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Key contacts

Zelda Akindele
Partner,
Competition
zelda.akindele
@templars-law.com

Adebimpe MacGregor
Senior Associate,
Competition
adebimpe.macgregor
@templars-law.com

TEMPLARS ThoughtLab

Mergers and Acquisitions in Nigeria's Oil and Gas Sector: *Avoiding Gun-Jumping*

Introduction

Over the last few years, there has been a surge in M&A activity in the Nigerian Petroleum Industry (the "**Industry**") spurred by the IOC divestments and increasing participation by indigenous players. In a sector where asset transfers, joint ventures and corporate restructuring are routine, this increase in M&A deals has been marked by transactions that are high-value, complex and high-stakes '*bet the company*' deals. These deals are all unfolding against the backdrop of an enhanced legislative framework with robust regulatory structures including the Petroleum Industry Act, 2021 ("**PIA**"), the assignment regulations issued by the Nigerian Upstream Petroleum Regulatory Commission ("**NUPRC**") and the Nigerian Midstream and Downstream Petroleum Regulatory Authority ("**NMDPRA**").

And so, as transactions become more strategic, regulatory compliance has become a core consideration for deal structuring and is no longer limited to obtaining the legendary 'Ministerial Consent' for upstream deals, and 'NMDPRA catch-all approval' for midstream and downstream deals. One significant consideration is that whilst the legislation referenced above are all sector-specific, the Industry is also subject to the Federal Competition and Consumer Protection Act, 2018 ("**FCCPA**") and its detailed competition and merger clearance framework. Competition law rules have evolved significantly under the FCCPA and are vigorously enforced by the Federal Competition and Consumer Protection Commission ("**Commission**") to the extent that parties proceeding without fully observing procedural safeguards now face penalties including fines, and in some cases, the unwinding of the transaction. Given the asset-heavy nature of its transactions, the oil and gas sector is especially exposed.

Amongst the many requirements to navigate under the FCCPA, one area that continues to pose risks, particularly for deal timelines and completion, is the issue of **Gun-jumping.** As regulatory scrutiny deepens, particularly in the oil and gas sector, legally sound deal structuring is now critical to withstand such scrutiny. In this article we explore the risk of gun-jumping and the importance of deal structuring to avoid crossing those regulatory red lines.

Regulatory Framework

At the heart of M&A in the Nigerian oil and gas sector is the PIA, which establishes the overarching operational and regulatory framework governing the oil and gas sector. The PIA covers key aspects such as asset transfers, joint ventures, change of control and other petroleum related arrangements. Regulatory approvals from both the NUPRC and NMDPRA, where applicable, are often required to validate these transactions under the sector-specific regime.

On the competition law front, the Commission plays a pivotal role in overseeing the same M&A activities within Nigeria's oil and gas sector. In enforcing the provisions of the FCCPA, the Commission requires that transactions which meet specific thresholds (*control and turnover*) must be notified for its review and obtain approval prior to implementation.

Importantly, the FCCPA establishes a '*standstill obligation'* which prohibits parties from implementing a notifiable transaction, whether in whole or in part, before obtaining the Commission's approval. This prohibition gives rise to the concept of *Gun-jumping.* Under sections 95 and 96 of the FCCPA, as supplemented by the Merger Review Regulations, 2020, the Merger Review Guidelines, 2020 and the Guidance Note to Merger Parties in Planning Mergers Negotiations and Exchange of Documents: Measures to Reduce the Risk of Gun Jumping ("the **Guidance Note**"), parties must remain independent competitors until regulatory approval is obtained, and any acts amounting to implementation before clearance may attract administrative sanctions and, in certain circumstances, be rendered void.

Under the relevant rules, 'implementation' is understood very broadly and may therefore arise not only where parties formally consummate a transaction before approval, but also where they engage in pre-closing conduct that effectively transfers control or facilitates coordination between them. This may include the exchange of competitively sensitive information without adequate safeguards, influencing the target's commercial decisions, coordinating pricing or customer strategies, integrating business operations, sharing employees, or imposing restrictions on the target's ordinary course of business. While the Commission recognises that certain forms of pre-closing coordination may be commercially necessary, such activities must be carefully structured to avoid any actual coordination or integration before clearance is obtained. The Commission accordingly recommends the use of specific mechanisms to mitigate gun-jumping risks.

Specifically, parties are under the obligation to notify the Commission of their transaction and await approval before making any major decisions that could affect market competition or indicate that the transaction has been completed[1].

Penalties

Under the FCCPA, the consequences of gun-jumping and failure to notify a notifiable transaction are significant. Sections 95 and 96 of the Act provide that the implementation of a notifiable merger without the prior approval of the Commission renders the transaction void and of no legal effect. In addition, the parties are liable, upon conviction, to a fine not exceeding 10% (ten per cent) of the turnover of the undertaking in the business year preceding the commission of the offence, or such other percentage as the court may determine in the circumstances.

[1] See sections 95(5), 96(4) and (5) of the FCCPA and Regulation 13 of the Merger Review Regulation.

Beyond the above sanctions, the Commission may also impose administrative penalties for gun-jumping. In determining the appropriate sanction, the Commission may consider factors such as whether the transaction was consummated without notification, whether notification occurred only after implementation, whether the parties implemented the transaction while the Commission's review was ongoing, the nature of the Commission's eventual decision, the existence of horizontal overlaps or vertical integration, and the economic size of the parties involved. The Commission may also consider whether acts undertaken before approval should be declared void, particularly where such acts occurred during the period between consummation and the Commission's final decision.

Similarly, the sector regulators, the NUPRC[2] and the NMDPRA[3] maintain separate enforcement powers under the PIA and applicable regulations. Non-compliance with sector-specific approval requirements, including the unauthorised transfer of petroleum assets or interests and the failure to obtain requisite regulatory consents, may attract administrative sanctions, monetary penalties, directives to unwind non-compliant arrangements, and, in appropriate cases, the suspension or revocation of licences, leases, or permits.

These parallel enforcement regimes underscore the importance of ensuring both competition and sector-specific regulatory compliance throughout the lifecycle of an M&A transaction within the oil and gas sector.

Understanding Gun-jumping

Gun-jumping refers to any premature action taken by the parties involved in a merger or acquisition that goes beyond mere discussions towards implementation, and which could affect the competitive dynamics of the market before regulatory approval is granted. Simply put, when parties act in ways that prematurely combine their operations, such actions risk being deemed gun-jumping, such as early coordination, exchange of sensitive information, or partial integration. Hence, the regulatory 'standstill period' as explained above. It is important for parties to note that the rationale behind the wait period is to keep the competitive environment which existed prior to the proposed merger as intact as possible until a determination is made as to the competitive effects of the transaction and whether or not it will be approved.

During the regulatory standstill period, parties are required to ensure that they take no steps nor undertake any activities that may be deemed coordination or integration of their businesses. This poses a challenge for the realities of commercial deals however, as parties invariably wish to safeguard the target's value and hit the ground running upon closing for maximum operational efficiency, which requires a degree of information sharing and operational planning. Such information can be commercially sensitive and often includes financial data, strategic plans, and/or asset details that could give one party an unfair competitive advantage. Sharing these details prematurely or making operational decisions about the future of the assets/entities being acquired, are examples of Gun-jumping. Even seemingly administrative actions, such as coordinating on post-transaction management or co-investing in new projects, can be viewed as early integration and thus violate the regulatory framework.

Additional complexities of transactions in the oil and gas sector which raise unique risks for gun-jumping include the need to obtain specific approvals from the NUPRC or NMDPRA (as applicable) beyond merger clearance. Thus, any action akin to an effort to control or influence the direction of the transaction before clearance or approval is given can attract significant penalties or even cause the entire transaction to be delayed or voided. Therefore, understanding and preventing gun-jumping is crucial in structuring M&A deals that comply with both competition laws and sector-specific regulations, and legal structures can be employed to mitigate any gun-jumping risks and allow

[2] Regulation 21 of the Nigeria Upstream Petroleum (Assignment of Interest), Regulations 2024.
[3] Regulation 143 of the Midstream and Downstream Petroleum Operations Regulations, 2025.

regulatory-compliant sharing of commercially sensitive information between the parties prior to full integration.

Navigating Gun-jumping Risks

The Commission does concede that there might be legitimate business reasons for parties to engage in certain forms of pre-closing coordination to organise their notification and clearance strategy and set in motion the process for a successful future implementation of the merger, such as undertaking due diligence and transition planning for parties. In recognition of these commercial realities, the Commission released the *Guidance Note* which provides a framework for structuring such engagement in a manner that preserves the parties' independence pending regulatory clearance and minimises competition law risk.

At the centre of the Guidance Note is the *Competition Protocol*, a framework designed to help transacting parties prevent gun-jumping and ensure interim operations comply with the provision of the FCCPA and the Commission's regulations without compromising their independence or inadvertently implementing the transaction before approval. While the Protocol is not specific to transactions within the oil and gas sector, it is a useful example of the types of legal and operational safeguards that can be employed to manage gun-jumping risk[4].

Given the long timelines, regulatory complexity and extensive information sharing typically involved in M&A transactions within the oil and gas sector, parties should consider implementing appropriate interim governance measures during the period between signing and closing. These may include the **use of clean teams** to manage sensitive information flows, **standstill provisions** to preserve the parties' competitive independence, **interim operating arrangements** that clearly delineate decision-making responsibilities, and **dedicated internal and external teams** to oversee regulatory and integration planning.

While these mechanisms do not eliminate gun-jumping risk altogether, they provide a structured framework within which parties can undertake legitimate pre-closing activities, such as due diligence, regulatory engagement and transaction planning, without inadvertently exercising control over one another's businesses. In a sector where transactions frequently involve strategic assets, lengthy approval processes and the exchange of commercially sensitive information, robust interim governance arrangements are increasingly becoming an essential component of transaction execution and regulatory risk management.

Conclusion

M&A transactions in Nigeria's oil and gas sector tend to be highly complex, requiring a blend of commercial insight and astute legal structuring for regulatory compliance. A key regulatory risk in this process being gun-jumping. While regulators such as the Commission allow certain pre-closing activities, any operational integration before clearance is prohibited. This is why dealmakers must work closely with legal advisors to implement strategic structures to manage these regulatory risks.

Compliance with competition laws and sector-specific regulations from bodies like the Commission, NUPRC, and NMDPRA is critical to avoid significant cost and timing implications and protect the integrity of the transaction.

[4] Paragraph 4 of the Guidance Note 2020.

A well-structured, and compliant M&A approach not only reduces gun-jumping risks but most importantly, aligns commercial objectives with regulatory requirements. For parties aiming to close out their transactions seamlessly and without regulatory hurdles, risk mitigated legal structuring is non-negotiable in the current regulatory climate.

If you require any further information, do not hesitate to contact us.