



Jackson, Etti & Edu

## IS THE CYBERSECURITY LEVY A VEILED CYBERTAX?

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## Introduction

The Central Bank of Nigeria (CBN), pursuant to the Cybercrimes (Prohibition, Prevention etc) Act (2015) (the 'Cybercrimes Act'), recently released a Circular dated 25th June, 2018 directing all Mobile Money Operators (MMOs) and other affected Payment Service Providers (PSPs) to comply with the statutory provision for the collection and remittance of the 0.005 levy imposed on electronic transactions by July 1, 2018. It is pertinent to note that under the Circular, electronic transactions include all financial transactions occurring in a bank or on a mobile money scheme or any other payment platform that has an accompanying service charge.

Below, is a synoptic analysis of the issues and potential impact of this Cybersecurity Levy on the operations of MMOs and PSPs.

## Why is the levy being imposed?

Essentially, this is a statutorily imposed levy that accrues to the National Cyber Security Fund (NCSF) which is domiciled with the CBN and even though Section 44(5) of the Cybercrimes Act prescribes that "an amount not exceeding 40 percent of the Fund may be allocated for programs relating to countering violent extremism" there is no clarity regarding the import of the NCSF, the framework for its management or indeed the parameters for its use and deployment.

Granted the levy is a contributory source to the NCSF, but if the singular prescriptive use of the NCSF under the Cybercrimes Act is **countering violent extremism**, which by the way is defined in the Interpretation Section as - "*any intervention designed to counter the persistence of violent radicalization to reduce the incidence of violent activities, change the behaviour of violent extremists, and counter the negative extreme groups while promoting core national values; also any program that seeks to identify the underlying causes of radicalization (social, cultural, religious and economic) and develop strategies that provide solutions and also introduce measures to change the attitudes and perceptions of potential recruits*" - , the obvious question is why is the private sector are being compulsorily levied for what is clearly a national security mandate of the Federal Government?

## Who is liable to pay the levy?

The levy is to be paid on a monthly basis on all electronic transactions on certain captive businesses specified in the Cybercrimes Act. The businesses affected by the levy include:





- i. Internet service providers,
- ii. GSM Service Providers and all telecommunication companies
- iii. Banks and other Financial institutions
- iv. Insurance Companies; and
- v. Nigeria Stock Exchange

### Implications of the levy on the Service Providers?

Having analyzed Cybercrimes Act and the Circular within the context of the existing regulatory architecture which MMOs and PSPs operate, we think that the immediate impact of the law in the short term will be:

- i. **Increased Transaction Costs and Reduced Profits:** Arguably this levy in conjunction with the existing levies and taxes already being paid by these service providers increases their costs structure and could potentially lead to a change in the existing tariff model for these businesses. Given that the levy is being imposed on the service charge element of these businesses, which is essentially their profit, expect that this will fundamentally impact on their profits and clearly their business models.
- ii. A clear and present danger is that the impact on their business model (as a result of rising costs and reduced profit) may stifle further innovation in the payments solutions business and reduce competition because it becomes less enterprising for entrepreneurs to venture into a business where your profits are significantly taxed.
- iii. An increase in transaction costs would most likely lead a change in the pricing model. An increase in tariffs paid by consumers accessing these platforms may potentially reverse the early gains of the financial inclusion policy of the Central Bank which at the core of it is about improving access to financial products. Could this deter the adoption rate of those contemporary electronic payment platforms? And would consumers become antipathetic to doing electronic transactions? These and more are some of the plausible effects to be considered.

### Sector Takeaways

We recognize that there has been a significant upsurge of cyber-related crimes both globally and domestically and their crippling effect on businesses are a clear and present danger. According to Nigerian Interbank Settlement Systems, Nigerian banks lost at least N159 billion





between the years 2000 – Q1 2013 which accounts for 2.4% of total banking revenue for that period. More worryingly, data available to the Central Bank of Nigeria suggests that deposit money banks lost a total of N2.19billion in 2016 fiscal year to fraudsters.

However, we fail to see how this levy addresses any of these concerns especially considering that the cyber legislation has already provided a robust penal framework to deal with cyber breaches. Also, the necessity of the levy is debatable given the other contributory sources of capital accruing to the Fund hence it ultimately feels like this a backdoor tax being statutorily imposed on technology businesses 'just because' and more worrisome is that it has the effect of penalizing consumers for adopting electronic channels. While compliance is unfortunately compulsory we think that to improve the optics of this levy it would be useful for the legislation to specify in greater detail the use of the Fund and also for Government to create an incentive-oriented legislation rather than a tax-oriented legislation for technology businesses.

Also, we feel that it is not the remit of private sector to be funding national security objectives of the Federal Government hence the levy would be better served if it was being utilized as venture capital for start-ups in the cybersecurity technology space or as some form of subsidy to operators in this area so as to increase adoption of these channels or even to encourage training programs in cybersecurity.



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