

**Baker
McKenzie.**

Competition in Africa Report 2022

IMPORTANT DISCLAIMER:

The material in this report is of the nature of general comment only. It is not offered as legal advice on any specific issue or matter and should not be taken as such. Readers should refrain from acting on the basis of any discussion contained in this report without obtaining specific legal advice on the particular facts and circumstances at issue. Whilst the authors have exerted every effort to provide accurate and up-to-date information on laws and policy, these matters are continuously subject to change. Furthermore, the application of these laws depends on the particular facts and circumstances of each situation, and therefore, readers should consult their lawyer before taking any action.

March 2022

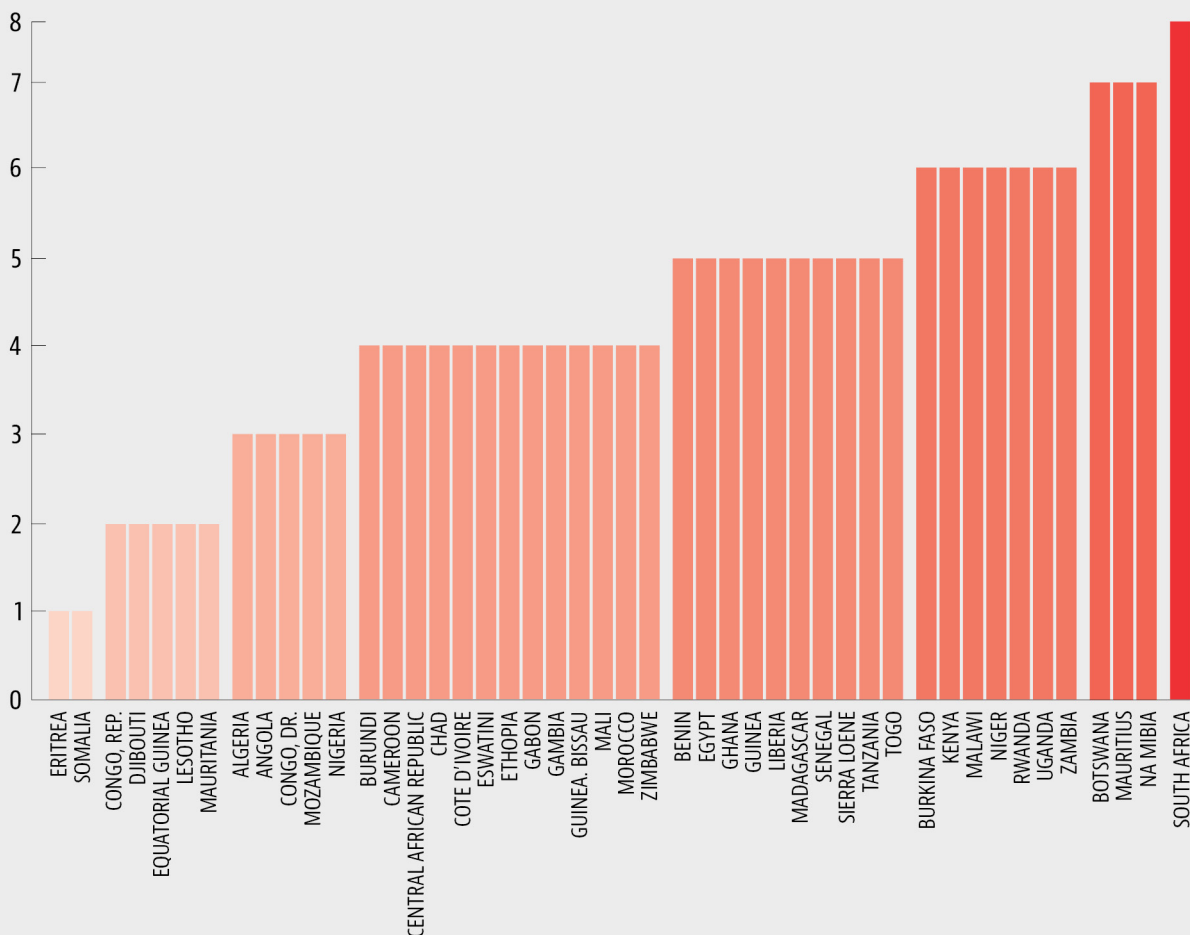
CONTENTS

Foreword	4	Malawi	163
Geographical Overview	6	Mali	172
Algeria	16	Mauritius	181
Angola	25	Morocco	189
Botswana	34	Mozambique	196
Cameroon	43	Namibia	205
Cape Verde	51	Nigeria	216
COMESA	59	Rwanda	227
Cote D'Ivoire	68	Senegal	235
Egypt	76	South Africa	244
Eswatini	85	Sudan	262
Ethiopia	96	Tanzania	270
Gabon	103	Togo	278
Gambia	120	Tunisia	286
Ghana	128	Uganda	295
Kenya	137	Zambia	303
Madagascar	152	Zimbabwe	313

FOREWORD

Competition authorities play an important role as champions, advocates and enforcers of competition policy across economies and view competition policy as a key driver of economic growth. Although over the past two years African competition regulators have actively engaged in efforts to address pandemic-related challenges, there has also been a general upward trend in competition policy enforcement across the continent. Matrices used to analyse economic transformation, such as the Bertelsmann Transformation Index, note the existence of comprehensive competition laws that are enforced (to some degree) in at least 46 African jurisdictions. The graph below, by **Bertelsmann Transformation Index**, denotes the existence of comprehensive competition laws that are strictly enforced, measured on a scale of 1 to 10, where 10 denotes high levels of enforcement. Almost half of the jurisdictions received a score of five or higher, demonstrating robust enforcement across much of the continent. Additionally, a review of historical scores indicates a year-on-year increase in respect of a number of African jurisdictions, with countries such as Eswatini, Ethiopia and Namibia each ranking higher than the previous year.

COMPETITION POLICY ENFORCEMENT IN AFRICA BY COUNTRY



Source: Bertelsmann Stiftung TransformTION Index Scores, 2020

Note: Measure of scale of 1 to 10, where 10 denotes the existence of comprehensive competition laws that are strictly enforced

FOREWORD

This upward trend in enforcement is highlighted by a number of significant recent developments in competition law regulation around the continent, which draw attention to the continent's collective enthusiasm in ensuring competition compliance, and its determination in promoting and protecting more effective economies.

Furthermore, a number of African jurisdictions have strengthened their competition and antitrust regimes by way of amendments to existing legislation, the introduction of new laws and regulations, and renewed fervour and political will to enforce existing laws.

This Africa Competition Report ("ACR") has been a collaborative effort between Baker McKenzie and its Africa Relationship Firms ("ARFs"), covering a detailed analysis and overview of recent developments in competition law enforcement and competition policy in 32 African jurisdictions. This report expands the scope of earlier ACRs, considering not only recent developments in competition law enforcement and competition policy in each of the highlighted jurisdictions but also providing an overview of regulatory and legislative dynamics and challenges in selected markets.



Lerisha Naidu

Partner

T +27 11 911 4323

lerisha.naidu@bakermckenzie.com



Angelo Tzarevski

Associate Director

T +27 11 911 4316

angelo.tzarevski@bakermckenzie.com



Sphesihle Nxumalo

Associate

T +27 11 911 4335

sphesihle.nxumalo@bakermckenzie.com



Zareenah Rasool

Associate

T +27 11 911 4343

zareenah.rasool@bakermckenzie.com



Jarryd Hartley

Candidate Attorney

T +27 11 911 4331

jarryd.hartley@bakermckenzie.com

GEOGRAPHICAL OVERVIEW

Status of competition law: geographical overview

Twenty-nine of the 32 surveyed African jurisdictions have national competition law, while only two have no national competition law but are members of a regional competition law body. This is illustrated in the map below:



KEY

Jurisdictions with national competition law

Jurisdictions with no national competition law but are part of a regional competition body

OVERVIEW

No.	JURISDICTION	DAWN RAIDS	FOREIGN DIRECT INVESTMENT REGIME	MERGER FILING	GUN-JUMPING LAWS	HORIZONTAL / VERTICAL RESTRAINTS
1.	Algeria	No Risk	See Chapter for Further Detail	Mandatory & Suspensory	See Chapter for Further Detail	Yes
2.	Angola	No Risk	Sector-Specific Laws	Mandatory & Suspensory	Yes	No
3.	Botswana	Low - Medium Risk	No	Mandatory & Suspensory	Yes	No
4.	Cameroon	No Risk	Yes	Mandatory & Suspensory	See Chapter for Further Detail	Yes
5.	Cape Verde	No Risk	Sector-Specific Laws	Mandatory & Suspensory	Yes	No
6.	COMESA	No Risk	No	Mandatory & Non-Suspensory	Yes	See Chapter for Further Detail
7.	Cote d'Ivoire	Low-Medium Risk	No	Voluntary & Non-Suspensory	No	Yes
8.	Egypt	High Risk	No	See Chapter for Further Detail	See Chapter for Further Detail	Yes
9.	Eswatini	No Risk	No	Mandatory & Suspensory	Yes	Yes
10.	Ethiopia	High Risk	Yes	Mandatory & Suspensory	Yes	No
11.	Gabon	No Risk	See Chapter for Further Detail	Mandatory & Suspensory	Yes	Yes
12.	Gambia	No Risk	No	See Chapter for Further Detail	See Chapter for Further Detail	No
13.	Ghana	No risk	No	Mandatory & Suspensory	Yes	Yes
14.	Kenya	Medium Risk	See Chapter for Further Detail	Mandatory & Suspensory	Yes	See Chapter for Further Detail
15.	Madagascar	No risk	Sector-Specific Laws	Mandatory & Suspensory	Yes	Yes
16.	Malawi	Medium Risk	No	See Chapter for Further Detail	No	Yes
17.	Mali	No Risk	No	Voluntary & Non-Suspensory	Yes	No
18.	Mauritius	High Risk	No	Voluntary & Non-Suspensory	No	Yes

OVERVIEW

No.	JURISDICTION	DAWN RAIDS	FOREIGN DIRECT INVESTMENT REGIME	MERGER FILING	GUN-JUMPING LAWS	HORIZONTAL / VERTICAL RESTRAINTS
19.	Morocco	No Risk	No	Mandatory & Suspensory	Yes	Yes
20.	Mozambique	No Risk	See Chapter for Further Detail	Mandatory & Suspensory	Yes	See Chapter for Further Detail
21.	Namibia	Low Risk	No	Mandatory & Suspensory	Yes	Yes
22.	Nigeria	High Risk	Yes	Mandatory & Suspensory	Yes	Yes
23.	Rwanda	Low Risk	See Chapter for Further Detail	Mandatory & Suspensory	Yes	See Chapter for Further Detail
24.	Senegal	No Risk	See Chapter for Further Detail	Voluntary & Non-Suspensory	No	See Chapter for Further Detail
25.	South Africa	Medium - High Risk	See Chapter for Further Detail	Mandatory & Suspensory	Yes	Yes
26.	Sudan	No Risk	Yes	Mandatory & Suspensory	Yes	No
27.	Tanzania	Low Risk	No	Voluntary & Non-Suspensory	Yes	Yes
28.	Togo	No Risk	No	Mandatory & Suspensory	No	No
29.	Tunisia	Moderate Risk	Yes	See Chapter for Further Detail	Yes	Yes
30.	Uganda	No Risk	No	See Chapter for Further Detail	No	No
31.	Zambia	Low Risk	No	Mandatory & Suspensory	Yes	Yes
32.	Zimbabwe	Low Risk	See Chapter for Further Detail	Mandatory & Suspensory	Yes	Yes

NIGERIA



NIGERIA

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted.

The Federal Competition and Consumer Protection Bill 2018 was signed into law by the President of Nigeria on 30 January 2019 ("**FCCPA**" or "**Act**"). The FCCPA repealed the Consumer Protection Act and the provisions of the Investment and Securities Act relating to merger control. The FCCPA also established the Federal Competition and Consumer Protection Commission ("**FCCPC**" or "**Commission**") with the responsibility of reviewing all mergers and other business combinations or arrangements, among other functions.

Between 3 May 2019 and March 2020, merger notifications and filings were jointly reviewed by the Securities and Exchange Commission ("**SEC**") and the FCCPC, but starting from April 2020, merger control notifications and filings were required to be submitted to the FCCPC. The SEC, however, reviews mergers and acquisitions by or involving public companies as well as transactions involving a change of shareholding of capital market operators.

On 20 November 2020, the FCCPC published the Merger Review Regulations (Regulations), Merger Review Guidelines, and other ancillary instruments for the purpose of providing a robust guideline on competition related matters such as computation of fees, description of control, merger filing exemptions and other matters, which clarified a number of grey areas in the competition regulatory space.

In a bid to strengthen the application of the recently enacted regulations, in October 2021, the FCCPC launched an online merger notification portal ("**Portal**") to automate the submission of merger notifications by merging parties. The Portal eliminates the need for physical submission of documents relating to merger transactions at the Abuja offices of the FCCPC and enables merging parties consult with and obtain clarifications from the FCCPC online, before filing a formal merger notification and also contains a fee calculator to enable parties automatically assess the fees without need for recourse to the FCCPC.

Also in January 2022, the FCCPC signed a regulatory Memorandum of Understanding with the Nigerian Shippers' Council, which is expected to regulate pricing, promote fair competition among operators in the industry and ensure that the playing field is level for all in the market, without undue entry barriers.

From a sectoral perspective:

- The Companies and Allied Matters Act, 2020 ("**CAMA 2020**") was enacted on 7 August 2020, which repeals and replaces the Companies and Allied Matters Act, 1990. The CAMA 2020 permits the merger of incorporated trustees with similar aims and objects, under the terms and conditions prescribed in regulations made by the Corporate Affairs Commission. CAMA 2020 also provides a legal framework for mergers involving of two or more companies, as well as compromise, arrangement or reconstruction between two or more companies.
- The Nigerian Communications Commission ("**NCC**") published the NCC Licensing Regulations 2019 ("**NCC Regulations**") which became effective on 11 January 2019. The NCC Regulations prohibit the issuance of an individual license to an applicant that has a controlling interest in another licensee, where the NCC is satisfied that anticompetitive issues would likely arise upon grant of such licence. Furthermore, where a licensee wishes to transfer ownership or control of more than 10% of its total share capital, it is required to apply to the NCC for an approval of the transfer, 90 days prior to the proposed date of such transfer, or such other period stated in the licence conditions or determined by the NCC. The NCC is mandated to refuse the transfer where it makes a determination that the acquisition of ownership or control of the licensee is likely to lead to anticompetitive issues in that segment of the telecommunications market.

- The National Broadcasting Commission ("NBC") published certain amendments to the 6th edition of the Nigeria Broadcasting Code ("NBC Code") on 26 March 2020. The NBC Code prohibits a broadcaster or a licensee from entering into any form of agreement, contract or arrangement that is intended to prevent, restrict or distort competition in the broadcast media industry in Nigeria. Based on the above, a broadcaster or a licensee is prohibited from entering into any form of broadcasting rights acquisition either in Nigeria or anywhere in the world to acquire any broadcasting right(s) in such a manner as to exclude persons, broadcasters or licensees in Nigeria from sub-licensing the same. Any such agreement entered in contravention of the NBC Code is void. There are, however, concerns around the power of the Director General of the NBC and the Nigerian Minister of Information to issue the NBC Code without recourse to the board of the NBC. In the event that the NBC Code is found to be issued without recourse to the due procedure for issuance of guidelines or codes under the NBC Act, the NBC Code will be deemed void.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the competition authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry? If so, kindly indicate these sectors/industries.

The FCCPC has conducted the market inquiries and investigations listed below:

- a) Investigation of competition and possible consumer rights violations by dominant PayTV service providers.
- b) Surveillance regarding price gouging and arbitrary increases in prices of protective and hygiene products on account of COVID-19 concerns.
- c) Investigation of anticompetitive conduct of five companies in the shipping and freight forwarding industry.
- d) Investigation of distribution companies over arbitrary billing and mass disconnection of electricity within the power sector.
- e) Setting up a regulatory committee to investigate the complaints of violation of consumer rights in the money lending industry, with the aim of shutting down an illegal money lending businesses.

3. Has the competition authority publicly expressed concern in relation to any industry/sector? If so, kindly indicate these sectors/industries.

Yes. The FCCPC expressed concerns over competition and possible consumer rights violations by dominant PayTV service providers, and price gouging by suppliers and retailers of protective and hygiene products during the COVID-19 pandemic.

The FCCPC has also expressed concerns over the anti-competitive conduct of five companies in the shipping and freight forwarding industry, including the formation of a cartel by these companies. Additionally, in December 2021, the FCCPC expressed concerns that the electricity, banking and aviation sectors have again topped its 2021 consumer-related complaints chart as they did in the year 2020.

4. Has the competition authority identified any specific sectors as strategic or key sectors for purposes of competition law enforcement? If so, kindly indicate these sectors/industries.

No.

5. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by the competition authority.

Yes. Dawn raids are a high risk in Nigeria. Recently it was reported that operatives of the FCCPC and the National Agency for Food and Drug Administration and Control conducted a joint dawn raid at a popular skin care facility in Surulere, Lagos. It was reported that during the dawn raid, operatives of both regulators removed various skin care products and chemicals for laboratory analysis and ordered an interim suspension of operation, and use of unapproved products/chemicals and procedures. However, it is noted that this raid is in relation to consumer protection and quality control not competition.

6. Has the competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

Yes. The FCCPC released a publication entitled *"Business Guidance Relating to COVID-19 On Business Co-operation / Collaboration and Certain Consumer Rights Under the Federal Competition and Consumer Protection Act"* in April 2020. The publication provides clarity for businesses and consumers regarding authorisations for cooperation among businesses during the COVID-19 pandemic, and regarding consumer rights under Part XV of the FCCPA during the COVID-19 pandemic.

The FCCPC released an additional publication entitled *"Guidance Regarding FCCPC's Merger Notification Process / Interpretation of the Law on Other Competition Issues Under the FCCPA During COVID-19 Pandemic"*, in April 2020, in relation to continuing operations regarding certain competition and consumer protection regulations during the Pandemic.

Another measure introduced by the FCCPC in October 2021 to alleviate the pressures of remote working as a result of the pandemic, is the launching of an online merger notification Portal to automate the submission of merger notifications by merging parties. The Portal eliminates the need for physical interface between the FCCPC and merger parties, while facilitating the merger review process.

7. Has the competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

Yes. In June 2020, the FCCPC filed an action against four major pharmacies and supermarkets at the Federal High Court, for allegedly taking advantage of the COVID-19 outbreak in the country by increasing the prices of key hygiene products. Furthermore, in August 2020, the FCCPC conducted investigations on various pharmacies, in response to multiple social media posts about alleged excessive pricing by the pharmacies, of hydroxychloroquine, which was considered effective for managing COVID-19.

8. Has the competition authority been proactive in addressing pricing practices of firms through, for example, reaching settlement agreements with firms to cap prices of products / services since? If so, please provide details.

In January 2022, the FCCPC signed a regulatory Memorandum of Understanding with the Nigerian Shippers' Council which is expected to, inter alia, regulate pricing and competition in the shipping industry.

9. Has the competition authority adopted any new regulations or measures that will apply to firms that are active in the digital market space? If so, please provide details.

In view of the provisions of section 17(a) of the FCCPA, which empowers the FCCPC to administer and enforce provisions of every Nigerian law with respect to competition and protection of consumers, it was reported that in November 2021, the FCCPC entered into a partnership with the National Information Technology Development Agency to create a more robust and concerted regulatory approach to the protection and use of consumer information and data by firms within the digital market space.

10. Has the competition authority identified industries / markets / sectors that it considers to be concentrated? If so, please provide details.

No.

11. Please indicate whether there is a foreign direct investment review regime in your jurisdiction in relation to mergers involving foreign buyers / acquirers and kindly indicate the relevant review/regulatory body? If there is, please indicate whether there have been any foreign direct investment notifications to date. If there is no foreign direct investment regime, kindly indicate whether there are any plans announced to introduce it.

Yes. There is a foreign direct investment review regime in relation to mergers involving foreign buyers or acquirers, and this is regulated by the FCCPC. Such transaction will be subject to merger review if:

- a) it attains the jurisdictional threshold for merger control filing in Nigeria which is (i) a combined annual turnover of the acquirer and the target in, into or from Nigeria, of NGN 1 billion or above (approx. USD 2.4 million); or (ii) an annual turnover of the target in, into or from Nigeria, of NGN 500 million (approx. USD 1.2 million); or
- b) it affects the market structure by preventing or lessening competition in Nigeria.

Where a merger occurs purely as a result of a transaction involving undertakings wholly domiciled outside Nigeria (i.e., foreign to foreign mergers with Nigerian component), the Commission will assess the merger if it has a local nexus, for instance, if it has subsidiaries in Nigeria and attains the jurisdictional threshold for merger control filing. Although the Regulations do not prescribe the yardstick for determining the local nexus, a transaction that has an impact on the Nigerian economy will generally fall within this category.

12. If there is a foreign direct investment regime in your jurisdiction, please indicate whether it applies to all sectors or specific sectors (such as sectors considered to relate to 'national security').

The foreign direct investment regime applies to all sectors except for sectors or activities that have already been excluded from investment in the interest of national security. These sectors and activities include (i) production of arms, ammunitions; (ii) production of and dealing in narcotic drugs and psychotropic substances; (iii) production of military and para-military wears and accoutrement such as police, immigration and prison services wears; and (iv) such items as may be prohibited by the Federal Executive Council from time to time.

MERGER CONTROL DEVELOPMENTS

13. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2021? If so, on what basis?

Local counsel are not aware of any notified transactions that have been prohibited by the FCCPC.

14. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected?

In light of concerns expressed as regards the excessive filing fees, in 2021, the FCCPC amended the merger filing fees by enacting the Merger Review (Amended) Regulations 2021, as discussed in detail above.

15. Is the submission of a merger notification suspensory and mandatory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction? If so, kindly provide details.

The submission of large mergers that meet the regulatory triggers, or small mergers that are required by the FCCPC to be notified ("**Notifiable Mergers**"), is both suspensory and mandatory, as the rules provide that all Notifiable Mergers must be first notified, and no notifiable merger may be implemented without the prior approval of the FCCPC.

Local counsel are aware of investigations which have been opened by the FCCPC against entities accused of gun-jumping and/or prior implementation of a notifiable transaction, but are not aware that the investigations have developed into cases before the courts.

16. Is the submission of a merger notification non-suspensory and voluntary in your jurisdiction? If so, has the authority brought any cases against entities for failure to notify a transaction post-completion within the stipulated time period? If so, kindly provide details, including details of instances where the authority has specifically requested notification of mergers.

The submission of a merger notification in relation to small mergers is voluntary, save as otherwise directed by the FCCPC, in which case it will become suspensory in nature.

Local counsel are not aware of any case against entities for failure to notify a transaction post-completion within the stipulated time period.

17. Please describe any cases in which the competition authority fined any entity for failing to comply with merger conditions.

Local counsel are not aware of any such cases.

18. Please describe any cases in which the acquisition of shares or assets of another firm was interdicted by the competition authorities in your jurisdiction, as well as the basis for this.

Local counsel are not aware of any such case.

19. Please describe any cases in which parties (acquirer and target) did not have physical presence in your jurisdiction and the transaction was nonetheless notified. For example, where either party makes sales and derive some turnover in your jurisdiction do not have any subsidiaries or assets in the country, what is the local nexus test /local effects test to establish merger review jurisdiction?

Whilst local counsel are not aware of any direct case where either party makes sales and derives turnover in Nigeria (despite not having any subsidiaries or assets in the country), it is noted that the rules do contemplate that such instances will constitute a foreign merger that has a local nexus.

A foreign merger is said to have a "local component or nexus" where:

- a) the target has a direct or indirect local subsidiary or subsidiaries; or
- b) the merging parties (i.e., the acquirer or target) have in the preceding year derived revenue from business activities in Nigeria, which also amounts to the turnover requirements for large mergers which is:
 - a. a combined annual turnover of the acquirer and the target in, into or from Nigeria, of NGN 1 billion or above (approx. USD 2.4 million); or
 - b. an annual turnover of the target in, into or from Nigeria, of NGN 500 million (approx. USD 1.2 million) in the preceding financial year.

20. Has the authority approved any mergers subject to novel or otherwise noteworthy conditions?

Save for the general condition to notify the Commission of any change in the transaction, and a requirement for the transaction to be implemented within 12 months of the grant of the approval, local counsel are not aware of any mergers subject to novel or otherwise noteworthy conditions.

21. Please indicate whether the competition authority has required notification of internal restructurings (that do not involve a change in ultimate control) and, if so, on what basis.

The FCCPC does not require a notification for internal reorganisations that do not occasion a change of control.

22. Please indicate whether an obligation to notify could be triggered as a result of a change in direct control over an entity through the interposition of a new entity within the group, albeit that the restructure does not result in a change in ultimate control.

Save for instances where such reorganisation may have a likelihood of affecting the market or impeding competition, it will not trigger a notification requirement given that the ultimate control remains the same.

23. Please describe cases of mergers that have been approved subject to public interest grounds since January 2021 and kindly describe the nature of these public interest grounds.

Local counsel are not aware of any mergers that have been approved subject to public interest grounds since January 2021.

24. Please describe cases where the competition authority has prohibited a merger transaction based on public interest grounds alone.

Local counsel are not aware of any cases where the Commission has prohibited a merger transaction based on public interest grounds alone.

25. Describe the circumstances in which 'greenfield' / joint ventures mergers are caught under the merger review regime, and kindly provide instances of such mergers that have been notified to and considered by the competition authority.

Given the rather flexible notion of what constitutes a "joint venture", it might be difficult to fully describe the circumstances in which greenfield joint venture mergers are caught under the merger review regime. However, as a general proposition under Nigerian competition law, a joint venture which involves:

- a) the economic integration of the parties' business activities (such as the pooling of resources to create a new business enterprise which essentially eliminates competition between the parties in the new business enterprise's field of activity);
- b) the formation of a new business enterprise with all the functions of an autonomous economic entity, competing with other undertakings in a relevant market, and has sufficient resources and staff to operate independently on the relevant market;
- c) is on a more or less permanent basis; and
- d) the formation of a new business enterprise whose assets or turnover (or in the case of greenfield joint venture assets only) value is above the large notification threshold.

The abovementioned joint venture arrangements will be caught under the merger review regime. Local counsel are not aware of instances of such mergers that have been notified to, or considered by, the FCCPC.

26. Please indicate whether there are any circumstances in which non-controlling minority share acquisitions have been found to constitute a notifiable merger and the basis for this.

There are certain circumstances under which non-controlling minority share acquisitions have and can be found to constitute a notifiable merger. Local counsel have seen an instance where the holder of a minority interest was deemed to have the ability to influence the target to compete less aggressively or competitively in the market for various reasons (in that the holder may have a unilateral incentive to compete less aggressively as it benefits through its minority interest if the target faces less competition).

A major consideration for this reasoning is that under the relevant provisions of the Companies and Allied Matters Act 2020, a shareholder of over 25% is in the unique position of blocking special resolutions that require the approval of 75% of the shares. Given the weighty and extensive nature of matters that can be influenced by this block of minority shareholding, the FCCPC will, as a matter of course, assess the merger for material influence.

27. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

For small mergers notified upon request by the FCCPC, the timeline for approval is typically about 20 to 40 business days from the date on which all merger notification requirements are met.

For large mergers, as well as foreign-to-foreign mergers with a Nigerian component, the timeline is approximately 60 to 120 business days.

However, for foreign-to-foreign mergers with a Nigerian component, there is a fast-track process under which applicants who pay an extra fast track fee of NGN 10,000,000.00 (approx. USD 25,000.00) will have their application review expedited with a period that is reduced for all applicable processes during the first detailed review by 40%. That being said, it is expected that the specific timeline will generally depend on the complexity of the transaction.

28. Kindly indicate whether the competition authority enjoys the power to “stop the clock” for the review of a merger and under what circumstances can this happen. If so, please describe cases where the authority has stopped the clock.

The FCCPC enjoys the power to “stop the clock” for the review of a merger notification and the statutorily prescribed timing of review of the notification can be impacted by a “stop-the-clock”. For instance, where the FCCPC has requested information from the parties, or if the filing is incomplete, the FCCPC can stop the clock until the information is provided or until the filing is deemed complete by the FCCPC.

The FCCPC has made use of this tool in a growing number of cases in the last year, for example, it suspended its review of a merger between a leading fast food chain company and a foreign investment entity during the course of the merger review process. The FCCPC has also stopped the clock about twice on the review of an acquisition by a pan-African investment company of a leading power generation company in Nigeria.

29. Please indicate whether, legally or in practice, your competition authority allows for “hold separate” arrangements (this means that where clearance is not obtained in your jurisdiction by a specific date, the acquirer would opt not to take over the company in your jurisdiction but will implement the transaction in countries where approval has been obtained. The target in your jurisdiction may be left behind with the sellers for future disposal separately). If so, kindly describe cases where this has happened.

In practice, hold separate arrangements are feasible, to the extent that the other part of the transaction, which is expected to proceed offshore (without having procured the necessary FCCPC regulatory approvals), does not have a Nigerian/local connection or nexus.

- 30. Please indicate whether, legally or in practice, your competition authority allows for a transaction to close sequentially (for example: the shares in a target company, which triggers a filing requirement in your jurisdiction or which is active in your jurisdiction, will only be transferred after clearance in your jurisdiction has been obtained, while the shares in other companies affiliated to the target and operating in other countries thus do not trigger a filing requirement in your jurisdiction, shall be transferred as soon as clearances in those other relevant jurisdictions have been obtained (irrespective of whether clearance in your jurisdiction has been obtained). If so, kindly describe cases where this has happened.**

In practice, sequential closing arrangements are feasible, to the extent that the transfer of shares in the other offshore companies, which are affiliated to the local target, will not occasion an indirect transfer of control or constitute transfers that have a local nexus or connection, as described above.

PROHIBITED PRACTICES

- 31. Please provide information in relation to any noteworthy penalties that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.**

The FCCPC, in furtherance of an investigation over competition and possible consumer rights violations by dominant PayTV service providers, secured an injunction against a PayTV service provider, pre-empting a price increase by the provider.

- 32. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation? If so, please provide details.**

Local counsel are not aware of any such cases.

- 33. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecution against entities for implementing exclusivity clauses or non-compete restraints? If so, please provide details.**

The FCCPA generally prohibits any agreement among entities or a decision of an association of entities that has an actual or likely effect of preventing, restricting or distorting competition in any market, unless such agreement or decision is duly authorised by the FCCPC, in accordance with the provisions of the FCCPA. The FCCPA also prohibits an entity or association from requesting another entity or association to refuse to sell or purchase any goods or services, intending to cause harm to certain entities.

In addition, the FCCPA prohibits agreements in restraint of competition. However, entering into a contract of service that contains provisions by which a person, other than a body corporate, agrees to accept restrictions as to the work which that person may engage in during or after the termination of the contract, is permitted under the FCCPA, provided that the restriction period is not more than two years.

There is no guidance from case law regarding the interpretation of the exclusivity and non-compete provisions of the FCCPA. To the best of local counsel's knowledge, there have been no prosecution against entities for implementing exclusivity clauses or non-compete restraints.

- 34. Has the authority launched and publicised any new investigations since January 2021 against any entities for engaging in prohibited practices? If so, please provide details.**

In 2020, the FCCPC, in conjunction with the Medical and Dental Council, launched and publicised an investigation against a Lagos based cosmetics surgeon on the grounds that the cosmetics surgeon's activities are unsafe for consumers and that the surgeon made false, misleading and deceptive representation in relation to the marketing of their services.

Additionally, in October 2021, the FCCPC launched and publicised an investigation into the anticompetitive conduct of five companies in the shipping and freight forwarding industry, including the formation of a cartel by these companies.

35. Does the competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power? If so, please provide details.

No. The FCCPA contains no provisions on the abuse of buyer power. Instead, it provides for abuse of a dominant market position.

36. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct? If so, please provide details.

Yes. Anticompetitive conduct is criminalised under Part XIV of the FCCPA. To the best of local counsel's knowledge, no criminal charges have been brought, nor convictions made, in this regard.

REGIONAL BODIES / COOPERATION

37. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Yes. Nigeria is a member of the ECOWAS. The ECOWAS has a competition regulatory framework regime – the ECOWAS Regional Competition Rules and the ECOWAS Regional Competition Authority ("ERCA"), launched on 31 May 2019 and is charged with implementing the ECOWAS Regional Competition Rules. However, Nigeria is yet to domesticate the ECOWAS Regional Competition Rules.

38. Please confirm whether your jurisdiction has signed any Memorandum of Understanding with any other jurisdiction. If so, kindly provide details.

The FCCPC and the Economic and Financial Crimes Commission in Nigeria have signed a Memorandum of Understanding with the United States' Federal Trade Commission. The purpose of the Memorandum of Understanding is to enhance communication and cooperation in a joint effort to combat cross-border fraud, as well as to work together on consumer protection investigations. The Memorandum of Understanding also establishes a joint implementation committee to develop joint training programs and provide assistance regarding specific investigations. Furthermore, the Memorandum of Understanding affirms the participants' ongoing support for econsumer.gov, a joint project of agencies from 40 countries for reporting international scams online. The Memorandum of Understanding is a framework for voluntary cooperation and does not change existing laws in either country.

39. Please describe trends on the level of enforcement of the regional body.

To the best of local counsel's knowledge, there have been no enforcements by the ERCA. There are, however, reports of plans by the ERCA to make its advisory committee operational.

40. If a merger is notifiable in your jurisdiction and the thresholds for regional notification are also triggered, are parties required to notify both domestically and regionally?

Mergers in Nigeria are only required to be notified domestically.

41. Please describe cases where a regional body has engaged with your local competition authority in relation to enforcement of competition law cases or merger reviews.

None.

42. Please describe any announced cooperation between your local competition authority and regional body(ies) in relation to new or ongoing investigations.

None.

In collaboration with:

TEMPLARS

Templars

Ijeoma Uju

Partner

T +234 1 2703 982, 2799 396,

4611 890, 46 11 294


ijeoma.uju@templars-law.com

Tolulope Falokun

Associate

T +234 1 2703 982, 2799 396, 081 1570 8339

tolulope.falokun@templars-law.com



Baker McKenzie helps clients overcome the challenges of competing in the global economy.

We solve complex legal problems across borders and practice areas. Our unique culture, developed over 70 years, enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends to instill confidence in our clients.

bakermckenzie.com

© 2022 Baker McKenzie. All rights reserved. Baker & McKenzie International is a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner or equivalent in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.