

Insights and Commentary from Dentons

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This document was authored by representatives of Adepetun Caxton-Martins Agbor & Segun prior to our combination's launch and continues to be offered to provide clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

NEWSLETTER AUGUST 2019

KEY FEATURES OF THE JOINT ADVISORY AND GUIDANCE ON MERGERS, ACQUISITIONS & OTHER BUSINESS COMBINATIONS NOTIFICATION

On the 30th of January 2019, President Muhammadu Buhari signed the Federal Competition and Consumer Protection Act 2018 (“FCCPA”) into law. The FCCPA repealed the Consumer Protection Council Act 1992 and created the Federal Competition and Consumer Protection Council (“FCCPC”) in place of the Consumer Protection Council.

Prior to the enactment of the FCCPA, mergers and acquisitions (“M&As”) in Nigeria were generally regulated by the Investments and Securities Act, 2007 (“ISA”) with the Securities and Exchange Commission (“SEC”) having regulatory oversight. Presently, the FCCPA has repealed the provisions of the ISA that authorised the SEC to conduct assessments and approve M&As. These powers are now to be exercised by the FCCPC. Specifically, the FCCPC is vested with the powers to review all mergers and business combinations to ensure that such combinations do not distort or impede the markets; a function which was previously handled by the SEC.

Due to the delay in instituting a board for the FCCPC as required under the FCCPA, there were uncertainties regarding M&A notifications and applications filed with the SEC prior to the creation of the FCCPC. There were also uncertainties regarding the regulation of M&As for companies who were contemplating new transactions. In a bid to address these uncertainties, the FCCPC and the SEC issued a Joint Advisory and Guidance on Mergers, Acquisitions & Other Business Combinations Notification (“Advisory Notice”) on 3rd May 2019 to clarify the status of pending applications and provide guidance for new applications. The Advisory Notice remains in force until otherwise discontinued.

KEY FEATURES OF THE ADVISORY NOTICE

- During the period when the Advisory Notice is in force, all notifications and filings relating to M&As are to be reviewed under the subsisting SEC regulations, guidelines and applicable fees.
- The SEC regulations, guidelines and applicable fees, which were in place prior to the enactment of the FCCPA will apply to all pending and subsequent merger transactions until further notice.

- All notifications for mergers are to be filed at the FCCPC office or at the SEC/FCCPA Interim Joint Merger Review Desk¹.
- All fees for M&A approval are to be paid to the FCCPC.
- The FCCPC and the SEC are to jointly review merger notifications, however, the FCCPC will have veto powers.

It is our view that the structure outlined in the Advisory Notice is not expected to apply indefinitely as the FCCPC is likely to issue more robust guidelines for M&A transactions in due course.

Qualifications

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Adepetun Caxton-Martins Agbor & Segun by telephone (+234 1 462 2094), fax (+234 01 461 3140)



¹This is located at SEC Tower, Plot 271, Samuel Asesujo Ademulegun Street, Central Business District, FCT, Abuja and the SEC/FCCPC Interim Joint Merger Review Desk at SEC Office 3, Idejo Street, Opposite ICON House, Off Adeola Odeku Street, Victoria Island, Lagos.