PUBLICATION OF A PROPOSED REMEDY PACKAGE: PROPOSED ACQUISITION OF 21.61% STAKE IN CENTRAL SECURITIES CLEARING SYSTEM PLC BY FMDQ HOLDINGS PLC ("FMDQ Group")

Further to the Commission's review of the proposed acquisition of 21.61% equity stake by FMDQ Holdings PLC (FMDQ Group) in Central Securities Clearing Systems PLC (CSCS), and specifically, in response to the Commission's determination that the proposed acquisition is likely to substantially lessen competition, the acquirer has submitted to the Commission a proposed remedy package, and same is hereby published in compliance with Regulation 40 of the Federal Competition and Consumer Protection Act, Merger Review Regulation, 2020 (MRR).

BACKGROUND INFORMATION

Acquirer

The Financial Market Dealers Quotation (FMDQ), incorporated in 2011, is a capital market holding company (Nigeria's largest Exchange by market turnover), with five wholly owned subsidiaries including SEC-registered depository FMDQ Depository Limited. FMDQ commenced operations in the debt capital market as an Over-the-Counter platform for trading debt securities and has since morphed into a vertically integrated Financial Market Infrastructure (FMI) Group with subsidiaries providing trade execution, clearing, settlement, central counterparty and depository services. Its exchange subsidiary was approved to carry out trades in debt and equity securities by the Securities and Exchange Commission in 2019.

FMDQ's wholly owned subsidiaries are FMDQ Securities Exchange Limited, FMDQ Clear Limited, FMDQ Depository Limited, FMDQ Private Markets Limited and iQx Consult Limited.

Target

Central Securities Clearing Systems PLC (CSCS) is Nigeria's Central Securities Depository (CSD) licensed to carry on the depository, clearing and settlement of all transactions in the Nigerian Capital Market. The company provides a single access point for all post-trade services in the Nigerian financial market, covering all forms of capital and money market securities including equities, treasury bills, bonds, commodities, funds and cash.

CSCS has operated primarily on the equity side of the Nigerian Capital Market since its incorporation in 1992 as Nigeria's first FMI, processing securities in electronic book-entry form and primarily providing post-trade services for equity transactions.

Relevant market

The Commission has identified the securities depositories market in Nigeria as the relevant market.

THEORY OF HARM

Upon the Commission's initial review of the notification, the Commission determined that the transaction was one which could significantly lessen competition in the securities depositories market because both the target (CSCS) and the acquirer (FMDQ Group) operate the only SEC Registered depositories in the Nigerian Market. Additionally, the Nigerian Exchange Limited (NGX), through its wholly owned subsidiary the Nigerian Stock Exchange (NSE) owns 44.18% equity stake in CSCS as well as 6.42% equity stake in FMDQ. The Existing interest of NGX in both the target and acquirer, raises a concern about a potential for collusion between the two companies, should FMDQ acquire the intended 21.61% equity stake in CSCS.

Additionally, the Commission noted that though FMDQ is acquiring only 21.61% shareholding in CSCS, there are other financial institutions with shareholding in the target (collectively owning at least 17.92% equity stake), and which could be significantly influenced by FMDQ, because the board of FMDQ is chaired by the Central Bank of Nigeria, which has regulatory oversight over these financial institutions, and which itself holds 15.41% equity stake in FMDQ. Furthermore, FMDQ is essentially owned by the CBN and operators in the Banking and Finance Industry (collectively owing at least 91.27% equity stake), who though are separate and distinct entities, have an incentive to act collaboratively.

Thus, the Commission, in arriving at the theory of harm, considered the potential for FMDQ to collude with NGXG and or other financial institutions with shareholding in CSCS, which could result in the de facto control of the target. The Commission's position is that CSCS by virtue of its significant functions in the Securities market, should remain an entity independent of market operators which are in a vertical or horizontal relationship with it, so as to preserve competition in that market.

The Commission therefore determined that the transaction was not approvable without the implementation of appropriate remedies which could address the theory of harm. Thus, the Commission requested that FMDQ should propose remedies it is willing to implement in this regard, pursuant to Regulation 40 of the Merger Review Regulation 2020 (MRR).

PROPOSED REMEDY PACKAGE

FMDQ has submitted the proposed remedy package below.

1. **Behavioural Remedy:**

   Accordingly, we confirm and affirm that FMDQ Group will:

- Maintain an arm's length relationship with NGXG as regards the acquisition of the 21.61% interest in CSCS shares.

- At all times, act in its own interest, as a shareholder and the CSCS (as an investee company) and shall not engage in any actions that will be deemed as constituting collusion/coordination with NGXG or any activity that will undermine competition in the market in which it plays.
- Not engage in any activity that can be construed as restraining the business operations of NGXG or any activity that will undermine competition in the market (with the expectation that FCCPC will obtain same commitment from NGXG).
- Not exert undue pressure on NGXG or any other third party, and shall refrain from engaging in any action or negotiation that will or may amount to collusive practice.

The affirmations above form the ethos of FMDQ Group's business and are deeply entrenched in our culture, as evidenced by FMDQ Group's Corporate Governance Manual, which states in Section 17.11, as follows:

> "Fair Dealing: FMDQ seeks to outperform its competition fairly and honestly and to acquire, explore and develop the Company's business in a fair and honest manner. The Company seeks competitive advantages through superior performance, never through unethical or illegal business practices. Stealing proprietary information, possessing trade secret information obtained without the owner's consent or inducing the disclosures of proprietary information or trade secrets by past or present employees of other companies is prohibited. Each employee shall endeavour to deal fairly with the Company's business associates, option partners, joint ventures, suppliers, competitors, and employees. Accordingly, no employee shall take unfair advantage of anyone through illegal conduct, manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair-dealing practice."

Furthermore, our Board, Management and Staff are also routinely trained on related policies and best practices to ensure that this culture remains widely and fully imbibed.

2. **Structural Remedy:**

Relinquish its right to representation on the Board of CSCS (by way of the appointment as a director), to the extent that FMDQ Group remains in a position of potential conflict by way of holding and operating a CSD registered by the Securities and Exchange Commission, Nigeria. In the event that FMDQ Group surrenders the SEC-issued depository registration, FMDQ Group will immediately become entitled to automatically (without any reference whatsoever) exercise the right to representation on the Board of CSCS and shall appoint the director in accordance with CSCS's governance process.

INVITATION TO SUBMIT COMMENTS

The Commission, pursuant to Regulation 40 (4) of the MRR, hereby invites stakeholders in the relevant industries and other interested parties to submit their comments, feedback, opinions or other information they consider vital to the Commission's consideration of this remedy package.

All submissions should be sent to the Commission via email at mergernotification@fccpc.gov.ng or hard copies may be submitted to the Commission's Head Office at 23, Jimmy Carter Street, FCT, Abuja.

The deadline for receiving submissions is close of business, Tuesday 14th March, 2023.