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Practical cross-border insights into merger control issues

Merger Control
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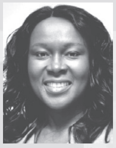

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1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The regulatory oversight for mergers and acquisitions in Nigeria is vested in the Federal Competition and Consumer Protection Commission (the "**Commission**" or "**FCCPC**") by virtue of the Federal Competition and Consumer Protection Act 2018 ("**FCCPA**" or "**Act**"). The FCCPA repealed certain sections of the Investments and Securities Act 2007 ("**ISA**") dealing with the Securities and Exchange Commission's ("**SEC**") previous regulatory oversight of mergers. The FCCPA makes provision for the creation of the FCCPC. The Commission acts as the competition regulator empowered to prevent and punish anti-competitive practices, regulate mergers, takeovers and acquisitions, and protect regulated industries in every sector and location in Nigeria. It also creates a Competition Tribunal to deal with any disputes and concerns that may arise.

The role of the SEC under the ISA as amended by the FCCPA in mergers and acquisitions is limited to fairness consideration in the exercise of its primary function as the regulator of the capital market.

Additionally, the SEC, on August 30, 2021, released New Rules and Amendments to its SEC Rules of 2013, which previously regulated mergers in Nigeria. Part 4 of the New Rules and Amendments covers mergers, acquisitions and combinations involving the acquisition of shares, assets, business or subsidiaries of a public company, which also aligns with its primary function as the regulator of the capital market.

The Corporate Affairs Commission ("**CAC**"), established by the Companies and Allied Matters Act 2020 ("**CAMA**") CAP C20 LFN 2004, also plays a part with respect to corporations that intend to merge. It is the responsibility of the CAC to receive corporate filings and to certify corporate resolutions and the de-registration of any dissolved company that may occur in the merger process. The new CAMA received Presidential assent on August 7, 2020, and came into force on January 1, 2021.

The Nigerian Exchange Limited ("**NGX**") is a self-regulatory body that runs the exchange for trading in shares. Quoted companies must meet the listing rules on merger transactions. Listed companies are required to submit to the NGX drafts of all circulars issued by the company to its shareholders; they are also required to disclose any conflict-of-interest issues between directors of merging companies. In addition, a listed company may have to be delisted due to a merger.

The Federal High Court ("**FHC**") also acts as a relevant judicial authority in merger control. Section 251 of the 1999 Constitution (as amended) of the Federal Republic of Nigeria gives the FHC the power to handle matters with respect to companies' operation, management and regulation. The FHC makes orders for shareholders' meetings to consider arrangement/compromise schemes that involve the transfer of shares. In addition, there are some sectoral merger regulatory authorities which may be involved depending on the business of the company. For instance, the National Insurance Commission ("**NAICOM**") would be a merging authority where the entity/entities involved is/are an insurance company, and the Nigerian Communications Commission ("**NCC**") for the telecommunications industry. The Central Bank of Nigeria ("**CBN**") performs a similar role for mergers in the financial services sector. On August 3, 2021, the CBN issued the Guidelines for Licensing and Regulation of Payments Service Holding Companies in Nigeria ("**PSHC Guidelines**"), wherein provisions as to control were provided. Paragraph 4 of the PSHC Guidelines states that prior approval of the CBN shall be obtained for any shareholding of 5% and above, or any change in ownership that results in a change in control of the payment service holding company ("**PSHC**"). Furthermore, where such shares are acquired through the secondary market, the PSHC shall apply for approval from the CBN within seven days of the acquisition.

1.2 What is the merger legislation?

The FCCPA is the key legislation on mergers in Nigeria. The FCCPA introduced significant changes to the regulation of mergers. The FCCPA repealed Sections 118–128 of the ISA. However, the SEC may still exercise the function under Section 121(1)(d), which empowers the SEC to determine whether all shareholders are fairly, equitably and similarly treated, and given sufficient information regarding the merger in line with Section 165(2) of the FCCPA. The FCCPC, pursuant to its powers under the FCCPA, has issued various regulations and guidelines for mergers in Nigeria. These regulations include: the Notice of Threshold for Merger Notification, 2019 ("**Notice**"); the Notice in Respect of Indicative Timeframes for Merger Notification and Review Process, 2020; the Merger Review Regulation, 2020 ("**Rules**"); the Merger Review (Amended) Regulations, 2021; the Guidelines on Simplified Process for Foreign-to-Foreign Mergers with Nigerian Component, 2019 ("**Guidelines**"), which were issued to provide a guide for obtaining the Commission's approval for offshore merger transactions; and the Merger Review Guidelines 2020, which were issued to govern the notification and review of mergers under the FCCPA.

The Companies Income Tax Act (Amendment) 2007 also requires the consent of the Federal Inland Revenue Service to a proposed merger or acquisition in relation to the capital gains tax payable. Section 25(12) of the Act provides that no merger, takeover, transfer or restructuring of trade or business carried out by a company shall take place without having obtained the Federal Inland Revenue Service's direction and clearance with respect to any tax that may be due and payable under the Capital Gains Tax Act. The CAMA is also applicable as well as the rules of the FHC. Sectoral pieces of legislation may also apply depending on the business of the merging companies.

1.3 Is there any other relevant legislation for foreign mergers?

The FCCPA has clear provisions with respect to foreign mergers. In terms of scope, the Act applies to all economic activities within or having effect within Nigeria. Section 1 of the Notice is to the effect that, where the turnover of either the buyer or the target in, into or from Nigeria equals or exceeds the threshold, a filing is required in Nigeria. In other words, even if neither the buyer nor the target has assets or entities in Nigeria, where the target's turnover in Nigeria exceeds the notifiable threshold, it would have to file the required notification in Nigeria. Section 2(3)(d) of the FCCPA also contains provisions extending its application to conduct (including acquisitions of assets or shares of businesses outside Nigeria) by a person who is resident or who carries out business in Nigeria, to the extent that such conduct substantially affects a market in Nigeria, which, to a large extent, covers foreign mergers. Furthermore, by virtue of Section 2.4 of the Notice, the turnover in foreign currencies shall be converted into Nigerian Naira at the official exchange rate determined by the CBN.

The Guidelines also provide a guide for obtaining the Commission's approval for offshore merger transactions.

The Rules and the Merger Review (Amended) Regulations, 2021 also make copious provisions on foreign mergers.

1.4 Is there any other relevant legislation for mergers in particular sectors?

The FCCPA and the regulation made thereunder are the primary legislation on mergers, acquisitions and takeovers in Nigeria. However, mergers, acquisitions and takeovers involving organisations in regulated industries are also subject to the provisions of the various sectoral pieces of legislation. Most often, those pieces of legislation would require the organisations to obtain approval or no objection from the relevant sectoral authority in any proposed merger or acquisition. The pieces of legislation below are, therefore, noteworthy.

Banking industry – The CBN regulates bank mergers pursuant to its powers under the Banks and Other Financial Institutions Act 2020 ("**BOFIA**") and the Central Bank of Nigeria Act 2007. By virtue of Section 65 of the BOFIA, the FCCPA would not be applicable to any financial institution licensed by the CBN, and all references to the FCCPC in Sections 92, 94 and 98 of the FCCPA shall be deemed and construed as a reference to the CBN. Section 65(4) of the FCCPA empowers the Governor of the CBN to prescribe additional rules and procedures for mergers, acquisitions or any business combination involving banks and other financial institutions licensed by the CBN.

Worthy of note is that a revised procedure is yet to be published following the enactment of the BOFIA.

Electricity sector – In line with its regulatory function of promoting competition and preventing the abuse of market power in the electricity sector, the Nigerian Electricity Regulatory Commission ("**NERC**"), pursuant to Section 82(5) of the Electric Power Sector Reform Act 2005, has the power to decide whether to approve a merger or acquisition in the Nigerian power sector.

Insurance industry – The National Insurance Commission Act 1997, CAP N53 LFN 2004 is one of the key pieces of legislation governing the insurance sector in Nigeria. The NAICOM has regulatory oversight of insurance business in Nigeria and, as such, its consent or non-objection is also required in the case of any proposed merger involving an insurance company. The NAICOM requires a public advert directed at policy holders before its approval of any merger or business combination.

Telecommunications – The Nigerian Communications Act No 19, 2003 CAP N97 LFN 2004 is one of the key pieces of legislation governing the telecommunications sector in Nigeria. The NCC has regulatory oversight over the telecommunications industry in Nigeria and has made a regulation in this regard: the Competition Practices Regulations 2007. This regulation provides the framework for the promotion of fair competition in the communication sector and creates standards and procedures which will assist the NCC in determining anti-competitive conduct by licensed entities. As such, necessary approval must be obtained, and necessary notifications must be given to the NCC regarding proposed mergers involving licensed companies in the telecommunications industry. The NCC gives a maximum of 60 days for such notification and responds within a 30-day timeframe. It may approve, approve with conditions, deny, or initiate an inquiry or any other public proceeding regarding the merger or proposed transaction. The Competition Practices Regulations 2007 give the NCC the right to review procedures for the acquisition of more than 10% of the shares of a licensed company, and transactions that may result in a change of control or direct/indirect transfer of acquisitions in a licensed company in the telecommunications industry. Where there is a breach of any of these rules, the NCC has the power to levy heavy sanctions or any other penalties in its Enforcement Process Regulation 2005.

Oil and gas – The Petroleum Industry Act, 2021 ("**PIA**") is one of the key pieces of legislation governing the oil and gas sector in Nigeria. The PIA grants the Minister of Petroleum Resources the power to revoke and assign interests in licences. The previous regulations made under the former Petroleum Act 1969 required the consent of the Minister for a change of control of the holder of an oil licence or asset. Although a recent regulation is yet to be made under the PIA 2021, the PIA provides that where a licensee, lessee or production sharing or service contractor is taken over by another company, or merges with or is acquired by another company, either by acquisition or exchange of shares including a change of control of a parent company outside Nigeria, it shall be treated as an assignment within Nigeria and shall be subject to the terms and conditions of the PIA and any regulations made under it. The PIA also provides that such an assignment shall require the consent of the Minister and further provides the conditions for the granting of the Minister's consent to such assignments.

1.5 Is there any other relevant legislation for mergers which might not be in the national interest?

Section 94(4) of the FCCPA provides that when determining whether mergers or proposed mergers can be justified on grounds of public interest, the Commission shall consider the effect that the merger or proposed merger will have on a particular industrial sector, employment, the ability of the national interest to compete on the international market and the ability of small- and medium-scale enterprises to become competitive. In line with this provision, anti-competitive mergers may be approved, or pro-competitive mergers rejected, if it is in the larger "public interest". This makes for a subjective approval process.

Also, by virtue of Section 100 of the FCCPA, the Minister responsible for trade matters is entitled to make representations on any merger relating to public interest, and the Commission shall have special regard to the representations made by the Minister in arriving at a decision on merger notification.

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught – in particular, what constitutes a "merger" and how is the concept of "control" defined?

By virtue of the provisions of the FCCPA, a merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking. This may be achieved in any manner, including purchase or lease of the shares, an interest, or assets of the other undertaking in question, amalgamation, or other combination with the other undertaking in question, or a joint venture.

Under Sections 92(4) and 93 of the FCCPA, small mergers and large mergers are caught transactions (that is, transactions that fall within the threshold of notification) and as such are subject to the notification and approval by the FCCPC. According to Section 95 of the FCCPA, a party to a small merger is not required to notify the FCCPC of that merger unless the FCCPC requires it to do so, and may implement that merger without approval unless it is required to notify the FCCPC in accordance with Subsection 3 of the FCCPA, which further states that within six months after a small merger is implemented, the FCCPC may require the parties to that merger to notify it of the merger in the prescribed manner and form if, in the opinion of the FCCPC, having regard to the provisions of the section, the merger may substantially prevent or lessen competition. On the other hand, Section 96 states that a party to a large merger shall notify the FCCPC of the merger in the prescribed manner and form. The notification of the merger shall be published within five business days after receipt by the FCCPC. It is important to note that the FCCPC, in exercise of the powers conferred upon it by Sections 3, 92 and 93 of the FCCPA, notified the public of its determination of the threshold requirements for mergers. By virtue of Section 1 of the Notice, mergers shall be notifiable before implementation if, in the financial year preceding the merger, the combined annual turnover of the acquiring undertaking and the target in, into or from Nigeria equals or exceeds N1,000,000,000 (one billion Naira) or the annual turnover of the target undertaking in, into or from Nigeria equals or exceeds N500,000,000 (five hundred million Naira).

The concept of "control" is defined under Sections 92(2) and 92(3) of the FCCPA. Section 92(2) states that an undertaking has control over the business of another undertaking if it: beneficially owns more than one half of the issued share capital; is entitled to cast a majority of the votes; and/or is able to appoint or to veto the appointment of a majority of the directors of the undertaking.

In the case of an undertaking that is a trust, control means the ability to influence the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust.

2.2 Can the acquisition of a minority shareholding amount to a "merger"?

Yes, the acquisition of a minority shareholding may amount to a merger because, under the FCCPA, a merger can be achieved through purchase or lease of the shares, interest or assets of the other company in question, by amalgamation or other combination with the other company in question, or joint venture. It therefore follows that the acquisition of the entire shareholding or any part thereof (even if it is just the minority shareholding) in another company can amount to a merger if, for instance, the minority has veto power over the majority or enjoys majority privileges. The threshold requirements under the FCCPA referred to in question 2.1 above will determine whether such a merger is notifiable. Where the value of the transaction equals or exceeds the threshold, it is a notifiable transaction.

2.3 Are joint ventures subject to merger control?

The FCCPA has extended the definition of mergers to include "joint venture". It did not stipulate what type of joint venture would fall within the scope of merger control. However, by virtue of Section 5 of the Rules, all joint ventures are subject to the scope of merger control by the Commission if they meet the requirements of control under Section 92(2) of the FCCPA. Since joint-venture transactions may play out in different scenarios, it is the nature of the joint venture that would determine whether it falls within the change of control concept. For instance, where two or more firms form a new entity for a specific purpose, with none of the parties acquiring control over the business of the other, it may not constitute a merger. On the other hand, where two competitors transfer a division of their businesses to the venture, which translates into acquisition by the joint venture, or two firms acquire joint control over an existing firm which neither of them previously controlled, the possibility of a notifiable transaction may have been created if the value of the assets or shares transferred or acquired falls within the notifiable thresholds.

Apart from issues of strict merger control, a joint venture can raise other issues within competition law in the sense that such agreement could be construed as anti-competitive and unenforceable depending on the market share and dominant position resulting in favour of the joint venture.

2.4 What are the jurisdictional thresholds for application of merger control?

The FCCPA stipulates that the criteria of small or large mergers shall be determined from time to time by the regulations of the FCCPC, and only large mergers must be notified and approved by the FCCPC before implementation. The FCCPC shall determine thresholds through certain steps; these steps include a threshold of annual turnover for determining categories of merger, the method of calculation to be applied, and written submissions on the proposal from the public. Further to our response to question 2.1 above, mergers shall be notifiable before implementation if, in the financial year preceding the merger, the combined annual turnover of the acquiring undertaking and the target in, into or from Nigeria equals or exceeds N1,000,000,000 (one billion Naira) or the annual turnover of the target undertaking in, into or from Nigeria equals or exceeds N500,000,000 (five hundred million Naira).

2.5 Does merger control apply in the absence of a substantive overlap?

Yes, merger control will still apply even where there is no increase in market share or competition concerns. The main area of concern to merging parties according to the law is the jurisdictional thresholds. However, the issues of market share and competition are of great importance to the regulators. The FCCPA mandates that once a merger is within the notifiable thresholds, the stipulated procedures in terms of notification and obtaining approval must be followed. Furthermore, the other aspect of merger control regulation is consideration of the fairness of the transaction amongst the shareholders of the merging parties. This issue is considered even if no competition issues arise from the merger. The SEC regulates fairness issues for public companies.

2.6 In what circumstances is it likely that transactions between parties outside your jurisdiction ("foreign-to-foreign" transactions) would be caught by your merger control legislation?

The FCCPA applies to transactions within and outside of Nigeria. The FCCPA applies to any person in relation to the acquisition of shares or other assets outside Nigeria resulting in the change of control of a business, part of a business or any asset of a business in Nigeria. By Section 1(b) of the Notice, where the turnover of either the buyer or the target in, into or from Nigeria equals or exceeds the threshold, a filing would be required in Nigeria.

Further to our response to question 1.3 above, Section 2.4 of the Notice provides that turnover in foreign currencies shall be converted into Nigerian Naira at the official exchange rate determined by the CBN. The implication is that where the turnover in the foreign-to-foreign transaction equals or exceeds the threshold after the conversion at the official exchange rate of CBN, the transaction would be caught by the merger legislation.

2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

The FCCPA provides that, to the extent that a given industry or sector is subject to another regulatory authority that has jurisdiction over matters of competition law (and presumably in respect of mergers), the Act is presumed to have established concurrent jurisdiction between the FCCPC and the other sector regulator over competition law. However, it mandates the FCCPC and the relevant sector regulator to enter into an agreement on how they would exercise their concurrent jurisdiction in order to avoid conflicts. Therefore, it is conceivable that occasionally, in keeping with the terms of any agreements so entered, the FCCPC may cede the control of a given merger to any sector regulator, to be assessed in accordance with the provisions of the relevant sectoral law, thus putting the operation of the jurisdictional threshold under the FCCPA in abeyance.

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

The Act does not expressly provide for the principles that may be applied to identify whether the various stages may constitute a single transaction or series of transactions. However, it is instructive to note that Rule 8 of the Rules provides as follows:

> "*(1) Where there is an increase in shareholding or a level of board representation, further to an earlier acquisition, that confers the ability to materially influence an undertaking's policy to a level of control, that further acquisition will produce a new relevant merger situation. (2) Where control is acquired over a series of transactions or successive events over a two-year period, the Commission shall regard such series of transactions or successive events as having occurred by means of a single transaction effected on the date of the latest transaction to occur.*"

Therefore, when the control is acquired over a series of transactions over a two-year period, it can be considered a single transaction.

3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

Section 93 of the Act stipulates that a proposed merger shall not be implemented unless it has been notified to and approved by the FCCPC. However, notification of small mergers in terms of the Act is voluntary by the parties, subject to the power given to the FCCPC to require parties to a small merger to notify it of the merger for review where it is felt that the merger, although "small", nevertheless substantially lessens competition.

For large mergers, notification to the FCCPC shall be at the initial stage via the filing of a merger notification with all necessary documents. Under the old regime administered by the SEC, a court sanction was required for large mergers. However, such provision is conspicuously missing from the FCCPA. This would suggest that there may be no need to have recourse to the FHC upon obtaining approval from the FCCPC.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

Please see our response to question 2.7 above. Under the old regime, Section 118(3) of the ISA excluded transactions involving holding companies acquiring shares solely for the purpose of investment and not using such shares by voting, or otherwise to cause or attempt to cause a substantial restraint of competition or tend to create a monopoly in any line of business enterprise. However, such provision is conspicuously missing in the FCCPA. Nevertheless, Section 92(3) of the FCCPA provides that the undertaking shall not be deemed to exercise control where a financial institution or insurance company in the course of their normal business activities is involved in dealing in securities. In this case, the financial institution or insurance company may hold, on a temporary basis, securities which they have acquired in an undertaking for the purpose of reselling them, provided that they do not exercise voting rights in respect of those securities for the purpose of determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing for the disposal of all or part of the undertaking within one year of the date of acquisition. The period may be extended by the Commission on request.

Secondly, an undertaking shall also not be deemed under control as defined in the Act where control is acquired by an office holder according to the laws of the Federal Republic of Nigeria relating to liquidation, insolvency or analogous proceedings.

3.3 Is the merger authority able to investigate transactions where the jurisdictional thresholds are not met? When is this more likely to occur and what are the implications for the transaction?

Sections 17(e) and 98 of the FCCPA empower the FCCPC to carry out any investigations or inquiries considered necessary or desirable in connection with any matter falling within the purview of the FCCPA. This means that the FCCPC has the power to investigate transactions where the jurisdictional thresholds are unmet. For instance, by virtue of Section 95 of the FCCPA, a small merger is not required to notify the Commission. However, if in the opinion of the Commission, the merger may substantially prevent or lessen competition within six months after implementation, the Commission may investigate and require parties to notify it.

Once the parties are notified of the recent decision of the Commission to investigate the transaction despite the fact that the thresholds were not met, the parties to the merger shall take no further steps to implement that merger until the merger is approved by the Commission or declared prohibited.

3.4 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

As earlier discussed, under the present regulatory regime, the requirement of obtaining the FCCPC's approval in respect of a proposed merger is mandatory where the merger equals or exceeds the threshold. Parties who fail to notify the FCCPC run the risk of their merger being void. However, apart from its power to invalidate or void a merger, the FCCPC has the power to impose administrative fines on parties for breach of the provisions of the Act. Section 96(7) provides that an undertaking that violates the provision commits an offence and, on conviction, is liable to a fine not exceeding 10% of the undertaking's turnover in the business year preceding the date of the commitment of the offence or such other percentage the FHC may determine.

3.5 Is it possible to carve out local completion of a merger to avoid delaying global completion?

It is possible to carve out the local completion of mergers to avoid a delay to global completion. Nigerian law allows for the consequential merger of local affiliates after global completion. A case in point is the global Total and Elf merger, which resulted in the consequential merger between Total Nigeria Plc and Elf Oil Nigeria Limited in 2011. The Chevron Texaco merger in Nigeria was also consequential to global completion. This process separates the local merger from the global one and does not affect the completion of the global merger. Please note that these consequential mergers occurred under the old law.

3.6 At what stage in the transaction timetable can the notification be filed?

The FCCPA stipulates that for small mergers, a party may voluntarily notify the Commission of the merger at any time. For large mergers, the proposed merger shall not be implemented unless it has first been notified and approved by the Commission. Given the timeframe for the scrutiny by the Commission, the parties can agree on the time to notify the Commission, bearing in mind that time would commence from the date of satisfactory notification requirement to the Commission.

3.7 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

Under the FCCPA, the FCCPC has 20 business days after parties have fulfilled the notification requirement, extendable by a single period not exceeding 40 business days, for the consideration and decision on a small merger notified to it upon demand. The FCCPC has 60 business days after parties have fulfilled the notification requirement, extendable by a single period not exceeding 120 business days, for the consideration and decision on a large merger notified to it. Mergers that are not approved or prohibited within these statutory periods are deemed approved. However, the FCCPC reserves the residual power to revoke the deemed approval.

Abridging the timeframe for the merger process is possible but is entirely at the discretion of the FCCPC. During the banking consolidation exercise in 2005, for instance, many mergers were concluded within a very short period to enable parties to meet the CBN recapitalisation deadline of December 31, 2005. Additionally, the timeframe for an FCCPA decision does not begin to count until parties have fulfilled the notification requirement.

3.8 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks of completing before clearance is received? Have penalties been imposed in practice?

The FCCPA makes it mandatory to obtain certain approvals before moving on to the next stage of the merger process. The risk of completion or implementation before clearance is obtained or the risk of the waiting period being exhausted is that the merger runs the risk of being invalidated and the parties exposed to huge financial penalties. Moreover, the FCCPC's power to revoke or break up a merger in terms of the FCCPA can be invoked. Please also see our response to question 3.4 above. Where clearance or denial is not received and the waiting period has ended, the merger shall be deemed approved, subject to the power of the FCCPC to revoke the approval under Section 99 of the Act.

Additionally, Section 96 of the FCCPA mandates that parties to a large merger shall not implement the merger unless approved, with or without conditions, by the FCCPC in accordance with the provisions of the FCCPA. The FCCPA further states that any action undertaken by any party in violation of this is void and further makes it an offence, liable upon conviction to a fine not exceeding 10% of turnover of the undertaking in the business year preceding the date of commission of the offence. In *Dr. Kuku & Ors v. Dr. Geoffery Ohen & Ors* (FHC/L/CP/25/12), the court, on May 7, 2018, declared the takeover bid as illegal for failure to comply with the provisions of the ISA.

3.9 Is a transaction which is completed before clearance deemed to be invalid? If so, what are the practical consequences? Can validity be restored by a subsequent clearance decision?

As stated in question 3.8 above, Section 96(4) of the FCCPA mandates that parties to a large merger shall not implement the merger unless approved, with or without conditions. It further provides that any action taken without the approval is void. To that extent, a large merger transaction may be deemed invalid if completed before clearance. Section 96(7) of the FCCPA provides that any undertaking that implements without clearance shall be liable on conviction to a fine not exceeding 10% of the turnover of the undertaking in the business year preceding the commission of the offence or any percentage the court may determine having regard to the circumstances of the case.

Rule 13 of the Rules provides that the Commission may impose appropriate interim measures to maintain or restore competition where the merger parties have implemented the merger contrary to the standstill obligations. It also empowers the Commission to declare any step taken void and of no effect. Relying on the said provision, validity may be restored by a subsequent clearance decision by the Commission.

3.10 Where notification is required, is there a prescribed format?

The FCCPA stipulates that notification shall be filed in the "prescribed form" and the Rules provide for Form 1 (Notice of Merger) and Form 2 (Notice of Merger-Simplified Procedure). The parties shall notify the FCCPC based on the format applicable to the transaction. The notification is filed by the notifying party/parties, and would contain the name of the undertaking, nature of business, non-confidential executive summary of the merger, ownership and control, turnover in Nigeria of the undertaking concerned, supporting documentation, etc.

3.11 Is there a short form or accelerated procedure for any types of mergers? Are there any informal ways in which the clearance timetable can be speeded up?

Yes, Form 2 (Notice of Merger-Simplified Procedure) provides for notification for a simplified procedure. By virtue of Rule 21 of the Rules, where, upon self-assessment, the merger parties are of the view that a proposed merger is less likely to prevent competition, they may apply for a simplified and expedited procedure. Furthermore, the Guidelines issued by the FCCPC provide for an expedited procedure for foreign-to-foreign merger notifications. Under the expedited procedure, the FCCPC shall conclude its review and issue its decision within 15 business days.

Moreover, in practice, effective liaison (by professional advisers of the merging parties) with the appropriate FCCPC officers in charge of the approval further speeds up the approval process. During the 2005 banks consolidation exercise, for instance, the SEC and the CBN worked out an expedited procedure to enable the banks to meet the December 31, 2005 consolidation deadline for the new capital requirement for banks.

Likewise, the SEC recently worked with other exchanges, such as the London Stock Exchange, to ensure effective cross-listing of shares of Nigerian companies. The result has been an overhaul of approval processes, which is likely to positively affect merger control regulation. It is expected that the FCCPC will continue in the same tradition.

3.12 Who is responsible for making the notification?

The merging parties (the primary acquiring undertaking and the primary target undertaking) are responsible for making the necessary notification and filings. However, it is commonplace for such organisations to instruct professional advisers, such as financial/transaction advisers or legal advisers, to make such notification or filings on their behalf. The merging parties would also have to make the reference with the assistance of their professional advisers.

3.13 Are there any fees in relation to merger control?

The FCCPA does not prescribe any fee in relation to merger control. However, further to our response to question 3.11 above, the Guidelines provide that: the sum of N3,000,000 (three million Naira) or 0.1% of the combined turnover, whichever is higher, shall be the fee for foreign-to-foreign mergers that have a nexus to Nigeria with a combined turnover of N1,000,000,000 (one billion Naira) and above; and the sum of N2,000,000 (two million Naira) where the target undertaking has a turnover of between N500,000,000 (five hundred million Naira) and N1,000,000,000 (one billion Naira). Please see our comments in response to question 6.3 below.

3.14 What impact, if any, do rules governing a public offer for a listed business have on the merger control clearance process in such cases?

The SEC is the body empowered under the ISA to regulate all offers of securities to the public-by-public companies and entities and to register such securities. Moreover, Rule 15.5 of the NGX Rules, which govern offers of securities by listed businesses, provides that all documents of offer by a listed company shall comply with the relevant provisions of the ISA and any other relevant law, thus making the ISA and any other relevant law the overriding law. Therefore, where a merger or acquisition is to be consummated by a listed company, several provisions applicable to listed companies may become applicable to the transaction. These relate mostly to primary and secondary market disclosures. Please see also our response to question 2.7 above.

3.15 Will the notification be published?

The notification of the merger shall be published within five business days after receipt of approval from the FCCPC.

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed?

Mergers are assessed against the test of "substantial lessening or prevention of competition" and "on substantial public interest grounds". Even where it appears that the merger is likely to substantially prevent or lessen competition, it may still be considered if it is likely to result in any technological efficiency or other pro-competitive gain that will be greater than its effect of lessening competition, or when the merger can be justified on substantial public interest grounds. In order to determine whether the merger is likely to substantially prevent or lessen competition, the FCCPC shall assess the strength of competition in the relevant market, and the probability that the company, in the market after the merger, will behave competitively or cooperatively, taking into account any factor that is relevant to competition in that market, including: the actual and potential level of import competition in the market; the ease of entry into the market, including tariff and regulatory barriers; the level and trends of concentration, as well as any history of collusion in the market; the degree of countervailing power in the market; the dynamic characteristics of the market, including the growth, innovation, and product differentiation; the nature and extent of vertical integration in the market; whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and whether the merger will result in the removal of an effective competitor. When determining, on the other hand, whether a merger can or cannot be justified on substantial public interest grounds, the FCCPC shall consider the effect of the merger on employment, particular industrial sectors, and the ability of national industries to compete in international markets.

The FCCPC may also require additional information to be disclosed in the memorandum, which may include information concerning the geographical area of Nigeria in which the merging entities intend to carry out business, and identification of any products or services that parties believe are considered substitutes by buyers. For each identified product or service, the merging parties are expected to provide contact details of the top five producers or providers in each identified geographical area with the largest estimated turnover in value, and their estimated share of the total turnover during the last financial year. The FCCPC may, at its discretion, request any other information that will assist it in carrying out a thorough job in preventing anti-competitive mergers.

4.2 To what extent are efficiency considerations taken into account?

Under Section 94 of the FCCPA, if it appears to the FCCPC that the merger is likely to substantially prevent or lessen competition, the FCCPC would, in assessing the merger:

> "*[D]etermine whether or not the merger is likely to result in any technological efficiency or other pro-competitive gain which will be greater than the effects of any prevention or lessening of competition that may result or is likely to result from the merger and would not likely be obtained if the merger is prevented.*"

Thus, the FCCPC may approve a merger if it considers that the merger would result in greater efficiency in the market, and the benefits of the resulting efficiency far outweigh the impact of lessening competition. Please see our response to question 4.1 above.

4.3 Are non-competition issues taken into account in assessing the merger?

Yes, non-competition issues, such as whether the merger can or cannot be justified on substantial public interest grounds and whether all shareholders are fairly, equitably, and similarly treated and given sufficient information regarding the merger, are taken into consideration. Fairness issues are increasingly playing a greater role in merger litigation as compared to competition issues. In *Victor Odili v. Oceanic Bank Plc* (unreported Suit No. FHC/L/CS/1361/2005), the FHC declared the merger terms between International Trust Bank Limited ("**ITB**") and Oceanic Bank Plc to be unfair to minority shareholders of ITB. The parties eventually settled the matter amicably whilst it was on appeal. In the case of *BGL Plc v. Finbank & Ors* (Suit No. FHC/CS/L/1367/2011), the FHC was invited to determine whether, by virtue of certain provisions of the CAMA, a proposed scheme of merger arrangement was oppressive, or unfairly prejudicial to or unfairly discriminatory against the Plaintiff and therefore illegal, null and void. The FHC, amongst other reasons, held that since the aggrieved party (the Plaintiff) participated and was represented at the FHC-ordered meeting, it did not find any reason to indicate that there was unfairness in the said transaction and, as such, the applications were dismissed.

4.4 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

The FCCPA provides that the Minister responsible for trade matters is entitled to make representations on any public interest ground with respect to any merger under consideration by the FCCPC. Also, in deciding in respect of a merger notification, the FCCPC may hear any person, other than persons to the merger, who in the opinion of the FCCPC is able to assist it in the determination on the merger notification. Furthermore, the Act provides that the FCCPC may decide to hold a hearing publicly or in private and any person aggrieved by the FCCPC's decision may file an application for review before the Tribunal and, where the decision relates to the decision of the Tribunal, to the Court of Appeal.

4.5 What information gathering powers (and sanctions) does the merger authority enjoy in relation to the scrutiny of a merger?

The FCCPA gives the FCCPC wide information-gathering and investigatory powers, which apply across the various fields over which the FCCPC has jurisdiction, including merger control. For instance, Section 27 of the FCCPA provides that the FCCPC may, for the purpose of ascertaining whether any undertaking has engaged, is engaging or is likely to engage in conduct constituting or likely to constitute a contravention of the FCCPA, require an authorised officer to either enter and search any premises, and inspect/remove from the premises any article, document or extract in the possession or under the control of any person. The FCCPA further provides that such officer authorised by the FCCPA shall only exercise the power to conduct a search as described above with a warrant issued by a judge under Section 28 of the FCCPA. However, the FCCPA provides that where there are grounds to believe that a violation, civil or criminal, of the provisions of the FCCPA or its regulations, was, is being or will be committed, the FCCPC may take any interim measure, including permitting an authorised officer to exercise the powers to conduct a search as described pending the issuance of a warrant to that effect.

Section 32 of the FCCPA further vests in the FCCPC the power to, where it considers necessary, by notice in writing served on any person, require that person to either furnish to the FCCPC in writing signed by that person or, in the case of an undertaking, by a director or competent officer or agent of the undertaking, within the time and in the manner specified in the notice, any information, or require that such person appear before the FCCPC at a time and place specified in the notice to give evidence, either orally or in writing and produce any document or class of documents specified in the notice. Hence, the FCCPC is empowered to obtain such information as it considers necessary in order to assist it in its investigations or inquiries and, where it considers appropriate, shall examine and obtain verification of documents submitted to it. By virtue of Section 33 of the FCCPA, a summons to attend and give evidence or to produce documents before the FCCPC issued under the hand of the Secretary or any member of the FCCPC shall be served on the person concerned. Hearings shall take place in public. However, the FCCPC may, whenever the circumstances warrant, particularly in order to preserve the business secrets of the undertaking concerned, conduct hearings *in camera*.

Section 33 further prescribes that a person who, without sufficient cause, fails or refuses to: appear before the FCCPC in compliance with a summons; or produce a document which the person is required by such summons to produce, commits an offence and is, therefore, liable on conviction to imprisonment for a term not exceeding three years or a fine not exceeding N20,000,000 (twenty million Naira), or both. Additionally, a person who wilfully obstructs or interrupts the proceedings of the FCCPC commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or a fine not exceeding N20,000,000 (twenty million Naira), or both. This provision presupposes that the FCCPC does not require a court order in order to subpoena a witness.

4.6 During the regulatory process, what provision is there for the protection of commercially sensitive information?

In seeking necessary approvals from the regulatory authority, and in the case of mergers, in particular in the industry sectors, such as banking (the CBN), all necessary information is required to be provided to the regulatory authorities and, as such, necessary information should not be withheld. The regulatory authorities are aware of the commercial sensitivities of the information which is submitted to them while seeking approvals for mergers. Nigerian law makes provision for the protection of commercially sensitive information. Rule 14 of the Rules provides that if an applicant believes its interests could be harmed by publication or disclosure of information, it should submit the information separately, clearly marked as "Business Secrets", and also explain why it considers the information to be confidential. However, the Commission reserves the right to determine what constitutes business secrets.

The FCCPA makes provision for the protection of business secrets of parties during all stages of an inquiry, and any person who, contrary to an order of the FCCPC prohibiting the publication or communication of such information, publishes or communicates the same, is liable on conviction to a fine of not less than N1,000,000 (one million Naira) in the case of a person, and not less than N50,000,000 (fifty million Naira) in the case of a corporate body.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

Under the FCCPA, the process ends with the approval, with or without conditions, or the prohibition by the FCCPC, and where the decision relates to the Tribunal, appeal to the Court of Appeal and a final appeal to the Supreme Court.

5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

Part VI of the Rules makes provision for negotiated remedies. If a merger raises competition issues, this section permits the merging parties to propose remedies that will address the competition issues, and these remedies can be negotiated with the Commission. See Rules 38–41 of the Rules.

Please note also that if the decision of the FCCPC is not acceptable to the parties, they may have to file an application for review before the Tribunal.

5.3 To what extent have remedies been imposed in foreign-to-foreign mergers?

Please see our responses to questions 2.6 and 3.5 above to the effect that the FCCPA is applicable to foreign-to-foreign mergers. Where there is a global merger by parent companies of Nigerian subsidiaries, the Nigerian subsidiaries must undergo a consequential merger process under Nigerian law. This separates the transactions and eliminates the possibility of the FCCPC imposing remedies on the foreign companies. However, we are not aware of any remedies imposed upon any foreign-to-foreign mergers by regulators in Nigeria.

5.4 At what stage in the process can the negotiation of remedies be commenced? Please describe any relevant procedural steps and deadlines.

As soon as the competition problems identified have been brought to the attention of the parties, the negotiation of remedies can commence at the earliest possible time during meetings with the regulators. At the very least, the concerns raised regarding the impact on competition must be met before approval can be granted to the merger. By virtue of Rule 40 of the Rules, the merger parties may submit a remedy proposal to the Commission at any time during the investigation and are encouraged to engage with the Commission at the earliest opportunity.

5.5 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

As discussed in question 5.4, any concern raised by the FCCPC ought to be addressed before the merger can be approved. However, the FCCPC reserves the right to approve a merger, approve it subject to any conditions, or to prohibit it outrightly. That said, no case of divestment remedy has been published under the current regime. One can only infer the possibility from the power of the FCCPC to approve a merger subject to conditions, as such power creates the possibility of a divestment remedy. So far, no standard approach has been developed by the FCCPC on the terms and conditions to be applied to the divestment, where applicable.

5.6 Can the parties complete the merger before the remedies have been complied with?

Where formal approval has been given subject to a condition, parties can complete the merger, subject to whether the conditions given are precedent or subsequent. If they are subsequent, the parties can then complete the merger subject, of course, to the power of the FCCPC, under the FCCPA, to revoke its decision to approve if the conditions are not subsequently met.

5.7 How are any negotiated remedies enforced?

The FCCPC, as a regulator, has many methods of enforcing negotiated remedies where applicable. It could withdraw its formal approval where, for instance, the remedies were negotiated at the pre-merger notice level. Alternatively, post-merger, the FCCPC could resort to its power to revoke its decision to approve, conditionally approve, or to break up the merger as contained under the FCCPA, in addition to the right to impose an administrative fine as previously noted.

5.8 Will a clearance decision cover ancillary restrictions?

This is not provided for expressly in the law. However, it is conceivable that any decision approving a merger could cover restrictions to ensure that competition is maintained, and which are incidental to the lawful implementation of the merger. Please also see our response to question 2.7.

5.9 Can a decision on merger clearance be appealed?

The FCCPA provides that a party aggrieved by a decision of the FCCPC can apply for a review of that decision to the Tribunal and, where the decision is that of the Tribunal, the aggrieved party may appeal to the Court of Appeal.

5.10 What is the time limit for any appeal?

The FCCPA provides that any party dissatisfied with a ruling, award or judgment of the Tribunal may appeal to the Court of Appeal upon giving notice in writing to the Secretary to the Tribunal within 30 days after the date on which the ruling, award or judgment was given. Rule 42 also provides that a party aggrieved by the decision of the Commission may appeal to the Tribunal within 30 days of being notified of the decision of the Commission. However, Competition and Consumer Protection Tribunal Procedural Rules are yet to be issued to guide the adjudication process.

5.11 Is there a time limit for enforcement of merger control legislation?

The FCCPA and the Rules do not provide a time limit for regulatory authorities to enforce the merger control legislation. However, parties may argue that the statute of limitation may be applicable as soon as the grounds of enforcement have arisen and the Commission fails to enforce within a reasonable time.

6 Miscellaneous

6.1 To what extent does the merger authority in your jurisdiction liaise with those in other jurisdictions?

Theoretically, there are no express provisions in our laws or administrative directives for such liaison with other jurisdictions. However, neither are there any provisions prohibiting the same. In practice, such liaison is necessary, as the SEC and the FCCPC will need to liaise with equivalent agencies in other countries for the proper performance of their functions. For instance, where a global merger will result in the Nigerian subsidiaries undergoing a consequential merger in Nigeria, the FCCPC may request the necessary information on the global merger. Where the FCCPC has established a Memorandum of Understanding ("**MOU**") with other regulators under the auspices of the International Organization of Securities Commissions, it may be possible for interagency cooperation to result in information sharing, as happened in the review process for the ISA 1999, which led to the ISA 2007. In this regard, the establishment of the Economic Community of West African States ("**ECOWAS**") Regional Competition Authority ("**ERCA**") by a Supplementary Act of the Authority of Heads of State and Government in 2008 ("**Supplementary Act**") is to be noted, alongside the ECOWAS Competition Rules adopted by another Act in the same year, within the framework of the ECOWAS Regional Competition Policy of 2007. The ERCA launched operations on May 31, 2019 in Banjul, the Gambia. It was set up in order to implement the Regional Competition Rules. The Regional Competition Rules, essentially, are intended to promote, maintain and encourage competition as well as enhance economic efficiency in production, trade and commerce at the regional level. The ERCA has both adjudicatory and investigative powers; it also has a core mandate of keeping under review commercial activities in the community market with a view to ascertaining practices that may distort the efficient operations of the market conduct, or that may adversely affect the economic interest of consumers. Article 13 (3) of the Supplementary Act provides that, in the carrying out of its duties, the ERCA shall collaborate with existing competition agencies. In Nigeria, therefore, it would be expected to collaborate with the FCCPC.

Furthermore, the FCCPC participates in the African Consumer Protection Dialogue Conference ("**Dialogue**"). The Dialogue is a joint initiative of African competition and consumer protection regulators and the United States Federal Trade Commission ("**FTC**"), which started in 2009. The Dialogue provides a platform to promote consumer protection and cross-border cooperation and is a vital tool for knowledge and information sharing, capacity building and joint projects, including investigations, consumer education and business guidance.

The FCCPC also actively participates in the activities of the United Nations Conference on Trade and Development and has served on technical committees to review relevant guidelines. Additionally, the FCCPC collaborates with the United Nations Industrial Development Organisation on a key component of the National Quality Infrastructure Project, specifically, a quality awareness campaign across the country, development of a Consumer Charter, and establishment of a Training Centre.

The FCCPC also signed an updated tripartite MOU with Nigeria's Economic and Financial Crimes Commission ("**EFCC**") and the United States' foremost competition and consumer protection authority, the FTC, for the purpose of strengthening cooperation and collaboration in addressing mutual cross-border consumer protection/fraud concerns and problems.

6.2 What is the recent enforcement record of the merger control regime in your jurisdiction?

We are not aware of any recent sanctions by the FCCPA on merger control. However, sanctions have been issued on the consumer protection regulation side by the FCCPC. British American Tobacco Nigeria instituted an action against the FCCPC at the FHC in Suit No. FHC/L/CS/1350/2020 before Hon. Justice Rilwan Aikawa seeking to prevent the Commission from investigating it for anti-consumer protection and anti-competition violations. The FHC struck out the action on the grounds that the action was premature and lacked the jurisdiction. It was, essentially, a consumer protection case. One challenge for the FCCPC is to improve merger control regulatory capacity as it transitions from its historical role as a consumer protection agency to a competition authority.

Our review of case law jurisprudence discloses low levels of activity in the courts on merger control. In *Oceanic Int. Bank v. Victor Odili & Ors* (FHC/L/CS/1361/2005, resolved amicably on appeal as CA/L/171M/08), the court altered the scheme of merger of the parties to impose a 1:1 share-exchange ratio, which was different from the formula agreed in the scheme document and without any further valuation or reconsideration of the matter by the then merger control regulator, SEC. Additionally, in *Dr. Kuku & Ors v. Dr. Geoffery Ohen & Ors* (FHC/L/CP/25/12), the court, on May 7, 2018, declared the takeover bid illegal for failure to comply with the provisions of the ISA.

6.3 Are there any proposals for reform of the merger control regime in your jurisdiction?

The enactment of the FCCPA, creation of the FCCPC and transfer of competition law regulation power to it inclusive of merger control in 2018 has been the major reform in the merger control regime. This reform has relieved the overburdened SEC, the previous securities and competition regulator. The FCCPC has, over the last few years, issued notification, guidelines, rules and regulations on merger control. The FCCPC encourages a consultation process before issuing its regulations. However, there is a dearth of a skilled pool of professionals in merger and competition law. The practice of the profession is also at its infancy, although growing. The FCCPC, therefore, relies on input and collaboration with multilateral agencies in discharge of its merger control regulatory functions. Due to the size of the Nigerian economy, there is increasing interest of non-state, international professional federations of merger practitioners such as the International Bar Association in the reform agenda of the FCCPC.

We note that some international stakeholders made a submission to the FCCPC in March 2021 regarding the Nigerian Merger Regime as contained in the Rules. The submission relates to Section 6(6) of the Rules, which provided for factors amounting to material influence. In their view, the FCCPC should provide clarity on the factors, as it would only be in limited, exceptional circumstances that the factors would amount to material influence in other jurisdictions. The submission also raised concerns on the framework of filing fees which, in their opinion, could result in excessive fees which do not correlate to reasonable costs for operating a merger control regime seriously impacting the economic rationale for mergers.

Further concerns about the regulatory regime in the submission include the current merger notification thresholds, which is considered very low, along with the possible requirement of notification of many transactions with no material effect in Nigeria, imposing significant resource burdens on the FCCPC and unwarranted costs and burdens on businesses engaging in merger transactions. Lastly, the submission alleges that the FCCPA thresholds do not provide for sufficient material local nexus contrary to generally accepted international principles.

The FCCPC did not respond positively to the concerns raised by the stakeholders per the above submission and their call for reconsideration of the issues. In the recent Rules made on August 2, 2021, the FCCPC increased the filing fees for mergers and specified the filing fees for foreign mergers and private investment entities.

Please also see our response to question 3.13 above.

On October 14, 2021, the FCCPC launched an online merger notification portal. The platform would enable parties to file their notifications, attach documents and calculate the processing fee for the transaction online. One of the objectives of the online notification portal is to ease the process of notification for the parties.

6.4 Please identify the date as at which your answers are up to date.

These answers are up to date as at August 16, 2022.

7 Is Merger Control Fit for Digital Services & Products?

7.1 Is there or has there been debate in your jurisdiction on the suitability of current merger control tools to address digital mergers?

Merger regulation in the digital economy is an important and unique aspect of competition regulation, as countries are beginning to realise that all the commercial activities that are arising from the use of various internet platforms and mobile technology, characterised by networks, raise real competition issues even when the services being provided are ostensibly "free". FinTech companies are spearheading the digital economy in Nigeria, causing a lot of disruption in this space. In 2018, Nigeria led investments in FinTech in Africa with 58 start-ups raising USD94,900,000 (ninety-four million, nine hundred thousand U.S. dollars). Current trends show that these FinTech companies are rebounding as a strategy to consolidate their operations, offering a well-equipped bouquet of services which will be more attractive to consumers and investors alike. This rebounding will most likely involve some form of mergers and raise the attendant competition issues. As such, there is a need for the FCCPC to ensure that they issue regulations that will enable them to better monitor the transactions in this sector, despite its provisions in the FCCPA, which regulates mergers in all sectors generally. It is noteworthy that the SEC and CBN have sought to regulate this space, but in our opinion, the merger control issues raised by the activities of these companies have not been specifically addressed by the FCCPC.

It is possible for the FCCPC to use its power under Section 93 to require notification for a merger that may not meet the mandatory requirement of the large merger threshold, based on its consideration, for example, of the digital value of the merger which may not be reflected in the financial value of the transaction. However, no provisions have been made or guidelines issued by the FCCPC in this regard, and existing SEC regulation has not dealt with the matter.

As mentioned in question 6.3, the FCCPA has been the major reform in the merger control regime in Nigeria. The new Act and Rules do not directly have any specific provision for addressing digital mergers; however, Section 163 of the FCCPA empowers the FCCPC to make rules and regulations for the effective implementation of the Act.

7.2 Have there been any changes to law, process or guidance in relation to digital mergers (or are any such changes being proposed or considered)?

Please see our response to question 7.1 above.

7.3 Have there been any cases that have highlighted the difficulties of dealing with digital mergers, and how have these been handled?

Please see our response to question 7.1 above. We are not aware of any reported case that highlights the difficulties of dealing with digital mergers in Nigeria.

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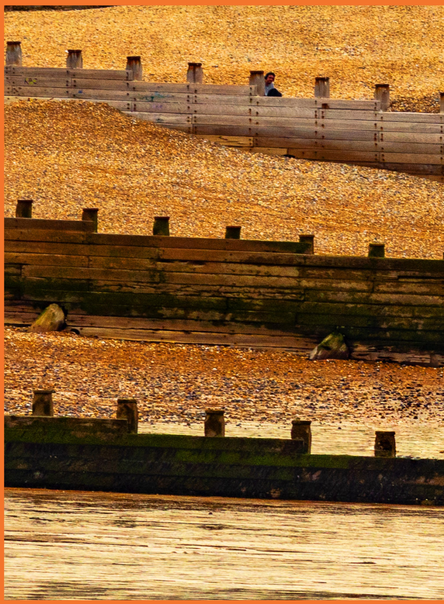

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