaled by business employers to accommodate more hands to effectively cover activities of the business and keep the profit-margin attractive, and this has repercussions on the economy as the spending power of workers would be affected as well as the reduction in circulation of money, where there may not be enough cast to go around in the first place. Still on the repercussions on wage downscaling, low wages and salaries apart from the fact that it reduces cash flow within the economy, the purchasing power of consumers and helps poverty, it also has a way of affecting the polity through industrial actions to call for higher wages with a resultant effect on the economy, especially where legislation pegs minimum wage on an amount business considers itself unable to pay except it sheds its workers. Like a roundtrip, jobs may not end up being created as imagined. Third, low wages generated from the system would result in employees splitting productive time between the business of the organization which is the provision of services and personal ventures to augment low wages and salaries, leading to possible inefficiencies associated with a regulated sector and vertically entrenched corruption. Do all these guarantee the international covenants on civil and political as well as economic, social and cultural rights? Article 1 of the ICCPR recognises the rights of the people to freely own, trade and dispose of their natural wealth and resources and although article 4 of the ICESCR places a restriction on the enjoyment of rights and places it in the hands of the government where it is for the overall benefit of the society, a situation of deregulation where it places access to certain basic amenities and products necessary for the survival of peoples, as guaranteed by article 6 ICCPR and article 7 ICESCR, beyond their reach is not only distasteful for societal development in all its ramifications, it also should not be allowed.

5. What can be done?

A free market economy which is the reason for the implementation of a deregulation policy has obvious advantages. Liberalization as I would like to put it has proven to be beneficial in the Nigeria airline industry and the banking industry with the creation of jobs, better and efficient service delivery as a result of competition, industry growth and contribution to national income; yet these positive attributes cannot be said for the liberalization of other sectors, for example, the educational sector with possible future non-participation by the government in the form of cost-subsidization. The argument of quality assurance is not a valid excuse for government to wash its hands off participating in such sectors as the result would be the ostracization of a certain class or population because of prohibitive cost to be paid for such service provided by private investment and a necessary consequence for the development of the nation. With deregulation comes a higher cost of accessing certain public services because it needs be said at this juncture that as a result of the freedom of the market dictated by the forces of demand and supply comes the determination of price by such forces and no government policy can contravene the dictatorial tendencies of pricing in a free market economy if quality is to be assured. Nigerian private universities are examples. The least the government can do is participate, not on the same level with businesses for profit-making but possible cost-subsidization with tighter rein on efficiency through transparent legal and administrative processes; as well as open the sector for private participation with a level-playing field for all and the operation of market forces so if natural resources cannot be left to the people to freely own and dispose of their own accord in order to prevent anarchy, the government's participation as a trustee for the people should at least guarantee their access in terms of availability and cost to the people.

What about oil? Oil has a major potential for wealth creation for oil-producing countries hence almost all major oil-producing countries of the world have their governments atop that resource to manage for the overall development of their societies. However, the reverse is the case as most of these governments use oil resources as a means of private enrichment at the expense of public good. The possibilities and potentials inherent in oil wealth for nations is classic in the Dubai example with room for more if properly managed. Evidence has shown that oil as a global resource cannot be entirely left to private hands although private participation can be allowed. This is necessary not only for the purpose of regulation and management but also access and availability. In Nigeria, the resource plays so much importance that the income of the country is derived largely from oil and internal economic activities revolve around it too. The small-scale laundryman needs diesel or fuel to power his machines, the petty pepper and other condiments grinder needs petrol to power her grinding machine, the barber needs petrol to power his generator for cutting his customers hairs; all these small economic players use and need this resource just as big industry players also cannot do without it in carrying out their activities. It would have been different if electricity provision was assured. The point here is that in the absence of alternative means of production of goods and services for both big and small players in the economic process, leaving the only resource available to private investment whose major concern is profit-making may not be as economically sound as it appears. To leave it to private investment through deregulation may pose serious legal and socio-economic implications for the country as discussed. As a result of the wealth inherent in oil, a minority with investment funds may end up controlling the economic wealth of the nation constituting a cabal that will not only determine the economic development of the nation but also political. As politics is largely determined by wealth, the political class as well as public office holders would buy into the investment opportunity, constituting for public office holders a conflict of interest and unjust use of public office for private gains among other derivatives of corruption. The regulatory function of government to ensure service availability would be affected as prices may skyrocket for profit ends as long as they can justify the price regime.

Secondly, the tyranny of associations may contribute to make the product unaffordable. Already, there is a petroleum marketers association that ensures an unfair price regime through underhand methods of product hoarding and readjustment of pump measurement so as to ensure profit. Deregulation may entrench this as long as the forces of demand and supply provide a plausible excuse.

6. Conclusion

The way forward remains that for certain sectors such as are mentioned above, government and private participation, as well as a transparent and level-playing system are necessary for the development of the society; a transparent system of audit and accountability in system and management may replace the usefulness of a private-sector incentive such as subsidy which has proven not to be effective and functional. With corruption done away with and skilled professionals introduced into the system for effectiveness and efficiency, the stability achieved over time in the sector may eventually pave way for a workable and functional deregulation of any sector.

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