

**THE FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION ACT
("THE ACT")**

**GUIDELINES ON SIMPLIFIED PROCESS FOR FOREIGN-TO-FOREIGN MERGERS WITH
NIGERIAN COMPONENT**

PART 1: Description of the merger

- 1.1. Provide an executive summary 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, and whether the merger will have an impact within Nigeria, and the strategic and economic rationale for the merger.
- 1.2. Provide a non-confidential summary (no more than 500 words) of the information provided under paragraph 1.1. It is intended that this summary will be published by the Federal Competition and Consumer Protection Commission (the Commission) upon notification. The summary must be drafted so that it contains no confidential information or business secrets.
- 1.3. Provide an explanation of the reasons why the merger qualifies for simplified treatment, for instance, identifying the extra territorial nature of the merger with an element of multiple filing obligations in other jurisdictions

PART 2: Information about the parties

2.1. *Information on notifying party (or parties) and other parties to the merger*

For each notifying 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 position held by, the appropriate contact person;
- iii. the address given must be an address for service to which documents and, in particular, Commission decisions and other procedural documents may be notified, and the contact person given must be deemed to be authorised to accept service;
- iv. if one or more authorised external representatives of the undertaking are appointed, the representative or representatives to which documents and, in particular, Commission decisions and other procedural documents may be notified;
- v. name, address, telephone number and e-mail address of, and position held by, each representative; and
- vi. Power of Attorney that each representative is authorised to act.

2.2. *Nature of the parties' business*

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

PART 3: Details of the merger, ownership and control

The information sought in this part may, in part, be illustrated by the use of organisation charts or diagrams to show matrix of relationships, the structure of ownership and control of the undertakings before and after completion of the merger.

- 3.1. Describe the nature of the merger being notified. By reference to the provisions of Section 92 (2) of the Act:
- i. 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;
 - ii. explain whether the proposed merger is:
 - a. a purchase or lease of the shares, and interests or assets of the other concerned undertaking;
 - b. the amalgamation or other combination with the other concerned undertaking;
 - c. a joint venture.
 - iii. explain how the merger will be implemented (for example by conclusion of an agreement);
 - iv. explain which of the following have taken place at the time of notification:
 - a. an agreement has been concluded;
 - b. a controlling interest has been acquired;
 - c. the undertakings concerned have demonstrated a good faith intention to conclude an agreement, including the signing of a Memorandum of Understanding or any other form of expression of intent.
 - v. indicate the expected date of any major events contemplated to bring about the completion of the merger;
 - vi. explain the structure of ownership and control of each of the undertakings concerned after the completion of the merger;
 - vii. describe the economic rationale of the merger as it affects Nigerian markets;
 - viii. 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);

PART 4: TURNOVER

- 4.1 For each of the undertakings concerned, provide information on turnover in Nigeria in the last financial year.
- 4.2 For the purposes of this part, financial information used for calculating turnover of an undertaking shall include the undertaking's audited financial statements, for the end of the immediately preceding financial year to the notification.

PART 5: SUPPORTING DOCUMENTATION

The notifying party or parties must provide the following:

- 5.1. copies of the final or most recent versions of all documents relevant to the merger, whether by agreement between the parties to the merger or acquisition of a controlling interest; and
- 5.2. an indication of the internet address or online location, if any, at which the most recent financial information including annual reports and accounts of the parties to the merger are available to the extent that they pertain to Nigeria. If no such internet address or location exists, copies of the financial information including the most recent annual reports and accounts of the parties to the merger.

Part 6: Market definitions

6.1 The relevant product market serves to identify the scope within which the market power of the new entity resulting from the merger must be assessed. When presenting relevant product markets, the notifying party or parties are required to submit their market studies and internal documents indicating:

6.1.1 all products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use. [A relevant product market may in some cases be composed of a number of individual products and/or services which present largely identical physical or technical characteristics and are interchangeable.]

6.2 The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of relevant products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring geographic areas because, in particular, conditions of competition are appreciably different in those areas. When presenting relevant geographic markets, the notifying party or parties are required to submit their market studies and internal documents indicating:

6.2.1 the nature and characteristics of the products or services concerned, the existence of entry barriers, consumer preferences, appreciable differences in the undertakings' market shares between neighbouring geographic areas, or substantial price differences.

Part 7: Information about Local Market Activities

7.1 Provide a brief explanation on the following:

- 7.1.1 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 within Nigeria;
- 7.1.2 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];

- 7.1.3 the sales in value and volume, as well as an estimate of the market shares, of each of the parties to the merger. Indicate if there have been significant changes to the sales and market shares for the last three financial years; and
- 7.1.4 the nature of the existing horizontal and vertical relationships, an estimate of the market share in value (and where appropriate, volume) of the five largest competitors (indicating the basis for the estimates). Provide the name, address, telephone number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) for these competitors.
- 7.2 In respect of each party to the merger provide a brief description of:
- 7.2.1 the policy and scope of research and development identifying specific past and current efforts and future plans;
- 7.2.2 innovations in products and/or services brought to the market over the last 3 (three) years, products intended for the market over the next 3 (three) years, as well as important intellectual property rights owned or controlled, or otherwise legitimately exercised under licence, franchise or similar arrangements.

Part 8: Business Secrets

Where interests may be subject to harm by reason of disclosure or publication of the information requested, then such information may be provided under separate cover with each page clearly marked 'Business Secrets'. Submission must include acceptable reasons why the relevant information should not be divulged or published.

Part 9: Declaration

The notification must include a declaration by or on behalf of all the notifying parties:

"The notifying party or parties, under penalty of law, and full and frank disclosure declare that, to the best of their knowledge and belief:

- the information provided in this notification is true, correct, and complete;
- true and complete copies of documents required have been submitted;
- all estimates are identified as such and are best estimates of the underlying facts; and
- all the opinions expressed are sincere.

The notifying party or parties recognise the powers of the Commission under the Act and in particular but without limitation under the provisions of Sections 92 – 103 of the Act."

Applicable Fees for Foreign-to-Foreign Merger Notifications

As approved by the Federal Competition and Consumer Protection Commission (the Commission), the following fees shall apply with respect to foreign-to-foreign mergers with a nexus to Nigeria:

	<i>Threshold</i>	<i>Fees</i>
1	Merger with combined turnover of ₦1 billion and above	₦3,000,000.00 or 0.1% of the combined turnover, whichever is higher.
2	Merger where target undertaking has turnover of up to ₦500 million and between ₦1 billion	₦2,000,000.00

Applicable Fees for Foreign-to-Foreign Merger Notifications: EXPEDITED PROCEDURE

1. The Commission, in the interest of transactional efficiency, shall adopt an expedited procedure, for foreign to foreign mergers where it will conduct a review under the simplified procedure.
2. Under the expedited procedure, the Commission shall conclude its review and issue its decision within 15 (fifteen) business days.
3. The expedited procedure fee is ₦5,000,000 (*five million Naira*) to be paid in addition to the application fee.