



# Nigeria

## Global Merger Control Handbook – Update

JULY 2020

### Merger control legislation updates since 1 July 2018

On January 30, 2019 the Nigerian President signed the Federal Competition and Consumer Protection Act, 2018 (“FCCP Act”) into law. The FCCP Act repealed Sections 118 to 128 of the Investments and Securities Act 2007 (“ISA”) (which hitherto empowered the Securities and Exchange Commission (“SEC”) to regulate mergers) and grants the Federal Competition and Consumer Protection Commission (“FCCPC”) the power to approve mergers. The Act provides a framework for the regulation of mergers largely mirroring the provisions contained in the repealed sections of the ISA. Under the Act, the FCCPC is entitled to consider and determine whether a merger or a proposed merger is likely to substantially prevent or lessen competition.

The FCCP Act provides that a proposed merger shall not be implemented unless it has first been notified to and approved by the FCCPC. A merger is deemed to have occurred 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. By virtue of Section 92(b) of the FCCP Act such a merger may be achieved by the purchase or lease of the shares, an interest or assets of the other undertaking or the amalgamation or other combination with the other undertaking or a joint venture.

Under the FCCP Act, an undertaking is deemed to have control over the other if it (a) beneficially owns more than one half of the issued share capital or assets of the undertaking; (b) is entitled to cast a majority of the votes that may be cast at a general meeting of the undertaking or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that undertaking; (c) is able to appoint or veto the appointment of a majority of the directors of the undertaking; (d) is a holding company and the undertaking is a subsidiary of that company as contemplated under the Companies and Allied Matters Act; (e) in the case of an undertaking that is a trust, has the ability to control the majority of the votes of the trustee, to appoint the majority of the trustees or to appoint or change a majority of the beneficiaries of the trust; (f) has the ability to materially influence the policy

of the undertaking in a manner comparable to a person who in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (e).

Further to the repeal of sections 118 to 128 of the ISA, the FCCPC (rather than the SEC) is now effectively the chief regulatory agency for mergers and acquisitions in Nigeria. Although the FCCP Act does not vest requisite powers in any organ or officer of government to exercise interim oversight functions prior to the constitution of the governing board of the FCCPC, the SEC and the FCCPC, pursuant to an advisory guidance jointly issued on 3 May, 2019, have confirmed that all merger notifications will be reviewed under the existing SEC Regulations during the transition period (which commenced on 3 May, 2019). Whilst the SEC and FCCPC will jointly review all merger notifications, the FCCPC would convey decisions with respect to the notifications.

On 13 November 2019, the FCCPC published Guidelines on Simplified Process for Foreign-to-Foreign Mergers with Nigerian Component (the "Guidelines") pursuant to the FCCP Act, Section 2(3) (d) which covers "...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". Key highlights of the Guidelines include:

- An expedited procedure which ensures the review of the transaction and issuance of a decision within 15 business days by the commission. This is subject to cost of N5,000,000.00 (five million naira);

- The documentation requirements are less cumbersome than those required for a local merger. The Guidelines provides for an information memorandum showing the effect of the transaction on the Nigerian market, the relevant agreement(s), authorisations for external representatives, financial information and a summary of the transaction for publication by the FCCPC;
- Parties are not required to pay a processing fee in addition to the application fee, as is the case of a local merger. The application fee is based on the turnover of the Nigerian business.

## Landmark merger control cases since 1 July 2018

There has been no landmark merger control case since 1 July 2018.

## Web link to the national competition authority Competition Authority

Current link to the Federal Competition and Consumer Protection Commission: <http://fccpc.gov.ng/>

Link to the FCCP Act on the FCCPC Website: <http://fccpc.gov.ng/guidelines/documents/>

Link to the FCCP Act on PLAC: <https://placng.org/wp/2019/03/federal-competition-and-consumer-protectionact-2018/>

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