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FCCPC GUIDELINES ON FOREIGN-TO-FOREIGN MERGERS



INTRODUCTION

The Federal Competition and Consumer Protection Commission (“Commission”) has issued guidelines for obtaining the Commission’s approval for offshore merger transactions. The ‘Guidelines on Simplified Process for Foreign-to-Foreign Mergers with Nigerian Component’ was published by the Commission on 13 November 2019.

Our understanding is that the Guidelines were issued pursuant to the provisions of Section 2(3) (d) of the Federal Competition and Consumer Protection Commission Act, 2018 (“FCCPA”), which extended the application of the FCCPA 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”. In essence, any offshore merger or acquisition that results in a change of control of a Nigerian business will come under the Commission’s regulatory purview. Prior to the enactment of the FCCPA, this was not the case.

Key highlights of the Guidelines are as follows:

- 1. An expedited procedure has been introduced, by which the Commission is expected to conclude its review of the transaction and issue a decision within 15 business days.*
- 2. The documentation requirement is less elaborate than that for local mergers. The only documents specified in the Guidelines are 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 Commission.*
- 3. The application fee is based on the turnover of the Nigerian business. Parties are not required to pay a processing fee in addition to the application fee, as is the case for local mergers.*

For more information on the above, contact
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