

Extraordinary



Federal Republic of Nigeria Official Gazette

No. 187

Lagos - 23rd November, 2020

Vol. 107

Government Notice No. 157

The following is published as supplement to this *Gazette* :

<i>S.I. No.</i>	<i>Short Title</i>	<i>Page</i>
25	Federal Competition and Consumer Protection Act Merger Review Regulations, 2020	B483-537

Printed and Published by The Federal Government Printer, Lagos, Nigeria
FGP 123/112020/650

Annual Subscription from 1st January, 2020 is Local : ₦45,000.00 Overseas : ₦60,500.00 [Surface Mail]
₦75,000.00 [Second Class Air Mail]. Present issue ₦2,500 per copy. Subscribers who wish to obtain *Gazette*
after 1st January should apply to the Federal Government Printer, Lagos for amended Subscriptions.

B 482

**THE FEDERAL COMPETITION AND CONSUMER
PROTECTION ACT, 2018**
FEDERAL COMPETITION AND CONSUMER PROTECTION ACT
MERGER REVIEW REGULATIONS, 2020



ARRANGEMENT OF REGULATIONS

Regulation :

PART I—SCOPE AND OBJECTIVES

1. Scope of the Regulations.
2. Objectives of the Regulations.

PART II—JURISDICTION OVER MERGERS

3. Merging Parties.
4. Internal Restructuring.
5. Joint Ventures.
6. Material Influence Test for Acquisition of Minority Shareholding.
7. Anti-Competitive Effects of Acquisition of Minority Shareholding.
8. Acquiring Control in Stages.

PART III—NEGATIVE CLEARANCE AND PRE-MERGER CONSULTATION

9. Application for Negative Clearance.
10. Pre-Notification Consultation.

PART IV—THE NOTIFICATION PROCESS

11. Small Mergers.
12. Large Mergers.
13. Standstill Obligations.
14. First Detailed Review (Phase One) Process.
15. Notification Fees.
16. Publishing the Merger Notice and Service on Employees.
17. Scope and Process for First Detailed Review (Phase One).
18. Scope and Process for Second Detailed Review (Phase Two).
19. Applicable Timeframe for Review Process and Virtual Proceedings.
20. Disposition of Notification and Review Process.
21. Simplified and Expedited Procedure.

- 22. Foreign Mergers.
- 23. Appointment of Representatives by Undertakings.

PART V—SUBSTANTIVE MERGER ASSESSMENT

- 24. Merger Assessment.
- 25. Definition of Relevant Market.
- 26. Analytical Tool for Relevant Market.
- 27. Market Concentration (Market Shares and HHI).
- 28. Ease of Entry or Expansion.
- 29. Countervailing Buyer Power.
- 30. Failing Firm Defence.
- 31. Actual and potential import competition.
- 32. Dynamic characteristics of the market.
- 33. Mergers involving vigorous and effective competitors.
- 34. Vertical Integration.
- 35. Theories of Harm.
- 36. Efficiency Test.
- 37. Public Interest.

PART VI—REMEDIES AND APPEALS

- 38. Remedies.
- 39. Forms of Remedies.
- 40. Undertaking and Concluding Remedies.
- 41. Independent evaluation of remedies.
- 42. Appeals.

PART VII—MISCELLANEOUS PROVISIONS

- 43. Power of the Commission to Issue Guidance.
- 44. Interpretation.
- 45. Citation.

SCHEDULE

Schedule 1-Applicable Fees for Merger Notifications.

Form 1 (Notice of Mergers).

Form 1 A (Notice of Merger For Publication).

Form 2 (Notice of Merger- Simplified Procedure).

Form 3 (Form of Decisional Report).

Form 4 (Application for Negative Clearance).

S. I. No. 25 of 2020

**THE FEDERAL COMPETITION AND CONSUMER
PROTECTION ACT, 2018**

**FEDERAL COMPETITION AND CONSUMER PROTECTION ACT
MERGER REVIEW REGULATIONS, 2020**

[20th Day of November, 2020]

Commence-
ment.

In exercise of the powers conferred upon it by sections 17, 18 and 163 of the Federal Competition and Consumer Protection Act, 2018 (“the Act”), and all other powers enabling it in that behalf, the Federal Competition and Consumer Protection Commission hereby makes the following Regulations—

PART I—SCOPE AND OBJECTIVES

1. These Regulations are made to provide a regulatory framework for the review of mergers pursuant to Part XII of the Act and all matters related thereto.

Scope of the
Regulations.

2. These Regulations shall—

(a) provide the substantive and procedural requirements for the implementation of Part XII of the Act ;

(b) outline the jurisdictional limits of mergers under the Act ;

(c) clarify the process for merger notification and efficient handling of notified merger cases ;

(d) provide guidance on the regulatory review process to identify the substantial prevention or lessening of competition by mergers ; and

(e) prescribe the procedure for remediation and disposition of notified merger cases.

Objectives
of the
Regulations.

PART II—JURISDICTION OVER MERGERS

3. For the purposes of Section 92 of the Act, the Commission shall consider an undertaking to be involved in a merger if it—

Merging
Parties.

(a) is being acquired directly or indirectly by another undertaking ;

(b) is directly or indirectly acquiring another undertaking ;

(c) establishes direct or indirect control over the whole or part of the business of another undertaking by way of acquisition of either shares or assets ;

(d) is involved in an amalgamation or other combination with another undertaking or is the product of that amalgamation or combination between the undertakings ; or

(e) is entering into a joint venture with another undertaking or is the product of an understanding to create a joint venture between two or more undertakings.

B 486

Internal
Restructuring.

4.—(1) Where affiliated undertakings engage in an internal scheme of reorganisation or restructuring which involves the transfer or change of business, interests, assets, shares or operations among the affiliated undertakings, without a change of control, such a transaction shall not be deemed a merger for the purpose of notification and approval by the Commission.

(2) Where however there is a change in the control of any of the undertakings within a group undergoing a restructuring or reorganisation, the Commission shall deem such transaction as a notifiable merger under the Act.

Joint
Ventures.

5.—(1) 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 Act.

(2) Any joint venture that operates on a regular or lasting basis with all the functions of an autonomous economic entity shall be considered a merger.

(3) Any joint venture that is a transitory contractual arrangement with no lasting impact in the market, such as cooperation on matters of research and development, shall not be considered a merger.

Material
Influence
Test for
Acquisition
of Minority
Shareholding.

6.—(1) The ability to exercise material influence is the lowest level of control that may give rise to a relevant merger situation.

(2) The Commission will conduct a case-by-case analysis to determine whether the acquirer has the ability to influence materially the policy of the target having regard to all the relevant circumstances of the case.

(3) In assessing material influence under section 92(2)(f) of the Act, the Commission shall primarily consider shareholding and voting power and may also extend its consideration to other relevant factors including but not limited to other forms or material ability of the acquiring party to exercise indirect control or exert influence on policy, key decisions and direction of the business.

(4) For the purposes of certainty, the Commission shall consider as follows—

(a) the acquisition of shareholding or voting rights above twenty five percent (25%) confers upon an acquirer a rebuttable presumption of the ability to materially influence policy ; and

(b) the acquisition of shareholding or voting rights below fifteen percent (15%) will not, in general, lead to the Commission's review.

(5) The relevant factors in any assessment of material influence by the Commission include but are not limited to—

(a) the distribution of the remaining shareholding, including ordinary and preference shares and any special classes of shares, in particular whether the acquiring undertaking's shareholding makes it the largest shareholder ;

(b) patterns of attendance and voting at shareholders' meetings based on recent shareholder returns (to establish whether other shareholders are active or passive participants at company meetings), and in particular whether voter attendance is such that the shareholder under consideration would be able in practice to block special resolutions ;

(c) the existence of any special or preferential voting or veto rights associated with the shareholding under consideration ;

(d) the status and expertise of the acquiring undertaking and its corresponding influence with other shareholders ;

(e) the existence of any convertible loan arrangement or other shareholder loan arrangement that confers influence over certain decisions ;

(f) any other special provisions in the Memorandum and Articles of Association of the target undertaking conferring an ability on the acquiring undertaking to materially influence policy ;

(g) the extent of information rights available to the acquiring undertaking ;

(h) any restrictive covenants or special benefits attaching to the acquired shares ;

(i) any pre-emption rights in relation to the sale of shares or assets ;

(j) the rights and influence of any significant debt holders ;

(k) the composition of the board of directors; and

(l) any other contracts or arrangements between the parties.

(6) The Commission may consider other relevant factors such as the existence of certain commercial agreements or arrangements between the parties, that enable the acquiring undertaking, materially to influence policy which may include, but are not limited to the following—

(a) the provision of consultancy services to the target undertaking ;

(b) cessation of production by one party ;

(c) sourcing all its inputs or requirements from the other party ;

(d) financial arrangements that place conditions upon one party that makes the party dependent on the other party ;

(e) right by one party either by itself or through a nominee to exercise control or options with respect to roles in managing or directing the course of the other party including in management, finance, technical and operational roles ;

(f) any licence agreement for use of proprietary information or tools belonging to one party, or the party's ability or discretion to dictate what tools may be used in the course of operations ; and

(g) the extent to which a party can influence the use of its own systems, operational or governance frameworks, or business model in the operation of the other party.

B 488

Anti-Competitive Effects of Acquisition of Minority Shareholding.

7. In relation to the acquisition of minority shareholding, the Commission shall consider the following as potentially anti-competitive effects, and a relevant merger situation will be said to arise such that the impact of the transfer of control shall be assessed by the Commission—

- (a) a likelihood of interdependence between competitors that leads to muted competition or coordinated conduct, in the case of acquisitions between horizontal undertakings ;
- (b) a likelihood of an increase in the acquirer’s incentive to foreclose rival suppliers, in the case of vertical or conglomerate acquisitions ;
- (c) access to commercially sensitive information of competitors ; and
- (d) blocking of potentially pro-competitive mergers and rationalisation.

Acquiring Control in Stages.

8.—(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.

PART III—NEGATIVE CLEARANCE AND PRE-MERGER CONSULTATION

Application for Negative Clearance.

9.—(1) Where any undertaking or any other party to a transaction is uncertain of whether or not a transaction or proposed transaction constitutes a relevant merger and is notifiable, it may apply to the Commission by way of preliminary assessment for clearance and shall provide such information as required by the Commission.

(2) Subject to section 92 of the Act, where, upon evaluation of an application for negative clearance, the Commission considers that the transaction—

- (a) is exempt under the requirements of sections 92(3)(a) of the Act ; or
- (b) does not present any circumstances that may warrant an exercise of material influence under section 92(2)(f) of the Act ; or
- (c) the merger is not notifiable under the Act and under the Threshold Regulations,

it shall notify the undertaking of its determination and clear the transaction.

(3) Where further information is required in order to determine whether the transaction satisfies the requirements of a merger under the Act, it shall notify the undertaking that it must apply for a first detailed review, in accordance with Part IV of these Regulations.

(4) The Commission may revoke the clearance granted under Regulation 9(2) where the application was based on inaccurate information.

(5) An application for clearance under this Regulation shall be completed using Form 4 and lodged in five (5) copies with the Commission upon the payment of the prescribed fees specified under the First Schedule to these Regulations.

10.—(1) Parties are strongly encouraged to request for pre-notification consultations with the Commission to assist in determining the course of a case, typically at least two weeks before submission of formal notification is contemplated.

Pre-
Notification
Consultation.

(2) Such consultations may take place in person, by telephone, by video conference or other digital means, or by any other means the Commission determines to be appropriate to enable the parties and the Commission to clarify matters such as—

- (a) whether or not a merger is required to be notified ;
- (b) the calculation of annual turnover, value of assets, market shares, the merger notification filing fee and other substantive matters ;
- (c) to inform the Commission where markets are novel or complex (engagement with business people from the parties is highly beneficial) ;
- (d) whether a simplified or expedited procedure may be merited ;
- (e) the requirements of Forms 1 or 2 and whether any draft notification form provided by the parties may be deemed complete ;
- (f) the required supporting documents, including any reasons from the parties why the need for certain documents may be dispensed with, thereby enhancing efficiency and reducing the burden on both the merger parties and the Commission ; and
- (g) whether notifications have been made in other jurisdictions, including other member countries of ECOWAS or AfCFTA.

PART IV—THE NOTIFICATION PROCESS

11.—(1) Small mergers are not notifiable unless where the parties to such merger voluntarily notify the Commission or where the Commission considers that the merger may substantially prevent or lessen competition in accordance with section 95(1) of the Act.

Small
Mergers.

(2) The Commission may compel notification on its own initiative or as may be prompted by complaints or information from competitors, consumers or suppliers of the merging undertakings.

(3) A party to a notifiable small merger shall pay the appropriate merger filing fees and provide such information prescribed by Form 1 and as may be required by the Commission and submit all relevant supporting documents to the Commission.

B 490

Large
Mergers.

12.—(1) Where an undertaking is involved in a large merger, an application shall be made for the approval of the Commission before implementation, in accordance with these Regulations and the provisions of the Act.

(2) A party to a large merger shall notify the Commission of the merger and shall, in the first instance, apply for approval by way of a first detailed review (Phase one review) of the merger for the purpose of determining whether the merger is likely to substantially prevent or lessen competition.

(3) A party to a large merger shall pay the appropriate merger filing fees and provide such information prescribed by Form 1 and as may be required by the Commission and submit all relevant supporting documents to the Commission.

Standstill
Obligations.

13.—(1) The parties to a merger shall not take any steps to implement the merger either prior to, or after notification until it has been approved by the Commission.

(2) To maintain the competitive environment which existed before the proposed merger as intact as possible, the merging parties shall ensure that prior to and during the notification period, they take no steps or undertake activities that may be deemed a coordination or integration of their businesses or their competitive conduct in any of the following respects—

(a) the exchange of commercially-sensitive information ;

(b) the nature of contractual clauses governing the relationship ; and

(c) the activities of the parties before and during the notification of the merger.

(3) For small mergers which are notified to the Commission post-transaction, no further steps shall be undertaken by the merger parties to integrate the respective businesses.

(4) The Commission may impose appropriate interim measures to maintain or restore competition where the merger parties have implemented the merger in contravention of subregulations (1) or (2).

(5) Where the Commission finds that any merging party violates subregulation (1) or (2), the Commission, without prejudice to any prosecution which may be initiated under the Act, may impose on the violating party, an administrative penalty as prescribed by the Administrative Penalties Regulations 2020.

(6) The Commission may, by order, also declare any such steps, actions, activities done in violation of subregulations (1) or (2) as void and of no effect.

(7) Merging parties shall ensure that they take proactive steps including establishing internal and expert teams to promote compliance with this Regulation.

14.—(1) The purpose of the first detailed review shall be for the Commission to determine whether or not the merger is likely to substantially prevent or lessen competition.

First
Detailed
Review
(Phase One)
Process.

(2) The parties to a merger may make a single application jointly or severally to the Commission.

(3) Parties may notify the Commission separately if they so wish, particularly in circumstances where they are including information, they do not want made available to any other party.

(4) If an applicant believes its interests could be harmed by publication or disclosure of any information, it should submit the information separately, clearly marked as “Business Secrets”, and also explain why it considers the information to be confidential.

(5) Further to sub-regulation (4), the Commission reserves the right to determine what constitutes a Business Secret.

(6) The application must be signed by an authorised signatory on behalf of each of the parties separately.

(7) If some of the requested information are unavailable, applicants are required to explain the reasons for the unavailability and give their best estimates of the information.

15.—(1) The fees payable for the different categories of review shall be as determined by the Commission using the parameters specified in the First Schedule to these Regulations.

Notification
Fees.

(2) Each application must be accompanied by evidence of payment of notification fees.

(3) The amount of the notification fee shall be obtained from the Commission before payment of the fee.

16.—(1) Within five (5) business days of the receipt of an application to notify and within two (2) business days of a complete and satisfactory notification, the Commission shall publish a notice of the merger in the form and manner prescribed by Form 1A, which is a non-confidential summary of key information in the application and shall include—

Publishing
the Merger
Notice and
Service on
Employees.

(a) the parties to the merger ;

(b) the nature of the merger (for example, acquisition, combination or joint venture) ;

(c) the areas of business activities of the parties to the merger and whether the merger will have an impact within Nigeria ; and

(d) the strategic and economic rationale for the merger.

(2) The publication of the notice shall include an invitation to any interested third parties to comment on the merger by providing a written submission to the Commission within three (3) business days of the publication in the case of small mergers and seven (7) business days of the publication in the case of large mergers.

(3) The parties to the merger shall, at the time of submission of Form 1, furnish the Commission with evidence of service of Form 1A upon—

(a) any registered trade union that represents the employees in the acquiring and target undertakings respectively ; or

(b) the employees or representatives of the employees of the acquiring and target undertakings, if there are no such registered trade unions.

(4) Further to subregulation (1), where the merger parties make a submission that does not fulfill the satisfactory notification requirement, the Commission shall not publish Form 1A until such a time as the submission fulfills satisfactory notification.

Scope and
Process for
First
Detailed
Review
(Phase One).

17.—(1) The Commission shall undertake the first detailed review after receiving a complete and satisfactory notification, including all relevant supporting documents

(a) in the case of small mergers, within twenty (20) business days of satisfactory notification, which may be extended by up to a further fifteen (15) business days where the merger raises initial competition concerns and parties propose acceptable remedies, but where the need for a Phase Two review is not expected ; and

(b) in the case of large mergers,

(i) within a maximum of sixty (60) business days of satisfactory notification, which may be extended by up to a further thirty (30) business days where the merger raises initial competition concerns and parties propose acceptable remedies, but where the need for a Phase Two review is not expected, and

(ii) for the majority of cases where no material competition concerns arise, the Commission will seek to complete the first detailed review within forty-five (45) business days.

(2) The Commission shall conduct an investigation, undertaking market testing and a substantive review of the notified transaction, including gathering additional information in the form of—

(a) requests for further information or clarification from the merger parties, where necessary ;

(b) requests for information from the merger parties' competitors, suppliers, customers and/or any other third parties deemed appropriate to seek their views on the merger.

(3) Where the Commission forms the view that a merger is likely to give rise to a substantial prevention or lessening of competition, the following, among others, may constitute the sequence of engagement between the Commission and merger parties—

(a) the convening of a state-of-play meeting informing the merger parties of the result of the Commission's market testing and whether the Commission will proceed with the issuance of an issues paper or proceed to clear the merger ;

(b) the issuance and transmittal of an issues paper that sets out :

(i) the initial findings of the market testing,

(ii) the key competition concerns raised by the merger including the theories of harm, and

(iii) a summary of third-party views on the merger ;

(c) the presentation of a written response by the merger parties addressing the concerns raised in the issues paper and proposing remedies as applicable ; and

(d) the convening of an issues meeting where the merger parties may elaborate on or clarify the arguments put forward in the written response to the issues paper.

(4) After consideration of the merger parties' response to the issues paper, where the Commission finds that the merger is still likely to substantially prevent or lessen competition and the remedies proposed by the merger parties do not address the competition issues identified, the Commission shall undertake a second detailed review, commencing phase two of the review.

(5) The Commission shall issue a report to conclude phase one, deciding that—

(a) the merger is approved, either unconditionally or subject to accepted remedies ; or

(b) the merger still raises substantial competition concerns and the Commission will undertake a second detailed review and will commence phase two.

(6) The following timeframe shall apply with respect to sub-regulations (4) and (5)—

(a) in the case of small mergers,

(i) where the undertakings propose acceptable remedies, the phase one timeframe shall be extended by fifteen (15) business days ;

(ii) where the Commission commences a second detailed review, the overall timeframe shall be extended by forty (40) business days, with

such timeframe inclusive of the period within which the undertakings may propose acceptable remedies.

(b) in the case of large mergers,

(i) where the undertakings propose acceptable remedies, the phase one timeframe shall be extended by thirty (30) business days ;

(ii) where the Commission commences a second detailed review, the overall timeframe shall be extended by sixty (60) business days, with such timeframe inclusive of the period within which the undertakings may propose acceptable remedies.

Scope and
Process for
Second
Detailed
Review
(Phase Two)

18.—(1) At the second detailed review, the Commission shall conduct an in-depth review and investigation with respect to the effects of the merger on competition.

(2) The Commission may undertake any of the following during the second detailed review—

(a) further and extensive information gathering, including parties’ internal documents, economic data, companies’ site visits and/or interviews ;

(b) hearings with third parties, including issuing detailed questionnaires to market participants, such as key customers or competitors and industry experts such as relevant public authorities or regulators ;

(c) more in-depth analysis on the economic impact of the merger ;

(3) The Commission shall undertake an extensive and in-depth analysis of the economic impact of the merger and will evaluate the following—

(a) the existence and validity of any counterweighting effects of the merger that are likely to result in any technological efficiency or other pro-competitive benefit (otherwise referred to as the “efficiency test”) ;

(b) the existence and substantiality of any public interest grounds (otherwise referred to as “public interest considerations”) ; and

(c) whether the effects of the efficiency test are greater than and offsets the effects of the substantial competition concerns and provides consumers a fair share of the resulting benefit.

(4) During the phase two review, the following, among others, may constitute the sequence of engagement between the Commission and merger parties :

(a) the convening of a state-of-play meeting to clarify any aspects of the phase one decision and/or provide any input regarding the scheduling of the phase two timetable ;

(b) the issuance and transmission of a statement of objections which shall set out and identify :

(i) the competition concerns existent in the transaction ;

(ii) the substantive analysis undertaken by the Commission including its initial determination on market definition, the counterfactual and theories of harm ;

(iii) detailed views of third parties ;

(iv) the issues the merger parties must address with a view to enabling them to exercise their rights to be heard in writing and through a formal oral hearing process ; and

(v) the means by which merger parties will be provided with all information needed to adequately and effectively present their response to the objections including having access to the case file to the extent permissible having regard to confidentiality considerations to protect the business secrets of other merger parties and third parties.

(c) the presentation of a written response by the merger parties addressing the objections and issues identified in the statement of objections and proposing remedies as applicable ;

(d) the invitation to third parties to make submissions by way of oral hearing, with or without the attendance of the merger parties, as may be determined by the Commission given the circumstances of each case;

(e) the conduct of oral hearing proceedings by the Commission in relation to the statement of objections and the written response thereto in accordance with the principles of fair hearing affording the merger parties the opportunity to present their case with the assistance of legal counsel, economic experts and any such other professionals as necessary.

19.—(1) Except as otherwise provided under these Regulations, the Commission shall issue, from time to time, a notice specifying the indicative timeframes applicable to the merger review process (“Notice of Indicative Timeframes for Merger Notification and Review”).

Applicable
Timeframe
for Review
Process and
Virtual
Proceeding.

(2) Where merger parties do not respond within the prescribed time specified under the applicable Notice of Indicative Timeframes for Merger Notification and Review issued pursuant to Regulation 19(1), the Commission may give a final decision based on its review.

(3) All meetings and hearings of the Commission contemplated under these Regulations may, in lieu of physical attendance, be conducted virtually using appropriate video conference technology or telephone as appropriate.

20.—(1) Further to the first detailed or the second detailed review, and at the end of the relevant timeframe for a merger, as applicable, the Commission may unconditionally or conditionally approve or prohibit a merger which shall be considered dispositive of the notification process.

Disposition
of
Notification
and Review
Process.

(2) The Commission shall issue a report in Form 3, which shall signify the disposition of the notification process, notifying the parties of its decision—

- (a) approving the merger ;
- (b) approving the merger subject to conditions ; or
- (c) prohibiting implementation of the merger.

(3) The Commission shall cause Form 3 to be published as follows—

- (a) in the case of small mergers, in the Federal Government Gazette ; and
- (b) in the case of large mergers, in at least two national newspapers.

(4) Where the Commission prohibits or conditionally approves the merger, it shall issue a written report of its reasons for its decision within ten (10) business days of the disposition of the notification process.

(5) Where the Commission prohibits a small merger that has already been consummated, it may require the merger parties to dissolve the merger, for example, by disposing of the shares or the assets acquired so as to restore the situation prevailing prior to the transaction.

(6) Further to subregulation (5), where dissolution is not possible, the Commission may take any other measure appropriate to achieve such restoration so far as possible.

Simplified
and
Expedited
Procedure.

21.—(1) Where upon a self-assessment, the merger parties are of the view that a proposed merger is less than likely to prevent or lessen competition and no further evidence will likely be uncovered to revise this finding, they may apply under the simplified procedure using Form 2.

(2) In assessing the suitability of using the simplified procedure, the Commission shall give consideration to the following circumstances—

(a) small mergers that have been voluntarily notified and have not been prompted by the Commission ;

(b) where none of the undertakings involved in the merger or acquisition are active or potentially active in the same product or geographic markets, or in any product market(s) which is upstream or downstream to a product market(s) in which another undertaking involved is active or potentially active ;

(c) where two or more of the undertakings involved in the merger or acquisition are active in the same product or geographic market, but their combined market share is less than fifteen percent (15%) ;

(d) where one or more undertakings involved in the merger or acquisition are active in any product market(s) which is upstream or downstream to a product market(s) in which another undertaking involved is active, but the market share of each of the undertakings involved in each market is less than 25% ;

(e) where an undertaking involved, which already has joint control over a company, is to acquire sole control over that company.

(3) In appropriate cases, the Commission may, upon application by merger parties, approve the use of the expedited procedure which shall, except as provided otherwise in the applicable Notice of Indicative Timeframes for Merger Notification and Review issued by the Commission, reduce the relevant timeframe for all applicable processes during the first detailed review by forty percent (40%).

(4) Parties are encouraged to discuss with the Commission during pre-notification consultations the suitability of using the simplified and/ or expedited procedure.

(5) Nothing in subregulations (1) and (3) shall limit the powers of the Commission to refer any transaction to the normal procedure where it appears that the circumstances presented for the simplified or expedited procedure are either inaccurate or unwarranted.

22.—(1) An undertaking in Nigeria that comes within the control of a foreign undertaking will be subject to merger review if it attains the turnover requirements under the Threshold for Merger Regulations 2019 or its acquisition affects the market structure by preventing or lessening competition in Nigeria.

Foreign
Mergers.

(2) In any event where a merger will occur purely as a result of a transaction involving undertakings wholly domiciled outside Nigeria, the Commission will nonetheless assess the merger if it has a local component.

(3) The Commission will only assert jurisdiction over a transaction in sub-regulation (2) if the foreign enterprise has a local nexus, such as having subsidiaries in Nigeria or having attained the turnover requirements for large mergers as provided under the Threshold Regulations.

(4) Parties outside Nigeria shall appoint local legal representatives to notify the merger to the Commission on their behalf in accordance with the Act, these Regulations and the Guidelines.

23—(1) The undertakings may appoint one or more authorised and qualified external representatives to which the Commission's decisions and other procedural documents may be notified.

Appointment
of
Representatives
by
Undertakings.

(2) Where the undertakings appoint a representative, the undertaking(s) must execute a power of attorney for each representative.

(3) Merger parties are enjoined to appoint representatives with expertise in competition law and economics.

PART V—SUBSTANTIVE MERGER ASSESSMENT

Merger Assessment.

24.—(1) The Merger Review Guidelines (“the Guidelines”) constitutes the analytical framework for the substantive assessment of mergers.

(2) The Commission assesses three types of mergers—

(a) horizontal mergers which are mergers between undertakings that operate in the same relevant market(s) at the same level of business, for example, between two manufacturers, two distributors or two retailers ;

(b) vertical mergers which are mergers between undertakings which operate at different levels of the production or supply chain of an industry ; and

(c) conglomerate mergers which are mergers between undertakings in different markets, with no functional link.

(3) While each type of merger has the potential to affect competition in a different way and will therefore be analysed by the Commission differently, there are theories of competitive harm and effects that are common to each merger as presented in these Regulations and the Guidelines.

(4) The standard for reviewing every merger shall be the likelihood of the merger substantially preventing or lessening competition in the future.

Definition of Relevant Market.

25.—(1) In assessing whether a merger will lead to a substantial prevention or lessening of competition, the Commission shall define one or more relevant markets in accordance with Section 71 of the Act, for the purposes of developing a conceptual framework within which relevant information can be organised for the purpose of assessing the competitive effect of a merger provided always that the Commission shall identify the products or services and geographic area in which competition may be harmed.

(2) The relevant product market is defined in terms of products and the set of products that customers consider to be close substitutes.

(3) The relevant geographic market is defined in terms of the location of suppliers and it includes those suppliers that customers consider to be feasible substitutes and it may be local, statewide, regional, national or wider (transcending national boundaries).

(4) For the purposes of preparing information regarding relevant market(s) as it pertains to submitting information towards a satisfactory notification, merger parties are to consider relevant markets that are affected by the merger as “Affected Markets” as described by the Guidelines.

Analytical Tool for Relevant Market.

26.—(1) The Commission shall apply the small but significant non-transitory increase in Price (“SSNIP”) test (also known as the hypothetical monopolist test or “HMT”) as an analytical tool as described by the Guidelines.

(2) The SSNIP determines the smallest area in product and geographic space within which a hypothetical current and future profit-maximising monopolist could effectively exercise market power.

27.—(1) Market concentration refers to the number and size of participants in the market and how much of the market that each of the participants controls.

Market
Concentration
(Market
Shares and
HHI).

(2) The Commission may measure concentration with reference to market shares, concentration ratios and the Herfindahl-Hirschman Index (“HHI”).

(3) The Commission may consider the combined market share of the merging parties, when compared with their respective market shares pre-merger, to provide an indication of the change in market power resulting from the merger, with competition concerns more likely to arise when the merger creates a merged entity with a large market share.

(4) The Commission shall calculate market shares according to sales, volume and capacity using information from a variety of sources, such as—

- (i) the merger parties ;
- (ii) competitors ;
- (iii) customers ;
- (iv) suppliers ;
- (v) trade associations ; and
- (vi) market research reports.

(5) The Herfindahl-Hirschman Index or HHI is a measure of market concentration that takes account of the differences in sizes of undertakings in the market calculated by adding the sum of the squares of the market shares of each undertaking in the market.

(6) The post-merger HHI gives an indication of the level of market concentration while the change in the HHI (or ‘delta’) reflects the change in market concentration resulting from the merger, together, post-merger forming a threshold of market concentration.

(7) The Commission shall have regard to the following thresholds—

- (a) a post-merger HHI below 1,000 is unlikely to cause concern ;
- (b) a market with a post-merger HHI greater than 1,000 may be regarded as concentrated and highly concentrated if greater than 2,000 ;
- (c) in a concentrated market, a delta of less than 250 is unlikely to cause concern while in a highly concentrated market, a delta of less than 150 is unlikely to cause concern.

(8) The purpose of the HHI thresholds is not to provide a rigid screen in order to determine whether or not a merger is likely to result in a substantial

prevention or lessening of competition, but a screening device for deciding whether the Commission should intensify its analysis of the competitive impact of a merger.

(9) The HHI thresholds may also be a useful self-assessment guide for merging parties who are—

- (a) considering a voluntary notification where the merger falls below the thresholds for compulsory notification set out in the Threshold Regulations ;
- (b) acquiring a minority interest and may fall within the purview of Section 92(2)(f) of the Act ; or
- (c) considering utilising the simplified procedure.

Ease of
Entry or
Expansion.

28.—(1) A barrier to entry or expansion is any factor that prevents or hinders effective new entry or expansion that might otherwise be capable of deterring a substantial prevention or lessening of competition arising from the merger.

(2) The Commission shall consider specific features of the market that give incumbents advantages over potential competitors as barriers to entry or expansion.

(3) Barriers to entry or expansion can take many forms and fall into one of the following four broad categories—

- (a) legal or regulatory ;
- (b) structural ;
- (c) strategic ;
- (d) technological ; or
- (e) other types of entry barriers.

(4) In assessing whether new entry or expansion will deter a substantial prevention or lessening of competition, the Commission will consider whether such entry would be—

- (a) timely ;
- (b) likely ; and
- (c) sufficient.

(5) The onus rests with the merging parties to demonstrate that entry or expansion will be timely, likely and sufficient such that a merger will not lead to a substantial prevention or lessening of competition.

(6) The Commission shall consider all reliable evidence bearing on whether entry or expansion will satisfy the conditions of timeliness, likelihood and sufficiency.

29.—(1) The Commission shall also consider whether one or more buyers would have sufficient countervailing power to constrain any attempted increase in market power by a supplier.

Countervailing
Buyer
Power.

(2) Countervailing power exists when buyers have special characteristics that enable them to credibly threaten to bypass the merged undertaking, such as by vertically integrating into the upstream market, establishing importing operations or sponsoring new entry.

(3) The merging parties must demonstrate that buyer power would be both present and effective post-merger, even after any reduction in buyer power caused by the merger.

(4) The burden of proof is on the merging parties to provide reliable evidence to the Commission to demonstrate that countervailing buyer power will prevent harm to competition post- merger.

30.—(1) The failing firm argument is a defence to a merger that would otherwise lead to a substantial prevention and lessening of competition.

Failing Firm
Defence.

(2) The failing firm argument requires that both the firm and its productive assets will exit from the market unless the merger is put into effect.

(3) The Commission shall consider the four elements below, all of which must be met—

(a) the firm must be unable to meet its financial obligations in the near future ;

(b) there must be no viable prospect of reorganising the business through the process of receivership or otherwise ;

(c) the assets of the failing firm would exit the relevant market in the absence of a merger transaction ; and

(d) there is no credible less anti-competitive alternative outcome than the merger in question.

(4) The burden of proof is on the merging parties to establish that all the elements of the failing firm defence are met.

31.—(1) Where the Commission can be satisfied that import competition, or the potential for import competition, provides an effective constraint on domestic suppliers, it may consider it unlikely that a merger would result in a substantial prevention or lessening of competition.

Actual and
potential
import
competition

(2) While the current or historic levels of imports may indicate the competitive role of imports in the relevant market, the Commission shall consider the potential for imports to expand if the merged undertaking attempted to exercise increased market power post- merger.

B 502

Dynamic characteristics of the market.

32.—(1) The Commission shall conduct analysis of the effects of dynamic changes in the market in close link with analysis of the other merger factors under section 94(2) of the Act.

(2) Dynamic changes may result from a range of factors including market growth, innovation, product differentiation and technological changes.

(3) The Commission shall consider changes in the market from two perspectives—

(a) the extent to which the dynamic features of the market affect the likely competitive impact of the merger ; and

(b) whether the merger itself impacts on the dynamic features of the market.

Mergers involving vigorous and effective competitors.

33.—(1) Vigorous and effective competitors may drive significant aspects of competition, such as pricing, innovation or product development, even though their own market share may be modest.

(2) Mergers involving a vigorous and effective competitor (sometimes referred to as a maverick firm) are more likely to result in a significant and sustainable increase in the unilateral market power of the merged undertaking or increase the ability and incentive of a small number of undertakings to engage in coordinated conduct.

(3) The Commission shall consider a merger that removes a vigorous and effective competitor as removing one of the most effective competitive constraints on market participants and thereby resulting in a substantial prevention and lessening of competition.

(4) The assessment of the removal of a vigorous and effective competitor depends on—

(a) the significance of the vigorous and effective competitor in the market ; and

(b) the extent to which the merged entity will compete less vigorously than the vigorous and effective competitor prior to the merger.

Vertical Integration.

34.—Where a merger involves both horizontal and vertical competition issues, the Commission will assess the merger based on the combined horizontal and vertical impact on competition.

Theories of Harm.

35.—(1) The Commission shall analyse the competitive effects of a merger and the factors based on the theories of competitive harm or effects.

(2) The Commission's analysis shall be evidence-based and shall focus mainly on three types of effects—

(a) unilateral effects which arise when in consequence of a merger, the merged undertaking finds it profitable to raise price, irrespective of the reactions of its customers, consumers and competitors.

(b) coordinated effects which arise when a merger facilitates coordinated interaction by competitors to increase price ; and

(c) vertical or conglomerate effects which arise principally in non-horizontal mergers where the merger creates or strengthens the ability of the merged undertaking to use its market power in at least one of the markets, thus reducing rivalry.

(3) The Commission's analysis in a merger may involve a mixture of the different types of effects.

36.—(1) Where the merger is likely to lead to a substantial prevention or lessening of competition, the Commission shall consider whether there are any efficiencies resulting from the merger that may offset its harmful effects.

Efficiency
Test.

(2) The Commission will have regard to the following efficiencies—

(a) allocative efficiencies that refer to the degree to which goods and services within the economy are distributed according to consumer preferences ;

(b) technical (productive) efficiencies that refer to the state where the optimal combination of inputs results in the maximum amount of output at minimal costs ; and

(c) dynamic efficiencies that refer to the optimal introduction of new products and production processes over time.

(3) The burden of proof is on the merger parties to demonstrate that the efficiencies are likely to occur, are merger specific and are greater than and offset the anticompetitive effects of the merger.

37.—(1) Where a merger is likely to lead to a substantial prevention or lessening of competition the Commission shall, in addition to efficiencies, consider whether there are public interest grounds to justify the merger.

Public
Interest.

(2) Public interest claims must be substantial and must be merger-specific.

(3) In arriving at its decision on a merger, the Commission shall have special regard to any representations made by the Minister in accordance with Section 100 of the Act.

(4) Notwithstanding any intervention from the Minister, the Commission shall have regard to whether public interest considerations are applicable with respect to the merger in accordance with the Guidelines.

(5) As with the Efficiency Test, public interest grounds must “be greater than and offset” the anticompetitive effects of the merger.

PART VI—REMEDIES AND APPEALS

Remedies. **38.**—(1) If a notified transaction raises substantial competition concerns, the Commission may allow the notifying party to propose remedies and/or to restructure the proposed transaction in a way that resolves the competition issues.

(2) The object of a remedy should be to restore or maintain competition, thereby preventing competitive harm that a transaction would otherwise cause.

(3) The remedy should adequately address the potential competitive harm identified and should not have the objective of improving pre-merger competition.

(4) The merging parties may be permitted to propose alternative resolutions that permit the transaction to proceed, and the Commission may consider such alternative resolutions before pursuing or adopting outright prohibition.

Forms of Remedies. **39.**—(1) Remedies in a merger investigation can take three forms, as follows—

(a) structural remedies, which involve a change in the market structure (commitment to divest assets) ;

(b) behavioural or non-structural remedies, which involve constraints on the future conduct of a merged entity (commitment with respect to certain contractual clauses) ; and

(c) a mixture or hybrid of both structural and behavioural remedies.

(2) Behavioural remedies are unlikely to be accepted by the Commission in phase one as they tend not to be clear-cut and are less effective and capable of ready implementation than structural remedies.

Undertaking and Concluding Remedies. **40.**—(1) Merger parties may submit a remedies proposal to the Commission at any time during the investigation and are encouraged to engage with the Commission at the earliest opportunity.

(2) Merger parties may offer multiple variations of proposed remedies, and the Commission will choose the least intrusive package that fully addresses the competition concerns identified.

(3) The Commission shall determine the most appropriate remedies offered by the merger parties within the prescribed timeframes to alleviate the competition concerns identified and in particular—

(a) during Phase One, will not be able to engage in extensive negotiations with merger parties, given the short time periods for finalising remedies ;

(b) during Phase Two, afford merger parties a more iterative process to negotiate remedies.

(4) The Commission shall publish a non-confidential version of the remedies package to give an opportunity for third parties to comment on the effectiveness of the identified remedies.

41.—(1) In the course of its investigations, it may be necessary for the Commission and the merger parties to undertake an independent evaluation of remedies that may mitigate the anti-competitive effects of a merger.

Independent evaluation of remedies.

(2) The Commission requires that such independent evaluation shall be undertaken by a person or firm with extensive experience in competition and must operate independently from the merger parties under an arm’s length relationship.

(3) The Commission may also appoint an independent third party to monitor compliance with the commitment of the parties presented as remedies.

(4) The merger parties shall bear the cost of any such engagement of a third-party evaluator or monitor.

42.—(1) A person or an undertaking aggrieved by a decision of the Commission may appeal to the Competition and Consumer Protection Tribunal (“the Tribunal”) within thirty (30) business days of being notified of the Commission’s decision.

Appeals.

(2) Only a party to a proposed merger, or a person or enterprise who has made written submissions to the Commission in opposition to the approval of a proposed merger application will be deemed aggrieved for the purpose of an appeal.

PART VII—MISCELLANEOUS PROVISIONS

43.—The Commission may, from to time to time issue additional rules or guidance on any aspect of these Regulations, and either of general application or specific to mergers.

Power of the Commission to Issue Guidance.

44.—In these Regulations terms defined in the Act shall have the same meanings as in the Act and in addition to the following—

Interpretation.

“*Act*” means the Federal Competition and Consumer Protection Act, 2019 ;

“*Commission*” means the Federal Competition and Consumer Protection Commission ;

“*Guidelines*” means the Merger Review Guidelines 2020 ;

“*HHI*” means the Herfindahl-Hirschman Index ;

“*Regulations*” means the Merger Review Regulations, 2020 ;

“*SSNIP*” means a small but significant non-transitory increase in price ;

B 506

“*Threshold Regulations*” means the Merger Threshold Regulations 2019.

45.—These Regulations may be cited as the Merger Review Regulations, 2020.

Made at Abuja this..... day of, 2020.

MR. BABATUNDE IRUKERA
Executive Vice Chairman

SCHEDULE 1

APPLICABLE FEES FOR MERGER NOTIFICATIONS

As approved by the Federal Competition and Consumer Protection Commission (“the Commission”) pursuant to Section 18 (1)(h) of the Act and the Merger Review Regulations, the following fees shall apply to all mergers to be notified to the Commission—

<i>No.</i>	<i>Threshold (based on Combined turnover of merging parties)</i>	<i>Fees (Consideration of transaction)</i>	<i>Fees (last annual turnover)</i>
1.	First N500 Million	0.3%	0.3%
2.	Next N500 Million	0.225%	0.225%
3.	Any sum thereafter	0.15%	0.75%

FEE TABLE

1. The applicable fees for the merger notifications, where applicable, shall be a sum of either—

(i) the percentages of the consideration sum payable for the transaction as specified in the Fee Table above ; or

(ii) the percentages of the last annual turnover as specified in the Fee Table above,

whichever is higher.

2. All merger applications shall be subject to the payment of an application fee in the sum of N50,000 per undertaking.

3. The applicable fee the expedited procedure service is N10,000,000 (ten million Naira).

4. The applicable fee for the negative clearance procedure is N2,500,000 (two million five hundred thousand Naira).

FEDERAL COMPETITION AND CONSUMER PROTECTION ACT 2018
MERGER REVIEW REGULATIONS 2020

FORM 1
(*Notice of Merger*)

PART I—EXECUTIVE SUMMARY AND NATURE OF THE PARTIES' BUSINESS.

Executive summary and nature of the parties' business.

1.—(1) Provide a non-confidential executive summary (up to 500 words) of the merger, specifying the parties to the merger, the nature of the merger (for example, merger, acquisition, or joint venture), the areas of activity of the parties to the merger, the markets on which the merger will have an impact, and the strategic and economic rationale for the merger. It is intended that this summary will be published on the Commission's website subsequent to notification. The summary must be drafted so that it contains no confidential information or business secrets and will constitute Form 1 A for purposes of publication under the Act.

Nature of the parties' business.

(2) For each of the merger parties and the other parties to the merger, describe the nature of the undertaking's business.

Information about the parties.

(3) Information on merger party (or parties) and other parties to the merger.

For each merger party as well as for each other party to the merger provide—

(i) name of undertaking ;

(ii) name, address, telephone number, and e-mail address of, and the position held by, the appropriate contact person(s) (the address given must be an address for service to which documents and, in particular, the Commission's decisions and other procedural documents may be notified, and the contact person given must be deemed to be authorised to accept service ;

(iii) if one or more authorised external representatives of the undertaking is appointed, the representative or representatives to which documents and, in particular, the Commission's decisions and other procedural documents may be notified ;

(iv) name, address, telephone number and e-mail address of, and position held by, each representative ; and

(v) Power of Attorney that each representative is authorised to act.

- (4) Provide the name and contact details of —
- (i) an individual within each of the merger parties ;
 - (ii) any authorised representatives of each of the merger parties ;
 - (iii) if not already provided in response to (i) and (ii), the person(s) submitting the Notice ;
 - (iv) the person to whom the Commission should address any correspondence.

PART II—DETAILS OF THE MERGER, OWNERSHIP AND CONTROL

Description of Merger

2. Describe the nature of the merger being notified. By reference to the provisions of Section 92 of the Act—

(a) identify the undertakings or persons solely or jointly controlling each of the undertakings concerned, directly or indirectly, and describe the structure of ownership and control of each of the undertakings concerned before the completion of the merger ;

(b) explain whether the proposed merger is—

(i) a purchase or lease of the shares, and interests or assets of the other undertaking in question ;

(ii) the amalgamation or other combination with the other undertaking in question ; and

(iii) a joint venture.

(c) explain how the merger will be implemented (for example by conclusion of an agreement).

(d) timing : specify the expected time scale for exchange of contracts and completion of the merger ;

(e) explain which of the following have taken place at the time of notification—

(i) an agreement has been concluded ;

(ii) a controlling interest has been acquired ;

(iii) the intention to launch has been announced, or ;

(iv) the undertakings concerned have demonstrated a good faith intention to conclude an agreement, including the signing of a Memorandum of Understanding or a Letter of intent or other pre-substantive agreement.

(f) indicate the expected date of any major events designed to bring about the completion of the merger ;

(g) explain the structure of ownership and control of each of the undertakings concerned after the completion of the merger ;

(h) describe the strategic and economic rationale/justification of the merger as it affects Nigerian markets ;

(i) state the value of the transaction (the purchase price (or the value of all the assets involved, as the case may be) ; specify whether this is in the form of equity, cash, or other assets) ;

(j) for the parties to the merger (other than the seller) provide a list of all other undertakings which are active in Nigeria or have a turnover element in Nigeria in which the undertakings, or persons, hold individually or collectively any voting rights, issued share capital or other securities, identifying the holder and stating the percentage held ; and

(k) Provide details of whether the merger is being notified in any other jurisdictions and, if so, whether the merger parties are willing to offer a waiver to support coordination between the Commission and the competition authorities in those jurisdictions.

3. Provide a brief description of the businesses of the merger parties (and, where relevant, their groups).

4. Provide brief details of any other transactions (merger, acquisition, disposal, joint venture) undertaken by—

(i) either of the merger parties in the last three years which involve the products or services in any Affected Market identified in response to question 11, and

(ii) both or all merger parties in the last three years (that is, where the merger parties were party to the same transaction).

¹ Where this involves a large number of transactions, merger parties are encouraged to contact the Commission to discuss.

PART III—ANNUAL TURNOVER

5. Indicate the annual turnover in the last financial year associated with each of—

(a) the acquiring undertaking (including group companies where relevant) ; and

(b) the target undertaking ; and

(c) for foreign to foreign mergers, the annual turnover of the Nigerian component is required.

PART IV—SUPPORTING DOCUMENTS

6. The merger party or parties must provide the following—

(a) copies of the final or most recent versions of all documents bringing about the merger, including heads of terms, memorandum of understanding, sale and purchase agreement, business purchase agreement or equivalent. Where these are not in final form, please provide the latest draft and keep the Commission informed of subsequent changes to the document, if any.

(b) copies of the following documents prepared by or for or received by any member(s) of the board of management, the board of directors, or the supervisory board, as applicable in the light of the corporate governance structure, or the other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders' meeting—

(i) minutes of the meetings of the board of management, board of directors, supervisory board and shareholders' meeting at which the transaction has been discussed, or excerpts of those minutes relating to the discussion of the transaction ;

(ii) analysis, reports, studies, surveys, presentations and any comparable documents for the purpose of assessing or analysing the merger with respect to its rationale (including documents where the transaction is discussed in relation to potential alternative acquisitions), market shares, competitive conditions, competitors (actual and potential), potential for sales growth or expansion into other product or geographic markets, and/or general market conditions ;

(iii) analysis, reports, studies, surveys and any comparable documents from the last two years for the purpose of assessing any of the affected markets with respect to market shares, competitive conditions, competitors (actual and potential) and/or potential for sales growth or expansion into other product or geographic markets.

7. Provide copies of the most recent business plan of the acquirer and acquirer group (if relevant) and the target (or merger parties in the case of a full merger). Where a horizontal overlap or vertical relationship involves, for example, a specific division or brand of one or both of the merger parties, the most recent business plan for the relevant division or brand should be provided as well.

8. Provide copies of any documents in either of the merger parties' possession which—

(a) have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or the

shareholders' meeting of either merger party (whether prepared internally or by external consultants) ; and

(b) also,

(i) set out the rationale for the merger (including but not limited to the benefits of, and/or investment case for the acquisition) ; and/or

(ii) assess or analyse the merger with respect to competitive conditions, competitors (actual and potential), potential for sales growth or expansion into new product or geographic areas, market conditions, market shares and/or the price to be paid. This should include but not necessarily be limited to post-merger business plans or strategy (including integration plans and financial forecasts) and Information Memoranda prepared by or for the merger parties that specifically relate to the sale of the merger transaction. If no such Information Memoranda exist, explain what information or document(s) given to any of the merger parties is meant to serve the function of an Information Memorandum.

PART V—INDUSTRY/MARKET REPORTS

9. Provide copies of documents (including, but not necessarily limited to, reports, presentations, studies, internal analyses, industry/market reports or analysis, including customer research and pricing studies) in either merger parties' possession and prepared or published in the last two years which—

(i) have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management of either merger party (whether prepared internally or by external consultants) ; and

(ii) set out the competitive conditions, market conditions, market shares, competitors, or the merging parties' business plans in relation to the product(s) or service(s) where the merger parties have a horizontal overlap.

PART VI—COMPETITION ASSESSMENT

Counterfactual

10. If the merger parties consider that the Commission should assess the competitive effects of the merger against a counterfactual other than the current or pre-existing competitive situation, please describe that counterfactual and explain why the merger parties consider it should be used for that assessment.

² These are products or services which do not lie within the same market, but which are nevertheless related in some way; for example, because they are complements (so that a fall in the price of one product/service increases the customer's demand for another), or because there are economies of scale in purchasing them (so that customers buy them together).

³ This may include, for example, the products/services and geographic area(s) in the Narrowest Affected Market(s) together with other products/services and geographic areas that might be considered substitutes with such products/services and geographic area(s).

PART VII—MARKET DEFINITION

11. Describe the product(s) or service(s) and geographic area(s) where the merger parties overlap, where they have a vertical relationship, or where they supply related products/services.

12. Identify (and explain the rationale for identifying)—

(i) the narrowest Affected product/service and geographic market(s) where the merger parties overlap, and (if the parties have a vertical relationship or supply related products/services) the narrowest Affected product/service and geographic market(s) at each level of the vertical supply chain and for each related product/service (the Narrowest Affected Market(s)).

(ii) any other plausible Affected product/service and geographic market(s) where the merger parties overlap, have a vertical relationship, or supply related products/services (together with the Narrowest Affected Market(s), the Affected Market(s)).

PART VIII—STRUCTURE OF DEMAND AND SUPPLY IN AFFECTED MARKETS

Share of Supply

13. Provide the structure of supply and demand (by value and, where appropriate, volume) for the undertakings and each of their principal competitors for the Affected Markets.

14. Provide brief explanation on the following—

(a) Degree of product differentiation in each of the Affected Markets ;

(b) Significant entry or expansion into any affected market in the last five years ;

(c) Significant exit from any affected market in the last five years.

Horizontal effects/Merger

15. Provide a description of how competition works in each Affected Market where the merger parties overlap. The description of such competitive dynamics in the Affected Market should include (but not necessarily be limited to)—

(i) information on the competitive constraint posed by each of the merger parties on each other and on the competitive constraint posed by the other principal suppliers in the Affected Market(s) ;

(ii) an explanation of what drives customer choice for the overlap product/services. Where relevant, the response should include the identification of separate customer groups, if any, and an explanation of how the competitive dynamics differ across these customer groups ;

(iii) a description of the parameters of competition (for example, price, quality, service, innovation) and their importance relative to one another ;

(iv) an explanation of the role and significance of product/service differentiation (including an explanation of the extent to which the merger parties' products/services are differentiated) ;

(v) an explanation of how pricing is determined (for example, whether set by suppliers, negotiated between suppliers and customers, or the result of a bidding process organised by customers), including, in appropriate cases (as explained below), supporting documentation ; and

(vi) an explanation of the supply chain (including distribution channels) for the product(s)/service(s), and of any differences between separate geographic areas, where the merger parties overlap, in relation to the supply of the same products/services.

Bidding Data

16. For Affected Markets characterised by bidding processes and/or where customers typically issue requests for quotations, provide bidding data setting out any bids made by each of the merger parties to win business in the overlapping markets.

Increase in the Merger parties' buyer power

17. If applicable, for any product(s) (including raw materials) or service(s) which the merger parties both purchase, provide details of the merger parties' ability to obtain more favourable commercial conditions from suppliers as a result of this merger and the effects, if any, of such increased ability on competition at any levels of the supply chain.

Loss of Potential Competition

18. Describe whether any merger party has plans or has attempted in the last three years to start supplying product(s)/service(s)/geographic area(s) which it does not currently supply but which the other merger party is already supplying (or expected to supply). If so—

(i) Provide any internal documents setting out plans of any merger party to expand in the overlapping product(s), service(s) and/or geographic area(s) or to enter a market where another merger party is operating.

(ii) Explain what barriers to entry or expansion exist for each merger party to start supplying product(s)/service(s)/geographic area(s) which it does not currently supply but which the other merger party is already supplying (or expected to supply).

Vertical effects/Merger

19. If the merger parties operate at different levels of the supply chain (that is, a merger party is engaged in activities upstream or downstream of the activities in which the other merger party is engaged), describe the impact of the merger on the ability and incentive of the merged entity to foreclose rivals (including partial and/or full foreclosure) post-transaction, either by limiting the supply of key inputs or access to customers.

Conglomerate effects/Merger

20. If the merger parties are active in “related” markets (e.g. products that are complementary or that belong to a range of products generally purchased by the same set of customers) and their individual share in any such related Affected Market exceeds 25%, describe the impact of the merger on the ability and incentive of the merged entity to foreclose rivals (including partial and/or full foreclosure) post-transaction, either by limiting the supply of inputs or access to customers.

Entry or Expansion/Actual and potential import competition

21. Where merger parties would like the Commission to consider whether or not the merged entity will be subject to constraints from potential entry or expansion, provide a description of the barriers to entry and expansion with respect to the Affected Market(s).

22.—(1) If the merger parties wish the Commission to consider potential entry or expansion in its competitive assessment, merger parties should provide—

(i) details of any expansion, entry or exit in any of the Affected Markets over the past five years ; and

(ii) details of any companies that the merger parties believe are likely, post-merger, to enter or expand into any of the Affected Markets in a sufficiently timely manner so as to adequately constrain the merged entity, including, in either case, any available evidence for that submission and contact details for any companies named.

(2) If the merger parties wish the Commission to consider actual and potential import competition in its competitive assessment, merger parties should provide—

(i) estimates of the actual level of import competition in the Affected Market/s over the past three years ; and

(ii) details of the price of imports as opposed to domestic production in the Affected Markets and an explanation of any divergence in these prices.

Countervailing buyer power

23. Where merger parties would like the Commission to consider whether or not the merged entity will be subject to countervailing buyer power, explain with reference to the Regulations and the Guidelines, with any available evidence how the merged entity will be subject to this constraint.

Efficiencies and Customer Benefits

24. Where merger parties would like the Commission specifically to consider at phase 1 any efficiencies or relevant customer benefits that the merger parties believe will arise from the merger, describe such efficiencies and provide any documents prepared internally or by external consultants that discuss such expected efficiencies or relevant customer benefits.

Other Information

25. Provide any other information that the merger parties consider may be relevant to the Commission's Phase 1 investigation.

PART IX—THIRD PARTY CONTACT DETAILS

26. Provide contact details for the relevant competitors and customers of the merger parties for (where applicable)—

(a) each of the Affected Markets in which they overlap ;

(b) each of the Affected Markets in which the merger parties have a vertical relationship (providing contact details for the relevant competitors and customers of the merger parties in the upstream and downstream markets on which each merger party is active) ; and

(c) each of the Affected Markets in which each of the merger parties provides related products/services.

27. To the extent applicable, provide contact details for relevant suppliers providing an estimate of the annual value and/or volume of purchases.

28. To the extent applicable, provide contact details for each of the companies that the merger parties consider are likely to enter and expand into any of the Affected Markets.

29. Provide the name and contact details, including address, and email address and telephone number, of—

(a) any relevant regulatory authorities covering the industry in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s).

(b) any trade associations which cover the industry in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s).

PART X – REASONED SUBMISSION

30. Provide merger parties' views or submissions on the overall impact of the merger on competition in the market buttressing the legal and economic bases that support the merger including on the issues of market definition, the counterfactual, the merger factors under section 94(2) of the Act, efficiency and public interest considerations and theories of harm.

PART XI—DECLARATION

Declaration

This Declaration must be signed by a duly authorised person or on behalf of each of the merger parties—

I declare that, to the best of my knowledge and belief, the information given in response to the questions in this Notice is true, correct, and complete in all material respects.

I understand that :

It is a criminal offence under section 112 of the Federal Competition and Consumer Protection Act, 2018 for a person knowingly to supply to the Commission information which is false or misleading in any material respect. This includes supplying such information to another person or any officer of the Commission knowing that the information is to be used for the purpose of supplying information to the Commission;

The Commission shall reject any Notice if it is discovered that it contains information which is false or misleading in any material respect ;

The Commission conducts both Phase 1 and Phase 2 investigations. In the event that the merger is referred for a Phase 2 investigation, information provided to the Commission during the course of the Phase 1 investigation will also be used for the Phase 2 investigation; and

The Commission will publish to the public some information described in this Notice, and the fact that the merger has been notified, as prescribed by the Act.

Signed :

Name: (block letters)

Position: (block letters)

Date :.....

In addition to the above Declaration, the Declaration below should also be signed by a duly authorised person or on behalf of each of the merger parties if the undertakings are appointing legal representatives :

I confirm that the representative(s) (if any) named in reply to question 1(3) or (4) is/are authorised for the purposes of proceedings related to the arrangements described under question 2 to act on behalf of the merger parties respectively specified in response to question 1(3) or (4) of this Form 1. I hereby specify the address of the representatives named in reply to question 1(3) or (4) as an address at which [name of merger party] will accept service or take receipt of documents.

Signed :

Name: (block letters)

Position: (block letters)

Date :.....

MERGER REVIEW REGULATIONS 2020

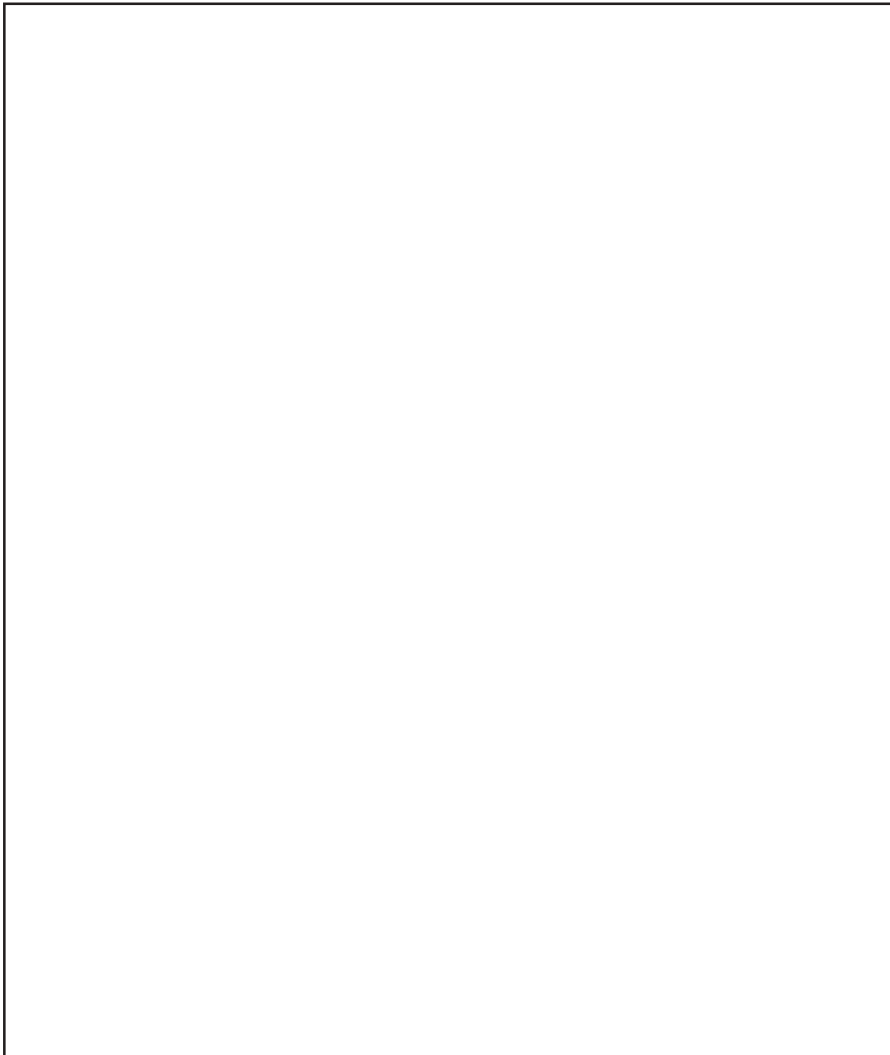
FORM 1A

(Notice of Merger For Publication)

EXECUTIVE SUMMARY

Provide a non-confidential executive summary (up to 500 words) of the merger, specifying the parties to the merger, the nature of the merger (for example, merger, acquisition, or joint venture), the areas of activity of the parties to the merger, the markets on which the merger will have an impact, and the strategic and economic rationale for the merger.

Declaration

A large, empty rectangular box with a thin black border, intended for the user to provide the executive summary and declaration as instructed in the text above.

This Declaration must be signed by a duly authorised person or on behalf of each of the merger parties :

I declare that, to the best of my knowledge and belief, the information given in response to the questions in this Notice is true, correct, and complete in all material respects.

I understand that :

It is a criminal offence under section 112 of the Federal Competition and Consumer Protection Act, 2018 for a person knowingly to supply to the Commission information which is false or misleading in any material respect. This includes supplying such information to another person or any officer of the Commission knowing that the information is to be used for the purpose of supplying information to the Commission;

The Commission shall reject any Notice if it is discovered that it contains information which is false or misleading in any material respect; and

The Commission will publish to the public the information described in this Notice, and the fact that the merger has been notified, as prescribed by the Act.

Signed :

Name: (block letters)

Position: (block letters)

Date :.....

MERGER REVIEW REGULATIONS 2020

FORM 2

(NOTICE OF MERGER-SIMPLIFIED PROCEDURE)

PART I—EXECUTIVE SUMMARY AND NATURE OF THE PARTIES' BUSINESS

1.—(1) Provide a non-confidential executive summary (up to 500 words) of the merger, specifying the parties to the merger, the nature of the merger (for example, merger, acquisition, or joint venture), the areas of activity of the parties to the merger, the markets on which the merger will have an impact, and the strategic and economic rationale for the merger. It is intended that this summary will be published on the Commission's website subsequent to notification. The summary must be drafted so that it contains no confidential information or business secrets and will constitute Form 1A for purposes of publication under the Act.

(2) Provide an explanation of the reasons why the merger qualifies for the simplified procedure by reference to the relevant provisions of the Merger Review Regulations 2020 and the Merger Review Guidelines 2020.

(3) For each of the merger parties and the other parties to the merger, describe the nature of the undertaking's business.

(4) Information on merger party (or parties) and other parties to the merger. For each merger party as well as for each other party to the merger provide :

(i) name of undertaking ;

(ii) name, address, telephone number, and e-mail address of, and the position held by, the appropriate contact person(s) (the address given must be an address for service to which documents and, in particular, the Commission's decisions and other procedural documents may be notified, and the contact person given must be deemed to be authorised to accept service) ;

(iii) if one or more authorised external representatives of the undertaking is appointed, the representative or representatives to which documents and, in particular, the Commission's decisions and other procedural documents may be notified ;

(iv) name, address, telephone number and e-mail address of, and position held by, each representative ; and

(v) Power of Attorney that each representative is authorised to act.

(5) Provide the name and contact details of—

Nature of the parties' business.

Information about the parties.

B 522

Information about authorised representatives.

- (i) an individual within each of the merger parties ;
- (ii) any authorised representatives of each of the merger parties ;
- (iii) if not already provided in response to (a) and (b), the person(s) submitting the Notice ; and
- (iv) the person to whom the Commission should address any correspondence.

PART II—DETAILS OF THE MERGER, OWNERSHIP AND CONTROL

Description of Merger.

2. Describe the nature of the merger being notified. By reference to the provisions of Section 92 of the Act—

(a) identify the undertakings or persons solely or jointly controlling each of the undertakings concerned, directly or indirectly, and describe the structure of ownership and control of each of the undertakings concerned before the completion of the merger ;

(b) explain whether the proposed merger is—

(i) a purchase or lease of the shares, and interests or assets of the other undertaking in question ;

(ii) the amalgamation or other combination with the other undertaking in question ;

(iii) a joint venture.

(c) explain how the merger will be implemented (for example by conclusion of an agreement).

(d) timing : specify the expected time scale for exchange of contracts and completion of the merger ;

(e) explain which of the following have taken place at the time of notification—

(i) an agreement has been concluded ;

(ii) a controlling interest has been acquired ;

(iii) the intention to launch has been announced, or ;

(iv) the undertakings concerned have demonstrated a good faith intention to conclude an agreement, including the signing of a Memorandum of Understanding or a Letter of intent or other pre-substantive agreement.

(f) indicate the expected date of any major events designed to bring about the completion of the merger ;

(g) explain the structure of ownership and control of each of the undertakings concerned after the completion of the merger ;

(h) describe the strategic and economic rationale/justification of the merger as it affects Nigerian markets ;

(i) state the value of the transaction (the purchase price (or the value of all the assets involved, as the case may be); specify whether this is in the form of equity, cash, or other assets) ;

(j) for the parties to the merger (other than the seller) provide a list of all other undertakings which are active in Nigeria or have a turnover element in Nigeria in which the undertakings, or persons, hold individually or collectively any voting rights, issued share capital or other securities, identifying the holder and stating the percentage held ; and

(k) Provide details of whether the merger is being notified in any other jurisdictions and, if so, whether the merger parties are willing to offer a waiver to support coordination between the Commission and the competition authorities in those jurisdictions.

3. Provide a brief description of the businesses of the merger parties (and, where relevant, their groups).

4. Provide brief details of any other transactions (merger, acquisition, disposal, joint venture) undertaken by both or all merger parties in the last three years (that is, where the merger parties were party to the same transaction).

PART III—ANNUAL TURNOVER

5. Indicate the annual turnover in the last financial year associated with each of—

(a) the acquiring undertaking (including group companies where relevant) ; and

(b) the target undertaking ;

(c) for foreign to foreign mergers, the annual turnover of the Nigerian component is required.

PART IV—SUPPORTING DOCUMENTS

6. The merger party or parties must provide the following—

(a) copies of the final or most recent versions of all documents bringing about the merger, including heads of terms, memorandum of understanding, sale and purchase agreement, business purchase agreement or equivalent. Where these are not in final form, please provide the latest draft and keep the Commission informed of subsequent changes to the document, if any.

(b) copies of the following documents prepared by or for or received by any member(s) of the board of management, the board of directors, or the supervisory board, as applicable in the light of the corporate governance structure, or the other person(s) exercising similar functions (or to whom

such functions have been delegated or entrusted), or the shareholders' meeting—

(i) minutes of the meetings of the board of management, board of directors, supervisory board and shareholders' meeting at which the transaction has been discussed, or excerpts of those minutes relating to the discussion of the transaction ;

(ii) analysis, reports, studies, surveys, presentations and any comparable documents for the purpose of assessing or analysing the merger with respect to its rationale (including documents where the transaction is discussed in relation to potential alternative acquisitions), market shares, competitive conditions, competitors (actual and potential), potential for sales growth or expansion into other product or geographic markets, and/or general market conditions ;

(iii) analysis, reports, studies, surveys and any comparable documents from the last two years for the purpose of assessing any of the affected markets with respect to market shares, competitive conditions, competitors (actual and potential) and/or potential for sales growth or expansion into other product or geographic markets.

Provide copies of the most recent business plan of the acquirer and acquirer group (if relevant) and the target (or merger parties in the case of a full merger).

7. Provide copies of any documents in either of the merger parties' possession which—

(a) have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or the shareholders' meeting of either merger party (whether prepared internally or by external consultants) ; and

(b) also,

(i) set out the rationale for the merger (including but not limited to the benefits of, and/or investment case for the acquisition) ; and/or

(ii) assess or analyse the merger with respect to competitive conditions, competitors (actual and potential), potential for sales growth or expansion into new product or geographic areas, market conditions, market shares and/or the price to be paid. This should include but not necessarily be limited to post-merger business plans or strategy (including integration plans and financial forecasts) and Information Memoranda prepared by or for the merger parties that specifically relate to the sale of the merger transaction. If no such Information Memoranda exist, explain what information or document(s) given to any of the merger parties is meant to serve the function of an Information Memorandum.

8. Provide copies of documents (including, but not necessarily limited to, reports, presentations, studies, internal analyses, industry/market reports or analysis, including customer research and pricing studies) in either merger parties' possession and prepared or published in the last two years which—

(i) have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management of either merger party (whether prepared internally or by external consultants); and

(ii) set out the competitive conditions, market conditions, market shares, competitors, or the merging parties' business plans in relation to the product(s) or service(s) where the merger parties have a horizontal overlap.

PART VI—COMPETITION ASSESSMENT

9. If the merger parties consider that the Commission should assess the competitive effects of the merger against a counterfactual other than the current or pre-existing competitive situation, please describe that counterfactual and explain why the merger parties consider it should be used for that assessment.

Counterfactual.

PART VII—MARKET DEFINITION

10. Describe the product(s) or service(s) and geographic area(s) where the merger parties overlap, where they have vertical relationship, or where they supply related products/services.

11. Identify (and explain the rationale for identifying)—

(i) the narrowest Affected product/service and geographic market(s) where the merger parties overlap, and (if the parties have a vertical relationship or supply related products/services) the narrowest Affected product/service and geographic market(s) at each level of the vertical supply chain and for each related product/service (the Narrowest Affected Market(s)).

(ii) any other plausible Affected product/service and geographic market(s) where the merger parties overlap, have a vertical relationship, or supply related products/services (together with the Narrowest Affected Market(s), the Affected Market(s)).

PART VIII—STRUCTURE OF DEMAND AND SUPPLY IN AFFECTED MARKETS

12.—(1) Provide a brief explanation of the structure of supply, specifying in particular—

(a) the manner in which the parties to the merger produce, price and sell the products and/or services; for example, whether they manufacture, sell and price locally;

(b) the nature and extent of vertical integration of each of the parties to the merger compared with their principal competitors ;

(c) the distribution systems prevailing in the market and their importance, and to what extent distribution is performed by third parties and/or undertakings belonging to the same group as the parties, as well as the importance of exclusive distribution contracts and other types of long-term contracts ; and

(d) the service networks (for example, maintenance and repair) prevailing and their importance in these markets. To what extent are such services performed by third parties and/or undertakings belonging to the same group as the parties ;

(e) If applicable, for any product(s) (including raw materials) or service(s) which the merger parties both purchase, provide details of the merger parties' ability to obtain more favourable commercial conditions from suppliers as a result of this merger and the effects, if any, of such increased ability on competition at any levels of the supply chain.

(2) Provide a brief explanation of the structure of demand, specifying in particular—

(a) the phases of the markets in terms of, for example, take-off, expansion, maturity and decline, and a forecast of the growth rate of demand ;

(b) the importance of customer preferences, for example in terms of brand loyalty, the provision of pre- and after-sales services, the provision of a full range of products, or network effects ;

(c) the role of switching costs (in terms of time and expense) for customers when changing from one supplier to another,

(i) for existing products, and

(ii) for new products replacing existing products (including the normal time horizon of customer contracts) ;

(d) the degree of concentration or dispersion of customers ;

(e) the way customers purchase the products or services in question, in particular whether they use procurement techniques such as requests for proposal and bidding procedures.

(3) Provide a brief explanation on the following—

(a) Degree of product differentiation in each of the Affected Markets ;

(b) Significant entry or expansion into any affected market in the last five years ;

(c) Significant exit from any affected market in the last five years.

PART IX—INFORMATION ON AFFECTED MARKETS

13. For each horizontally affected market, for each vertically affected market and for each of the other markets where the notified operation may have a significant impact, and for each of the last three years, provide the following—

(a) for each of the parties to the merger, the nature of the undertaking's business, the main subsidiaries active and/or brands, product names and/or trademarks used in each of these markets ;

(b) an estimate of the total size of the market in terms of sales value (in Naira) and volume (units). Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations ;

(c) the sales in value and volume, as well as an estimate of the market shares, of each of the parties to the merger ;

(d) an estimate of the market share in value (and where appropriate, volume) of all competitors (including importers) having at least 5% of the relevant market under consideration. Identify the sources used to calculate these market shares and provide documents where available to confirm the calculation ;

(e) an estimate of the total Nigeria-wide capacity. Over the last three years what proportion of this capacity has been accounted for by each of the parties to the merger, and what have their respective rates of capacity utilisation been? If applicable, identify the location and capacity of the manufacturing facilities of each of the parties to the merger in affected markets.

PART X—EFFICIENCIES AND CUSTOMER BENEFITS

14. Where merger parties would like the Commission specifically to consider at phase 1 any efficiencies or relevant customer benefits that the merger parties believe will arise from the merger, describe such efficiencies and provide any documents prepared internally or by external consultants that discuss such expected efficiencies or relevant customer benefits.

PART XI—OTHER INFORMATION

15. Provide any other information that the merger parties consider may be relevant to the Commission's Phase 1 investigation.

PART XII—THIRD PARTY CONTACT DETAILS

16.—(1) Provide contact details for—

(a) the competitors identified under part IX ;

(b) each of the parties' top five customers in each of the affected markets ;

(c) the recent and potential entrants identified under 13.3b ;

(2) To the extent applicable, provide contact details for relevant suppliers providing an estimate of the annual value and/or volume of purchases.

(3) To the extent applicable, provide contact details for each of the companies that the merger parties consider are likely to enter and expand into any of the Affected Markets.

(4) Provide the name and contact details, including address, and email address and telephone number, of—

(a) any relevant regulatory authorities covering the industry in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s).

(b) any trade associations which cover the industry in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s).

PART XIII—REASONED SUBMISSION

17. Provide merger parties' views or submissions on the overall impact of the merger on competition in the market buttressing the legal and economic bases that support the merger including on the issues of market definition, the counterfactual, the merger factors under section 94(2) of the Act, efficiency and public interest considerations and theories of harm.

PART XIV—DECLARATION

Declaration

This Declaration must be signed by a duly authorised person or on behalf of each of the merger parties—

I declare that, to the best of my knowledge and belief, the information given in response to the questions in this Notice is true, correct, and complete in all material respects.

I understand that:

It is a criminal offence under section 112 of the Federal Competition and Consumer Protection Act, 2018 for a person knowingly to supply to the Commission information which is false or misleading in any material respect. This includes supplying such information to another person or any officer of the Commission knowing that the information is to be used for the purpose of supplying information to the Commission;

The Commission shall reject any Notice if it is discovered that it contains information which is false or misleading in any material respect ;

The Commission conducts both Phase 1 and Phase 2 investigations. In the event that the merger is referred for a Phase 2 investigation, information provided to the Commission during the course of the Phase 1 investigation will also be used for the Phase 2 investigation ; and

The Commission will publish to the public some information described in this Notice, and the fact that the merger has been notified, as prescribed by the Act.

Signed :

Name: (block letters)

Position: (block letters)

Date :.....

In addition to the above Declaration, the Declaration below should also be signed by a duly authorised person or on behalf of each of the merger parties if the undertakings are appointing legal representatives:

I confirm that the representative(s) (if any) named in reply to question 1(b) is/are authorised for the purposes of proceedings related to the arrangements described under question 2 to act on behalf of the merger parties respectively specified in response to question 1(b) of this Form/ Guidance Note. I hereby specify the address of the representatives named in reply to question 1(b) as an address at which [name of merger party] will accept service or take receipt of documents.

Signed :

Name: (block letters)

Position: (block letters)

Date :.....

FEDERAL COMPETITION AND CONSUMER PROTECTION ACT 2018

MERGER REVIEW REGULATIONS 2020

FORM 3

(FORM OF DECISIONAL REPORT)

PREAMBLE

Purpose of
this Report.

1.—(1) This Report is issued pursuant to Section 97 (1)(b) of the Federal Competition and Consumer Protection Act 2018 (“the Act”).

(2) Upon its conclusive review of the merger as notified by merger parties, the Commission hereby issues this decisional report in respect of the proposed merger.

Decisional
Report.

2.—(1) The Commission has reviewed the merger with Case Number [.] notified on [.] by [.]

(2) The decision of the Commission regarding the proposed merger is as follows—

Merger Approved

Merger Approved Subject To Conditions

Merger/Implementation of Merger Prohibited

Additional
Considerations.

3.—(1) Where the Commission either approves the merger conditionally or prohibits the merger, it will provide written reasons in accordance with the Merger Review Regulations.

(2) Pursuant to Section 99 of the Act, the Commission may revoke its decision to approve or conditionally approve a merger for the reasons contained therein.

MADE at Abuja this..... day of....., 2020

MR BABATUNDE IRUKERA
Executive Vice Chairman

FEDERAL COMPETITION AND CONSUMER PROTECTION ACT 2018

MERGER REVIEW REGULATIONS 2020

FORM 4

(APPLICATION FOR NEGATIVE CLEARANCE)

Application pursuant to Regulation 9 of the Merger Review Regulation 2020 in order to assess whether the contemplated transaction, constituting the subject of this form (“Transaction”) complies with the Federal Competition and Consumer Protection Act 2018.

DESCRIPTION OF PARTIES

1.—(1) Provide the following information for the applying undertaking(s)—

Name of Undertaking Entity	Address	Telephone and e-mail, Website	Share Distribution %	members of the Board of Directors	External Representative

(2) Provide the following information if the Application is being presented by an external representative :

<i>Name and Surname</i>	<i>Address</i>	<i>Telephone and E-mail</i>

(3) Provide the following information for each undertaking which is either a party to or within the scope of the Transaction :

<i>Name of Undertaking</i>	<i>Address</i>	<i>Nature of Business</i>

B 532

(4) Provide the following information of an authorised person of each undertaking which is either a party to or within the scope of the Transaction :

<i>Name of Undertaking/ Entity</i>	<i>Name of the Un- authorised person</i>	<i>Position of authorised person</i>	<i>Address</i>	<i>Telephone and e-mail</i>

Information regarding the Group.

(5) For the purposes of this form, group relation stands for the following circumstances :

- * Possession of more than half of the capital or the commercial assets of another undertaking ; or
- * Being authorised to use more than half of the voting rights of another undertaking ; or
- * Being authorised to appoint more than half of the members of the board of directors, board of supervisors or legally representing bodies of an undertaking ; or
- * Having the right to manage/ control the activities of another undertaking.

If the undertaking(s), which is/are party to the Transaction belong to a group, provide the following information in relation to the group :

<i>Name</i>	<i>Sector/Industry</i>	<i>Turnover</i>

2.—(1) Provide information on the nature, scope and purpose of the Agreement or Transaction.

Information regarding the Transaction.

(2) Does the Transaction include any arrangements or effects prohibiting its parties to take independent commercial decisions concerning matters such as—

- purchase or sale prices, discounts or other commercial conditions,
- the amount of goods or services that would be produced or distributed,
- technical developments or investments,
- selection of markets or sources of supply, purchases or sales to/from third parties,
- implementing similar terms to the supply of equivalent goods or services,
- offering different services together or separately.

Provide information regarding provisions of any such arrangement and their potential effects.

(3) If undertaking a minority acquisition, provide an assessment of the factors provided under Regulation 6 of the Merger Review Regulations 2020.

3. Relevant market is comprised of relevant product market and relevant geographic market. All goods and/or services deemed by the consumer as substitutable in respect of quality, prices and intended use constitute the relevant product market.

Information regarding Relevant Market

The factors listed below may be considered while defining the relevant product market :

- the degree of physical similarity between the products ;
- intended uses of the products ;
- price differences between two products;
- for producers or consumers the cost for switching from one product to the other ;
- consumer preferences.

Distinct territories such as states or cities or nationwide, where the relevant undertakings' are active for the supply and demand of their products and services, where the conditions of competition are sufficiently homogenous and especially where the conditions of competition are significantly different of the adjacent territories constitute the relevant geographical market.

The factors listed below may be considered while defining the relevant geographic market :

- structure and qualities of the products,
- existence of entry barriers or consumer preferences,
- significant differences in market shares of undertakings or major price differences between the adjacent territories, and
- transportation costs.

(1) In the light of the abovementioned information, define the relevant product market(s) affected by the Agreement/ Transaction, which, in your opinion, the Commission’s assessment of this Application should be based on. Answers should clarify how the abovementioned factors are considered. In addition to the relevant product market(s), identify goods and services that could be affected directly or indirectly from the Agreement/ Transaction.

(2) Define the relevant geographic market(s) affected by the Agreement/ Transaction, on which, in your opinion, the Commission’s assessment of this Application should be based on. Answers should clarify how the abovementioned factors are considered.

(3) For each party, identify every undertaking that belongs to the same group of companies and is active in the abovementioned relevant product market as well as in the downstream and upstream markets.

Information regarding Parties, Competitors and Customers in the Relevant Product Market.

4. (When answering the following questions consider the whole group of companies that the parties belong).

(1) For the last three years provide information regarding market shares of the whole group of companies that the parties belong to in the relevant product market and relevant geographic market. (Market shares for the answers provided under this question can be calculated by considering sales value (in terms of Naira) or sales volume. The sales value (in terms of Naira) or the total size of the market with regard to sales volume and the sales values (in terms of Naira) or sales amount of each of the parties in this extent of the market that are used for the calculation of the market share shall be provided. The sources of these information (e.g. official statistics, studies of independent research companies, hypothetical estimates etc.) should be also indicated and the copies of the relevant pages of these sources should be also submitted.)

(2) Provide the following information regarding the five largest competitors of the parties in the entire relevant market(s) :

<i>Name-Title</i>	<i>Address</i>	<i>Telephone and fax Numbers</i>	<i>Name of the Authorised Person</i>	<i>Market Share in the Entire Relevant Markets</i>

(The sources of the information (e.g. official statistics, studies of independent research companies, hypothetical estimates etc.) should be also indicated and the copies of the relevant pages of these sources should be also submitted, when providing competitors' market shares.)

(3) Provide information regarding the five largest customers of each party in the entire relevant market(s) :

<i>Name-Title</i>	<i>Address</i>	<i>Telephone and fax Numbers</i>	<i>Name of the Authorised Person</i>	<i>Share</i>

5.—(1) Which factors affect entry to relevant product market(s) ? In other words, what are the barriers to enter into this/these relevant product market(s) ? While responding to this question, the following factors should be considered where appropriate :

- Legal entry barriers (requirement of authorization, requirement of complying with particular standards, legal or regulatory controls etc.) ;
- Raw material supplies ;
- Scope and duration of supply and distribution agreements in the market ;
- Importance of research and development activities and particularly patent, know-how and other rights and relevant licenses in the market ;
- Existence of economies of scale/ scope in the market ;
- Total cost of entry as a significant competitor (investment, research and development, setup of a distribution system, advertisement costs etc.) ;
- Installed capacity and capacity usage rates.

Information regarding Entry Barriers and Potential Competition.

(2) Which factors are affecting the entry to the relevant geographic market(s) ? While responding this question, the following factors should be considered where appropriate :

- Transportation costs,
- Sufficiency of existing distribution and retail options,
- Legal commercial barriers such as tariff, quota and import ban,
- Specifications or technical requirements,
- Procedures for purchase and supply of goods,
- Consumer preferences regarding existing brands or products.

(3) Was there an undertaking that newly entered the relevant market within the last three years? If so, provide name, address, telephone and fax numbers and approximate market shares in relevant market(s), as well as name and surname of an authorized person of this undertaking to be contacted.

Information regarding Grounds for Application/ Notification.

6.—(1) If you are applying for a negative clearance, explain the reasons for an assessment under Regulation 9(2) of the Merger Review Regulation for negative clearance. Explain by including the reasons why the Agreement/ Transaction does not have a likely impact of preventing or lessening competition directly or indirectly in a particular market for products or services.

6.2.1. Specify in which aspects the Transaction provides or will provide new development and improvement or economic or technical development in the production or distribution of goods and offering of services. Parties' studies regarding such favorable effects need to be explained and annexed to the Application.

6.2.2. Specify how the consumers will benefit from the developments and improvements will result from the Transaction.

6.3. Provide other issues that you would like to state about the Transaction.

Information regarding the Annexures to the Application.

7. In addition to information provided above—

(1) Enclose a copy of the final version of all documents relating to the Transaction together with its annexes.

(2) Enclose the annual reports showing parties' activities, balance sheets, income statements and accounts for the last three years.

(3) Provide the plans, market researches and relevant studies conducted by the parties or third parties containing information such as market and competitive conditions, existing and potential competitors.

Declaration.

8. This Declaration must be signed by a duly authorised person or on behalf of each of the merger parties :

I declare that, to the best of my knowledge and belief, the information given in response to the questions in this Notice is true, correct, and complete in all material respects.

I understand that :

It is a criminal offence under section 112 of the Federal Competition and Consumer Protection Act, 2018 for a person knowingly to supply to the Commission information which is false or misleading in any material respect. This includes supplying such information to another person or any officer of the Commission knowing that the information is to be used for the purpose of supplying information to the Commission ;

The Commission shall withdraw its clearance if it is discovered that any submission contains information which is false or misleading in any material respect ;

The Commission may publish to the public some information described in this Notice.

Signed :

Name: (block letters)

Position: (block letters)

Date :.....

In addition to the above Declaration, the Declaration below should also be signed by a duly authorised person or on behalf of each of the merger parties if the undertakings are appointing legal representatives:

I confirm that the representative(s) (if any) named in reply to question 1(b) is/are authorised for the purposes of proceedings related to the arrangements described under question 2 to act on behalf of the merger parties respectively specified in response to question 1(b) of this Form/ Guidance Note. I hereby specify the address of the representatives named in reply to question 1(b) as an address at which [name of merger party] will accept service or take receipt of documents.

Signed :

Name: (block letters)

Position: (block letters)

Date :.....

MADE at Abuja this 20th day of November, 2020.

BABATUNDE IRUKERA
Executive Vice-Chairman/Chief Executive Officer
Federal Competition and Consumer
Protection Commission