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Federal Competition And Consumer Protection Act 2018

**Merger Review Regulations 2020**

**Form 2**

**(Notice of Merger- Simplified Procedure)**

**Part I- Executive summary and nature of the parties’ business**

* 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. **Nature of the parties’ business**

For each of the merger parties and the other parties to the merger, describe the nature of the undertaking’s business.

* 1. **Information about the parties**

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:

1. name of undertaking;
2. 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);
3. 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;
4. name, address, telephone number and e-mail address of, and position held by, each representative; and
5. Power of Attorney that each representative is authorised to act.
   1. **Information about authorised representatives**

Provide the name and contact details of:

* 1. an individual within each of the merger parties
  2. any authorised representatives of each of the merger parties
  3. if not already provided in response to (a) and (b), the person(s) submitting the Notice
  4. the person to whom the Commission should address any correspondence.

**PART II – Details of the merger, ownership and control**

***Description of Merger***

1. Describe the nature of the merger being notified. By reference to the provisions of Section 92 of the Act:
2. 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;
3. explain whether the proposed merger is:
4. a purchase or lease of the shares, and interests or assets of the other undertaking in question;
5. the amalgamation or other combination with the other undertaking in question;
6. a joint venture.
7. explain how the merger will be implemented (for example by conclusion of an agreement).
8. timing: specify the expected time scale for exchange of contracts and completion of the merger;
9. explain which of the following have taken place at the time of notification:
   1. an agreement has been concluded;
   2. a controlling interest has been acquired;
   3. the intention to launch has been announced, or;
   4. 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.
10. indicate the expected date of any major events designed to bring about the completion of the merger;
11. explain the structure of ownership and control of each of the undertakings concerned after the completion of the merger;
12. describe the strategic and economic rationale/justification of the merger as it affects Nigerian markets;
13. 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);
14. 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
15. 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.
16. Provide a brief description of the businesses of the merger parties (and, where relevant, their groups).
17. 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**

1. Indicate the annual turnover in the last financial year associated with each of:
   * + - 1. the acquiring undertaking (including group companies where relevant); and
         2. the target undertaking;
         3. for foreign to foreign mergers, the annual turnover of the Nigerian component is required.

**PART IV – Supporting documents**

1. The merger party or parties must provide the following:
2. 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.
3. 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:
4. 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;
5. 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;
6. 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).

1. Provide copies of any documents in either of the merger parties’ possession which:
   * + - 1. 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
         2. also,
     1. set out the rationale for the merger (including but not limited to the benefits of, and/or investment case for the acquisition); and/or
     2. 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**

1. 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:
   1. 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
   2. 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***

1. 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.

**PART VII – Market definition**

1. 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.
2. Identify (and explain the rationale for identifying):
   1. 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)[[1]](#footnote-1) 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)).
   2. any other plausible Affected product/service and geographic market(s)[[2]](#footnote-2) 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***

* 1. Provide a brief explanation of the structure of supply, specifying in particular:

1. 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;
2. the nature and extent of vertical integration of each of the parties to the merger compared with their principal competitors;
3. 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
4. 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?
5. 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.
   1. Provide a brief explanation of the structure of demand, specifying in particular:
6. 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;
7. 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;
8. the role of switching costs (in terms of time and expense) for customers when changing from one supplier to another,
   * 1. for existing products and
     2. for new products replacing existing products (including the normal time horizon of customer contracts);
9. the degree of concentration or dispersion of customers;
10. 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.
    1. Provide a brief explanation on the following:
11. Degree of product differentiation in each of the Affected Markets;
12. Significant entry or expansion into any affected market in the last five years;
13. Significant exit from any affected market in the last five years.

**PART IX- *Information on Affected Markets***

* 1. 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:
  2. 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;
  3. 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;
  4. the sales in value and volume, as well as an estimate of the market shares, of each of the parties to the merger;
  5. 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;
  6. 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***

* 1. 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***

* 1. 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**

* 1. Provide contact details for:

1. the competitors identified under part IX;
2. each of the parties’ top five customers in each of the affected markets;
3. the recent and potential entrants identified under 13.3b;
   1. To the extent applicable, provide contact details for relevant suppliers providing an estimate of the annual value and/or volume of purchases.
   2. 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.
   3. Provide the name and contact details, including address, and email address and telephone number, of:
   4. any relevant regulatory authorities covering the industry in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s).
   5. 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**

18. Provide merger parties’ views or submissions on the overall impact of the merger on competition in the market butressing 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:*

1. 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). [↑](#footnote-ref-1)
2. 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). [↑](#footnote-ref-2)