

THE MERGERS &  
ACQUISITIONS  
REVIEW

SIXTEENTH EDITION

Editor  
Mark Zerdin

THE LAWREVIEWS

THE  
MERGERS &  
ACQUISITIONS  
REVIEW

SIXTEENTH EDITION

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Mark Zerdin

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# PREFACE

As highlighted by the previous edition of *The Mergers & Acquisitions Review*, following the height of the covid-19 pandemic that tested the resilience of companies, the first half of 2021 had begun to tell a promising story for the M&A markets. This promise was realised with 2021 becoming a year for the record books with US\$5.9 trillion in deals, a 62 per cent lift from 2020 and the highest value amount in more than a decade. Deal total also rose 0.4 per cent to 34,128.<sup>1</sup>

The figures for the first half of 2022 predictably dropped from 2021's record levels but the overall picture still remains a positive one. The value of global M&A transactions has dropped 21 per cent when compared to the record high of the first half of 2021, but deal values still broke US\$2 trillion.<sup>2</sup> The decrease is understandable given macro events such as inflation, interest rates and the Ukraine war, which have created a more challenging market.<sup>3</sup>

Again, the Americas were the leading market for deal value in the first half of 2022 with a total of US\$1.1 trillion from 4,771 deals. While these figures represent a 30.7 per cent and 18 per cent decrease, respectively, year-on-year, these figures should be put into the context, whereby not only was 2021 a record-breaking year, but by the fourth quarter activity was already beginning to normalise. In this respect, what has been witnessed to date in 2022 is a correction to more sustainable levels.<sup>4</sup> Across the Americas, the leading sectors for the first half of 2022 were technology, media and telecoms (1,712 deals totalling US\$471 billion), energy, mining and utilities (316 deals totalling US\$102.6 billion) and real estate (58 deals totalling US\$96.6 billion).<sup>5</sup>

European dealmaking has experienced a similar decline in deal count with figures falling 19.7 per cent from 6,182 in the first half of 2021 to 4,963 in the first half of 2022. However, this decline was most prominent in the second quarter, following the invasion of Ukraine and as companies began to take a more risk off approach.<sup>6</sup> Interestingly, deal value has barely slipped at all and, in fact, rose quarter-on-quarter in the second quarter. Over the first half of 2022, there was €579 billion worth of transactions, down by only 6.5 per cent on last year. Private equity again played a large part in maintaining these values, with Blackstone Group

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1 Bakertilly, 'Global dealmakers 2022: M&A market update'.

2 AllenOvery, 'M&A Insights H1 2022'.

3 *ibid.*

4 Mergermarket, 'Deal Drivers: Americas HY 2022'.

5 *ibid.*

6 *ibid.*

being particularly active in the megadeal for Atlantia (€42.7 billion) and the recapitalisation of logistics business Mileway (€21 billion).<sup>7</sup> Of the 10 largest deals across the EMEA, private equity accounted for no fewer than half.<sup>8</sup>

The year 2022 has been challenging and will likely continue to be so, with the Ukraine conflict showing no signs of end, inflation biting across the continent and cost of the living crisis drawing major attention. However, the M&A markets have thus far withstood these challenges, with dealmaking and value returning to a 'normal' level, following the heights of 2021. Should the M&A markets continue to remain resilient, the remainder of 2022 may follow the positive outlook displayed in the first half of 2022.

I would like to thank the contributors for their support in producing the 16th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 35 chapters will provide a richer understanding of the shape of the global markets, and the challenges and opportunities facing market participants.

**Mark Zerdin**

Slaughter and May

London

November 2022

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7    ibid.

8    ibid.

# NIGERIA

*Lawrence Fubara Anga, SAN, Edidiong Antai and Al-Ameen Sulyman<sup>1</sup>*

## I OVERVIEW OF M&A ACTIVITY

Nigeria continues to witness growing M&A activity across different sectors, including technology, especially in the start-up space, financial services, telecommunications, manufacturing and consumer goods, and oil and gas sectors. Deals have been a mix of local and cross-border with startups continuing to raise significant funding in order to expand their operations and businesses. A notable deal in the oil and gas sector, which continues to be newsworthy due to the regulatory hurdles with which the parties are dealing, is the proposed acquisition by Seplat Energy of the offshore shallow water business assets of Mobil Producing Nigeria Unlimited. This deal is awaiting regulatory approval. Another notable development within this sector is the suspension of Shell's divestment of its interest in its Nigerian subsidiary – Shell Petroleum Development Company.

The financial services sector also witnessed some activity, with Titan Trust Bank, Fidelity Bank, Access Bank and Guaranty Trust Holding Company Plc all acquiring or seeking to acquire stake in other financial services businesses. Although many of the deals that have been completed between Q1 and Q3 2022 have been acquisitions involving local companies, there have been deals that involve foreign investment, especially in relation to technology start-up companies.

## II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The laws that govern M&A activity in Nigeria are as follows:

- a* the Federal Competition and Consumer Protection (FCCP) Act 2019;
- b* the Merger Review Regulations, 2021;
- c* the Merger Review Guidelines, 2019;
- d* the Companies and Allied Matters Act 2020 (CAMA);
- e* the Companies Regulations 2021;
- f* the Investments and Securities Act (ISA) 2007;
- g* the Rules and Regulations of the Securities and Exchange Commission (SEC); and
- h* the Nigerian Stock Exchange Rulebook.

---

<sup>1</sup> Lawrence Fubara Anga, SAN is a partner, and Edidiong Antai and Al-Ameen Sulyman are associates at ALEX.

The FCCP Act is the primary legislation that regulates mergers and acquisitions in Nigeria. The Act establishes the Federal Competition and Consumer Protection Commission (FCCPC), and the Competition and Consumer Protection Tribunal. The FCCP Act will be discussed further in Section III.

The CAMA is also an important piece of legislation that impacts on M&A deals. In addition to the regulation of companies, CAMA also includes provisions on share acquisitions, schemes of arrangements and other forms of business disposals. The provisions in CAMA cover schemes of merger, share buybacks by companies, pre-emptive rights of shareholders and financial assistance by companies to shareholders, among other things.

The Nigerian Stock Exchange also plays a significant role in M&A involving publicly quoted companies that are required to comply with its listing requirements.

Some sector-specific laws also regulate M&A transactions; these include:

- a* the Banks and Other Financial Institutions Act and the Central Bank of Nigeria's Guidelines and Incentives on Consolidation in the Banking Industry are relevant to M&A in the banking sector;
- b* the Nigerian Communications Act regulates the telecommunications sector;
- c* the Electric Power Sector Reform Act regulates the electricity sector;
- d* the Petroleum Industry Act 2021 in the oil and gas industry; and
- e* the National Insurance Commission Act regulates the insurance industry

These sector-specific laws operate in addition to the provisions of the FCCP Act, the CAMA, the ISA, and the SEC Rules and Regulations. In the oil and gas industry, for example, any M&A activity that would effect a change in the ownership of an oil mining lease, an oil prospecting licence or a marginal field requires the consent of the Honourable Minister of Petroleum Resources.

M&A transactions may also be subject to the provisions of various tax laws, including the Companies Income Tax Act and the Capital Gains Tax Act. The Finance Act 2021, which was passed into law in December 2021, made significant changes to existing tax laws in the country. In addition to legislation, common law applies to the extent that there is no relevant provision in the statutes.

### **III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT**

Since the enactment of the Federal Competition and Consumer Protection Act 2019, powers of oversight and approval of M&A transactions are vested in the Federal Competition and Consumer Protection Commission (FCCPC). In the exercise of its powers, the FCCPC has released the following:

- a* the Merger Review (Amended) Regulations 2021, which amend the 2020 Merger Review Regulations and provide a regulatory framework for the notification and review of mergers in accordance with the provisions of the Federal Competition and Consumer Protection Act. They also modify the applicable fees for notifications under the Regulations. Under the amended Merger Review Regulations, merger notification fees are based on the combined annual turnover of the merging entities or on the consideration for the transaction, whichever is higher, and are calculated as follows:
  - 0.45 per cent of the first 500 million naira;
  - 0.4 per cent of the next 500 million naira; and

- 0.35 per cent of the balance;<sup>2</sup>
- b the Guidelines on Simplified Process for Foreign-to-Foreign Mergers with Nigerian Component in November 2019, which serve to bring mergers and acquisitions of foreign entities that would result in a change of control of a Nigerian business under the regulatory purview of the FCCPC; and
- c the Notice of Threshold for Merger Notification in September 2019, which prescribes the thresholds of annual turnover that would trigger the requirement to give the FCCPC notice of a merger before implementation.

In August 2020, the President of the Federal Republic of Nigeria signed the Companies and Allied Matters Act 2020 into law. CAMA introduced several changes to the practice of corporate law in Nigeria. Some of the changes introduced include the introduction of single-member companies, which allows for the formation of private companies with only one member. Under the Act, small companies can carry on business with only one director and are exempted from the requirement to appoint a company secretary and to hold annual general meetings. CAMA also permits private companies to hold their general meetings electronically.

Under CAMA, the circumstances under which a company is permitted to provide financial assistance for the acquisition of its own shares have been expanded so that financial assistance may be given where there is non-reduction of net assets. In cases where net assets are reduced, such assistance should be financed out of distributable profits. Additionally, such financial assistance must be approved by a special resolution of the company. Directors of the company are also required to make a statutory declaration in a form prescribed by the Corporate Affairs Commission.

CAMA also introduced mandatory pre-emption provisions for new share issuances, which will have implications for the transaction timelines for M&A deals and is expected to feature as a mandatory completion condition for transactions that involve in share issuances.

The Securities and Exchange Commission (SEC) published an amendment to its Rules on Mergers, Takeovers and Acquisitions, which is intended to guide its new role in mergers and acquisitions. Among other things, the amendment extends the definition of affected transactions under Rule 1 of the extant rule to cover carve-outs, spin-offs and split-offs of a public company. It stipulates that the SEC's approval must be obtained prior to undertaking any merger involving a public company and its subsidiaries. The obligation to obtain the approval is that of the public company involved in the transaction, whose approval will only be given if the SEC is satisfied that all shareholders are fairly, equitably and similarly treated, and given sufficient information regarding the transaction. The SEC also published proposed new rules on special purpose acquisition companies (SPACs). Under the proposed rule, among others:

- a the size of a SPAC IPO may not be less than 10 billion naira;
- b up to 15 per cent but no more than 20 per cent of the post-issue paid up capital may be held by the promoters;
- c a minimum subscription size of 25 million naira is prescribed for a SPAC IPO;

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2 Note that prior to the Merger Review (Amended) Regulations 2021, merger notification fees based on combined annual turnover were calculated as follows: (1) 0.3 per cent of the first 500 million naira; (2) 0.225 per cent of the next 500 million naira; and (3) 0.75 per cent of the balance, where fees were based on combined annual turnover or 0.15 per cent of the balance where fees were based on consideration.

- d* to be deemed successful, a SPAC offer must be, at a minimum, 75 per cent subscribed and have at least 50 subscribers; and
- e* no single subscriber may be allotted more than 10 per cent of the post-issue capital.

The proposed Rules are yet to be finalised and the expectation is that relevant stakeholders will be consulted before the final rules are issued.

#### **IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS**

M&A activity in the past was fuelled by investors' desire to participate in Nigeria's rapidly developing economy. However, continued uncertainty surrounding the foreign exchange regime, coupled with slower economic growth and the emergence of other frontier markets, has led investors to become more selective with Nigerian investments. A key consideration that influences foreign investments in Nigeria is the foreign exchange regime. Uncertainty as to the value of the naira coupled with recent difficulties with obtaining foreign exchange in Nigeria has made foreign investors focus on Nigerian investments that generate revenue in foreign currency. Because of the depreciation of the naira, Nigerian investments are cheaper for foreign investors; however, there are concerns about viable and profitable exit strategies because of the difficulty in obtaining foreign currency to repatriate capital and profits. Policy uncertainty around foreign exchange management is currently fuelling exits while at the same time limiting the number of fresh foreign investments into Nigeria.

Despite these foreign exchange concerns, Nigeria continues to attract foreign investment, with investors exploring structures and models that could mitigate the foreign exchange risks present in the Nigerian market. Some of the M&A deals that have been concluded this year have involved foreign investment. These include:

- a* Equinix Inc, which is an American multinational specialising in internet connection and data centres, recently acquired MainOne (headquartered in Lagos, Nigeria), which is a West African data centre and connectivity solutions provider for an enterprise value of US\$320 million;
- b* US-based PowerDFI's also acquired Naijacrypto, which is a Nigerian blockchain startup; and
- c* Africa FMCG Distribution Ltd, which is a part of the multinational Chanrai Group, recently acquired Suntory Beverage & Food Nigeria (makers of Ribena and Lucozade in Nigeria).

#### **V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES**

Some of the notable M&A deals of 2022 involved the start-up technology space, which received much PE/VC funding, the oil and gas sector, the financial services sector inclusive of banking, insurance and pensions, and the healthcare sector.

In the oil and gas sector, transactions included:

- a* Africa Capitalworks, which acquired a significant equity stake in Dorman Long Engineering Ltd; and
- b* Seplat Energy proposed to acquire Mobil Producing Nigeria Unlimited's offshore shallow water business; and TNOG Oil & Gas Limited's (a related company of Heirs

Holdings and Transcorp) acquired 45 per cent participating interest in Nigerian oil licence OML 17 and related assets from Shell Petroleum Development Company of Nigeria Limited, Total E&P Nigeria Limited and ENI.

Key transactions in the financial services sector included:

- a* Titan Trust Bank Limited's acquisition of 89.39 per cent of the issued share capital of Union Bank of Nigeria Plc and Guaranty Trust Holding Company Plc's acquisition of 100 per cent shares in Investment One Funds Management Limited;
- b* in June 2022, Access Bank Plc also entered into a binding agreement with Kenyan-based Centum Investment Plc for the acquisition of the entire 83.4 per cent equity stake held by Centum in Sidian Bank Ltd;
- c* notably, Fidelity Bank Plc's proposed acquisition of 100 per cent equity in Union Bank UK Plc. Although this is not an investment in Nigeria, it represents outward investment by Nigerian companies;
- d* First Pension Custodian Nigeria Limited, a subsidiary of First Bank Nigeria Limited, also acquired 100 per cent of Access Pension Fund Custodian Limited (a subsidiary of Access Bank Plc);
- e* Access Holdings also received regulatory approval to acquire a majority stake in First Guarantee Pension Limited; and
- f* Norrenberger, which is a Nigerian financial services group, received NAICOM approval to acquire 100 per cent of International Energy Insurance Plc.

Transactions in other sectors included:

- a* in the manufacturing sector, Flour Mills of Nigeria acquired a 76.75 per cent stake in Honeywell Flourmills PLC;
- b* in the healthcare sector, mPharma acquired a majority stake in HealthPlus, which is a leading pharmacy chain in Nigeria; and
- c* in the telecommunications sector, Equinix, Inc, which is the world's digital infrastructure company, acquired West African data centre and connectivity solutions provider MainOne, as mentioned earlier.

## **VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS**

The cost of locally sourced debt funding for acquisitions is very high, with interest rates as at July 2022 at approximately 14 per cent. As a result, the majority of acquisitions in Nigeria are funded using cash reserves while the rest are funded with equity or debt, especially from foreign sources.

## **VII EMPLOYMENT LAW**

There have been no recent changes to employment law that are relevant to M&A. The statutes governing this are the Labour Act, the Pension Reform Act and the Personal Income Tax Act. However, it should be noted that as a result of disruptions caused by the covid-19 pandemic, there have been significant lay-offs and redundancies across several sectors. This has led to increased judicial activism, especially at the National Industrial Court.

## VIII TAX LAW

The Finance Act, 2021, which took effect in January 2022, introduced some changes to the existing tax laws. The Capital Gains Tax (CGT) Act was amended to remove the CGT exemption on the sale of shares. By virtue of the amendment, the gains accruing to a person on disposal of shares in any Nigerian company are now subject to CGT at the rate of 10 per cent, except in limited circumstances. Before the Finance Act 2021, a disposition of shares did not attract capital gains tax. The exceptions to the requirement to pay CGT are as follows:

- a* where the proceeds from the sale of shares are reinvested for the purchase of shares in the same or any other Nigerian company within the same year of assessment. The portion that is not reinvested will remain subject to CGT;
- b* where the proceeds from the disposal are, in aggregate, less than 100 million naira in any 12 consecutive months, provided that the person making the disposal renders appropriate annual tax returns; and
- c* where the shares are transferred between an approved borrower and lender in a SEC-regulated securities lending transaction.

## IX COMPETITION LAW

The Federal Competition and Consumer Protection Act received presidential assent in early 2019. The Act aims to promote competition, curb restrictive trade practices and protect the interests of consumers. The Act establishes the FCCPC, which is now responsible for the approval of M&A. The Act divides mergers into small and large mergers and gives the FCCPC the power to determine the threshold of annual turnover to determine what constitutes a small and large merger. In the exercise of this power, the FCCPC issued the Notice of Threshold for Merger Notification, which prescribes that the FCCPC shall be notified of a merger, if, in the preceding financial year, the entities involved had a combined annual turnover of 1 billion naira or more. Alternatively, the FCCPC must be notified if the annual turnover of the target entity in the preceding financial year was 500 million naira or more.

The FCCPC launched its online portal for merger notifications and pre-notification consultations in October 2022. In addition to receiving merger notifications via the portal, the FCCPC publishes non-confidential summaries of notifications that have been completed, which are accessible to the public. The introduction of the online filing system has certainly simplified the process for making submissions.

## X OUTLOOK

As the economy recovers from the effects of the covid-19 pandemic, we expect to see more activity in the M&A space. We also expect to see continued activity and development in the e-commerce and financial technology sectors, following the funding rounds by different companies. We also note uncertainty in the cryptocurrency space remains in light of the CBN and SEC's stance and restriction on cryptocurrency.

The introduction of changes to major laws governing corporate law practice in the country points to a commitment to updating the country's legal and regulatory framework to accommodate advances in technology. There have been some concerns that some of the amendments to tax legislations may have a negative impact on foreign investments; however, there is no clear indication that this has been the case.

As the country's economy recovers from the effects of the pandemic, we expect to see increased activity in sectors with a high potential for growth, especially the financial technology and technology, media and telecommunications sectors.

In the oil and gas sector, there is renewed optimism for the Nigerian petroleum industry as the new fiscal and tax framework for the sector aims to encourage investment in the sector. The upcoming elections in Nigeria are also expected to have some effect on dealmaking over the next few months due to uncertainty as to the new government's policy.

## ABOUT THE AUTHORS

### **LAWRENCE FUBARA ANGA, SAN**

#### *ÁELEX*

Lawrence Fubara Anga, SAN heads the banking, finance and transportation practice groups at ÁELEX.

He advises on M&A strategy, as well as on financial, corporate and commercial issues affecting projects and companies, especially in the oil, gas, electricity, aviation, maritime, banking and financial services sectors.

Mr Anga has been involved in project finance, banking and capital market transactions for several years. He is a former chair of the Capital Markets Solicitors Association.

He advised the government on the review of the Investment and Securities Act and was a member of the National Committee on the Review of Capital Market Structure and Processes.

He was invited to become a member of the Presidential Policy Advisory Committee; he was also a member of the subcommittee on finance and investment and authored the committee's policy paper on foreign investment and privatisation. He is currently the chair of the board of trustees of the Investors Protection Fund of the Nigerian Stock Exchange. He was a member of the SEC's master plan committee and is currently a member of the rules and compliance subcommittee of the capital markets committee of the SEC.

Mr Anga, a Senior Advocate of Nigeria, was educated at Yale University and the University of Cambridge. He is admitted to practise law in Nigeria, England and Wales, and Ghana.

### **EDIDIIONG ANTAI**

#### *ÁELEX*

Edidiong Antai is an associate in the firm's mergers and acquisitions and corporate and commercial practice groups. She regularly advises local and foreign clients across industries on regulatory compliance, competition law issues and corporate structure.

Edidiong was educated at the University of Kent (LLB) and is qualified to practice law in Nigeria.

**AL-AMEEN SULYMAN**

*ÁELEX*

Al-Ameen Sulyman is an associate in the firm's mergers and acquisitions and corporate and commercial practice groups. He regularly advises local and foreign clients on exchange control issues, regulatory compliance, competition law issues and corporate structure.

Al-Ameen was educated at the University of Lagos (LLB) and is qualified to practice law in Nigeria.

**ÁELEX**

4th Floor, Marble House

1 Kingsway Road, Falomo Ikoyi

Lagos

Nigeria

Tel: +234 1 2793367/2793368/

4617321/4617322/4617323

Fax: +234 1 4617092

lfanga@aelex.com

eantai@aelex.com

asulyman@aelex.com

www.aelex.com

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