Federal Competition and Consumer Protection Commission
Merger Review Regulations
2020

ARRANGEMENT OF REGULATIONS

FEDERAL COMPETITION AND CONSUMER PROTECTION ACT, 2018
(A29 (Act No.1 of 2019)

MERGER REVIEW REGULATIONS, 2020

[.] 2020

In exercise of the powers conferred upon it by sections 17 and 18 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

Scope of the Regulations

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.

Objectives 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.

PART II - JURISDICTIONAL APPLICABILITY OF MERGERS

Merging Parties

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

(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; and

(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.

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 a cooperation on matters of research and development, shall not be considered a merger.

Material Influence Test for Acquisition of Minority Shareholding

6. – (1) In assessing material influence under section 92(2)(f) of the Act, the Commission's consideration, while including shareholding and voting power, shall extend 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.

(2) The factors that may be relevant 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.

(3) The Commission may also consider 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.

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-

(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. Where there is an increase in shareholding or a level of board representation, further to an earlier acquisition, that confers the ability materially to influence an undertaking's policy to a level of control, that further acquisition will produce a new relevant merger situation.

Foreign mergers with Nigerian component

9. (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.

(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 component materiality, 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 laws of Nigeria.

PART III- NEGATIVE CLEARANCE AND PRE-MERGER CONSULTATION

Application for Negative Clearance

10. (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 negative 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 grant negative clearance.

(4) 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.

(5) The Commission may revoke the grant of a negative clearance where the application was based on insufficient or inaccurate information.

(6) An application for negative clearance shall be completed using Form MRR 2 and lodged in five copies with the Commission upon the payment of the prescribed fees specified under the Second Schedule to these regulations.

Pre-Notification Consultation

11. (1) Parties may request for pre-notification consultations with the Commission to assist in determining the course of a case.

(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 matters;

(c) the requirements of Forms MRR 1 and MRR 2; and

(d) requests for confidential treatment of information or documents.

PART IV- THE NOTIFICATION PROCESS

Small Mergers

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

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

(3) Such notifications will attract merger filing fees.

(4) Such notification and application shall be in Form MRR 1.

Large Mergers

13. (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 provide such information prescribed by Form MRR 1 and as may be required by the Commission and submit all relevant supporting documents to the Commission.

First Detailed Review (Phase One) Process

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.

(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.

Notification Fees

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

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

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

Publishing of the Merger Notice and Service on Employees

16. (1) The Commission shall, within five business days of the receipt of the notification application, publish a notice of the merger in the form and manner prescribed by Form MRR1A, which is a non-confidential summary of the entire information in the application and shall include-

(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 parties to the merger shall furnish to the Commission, evidence of service of Form MRR 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.

Concluding Phase One

17. (1) The Commission shall undertake the first detailed review-

(a) in the case of a small merger, within twenty (20) business days of notification; and

(b) in the case of a large merger, within sixty business days of notification.

(2) The Commission may extend the timeframe to conclude the first detailed review in any of the following circumstances-

(a) a request for additional information or clarification from the merging undertakings or third parties;

(b) upon issuing of inquiries to competitors, customers or suppliers seeking their views on the merger, as well as other contacts with market participants, aimed at clarifying the conditions for competition in a given market or the role of the merging undertakings in that market.

(3) Towards the end of phase one, a state-of-play meeting may be convened with the notifying parties in attendance where the Commission shall inform them about the outcome of the first detailed review.

(4) If the merger presents competition concerns of a remediable nature, the undertakings may offer remedies, which may be accepted or not by the Commission.

(5) Where it appears to the Commission that the merger is likely to substantially prevent or lessen competition, the Commission shall undertake a second detailed review, commencing phase two of the review.

(6) 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.

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

(a) in the case of small mergers,

(i) where the undertakings offer remedies that are acceptable to the Commission, 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;

(b) in the case of large mergers,

(i) where the undertakings offer remedies that are acceptable to the Commission, 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 one hundred and twenty (120) business days.

Undertaking and Concluding Phase 2

18. (1) At the second detailed review, the Commission shall conduct a review and investigation with respect to -

(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.

(2) Where the Commission makes a positive determination with respect to sub-regulation (1), notwithstanding its decision at phase one, that the merger is likely to result in a substantial prevention or lessening of competition, it shall approve the merger subject to such conditions it may impose.

(3) Where the Commission approves the merger at phase two, it may require the merging parties to:

(a) take an action to remedy, mitigate, or prevent the substantial lessening or prevention of competition; or

(b) fulfill any other conditions as may be appropriate in the circumstance of the case.

Disposition of Notification and Review Process

19. (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.

(2) The Commission shall issue a report in Form MRR 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 MRR 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, or is requested by a party to the merger, it shall issue a written report of its reasons for its decision within fourteen (14) business days of the disposition of the notification process.

Simplified and Expedited Procedure

20. (1) Any party notifying-

(a) a small merger;

(b) a foreign merger with a domestic component; or

(c) any other case where a self-assessment indicates that the merger is less than likely to prevent or lessen competition and no further evidence is likely to be uncovered to revise this finding,

may apply under the simplified procedure using Form MRR 2.

(2) In appropriate cases, a notifying party in a merger may apply under the expedited procedure which shall reduce the timeframe for the first detailed review by-

(a) five (5) business days in the case of small mergers; and

(b) fifteen (15) business days in the case of large mergers.

Appointment of Representatives by Undertakings

21. (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.

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

PART V- SUBSTANTIVE MERGER ASSESSMENT

Merger Assessment

22. (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 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 are mergers between undertakings which operate at different levels of the production or supply chain of an industry.

(c) conglomerate mergers 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

23. (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).

Analytical Tool for Relevant Market

24. (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.

Market Concentration (Market Shares and HHI)

25. (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.

(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-

(a) the merger parties;

(b) competitors;

(c) customers;

(d) suppliers;

(e) trade associations; and

(f) 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 firms in the market calculated by adding the sum of the squares of the market shares of each firm 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; or

b) acquiring a minority interest and may fall within the purview of Section 92(2)(f) of the Act.

Ease of Entry

26. (1) A barrier to entry is any factor that prevents or hinders effective new entry 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.

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

(a) legal or regulatory;

(b) structural;

(c) strategic; or

(d) other types of entry barriers.

(4) In assessing whether new entry 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.

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

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

Countervailing Buyer Power

27. (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.

(2) Countervailing power exists when buyers have special characteristics that enable them to credibly threaten to bypass the merged firm, 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 onus 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.

Failing Firm

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

(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.

Actual and potential import competition

29. (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.

(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 firm attempted to exercise increased market power post-merger.

Dynamic characteristics of the market

30. (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

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

Mergers involving vigorous and effective competitors

31. (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 firm or increase the ability and incentive of a small number of firms to engage in coordinated conduct.

Removal of a vigorous and effective competitor

32. (1) 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.

(2) 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

33. 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

34. (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 firm finds it profitable to raise price, irrespective of the reactions of its competitors.

(b) coordinated effects which arise when a merger facilitates coordinated interaction by competitors to raise price.

(c) vertical or conglomerate effects which arise principally in non-horizontal mergers where the merger creates or strengthens the ability of the merged firm 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.

PART VI- REMEDIES AND APPEALS

Remedies

35. (1) If a notified transaction raises substantial competition concerns, the Commission may allow the notifying party to propose remedies and 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

36. 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 remedies, which involve constraints on the future conduct of a merged entity (commitment with respect to certain contractual clauses); and

(c) A mixture of both structural and behavioural.

Independent evaluation of remedies

37. (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.

(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.

Appeals

38. (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.

(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

Power of the Commission to Issue Guidance

39. 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.

Interpretation

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

"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;

"Threshold Regulations" means the Merger Threshold Regulations 2019.

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

MADE at Abuja this day of , 2020

MR. BABATUNDE IRUKERA
Chief Executive Officer