# MERGER CONTROL

## Nigeria

LEXOLOGY
Getting The Deal Through

Consulting editor
*Freshfields Bruckhaus Deringer*

# Merger Control

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into legislation and regulators; scope of legislation; thresholds, triggers and approvals; notification and clearance timetable; substantive assessment; remedies and ancillary restraints; involvement of other parties or authorities; judicial review; enforcement record and reform proposals; and recent trends.

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# Contributors

## Nigeria

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## LEGISLATION AND JURISDICTION

### Relevant legislation and regulators

What is the relevant legislation and who enforces it?

The Federal Competition and Consumer Protection Act 2018 (the FCCP Act) is the main merger control statute applicable in Nigeria. Where the merger involves a public company, the Investment and Securities Act 2007 (ISA) will also apply.

In addition, there is specific legislation that regulates merger transactions in certain industry sectors. This legislation complements the ISA, rather than supplants it. The legislation includes:

- the Banks and other Financial Institutions Act 2020 (for banks);
- the Nigerian Communications Commission Act 2003 (for telecommunications companies);
- the Insurance Act 2003 (for insurers and re-insurers);
- the Pension Reform Act 2014 (for pension fund administrators);
- the Petroleum Industry Act 2021 (for operators in the upstream petroleum industry); and
- the Electric Power Sector Reform Act 2005 (for operators in the electricity sector).

The Federal Competition and Consumer Protection Commission (FCCPC) is responsible for administering and enforcing the FCCP Act and the regulations and guidelines thereunder. The Securities and Exchange Commission administers and enforces the ISA. Similarly, sector-specific legislation allows regulatory authorities to administer the applicable legislation.

*Law stated - 11 July 2023*

### Scope of legislation

What kinds of mergers are caught?

Transactions that fall within the definition of a 'merger' and that meet the prescribed monetary threshold for notification will require prior notification to, and the approval of, the FCCPC. Under the FCCP Act, 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. A merger may be achieved through:

- a purchase or lease of shares, an interest in or assets of the other undertaking in question;
- the amalgamation or other combination with the other undertaking in question; or
- a joint venture.

The prescribed monetary threshold determines whether a merger will be categorised as small or large. A merger falling below the prescribed monetary threshold for notification is deemed a small merger and need not be brought to the attention of the FCCPC unless the FCCPC requires the parties to do so. Any merger whose value exceeds the prescribed threshold is a large merger and will require notification to, and the prior approval of, the FCCPC. A party to a small merger can, however, voluntarily notify the FCCPC at any time. The parties to a large merger can only implement the merger if it is approved by the FCCPC. In the absence of such approval, any action taken in respect of a large merger is void.

*Law stated - 11 July 2023*

## What types of joint ventures are caught?

Joint ventures that satisfy the requirement of control under the FCCP Act will be caught. It also catches joint ventures that operate on a regular or lasting basis with all the functions of an autonomous economic entity. This type of joint venture, the assets or turnover value of which is above the notification threshold, requires notification to and the approval of the FCCPC.

*Law stated - 11 July 2023*

## Is there a definition of 'control' and are minority and other interests less than control caught?

The FCCP Act defines 'control' to include a situation where an undertaking has control over the business of another undertaking if it:

- beneficially owns more than one-half of the issued share capital or assets of the undertaking;
- is entitled to cast a majority of the votes that may be cast at a general meeting of the undertaking;
- can appoint or veto the appointment of a majority of the directors of the undertaking;
- is a holding company and the undertaking is its subsidiary, as contemplated under the Companies and Allied Matters Act 2020 (as amended);
- can 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; and
- is entitled to control majority of the votes of the trustees, or entitled to appoint majority of the trustees or change majority of the beneficiaries of the trust, in the case of an undertaking that is a trust.

The FCCP Act does not define 'material influence', and the term is also not defined by case law. The FCCPC carries out an assessment as to whether a party has material influence on another on a case-by-case basis, examining, among other things, the overall relationship between the acquirer and target, and the acquirer's ability to materially influence policy relevant to the target's behaviour in the market. Some factors that raise a presumption of material influence include:

- acquisition of more than 25 per cent equity;
- existence of any special or preferential voting or veto rights associated with the shareholding under consideration;
- convertible loan arrangement or shareholder loan arrangement conferring influence over certain decisions;
- pre-emption rights on sale of shares or assets;
- board composition;
- status and expertise of acquirer and corresponding influence with other shareholders;
- provisions in the target's articles granting such influence over policy; and
- commercial agreement or arrangement between the parties granting influence over policy.

Internal arrangements, management representation or other interests that do not confer control do not come under the purview of transactions that require FCCPC approval. However, in practice, parties are advised to apply and obtain a negative clearance from the FCCPC before consummating transactions when they are in doubt as to whether the nature of the internal arrangement will require FCCPC approval.

'Control' as defined under the FCCP Act does not include control acquired by an office holder (such as a receiver manager or a liquidator) and credit institutions or other financial institutions or insurance companies that in the ordinary course of business may hold (on a temporary basis) security that they have acquired in an undertaking with a view to reselling them.

*Law stated - 11 July 2023*

## Thresholds, triggers and approvals

### What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

The prescribed threshold for merger notification requires that the FCCPC be notified of a merger if in the financial year preceding the merger:

- the combined annual turnover of the acquiring undertaking and the target undertaking (combined figure) in, into or from Nigeria equals or exceeds 1 billion naira; or
- the annual turnover of the target undertaking in, into or from Nigeria equals or exceeds 500 million naira.

Transactions falling below the thresholds can be investigated by the FCCPC if the merger is likely to lessen competition in the market, or if the transaction is illegal or fraudulent. The FCCPC has the powers within six months of a small merger being implemented to require the parties to that merger to notify it of the merger. Within 20 business days (or extended period) of being notified, the FCCPC shall issue a report:

- approving the merger;
- approving the merger subject to conditions;
- prohibiting implementation of the merger, if it has not been implemented; or
- declaring the merger void.

*Law stated - 11 July 2023*

### Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

Notification to the FCCPC and the FCCPC's prior approval is mandatory for mergers that meet or exceed the threshold (large mergers). Such mergers cannot be consummated without prior notification to and approval of the FCCPC. Any action taken in respect of a large merger that either has not been previously approved by the FCCPC or is contrary to the provisions of the FCCPC is void.

Prior notification to the FCCPC is not mandatory for small mergers. The merger parties may, however, voluntarily notify the FCCPC of the merger. Also, the FCCPC may require parties to a small merger to notify it of the merger if it is likely that the merger may substantially prevent or lessen competition.

*Law stated - 11 July 2023*

### Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

Parties to a foreign-to-foreign merger must notify the FCCPC where the foreign entity has a local nexus, such as a

Nigerian subsidiary, and the foreign merger has met the turnover requirements for large mergers in Nigeria.

*Law stated - 11 July 2023*

### Are there also rules on foreign investment, special sectors or other relevant approvals?

The Nigerian Investment Promotion Commission Act 1995 mandates the registration of foreign ownership of shares in a Nigerian company to be registered with the Nigerian Investment Promotion Commission established under the Act. The Foreign Exchange (Miscellaneous Provisions) Act 1995 regulates dealings in foreign exchange, and the importation and repatriation of foreign capital invested in Nigerian businesses.

Where an undertaking in Nigeria is acquired by or comes under the control of a foreign undertaking, the acquisition will be subject to FCCPC review if it meets the notification thresholds and is likely to prevent or lessen competition in Nigeria.

If the merger relates to an entity or entities within a regulated industry, such as insurance, banking, telecommunications or electricity, additional approvals may be required from the relevant sectoral regulator.

*Law stated - 11 July 2023*

## NOTIFICATION AND CLEARANCE TIMETABLE

### Filing formalities

### What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

There is no deadline for filing and obtaining the approval of the Federal Competition and Consumer Protection Commission (FCCPC) in respect of a notifiable merger, provided that it is done prior to implementation of the merger. Failure to notify the FCCPC of a large merger is an offence and attracts a fine of up to 10 per cent of the turnover of the undertaking in the previous year. The FCCPC also has the power to impose an administrative penalty for non-compliance with the provisions of the Federal Competition and Consumer Protection Act 2018 (the FCCP Act).

The FCCP Act is a relatively new piece of legislation. To our knowledge, the FCCPC has not publicly disclosed any sanctions it has imposed on merging parties for defaulting in notifying and obtaining FCCPC approval before consummating a large merger.

*Law stated - 11 July 2023*

### Which parties are responsible for filing and are filing fees required?

The FCCP Act requires each party to a merger to file a FCCPC Form 1 (Notice of Merger); however, in practice, parties will file a joint application for FCCPC approval. In fact, the Notice of Merger requires parties to a proposed merger to jointly fill in Form 1. The filing fees payable are calculated based on the assessment and turnover of the parties or the purchase consideration (whichever is higher), and include an application fee of 50,000 naira that is payable per merging entity.

*Law stated - 11 July 2023*

### What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

The FCCPC has 60 business days to consider and approve a proposed merger. It may extend the waiting period to 120 days by issuing an extension notice to the parties. If the FCCPC fails to communicate a decision on the proposed merger after 60 business days or after the extended period, the merger will be deemed to have been approved.

Any approval obtained is still subject to the power of the FCCPC to revoke its own decision to approve a merger. For large mergers, parties are prohibited from consummating the merger or taking any action in respect of the merger pending approval or following a refusal of the merger by the FCCPC.

*Law stated - 11 July 2023*

## Pre-clearance closing

### What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

Regarding mergers that require prior notification to the FCCPC, the parties are prohibited from consummating or implementing the merger (even partly) without the prior approval of the FCCPC. The same sanctions for implementing a merger without approval are equally applied for not notifying the merger to the FCCPC. The FCCPC has the power to invalidate mergers that have been partly or wholly consummated without approval. The FCCPC may also impose administrative fines. Consummating a merger without approval is an offence and attracts a fine of up to 10 per cent of the turnover of the undertaking in the previous year. There is no publicly available information illustrating the types of sanctions imposed by the FCCPC.

*Law stated - 11 July 2023*

### Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

The FCCPC does not have the power to impose sanctions on foreign-to-foreign mergers where:

1. the foreign entities do not have a local entity or subsidiary in Nigeria;
2. the turnover threshold requirements for prior notification and approval in Nigeria have not been met; and
3. the foreign merger does not affect the market by preventing or lessening competition in Nigeria.

Regarding point (2), to determine whether the threshold requirement is met, the foreign entity's turnover in foreign currency will be converted to naira at the prevailing official exchange rate as determined by the Central Bank of Nigeria for the corresponding period when the year ended.

*Law stated - 11 July 2023*

### What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

Parties to a notifiable foreign merger are not permitted to take any steps to implement the merger prior to receiving

FCCPC approval.

*Law stated - 11 July 2023*

## Public takeovers

### Are there any special merger control rules applicable to public takeover bids?

There are no special merger control rules applicable to public takeover bids in Nigeria. The definition of 'merger' in the FCCP Act is, however, wide enough to catch takeover bids. These mergers will require FCCPC approval if they meet or exceed the prescribed threshold.

The Securities and Exchange Commission (SEC) has rules applicable to mandatory takeover bids involving public companies. Where a mandatory takeover bid is triggered, parties are required to file with SEC to obtain authorisation to proceed with the takeover as well as for the approval of the bid document and its registration.

There are no special rules governing a voluntary takeover bid. Where one is made, the rules applicable to mandatory takeover bids should be followed.

*Law stated - 11 July 2023*

## Documentation

### What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

A party to a merger must provide information in the application form (FCCPC Form 1 (Notice of Merger)) alongside all relevant supporting documents. The FCCPC requires full disclosure of all relevant information so that it can make an informed decision. Some of the information required in Form 1 includes:

- a non-confidential executive summary of the merger;
- details of the merging parties;
- the nature of the merger;
- the areas of activity of the merging parties;
- the markets on which the merger will have an impact;
- the strategic and economic rationale for the merger;
- a detailed description of the merger, ownership and control; and
- the annual turnover of the merging parties.

The supporting documents that must be filed alongside Form 1 include:

- copies of the final or most recent version of the merger documents;
- minutes of board of directors' and shareholders' meetings where the merger was discussed and approved;
- analysis, reports, studies, surveys, presentations and any comparable documents for the purpose of assessing the merger with respect to its rationale, market shares, competitive conditions, competitors, potential for sales growth or expansion into other product or geographic markets, and general market conditions; and
- analysis, reports, studies, surveys and any comparable documents from the past two years for the purpose of assessing any of the affected markets with respect to market shares, competitive conditions, competitors, or potential for sales growth or expansion into other product or geographic markets.

The FCCPC can revoke its decision to approve or may conditionally approve a merger where the application was based on incorrect information supplied by the merging parties. The FCCPC can also prohibit a merger in its entirety.

*Law stated - 11 July 2023*

### Investigation phases and timetable

#### What are the typical steps and different phases of the investigation?

The approval procedure for a large merger has two phases. A Phase I review is conducted within 60 business days of the date of satisfactory notification. This review timeline can be extended by a further 30 business days where the merger raises initial competition concerns and parties propose acceptable remedies. Where this is the case, a Phase II review may not be required. For a Phase II review, the Phase I review period can be further extended by 60 business days where the undertakings propose acceptable remedies to the FCCPC.

It is advisable for merging parties to obtain informal guidance from the FCCPC prior to notification. In fact, the FCCPC advises merging parties to seek pre-merger consultation before filing the formal notification to the FCCPC. The pre-notification consultation may take place in person, by telephone, by video or by other digital means. Pre-merger consultation can be used in resolving matters such as, among others:

- whether a merger is required to be notified;
- the calculation of the annual turnover, value of assets and market share; and
- the merger notification filing fees.

*Law stated - 11 July 2023*

#### What is the statutory timetable for clearance? Can it be speeded up?

For small mergers, the Phase I review is usually concluded within 20 business days of the date of a satisfactory notification. The timeline may be extended by 15 business days where initial competition concerns are raised.

The FCCPC has 60 business days to consider and approve a large merger, and it may extend the waiting period to 120 days by issuing an extension notice to the parties. If the FCCPC fails to communicate a decision on the merger after 60 business days or after the extended period, the merger will be deemed to have been approved, subject to the powers of the FCCPC to revoke it.

Merging parties may apply to the FCCPC for an expedited process that reduces the merger review period by up to 40 per cent. This process attracts an additional fee of 10 million naira.

*Law stated - 11 July 2023*

## SUBSTANTIVE ASSESSMENT

### Substantive test

#### What is the substantive test for clearance?

The substantive test for clearance in Nigeria has two limbs: lessening or preventing competition and protecting public interest. In approving a merger, the Federal Competition and Consumer Protection Commission (FCCPC) will consider if

the merger has the potential to substantially lessen or prevent competition and, if so, the FCCPC will determine whether the merger has an overriding public interest. Where the first limb applies, the FCCPC also considers whether the merger is likely to result in any technological efficiency or other pro-competitive gain that would not be obtained if the merger is prevented; in such cases, the FCCPC may on the basis of public interest approve a merger.

In determining whether a merger or a proposed merger is likely to substantially prevent or lessen competition, the FCCPC typically assesses the strength of competition in the relevant market. It also considers the probability that the undertakings in the market, after the merger, will behave competitively by taking into account a number of factors, including:

- the actual and potential level of import competition in the market;
- the level of ease of entry into the market, including tariff and regulatory barriers;
- the level and trends of concentration, and history of collusion on the market;
- the degree of countervailing power in the market;
- the dynamic characteristics of the market, including growth, innovation and product differentiation; and
- whether the business, or part of the business, of a party to the merger or proposed merger has failed or is likely to fail.

If the FCCPC cannot justify a merger on grounds of public interest, it will consider the effect that the proposed merger will have on:

- a particular industrial sector or region;
- employment;
- the ability of national industries to compete in international markets; and
- the ability of small and medium-sized enterprises (SMEs) to become competitive.

*Law stated - 11 July 2023*

### Is there a special substantive test for joint ventures?

No. Where a joint venture results in a merger, the substantive test for clearance is the same as for any other merger.

*Law stated - 11 July 2023*

## Theories of harm

### What are the 'theories of harm' that the authorities will investigate?

Theories of harm are competition concerns that may arise as a result of a merger. The FCCPC analyses these theories based on the three types of mergers (horizontal, vertical and conglomerate mergers) and adopts a tailored approach to the particular nature of the merger. The basic theories of harm investigated by the FCCPC are divided into the following categories:

- Unilateral effects: these may arise in horizontal mergers, removing the competition between the firms and allowing the merged firm to raise prices profitably.
- Coordinated effects: these may arise in both horizontal and non-horizontal mergers. Here, the merger increases the ability for several firms within the market (including the merged firm) to jointly increase prices because it

creates or strengthens the conditions under which they can coordinate.
- Vertical or conglomerate effects: these may arise in both horizontal and non-horizontal mergers. The merger creates or strengthens the ability of the merged firm to use its market power in at least one of the markets, thus reducing rivalry.

*Law stated - 11 July 2023*

## Non-competition issues

### To what extent are non-competition issues relevant in the review process?

In determining whether a merger is likely to substantially prevent or lessen competition, non-competition issues are relevant in the merger review process. The FCCPC will consider certain public interest issues on four grounds:

- particular industrial sector or region (eg, the FCCPC will consider the security of supply and stable provision of energy);
- the effect of the merger on employment;
- the ability of national industries to compete in the international market; and
- whether the merger affects certain factors that may have an impact on the ability of SMEs to compete.

In determining whether employment is a substantial public ground, the FCCPC will consider the overall nature of the transaction (among other things), including:

- the extent of overlap and duplication in the merging parties' activities;
- the rationale of the transaction;
- the intention of the parties relating to employment and the target business;
- any plans to create further employment opportunities within the merged entity; and
- whether there is any planned retrenchment.

Where the ability of national industries to compete in international markets will result in significant economic benefits that flow back to the domestic economy (such as further investment in the domestic economy, job creation opportunities, the introduction of improved technologies and higher-quality products or services), the FCCPC is likely to consider these to be substantial public grounds.

*Law stated - 11 July 2023*

## Economic efficiencies

### To what extent does the authority take into account economic efficiencies in the review process?

In cases where the FCCPC finds that a merger will substantially lessen or prevent competition, it may still approve the merger on the basis of economic efficiency, gains, other pro-competitive advantages or public interest factors. The FCCPC will investigate the following three categories of efficiencies in its review process:

- allocative efficiency: the degree to which goods and services within the economy are distributed according to consumer preferences;

- technical (productive) efficiency: the state where the optimal combination of inputs results in the maximum amount of output at minimal costs; and
- dynamic efficiency: the optimal introduction of new products and production processes over time.

*Law stated - 11 July 2023*

## REMEDIES AND ANCILLARY RESTRAINTS

### Regulatory powers

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

The Federal Competition and Consumer Protection Commission (FCCPC) is empowered to approve (with or without conditions) or prohibit a merger pursuant to the Federal Competition and Consumer Protection Act 2018. The FCCPC is also empowered to revoke its decision approving or conditionally approving a merger where the approval was based on an incorrect information provided by the merging parties.

*Law stated - 11 July 2023*

### Remedies and conditions

Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

Merging parties may propose remedies to the FCCPC at any time during the review process, including during the pre-notification consultation.

The following remedies are available to merging parties in the resolution of competition issues:

- structural remedies that involve a change in the market structure (commitment to divest assets);
- behavioural or non-structural remedies that are ongoing measures designed to modify, regulate or constrain the future conduct of merging parties (commitment with respect to certain contractual clauses) – examples of behavioural remedies would be granting access to intellectual property rights (such as upgrades of technology or data), granting licences for data or brands, or granting access to the merger parties' customers; and
- a hybrid of both structural and behavioural remedies.

A recent example is the notice published by the FCCPC on 4 March 2023, requesting stakeholders' comments on the behavioural and structural remedies proposed by the merging parties in the proposed acquisition of a 21.61 per cent stake in Central Securities Clearing System Plc by FMDQ Holdings Plc.

*Law stated - 11 July 2023*

What are the basic conditions and timing issues applicable to a divestment or other remedy?

The FCCPC must determine the most appropriate remedies offered by the merging parties within the prescribed time frames. Merging parties are encouraged to engage with the FCCPC at the earliest opportunity by submitting a remedies proposal to the FCCPC. This can be done as early as during the pre-merger consultation. During Phase I, the FCCPC and the merging parties have an additional 15 business days for small mergers and 40 business days for large mergers

for the merging parties to offer and the FCCPC to accept remedies.

*Law stated - 11 July 2023*

### What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

The FCCPC takes the same approach to remedies for foreign-to-foreign mergers as it does for domestic mergers.

*Law stated - 11 July 2023*

## Ancillary restrictions

### In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

Generally, agreements among undertakings that have the likely effect of preventing, restricting or distorting competition in any market are unlawful, void and have no legal effect. The FCCPC may grant an exemption where the market share held by each of the merging parties does not exceed the stipulated limit in the relevant market affected by such agreements. The FCCPC may also impose certain ancillary restrictions, such as the limitation of the scope of any restraint of trade by the merger parties.

*Law stated - 11 July 2023*

# INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

## Third-party involvement and rights

### Are customers and competitors involved in the review process and what rights do complainants have?

Customers and competitors are typically contacted as part of the review process. During Phase I of the review process, the Federal Competition and Consumer Protection Commission (FCCPC) typically sends out information requests to the merger parties' key suppliers, competitors and customers to seek their views on the merger and request that they provide information, such as estimated market shares, capacity, switching costs and potential entry or expansion. Where a Phase II review becomes necessary, the FCCPC will conduct an in-depth review and investigation with respect to the effects of the merger on competition by organising hearings with third parties, including issuing detailed questionnaires to key customers or competitors of the merging entities, or industry experts such as regulators and relevant public authorities.

Complainants may appear before the FCCPC to make submissions during an oral hearing, with or without the merging entities in attendance, to give their opinion on whether the merger would lessen competition.

*Law stated - 11 July 2023*

## Publicity and confidentiality

### What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

The FCCPC must publish a non-confidential summary of key information about the transaction within five business days of receipt of an application to notify, and within two business days of a complete and satisfactory notification.

The publication of the notice will include an invitation to interested third parties to provide comments on the merger by providing a written submission to the FCCPC within three business days of the publication, in the case of small mergers, and seven business days of the publication, in the case of large mergers.

Merging parties may protect commercial information, including business secrets, from disclosure at the point of notifying the FCCPC of the intended merger. Where a merging party is of the opinion that its interest could be harmed by publication or disclosure of any information, it can submit a separate document clearly marked as 'business secrets' with an explanation as to why it considers such information to be confidential.

*Law stated - 11 July 2023*

### Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

The FCCPC cooperates, to some degree, with antitrust authorities in other jurisdictions. On 31 January 2023, the FCCPC executed a memorandum of understanding with the Egyptian Competition Authority to strengthen both the Nigerian and Egyptian economies, and to promote shared prosperity. The memorandum seeks to address crucial issues for the progress of both agencies' engagement through joint investigation, capacity development, and sharing of information and experiences to ensure that consumers and businesses derive the protection and benefits inherent to the economic expansion that the memorandum enhances.

Further, it is expected that merging parties will notify the FCCPC at the onset if the merger is being notified in any other jurisdictions and, if so, whether the merging parties are willing to offer a waiver to support coordination between the FCCPC and the competition authorities in those other jurisdictions.

*Law stated - 11 July 2023*

## JUDICIAL REVIEW

### Available avenues

What are the opportunities for appeal or judicial review?

If the merging parties are dissatisfied with the decision of the Federal Competition and Consumer Protection Commission (FCCPC), they may appeal to the Competition and Consumer Protection Tribunal (the Tribunal) to review the decision of the FCCPC. Any merging party dissatisfied with the ruling, award or judgment of the Tribunal may appeal to the Court of Appeal.

*Law stated - 11 July 2023*

### Time frame

What is the usual time frame for appeal or judicial review?

An aggrieved merging party may appeal to the Tribunal within 30 business days of being notified of the FCCPC's decision.

A dissatisfied merging party can further appeal the Tribunal's decision to the Court of Appeal by notice to the Tribunal's Registrar within 30 days of the date of the Tribunal's decision.

*Law stated - 11 July 2023*

## ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

### Enforcement record

What is the recent enforcement record and what are the current enforcement concerns of the authorities?

In the first quarter of 2022, the FCCPC investigated the anticompetitive activities of shipping companies over the high cost of services provided by shippers. These investigations yielded results as significant declines in shipping costs were noticed by the end of the first quarter.

In the second quarter of 2022, the FCCPC investigated Nigerian electricity distribution companies over arbitrary billing and mass disconnection of electricity consumers. The FCCPC also investigated complaints on violations of consumer rights by certain digital money lenders with a view to ensuring that operators comply with applicable principles of fairness and ethics within the industry. Pursuant to the investigations into the digital money lending industry, the FCCPC released the Limited Interim Regulatory/Registration Framework and Guidelines for Digital Lending 2022 to regulate the digital lending space, and to make provisions for the requirements for approval and registration to carry out digital lending in Nigeria.

*Law stated - 11 July 2023*

### Reform proposals

Are there current proposals to change the legislation?

At the time of writing, there is no pending proposal before the National Assembly to amend the Federal Competition and Consumer Protection Act 2018 or repeal it.

*Law stated - 11 July 2023*

## UPDATE AND TRENDS

### Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

The competition regime and the Federal Competition and Consumer Protection Commission (FCCPC) are still fairly new in Nigeria; thus, there has not been significant case law on merger control. Nonetheless, the FCCPC has reiterated its commitment through various press releases to help curb price gouging and possible violations of consumer rights.

The FCCPC introduced regulations in 2022, including the Abuse of Dominance Regulations 2022 , to provide a regulatory framework for the implementation of Part IX of the Federal Competition and Consumer Protection Act 2018 (the FCCP Act) relating to abuse of dominance and other related matters. Another development is the Notice of Market Definition 2022 , which establishes the framework within which competition policy is applied by the FCCPC. Defining the term ‘market’ helps to identify the actual competitive constraints that a relevant undertaking is faced with.

Further, the FCCPC recently released the Restrictive Agreement and Trade Practices Regulation 2022 for the provision of a regulatory framework for the implementation of the FCCP Act in relation to restrictive agreements and related matters aimed at restricting, preventing or distorting competition, or that have a similar effect.

*Law stated - 11 July 2023*

# Jurisdictions

| | |
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| **New Zealand** | Russell McVeagh |
| **Nigeria** | G Elias |
| **Norway** | Wikborg Rein |
| **Pakistan** | Axis Law Chambers |
| **Peru** | Payet Rey Cauvi Pérez Abogados |
| **Poland** | WKB Wiercinski Kwiecinski Baehr |
| **Portugal** | Gomez-Acebo & Pombo Abogados |
| **Romania** | Wolf Theiss |
| **Saudi Arabia** | Freshfields Bruckhaus Deringer |
| **Serbia** | Wolf Theiss |
| **Singapore** | Drew & Napier LLC |
| **Slovakia** | Wolf Theiss |
| **Slovenia** | Wolf Theiss |
| **South Korea** | Bae, Kim & Lee LLC |
| **Spain** | Freshfields Bruckhaus Deringer |
| **Sweden** | Mannheimer Swartling |
| **Switzerland** | Lenz & Staehelin |
| **Taiwan** | Yangming Partners |

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|---|---|
| **Turkey** | ELIG Gurkaynak Attorneys-at-Law |
| **Ukraine** | Asters |
| **United Arab Emirates** | Freshfields Bruckhaus Deringer |
| **United Kingdom** | Freshfields Bruckhaus Deringer |
| **USA** | Davis Polk & Wardwell LLP |
| **Vietnam** | Freshfields Bruckhaus Deringer |
| **Zambia** | Corpus Legal Practitioners |