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Nigerian government authorities demand that South Africa-based telecommunications company MTN Group pay a total of \$10.1 billion in refunds and taxes. President Muhammadu Buhari (2015-present) formally submits his candidacy to the ruling All Progressives Congress (APC) for the February 2019 presidential elections. An Italian judge sentences Nigerian Emeka Obi and Italian Ginaluca Di Nardo to four-year jail sentences for international corruption in connection with the 2011 purchase of OPL 245 offshore oilfield.

Authorities press MTN Group for \$10.1 billion in refunds and taxes

Nigerian government authorities have demanded that **South Africa**-based telecommunications company **MTN Group** pay a total of \$10.1 billion in refunds and taxes.¹ The demand is seen as a shakedown of the company and puts MTN's initial public offering (IPO) on the **Nigerian Stock Exchange (NSE)** at risk. The **Central Bank of Nigeria (CBN)** ordered MTN Group subsidiary **MTN Nigeria and Communications Ltd** on 29 August to refund \$8.13 billion it alleges MTN repatriated between 2007 and 2015 in breach of foreign exchange regulations.²

The CBN alleges that four banks improperly issued certificates of capital importation (CCI) in 2007 when MTN Nigeria converted shareholder loans to preference shares.³ The CBN allows banks to issue CCIs when investors bring in foreign investment. The CCI guarantees access to official foreign exchange markets should investors repatriate profits in foreign currency.⁴ The type of CCI the CBN issues depends on the type of capital brought into Nigeria. MTN's initial capital injection of \$400m was a mixture of both loans and equity.⁵ According to Nigeria-based bankers familiar with the transactions, MTN repatriated dividends using their equity CCIs, which is legal.⁶ However, MTN's decision to convert its shareholder loans into preference shares, which would change from a loan CCI to a preferential share CCI and which do not qualify for dividend repatriation, required CBN approval and reportedly the CBN only gave 'approval in principle'.⁷ The CBN alleges that any dividends repatriated on the back of these preference share CCIs are fraudulent and the CBN is now asking for its refund.⁸

The CBN also fined four banks that it alleges failed to verify that MTN has met all the requirements to repatriate the funds.⁹ The CBN fined **United Kingdom (UK)**-based **Standard Chartered** 2.4 billion naira (\$6.6m); South Africa-based **Stanbic IBTC Bank** 1.8 billion naira (\$4.9m); **United States**-based **Citibank** 1.2 billion naira (\$3.3m); and Nigeria-based **Diamond Bank** 250m naira (\$689,655).¹⁰

This is not the first time the government has levelled this charge against MTN. In November the senate approved a 2016 report that exonerated MTN for illegally reporting \$13.92 billion between

¹ The South African, 29 Aug 2018

² The South African, 29 Aug 2018

³ TechCentral, 30 Aug 2018

⁴ Quartz, 11 Sep 2018

⁵ Quartz, 11 Sep 2018

⁶ Quartz, 11 Sep 2018

⁷ Quartz, 11 Sep 2018

⁸ TechCentral, 30 Aug 2018

⁹ Business Day, 29 Aug 2018

¹⁰ Business Day, 29 Aug 2018

2006 and 2016.¹¹ MTN refuted the CBN's claims and stated that MTN did not declare or pay any dividends other than the CCI's, which the CBN approved at the time.¹²

The attorney-general's office also claims that MTN should pay approximately \$2 billion in extra taxes relating to the importation of foreign equipment and payments to suppliers from 2008 to the present day.¹³ MTN announced on 4 September that it has been in talks with the attorney general regarding the investigation into MTN's tax compliance. MTN again refuted the government's allegations, noting that its \$700m payment over the ten-year period fully settled its tax obligations.¹⁴

MTN Group has not declared its future plans in Nigeria. However, the company announced on 10 September that it will seek injunctive relief against CBN and the attorney-general from the **Federal High Court of Nigeria**.¹⁵ MTN is also seeking \$10m in damages and legal costs¹⁶ as its **Johannesburg Stock Exchange** listing price has dropped dramatically after the announcement of the refund and taxes (see chart 1). The stock price has gained slightly after Nigerian authorities stated on 20 September they were open to working towards an amicable solution to the two issues.¹⁷



Source: www.fin24.com

The demands for refund and taxes will further delay MTN's plans for an IPO, originally scheduled for June or July 2018 (see *ARC Briefing Nigeria August 2018*).¹⁸ MTN chief financial officer **Ralph Mupita** stated:

*"We are not ... saying the listing is off. The listing is to remain on track. It makes the IPO that we had planned pretty challenging and awkward but we have got to explore other options of continuing to meet the listing requirements."*¹⁹

MTN had to pay a \$1.6 billion fine²⁰ and agree to list on the NSE²¹ as part of its settlement agreement in 2016 for failing to disconnect 5.2 million subscribers. The **Nigerian Communications Commission (NCC)** had alleged that MTN's failure to disconnect unregistered SIM cards allowed terrorist groups to use these SIM cards for terrorist activities.²²

The sudden shakedown against MTN is political. President **Muhammadu Buhari** (2015-present) took office promising tougher regulation and is now implementing this ahead of the 2019 elections, in which Buhari will run (see below). Nigerians will view the crackdown and call for the return of repatriated funds positively in Nigeria. According to a Nigeria-based author,

¹¹ Business Day, 29 Aug 2018

¹² BizNis Africa, 30 Aug 2018

¹³ EWN, 4 Sep 2018

¹⁴ EWN, 4 Sep 2018

¹⁵ MyBroadband, 10 Sep 2018

¹⁶ MyBroadband, 12 Sep 2018

¹⁷ Business Day, 20 Sep 2018

¹⁸ Reuters, 28 Feb 2018.

¹⁹ IT Web Africa, 14 Sep 2018

²⁰ Forbes, 10 Jun 2016

²¹ Developing Telecoms, 14 Sep 2018

²² Forbes, 10 Jun 2016

"[There] is the belief that whatever profits any foreigner makes from Nigeria is at the expense of Nigerians."²³

Buhari and the government are also desperate for hard currency due to the Nigerian economy's reliance on oil for revenue. Much like the 2016 fine, MTN is unlikely to have to pay \$10.1 billion and the cost will be reduced during negotiations, if MTN pays anything. MTN has two choices –negotiate a settlement or leave Nigeria. Buhari and the government may be betting that MTN will not voluntarily leave **Africa's** largest telecommunications market. Nigeria is MTN's biggest market and accounts for a third of its annual core profit.²⁴ However, a source close to government states that there is also a hedge:

*"[If MTN leaves] there are other mobile competitors, such as **Airtel**, who are ready to take up MTN's business, and are perhaps lobbying to push MTN out. For the presidency, they want one major telecommunications company which [the government] can control."²⁵*

With so much at stake, MTN is likely to stay. However, the government's tactic of using large foreign companies as piggy banks and scapegoats when needed is likely to weaken foreign investment and Nigeria's economy in the future.

Buhari announces presidential candidacy amid growing economic challenges

President Buhari formally submitted his candidacy on 12 September to the ruling **All Progressives Congress (APC)** for the February 2019 presidential elections.²⁶ The APC primaries to choose the presidential candidate are scheduled for late September, although Buhari is currently the only candidate.²⁷ While Buhari's APC candidacy is all but guaranteed, his electoral win is not. There are questions not only regarding Buhari's fitness after months abroad for treatment,²⁸ but also about his economic and political record since 2015 and his perceived autocratic style.

Nigeria's economic growth is slowing down. GDP growth was 1.5% in the second quarter of 2018 compared to 1.95% in the first quarter.²⁹ Nigeria's economy is heavily tied to the price of oil; as the price of oil increases (see chart 2), Buhari will forego any economic reform and liberalisation and instead fall back onto oil profits. According to an economist in Nigeria,

"As the oil price rises, the chances of substantial economic reforms lowers. When the oil price was falling to \$20 a barrel in 2016, the federal government looked at privatisation, breaking up the state-owned oil company and re-floating the currency. However, once the oil price rebounded, the government reverted back to its old ways."³⁰

²³ Quartz, 11 Sep 2018

²⁴ IT Web Africa, 14 Sep 2018

²⁵ Source, government official, Lagos

²⁶ News24, 12 Sep 2018

²⁷ News24, 12 Sep 2018

²⁸ News24, 12 Sep 2018

²⁹ Punch, 28 Aug 2018

³⁰ Source, economist, Nigeria



Source: www.bbc.com

On the political front, Buhari and the APC will need to deal with the large number of recent defections (see *ARC Briefing Nigeria August 2018*) as well as potential presidential challengers. Former APC member and senate president **Bukola Saraki** announced on 30 August that he will run for president, most likely as part of the opposition **People's Democratic Party (PDP)**.³¹ The PDP have yet to announce exact dates for their primary elections, but may pose the biggest challenge to Buhari. Saraki was born into one of the wealthiest and most politically connected families in Nigeria, but will need to beat other political heavyweights for the PDP nomination. These include former Buhari aide, **Rabiu Kwakwaso**; **Ekiti State** governor **Ayodele Fayose**; and former vice-president **Atiku Abubakar**.³² Those who do not secure the PDP nomination are likely to look to other parties for their candidacy, increasing the number of candidates for the 2019 elections.

Finally, there are concerns about Buhari's autocratic style, which led to the APC defections. Buhari rejected the **Petroleum Industry Governance Bill (PIGB)** on 28 August, which aimed to liberalise the governance structure of the oil industry.³³ The bill, which the national assembly passed in March, would have reduced the powers of the minister of petroleum resources and the Nigerian president – Buhari is both the president and the petroleum resources minister.³⁴ The PIGB has been debated and changed for 17 years and while issues remain, it would have helped to bring more transparency and oversight over Nigeria's oil industry. Buhari's decision to return the bill was less about the future of the oil industry and all about the reduction of his powers, which he knows he needs to win another term in 2019.

Italian judge sentences two individuals in oil corruption case

An Italian judge sentenced Nigerian **Emeka Obi** and Italian citizen **Ginaluca Di Nardo** to four-year jail sentences for international corruption in connection with the 2011 purchase of OPL 245 offshore oilfield.³⁵ The court also ordered the seizure of \$98.4m from Obi and \$21.9m from Di Nardo.³⁶ **Netherlands**-based **Royal Dutch Shell** and Italy-based **Eni** purchased the exploration licence from Nigeria-based **Malabu Oil and Gas** for \$1.3 billion and Italian prosecutors allege that Shell and Eni paid \$1.1 billion of that amount in bribes for the licence.³⁷ Only \$210m ultimately went to the Nigerian

³¹ CGTN Africa, 30 Aug 2018

³² IOL, 30 Aug 2018

³³ Naija News, 28 Aug 2018.

³⁴ Naija News, 28 Aug 2018.

³⁵ Reuters, 20 Sep 2018

³⁶ Reuters, 20 Sep 2018

³⁷ Reuters, 20 Sep 2018

government.³⁸ The Italian court found that Obi and Di Nardo took kickbacks. Obi acted as a middleman for former petroleum minister **Dan Etete**, who asked Obi to find a buyer for OPL 245 in exchange for \$114m.³⁹ Obi then paid Di Nardo \$24m of that for putting him in touch with Eni.⁴⁰ However, Obi and Di Nardo were only middlemen in a larger trial involving Eni chief executive officer **Claudio Descalzi** and four ex-Shell managers, including former **Shell Foundation** chairman, **Malcolm Brinded**.⁴¹ Obi and Di Nardo asked for a separate fast-track trial, which allows sentences to be cut by a third, and the main trial, which starts 26 September, is expected to continue for several more months.⁴²

Eni has reiterated that it acted legally in the purchase and that it worked directly with the government for the purchase of the licence, while Shell has denied that it was involved in bribes. Shell issued a statement that,

*"[Shell] does not believe that there is a basis to convict Shell or any of its former employees ... We believe the trial judges in Italy will conclude that there is no case against Shell or its former employees."*⁴³

However, Shell's statement followed up that

*"...if the evidence ultimately proves that improper payments were made by Malabu or others to then current government officials in exchange for improper conduct relating to the 2011 settlement of the long standing legal disputes, it is Shell's position that none of those payments was made with its knowledge, authorisation or on its behalf."*⁴⁴

OPL 245, one of the largest untapped oil reserves in **Africa** with an estimated nine billion barrels, has yet to enter into production.⁴⁵ The ruling sets a precedent for other international corporations that have paid bribes to government employees for oil or mining licences that ultimately rob that country's treasury. Obi and Di Nardo are only middlemen. The real test will be whether the **Milan**-based court will sentence the Eni CEO and former Shell management.

Planner

24-25 Sep 2018 (**Nigeria**) **Central Bank of Nigeria Monetary Policy Committee** meeting

19-20 Nov 2018 (**Nigeria**) **Central Bank of Nigeria Monetary Policy Committee** meeting

7 Oct 2018 (**Nigeria**) *Vanguard*. Deadline for parties to select candidate for 2019 general election;

18 Nov 2018 (**Nigeria**) *Vanguard*. Campaigning to begin for presidential and National Assembly elections;

1 Dec 2018 (**Nigeria**) *Vanguard*. Campaigning to begin for governorships and state assembly elections;

16 Feb 2019 (**Nigeria**) *Vanguard*. Voting in presidential and National Assembly elections;

2 Mar 2019 (**Nigeria**) *Vanguard*. Voting in governorships and state assembly elections;

³⁸ Vanguard Nigeria, 20 Sep 2018

³⁹ The Nation, 20 Sep 2018

⁴⁰ Reuters, 20 Sep 2018

⁴¹ Reuters, 20 Sep 2018

⁴² Reuters, 20 Sep 2018

⁴³ Vanguard Nigeria, 20 Sep 2018

⁴⁴ Vanguard Nigeria, 20 Sep 2018

⁴⁵ Reuters, 20 Sep 2018

Chronology

20 Sep 2018 **Abuja (Nigeria)** *Business Day*. The **Central Bank of Nigeria** is reviewing information to find an equitable resolution to a foreign currency repatriation dispute;

19 Sep 2018 **Lagos (Nigeria)** *Quartz*. Aviation minister **Hadi Sirika** suspends the plans to launch a new national carrier;

17 Sep 2018 **Lagos (Nigeria)** *Fin24*. **Nigeria** accuses banking giant **HSBC** of money laundering after an HSBC analyst stated that a second term for President **Muhammadu Buhari** may stall economic recovery;

15 Sep 2018 **Abuja (Nigeria)** *Reuters*. Finance minister **Kemi Adeosun** resigns after allegations of using forged certificates;

13 Sep 2018 **Abuja (Nigeria)** *The Guardian*. Trade minister **Okechukwu Enyinnah Enelamah** states the government signed a \$2 billion trade agreement with **China**-based textile firm **Ruyi Group** to build an industrial park;

12 Sep 2018 **Abuja (Nigeria)** *News24*. President **Muhammadu Buhari** formally submits his candidacy for the February presidential elections;

12 Sep 2018 **Lagos (Nigeria)** *Fin24*. **MTN Group** claims that the attorney-general's office exceeded its powers when it demanded MTN Group pay \$2 billion in back taxes;

11 Sep 2018 **Johannesburg (South Africa)** *Tech Central*. Telecommunications minister **Siyabonga Cwele** states the government is ready to help MTN Group in its dispute with **Nigeria**;

10 Sep 2018 **Abuja (Nigeria)** *Fin24*. **South Africa**-based telecommunications company **MTN Group** applies to the **Federal High Court of Nigeria** for relief from the recently imposed fines;

9 Sep 2018 **Gudumbali (Nigeria)** *EWN*. Islamist militant attacks in northeastern **Nigeria** leave several dead, just months after the government ordered people to return to **Gudumbali**;

6 Sep 2018 **Abuja (Nigeria)** *Reuters*. The **Central Bank of Nigeria** debits \$7.9m in fines from **United Kingdom**-based **Standard Chartered Bank** and \$3.9m from **United States**-based **Citigroup** for allegedly helping South Africa-based telecommunications firm **MTN** to move funds abroad;

4 Sep 2018 **Abuja (Nigeria)** *Reuters*. **European** states warn that 800,000 people in **Nigeria** may be starving in areas affected by **Islamist** fighters;

4 Sep 2018 **Abuja (Nigeria)** *Reuters*. The attorney-general imposes a \$2 billion tax bill on **MTN Nigeria** for importation of foreign equipment, on top of the \$8.1 billion the government alleges MTN Nigeria illegally sent abroad;

1 Sep 2018 **Abuja (Nigeria)** *Sahara Reporters*. The **Export-Import Bank of China** announces a \$328m loan to **Nigeria** to grow the information and communication technology sector;

30 Aug 2018 **Abuja (Nigeria)** *News24*. Senate speaker **Bukola Saraki** announces his intention to run for president in the 2019 elections;

29 Aug 2018 **Abuja (Nigeria)** *Reuters*. The presidency reportedly rejects an oil industry reform law that reduces the power of the president and oil minister to oversee and award oil licences and contracts;

29 Aug 2018 **Abuja (Nigeria)** *Vanguard*. Vice-president **Yemi Osinbajo** expects the economy to improve in the second half of 2018;

29 Aug 2018 **Lagos (Nigeria)** *Reuters*. **South Africa**-based telecommunications company **MTN Group** loses 19% value of its shares after the **Central Bank of Nigeria** orders \$8.1 billion in

foreign exchange to be returned due to failure to comply with regulations;

29 Aug 2018 **Abuja (Nigeria)** *FT*. **United Kingdom (UK)** prime minister, **Theresa May**, pledges \$13.6m to combat human trafficking and terrorism;

27 Aug 2018 **Abuja (Nigeria)** *Vanguard*. The **National Bureau of Statistics** states that gross domestic product growth slowed to 1.5% in the second quarter of 2018 due to a decline in oil production;