

RECAPITALISATION OF THE BANKING INDUSTRY IN NIGERIA: APPRAISAL
OF MERGER AND ACQUISITION

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Abstract

In recent times, the current macroeconomic problems and headwinds caused by external and local shocks have highlighted the necessity for banks to increase and sustain sufficient capital to bolster their resilience, solvency, and ability to support the expansion of the Nigerian economy. Thus, the Central Bank of Nigeria (CBN) in the recapitalisation circular dated March 28, 2024, announced an upward review of the minimum capital requirements for commercial, merchant, and non-interest banks in Nigeria and banks may consider various options to meet the minimum paid-up capital such as mergers and acquisitions, upgrade and downgrade of license authorization and injecting fresh equity capital. In line with the recent circular, this paper appraised merger and acquisition in the context of bank recapitalisation. A doctrinal methodology was adopted in achieving the appraisal by consulting primary sources of law such as the Federal Competition and Consumer Protection Act 2018, Companies and Allied Matters Act 2020, Investment and Securities Act 2025, and secondary sources of law garnered from journal articles and newsprints that were subject to content analysis. The paper revealed that to improve the capital basis of Nigerian banks as well as the stability of the banking sector, the Central Bank advocates mergers and acquisitions as a consolidation option. It further revealed that an inadequately managed merger frequently results in collective disaster and the demise of synergy. Conclusively, merger and acquisition activities have served as a benchmark for assessing the growth and performance of the Nigerian economy. The paper recommends that integration must be comprehensive, adaptable, and well implemented because the determinants of post-merger performance and long-term sustainability hinge on the engagement and integration of employees from the outset to establish a unified identity centered on a collective goal.

Keywords: Bank Consolidation, Banking Industry, Merger and Acquisition, Recapitalization.

1.0 Introduction

The banking sector in Nigeria is integral to the nation's economic prosperity. Banks within the Nigerian financial system allocate limited resources from surplus economic units to deficit units and have significant influence through their lending and deposit mobilisation activities.¹The banking system is

¹ C Wigwe, 'Merger and Acquisition in the Nigerian Banking Industry: A Legal Perspective' *Journal of Commercial and Contemporary*

undeniably the engine of growth in any economy due to its role in financial intermediation. Through this essential duty, banks support capital formation, enhance production efficiency, and promote economic growth. Banks undeniably serve a crucial function in advancing the economy of any nation, necessitating urgent repositioning for optimal financial performance via a reform process aimed at preventing bank crises.²

Globally, the 2008 financial crisis and the subsequent bank failures have demonstrated the crucial role of regulating capital in maintaining the strength of banks and the overall stability of a nation's economic system.³ Similarly, in 2011, economies and financial markets worldwide faced turmoil due to the Eurozone debt crisis and its repercussions, which affected both emerging and developed countries to varying degrees. This increased sovereign risk for indebted countries such as Greece, instilled fear in large European banks and the global corporate sector due to their significant Euro exposure.⁴

With an estimated 40,000 mergers and acquisitions (M&A) completed globally, M&A is a global phenomenon,⁵ which arose as a result of the aforementioned global financial crises in a bid to reform the banking sector and repositioning it to achieving its goal.

The banking sector reform in Nigeria is integral to the government's strategic plan to reposition and integrate the Nigerian banking industry into the African regional and global financial systems. The Nigerian banking system has experienced significant transformations throughout the years regarding the number of institutions, ownership structure, and the extent of operational scope. The alterations have been significantly shaped by the problems presented by financial sector liberalisation, globalisation, technology advancements, and the

Law<MergersandAcquisitionsintheNigerianBankingIndustryALegalPerspective (1).pdf> accessed 20 September 2024.

² I Okpanachi, 'Constructive Analysis on the Impact of Mergers and Acquisitions on Financial Efficient of Banks in Nigeria' Journal of Accounting and Taxation.

³ C Obianwu & Others, Central Bank of Nigeria New Minimum Capital Requirement for Banks (2024) <Central Bank Of Nigeria (CBN) New Minimum Capital Requirements For Banks - Capital Adequacy/BASEL - Finance and Banking - Nigeria (mondaq.com)> accessed 20 September 2024.

⁴ The European Sovereign Debt Crisis is an ongoing financial debt crisis that has made it difficult or impossible for some countries in the euro zone to re-finance their government debt without the assistance of third parties. D Liberto 'European Sovereign Debt Crisis: Eurozone Crisis Causes, Impacts' (2024) <<https://www.investopedia.com/terms/e/european-sovereign-debt-crisis.asp>> accessed 20 September 2024.

⁵ Number of merger and acquisition (M&A) transactions worldwide from 1985 to May 2024 <<https://www.statista.com/statistics/267368/number-of-mergers-and-acquisitions-worldwide-since-2005/#:~:text=In%202023%2C%20nearly%2040%2C000%20merger,a%20decrease%20compared%20to%202022>> accessed 20 September 2024.

enforcement of supervisory and prudential requirements that align with worldwide legislation and norms.⁶A reformer emerged in Nigeria with aspirations for a robust, stable, and profitable banking industry. The main reforms were consolidation and recapitalization through mergers and acquisitions.⁷Chukwuma Soludo, the governor of the Central Bank of Nigeria from 2004 to 2009, was the driving force behind this proposal.⁸

In an interactive meeting with the Bankers Committee, Charles Soludo demanded that banks recapitalize NGN 25 billion (\$190 million) against NGN 2 billion by December 31, 2005, at the latest. Prof. Charles Soludo went on to say that this needs to be accomplished through mergers and acquisitions under the watchful eyes of the Security Exchange Commission, the Nigeria Deposit Insurance Corporation (NDIC), and the Central Bank of Nigeria.⁹

A significant number of mergers and acquisitions were reported in 2014 in a number of Nigerian economic sectors. Nigeria recorded 24 mergers and acquisitions in 2014.¹⁰The main factor influencing this was the continuous bank divestitures from non-essential financial services. Commercial banks were told to either exit non-banking operations or establish a holding company structure if they chose to continue providing those services after the Central Bank of Nigeria eliminated the universal banking system in 2010. The majority of commercial banks chose to sell off their non-banking businesses in response to the CBN directive, which created significant M&A opportunities in 2013 and 2014.¹¹

The current macroeconomic issues and challenges brought on by both domestic and foreign shocks have brought attention to the need for banks to raise and maintain adequate capital in order to strengthen their solvency, resilience, and capacity to support the growth of the Nigerian economy. As a result, the CBN announced an increase in the minimum capital requirements for Nigerian commercial, merchant, and non-interest banks in a circular dated March 28, 2024 (the "Recapitalization Circular").¹² For Commercial banks, with

⁶ R Alaz, Merger and Acquisition in the Nigerian Banking Industry, an Advocate of the Three Mega Banks.

⁷ A A Adepoju, 'Merger and Acquisitions: An appraisal of Regulatory Framework in Nigerian Banking Sector' (2021) 1(1) *PPLRUNLAW Review* 122.

⁸ V Akomaye & E Enofe, 'The Mega Banking in Nigeria Business Environment Emerging issues' (2007) 7(2) *The Chartered institute of Bankers of Nigeria*

⁹ Ibid.

¹⁰ The Nations, 'Nigeria records 24 mergers, acquisitions' (Lagos, 10 June 2015) <<https://thenationonline.net/nigeria-records-24-mergers-acquisitions/>> accessed 30 September 2024.

¹¹ R Oladosu & A Alex-Adedipe, 'Nigerian Mergers and Acquisitions in 2014 and the Outlook for 2015' (2015) <<http://www.alukooyebode.com/resources/nigerian-mergers-acquisitions-in-2014-and-theoutlook-for-2015>> accessed 25 September 2024.

¹² C Obianwu & Others, Central Bank of Nigeria New Minimum Capital Requirement for Banks, (2024) <Central Bank Of Nigeria (CBN) New Minimum Capital Requirements For

international authorization of five hundred-billion-naira, national authorization of two hundred billion naira with regional authorization of fifty billion naira. For merchant banks, it is fifty billion naira. For non-interest banks with national authorization is twenty billion while the regional authorization is ten billion.¹³

Nigerian banks may consider various options to meet the minimum paid-up capital such as mergers and acquisitions, upgrade and downgrade of license authorization injecting fresh equity capital through private placement, and offers for subscription. However, mergers and acquisitions constitute the predominant corporate strategy for entering new markets and geographic areas, acquiring management expertise and knowledge, or allocating cash. It is on this premise that this paper seeks to examine mergers and acquisitions in the banking sector.

2.0 Conceptual Clarification

In essence, the terms "merger" and "acquisition," together with terminology like "reconstruction," "reorganization," and "scheme of arrangement," are alien ideas. They are the result of an economy that is laissez-faire, meaning that the government interferes as little as possible and that people are free to engage in any commercial activity, they believe to be profitable. This allows for the best possible use of the nation's resources.¹⁴

2.1 Recapitalization

Recapitalisation denotes the process of enhancing financial robustness through the acquisition of supplementary capital.¹⁵ The recapitalisation of Nigerian banks emerged from societal demands, the dynamic structure of the economy, and the sensitive characteristics of the banking sector. The Central Bank of Nigeria's Banking Sector recapitalization program requires banks to increase their minimum paid-in common equity capital to a specific amount based on their authorization and licensing category within a given time frame.

Banks - Capital Adequacy/BASEL - Finance and Banking - Nigeria (mondaq.com)> accessed 20 September 2024

¹³ CBN Circular, 'Review of Minimum Capital Requirement for Commercial, Merchant and Non Interest Banks in Nigeria (2024)' <https://www.cbn.gov.ng/Out/2024/CCD/Recapitalization_MARCH_2024.pdf> accessed 21 September 2024.

¹⁴ I Gower, *The Principles of Modern Company Law* (London 4th edition, Oxford Press Ltd, 1979) 56

¹⁵ S Eyenubo, 'Bank Recapitalization, and Economic Prosperity: A Case of Nigeria Banking Industry' (2015) <<https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=fad60d27251122a5d30e5ac54c3e5ef3bd5fe505>> accessed 21 September 2024.

Notably, the most recent recapitalization reform was the banking consolidation was announced on January 6, 2004.¹⁶As a result, the minimum capital requirement for banks across all license types increased from 2 billion naira to 25-billion-naira, effective December 31, 2005. It was believed that the recapitalization action had sparked a significant change, as by 2006, there were only twenty-four banks instead of the previous eighty-nine. During the consolidation process, some banks merged, while others were purchased by more powerful organisations. The overall goal of a recapitalization effort is to give Nigerian banks the necessary capital base to sustain various economic sectors, absorb unforeseen losses, and boost public trust in the banking system all of which would help the country's economy expand and prosper.¹⁷

2.2 Bank Consolidation

This occurs when the number of banks and other deposit-taking organizations declines while the size and concentration of the surviving businesses in the industry rises at the same time.¹⁸The effects of greater size and concentration on the risks and returns of the banking sector or industry have been discussed from a number of angles. These include higher bank returns due to the removal of weaker banks and improved opportunities for diversification for the larger banks that remain, as well as a greater inclination towards risk-taking through increases in leverage and off-balance sheet operations. Consolidation is the process by which two or more businesses join forces to create a new, more successful business. Granted, cooperative organizations continue to grow and benefit from economies of scale even as they reposition to meet new commercial difficulties.¹⁹It is important to remember that Heritage Bank was the first bank to be permitted to fail since the consolidation in 2005. There have been a few ill ones since, most notably Diamond Bank and Intercontinental, but they were not liquidated. They were bought by a healthier one.²⁰

The CBN Revocation Order explained why Heritage Bank was not purchased by a stronger bank. According to this ruling, which was evaluated by the author and

¹⁶ Soludo, C.C (2004). 'Consolidating the Nigerian Banking Industry to Meet the Development Challenges of the 21st Century, *Address delivered to the Special Meeting of the Bankers' Committee, Central Bank of Nigeria, Abuja.*

<<https://www.cbn.gov.ng/Out/Speeches/2004/Govadd-6jul.Pdf>> accessed 16 May 2025.
¹⁷ Jackson, 'Bank Recapitalization: CBN sets New Minimum Capital Requirement for Banks in Nigeria' (2024) <<https://jee.africa/wp-content/uploads/2024/04/BANK-RECAPITALISATION-CBN-SETS-NEW-MINIMUM-CAPITAL-REQUIREMENT-FOR-BANKS-IN-NIGERIA.pdf>> accessed 25 September 2024.

¹⁸ RR Pennington, *Pennington's Company Law* (London 7th Edition, Butterworth, 1995) 44

¹⁹ AA Adepoju 'Merger and Acquisitions: An appraisal of Regulatory Framework in Nigerian Banking Sector' (2021) 1(1) *PPLRUNLAW Review* 119.

²⁰ E Etim, Heritage Bank: What you didn't know (2024)
<<https://businessday.ng/uncategorized/article/heritage-bank-what-you-didnt-know/>> accessed 31 October 2024.

signed by Yemi Cardoso on June 3, 2024, Heritage Bank breached Section 12(1) of the Banks and Other Financial Institutions Act (BOFIA) 2020 in five different ways. Its assets are insufficient to cover its liabilities; it conducted its operations in an unsound manner. It is seriously undercapitalized, with a capital adequacy ratio below the prudential minimum relevant to its license category; its financial performance and condition pose a risk to financial stability; it ignored specific requirements set forth by the Banks and Other Financial Institutions Act, 2020 and the Central Bank of Nigeria Act, as well as the rules, regulations, guidelines, and directives established under both Acts.²¹

2.3 Merger

It is a form of reconstruction of a company. A merger occurs when a firm moves its operations and assets to a new business that was established for that purpose in exchange for the old company's members receiving shares of the new organization. Debenture holders of the old firm receive shares or debentures of the new business to satisfy their rights if the old company's debentures have not been paid off. As a result, the same individuals who were interested in the previous company are now also interested in the new one.²² A merger denotes the amalgamation of two or more organizations into a singular, larger entity. These activities are predominantly voluntary and frequently culminate in the establishment of a new organizational name. A merger means the amalgamation, combination, acquisition, establishment or otherwise directly or indirectly, by one or more persons, whether by purchase of shares or lease of assets, resulting in a joint venture, control over or significant interest in the whole or a part of a business of any other person.²³ A merger is nothing more than an agreement and absorption of two or more existing conglomerates into one. It is the agreement of two or more already-existing banks to merge into one bank for simpler operation and greater diversification.²⁴ Such actions are mostly voluntary and often result in a new organizational name. It is defined as the absorption of one firm by another, wherein the acquiring corporation maintains its name and identity while gaining the assets, liabilities, franchise, and powers of the absorbed company, which then ceases to exist as a separate organisation.²⁵

2.4 Acquisition

The term acquisition and take over are similarly use interchangeably. Acquisition can be defined as the gaining of something for oneself or acquired.²⁶The

²¹ Ibid

²² EE Aloba, *Company and Practice in Nigeria* (Princeton & Associates Publishing Co. Ltd 2022) 794.

²³ Investment and Securities Act 2025, s. 357

²⁴ A Owogram, List of merged banks in Nigeria (2023) <<https://www.owogram.com/list-of-merged-banks-nigeria/>> accessed 23 September 2024

²⁵ In the American case of *Morris v. Investment Life Insurance Co.* 27 Ohio St. 2d. 26.

²⁶ Ibid.

aforementioned definition acknowledges acquisition as something taken, even though it can seem overly straightforward in light of our current preoccupation. Acquisition is the process by which one business acquires enough stock in another business to gain control over that other business.²⁷ This definition pointed out taking over of another company by one company through buying up of the shares of the company to be acquired company.

A takeover is an event or sequence of events in which an individual gains control of a company's assets, either directly by acquiring ownership of the assets or indirectly by gaining command of the management of the business. The definition highlights either direct control over a company's assets or indirect control obtained by gaining access to the company's management. Additionally, an acquisition is basically when one business buys all or a significant portion of another business, with the possibility that the acquired business may be fully absorbed or become a subsidiary or division of the acquirer. Likewise, a takeover occurs when a corporation purchases enough stock in another company to grant the purchasing company control over the business.²⁸ In generic terms, merger and acquisition are often used synonymously, other terms like take over, amalgamation and consolidation are also used depending on the circumstances, to express the various variants of business combinations. Such actions can be hostile or friendly and the acquirer maintains control over the acquired firm.

It is useful to notice that, despite their sometimes interchangeability, mergers and acquisitions do have some differences. Generally speaking, an acquisition is when one firm buys another without creating a new company, whereas a merger is when two companies combine to form a new company. In the event of a merger, the merged company may choose to adopt a completely different name or maintain the identity of one of the merging businesses, as was the case with Access and Diamond Banks, where the corporate color of Diamond Bank is still prominently displayed in the Access bank symbol and logo.²⁹

In particular, the following are the main differences between mergers and acquisitions: ownership of the combined business, the relative sizes of the individual companies involved in the business combination, management control of the combined business, both companies participating in the establishment of the combined business's management structure, the fact that both companies are sufficiently similar in size that one does not dominate the other when combined,

²⁷O.M. Atoyebi, 'Corporate Restructuring, Merger and Acquisition' (July 11, 2024) <<https://omaplex.com.ng/corporate-restructuring-merger-and-acquisition/>> accessed 24 May 2025

²⁸ Companies and Allied Matters Act 2020, Section 849.

²⁹ Ibid.

and the fact that a merger occurs when neither company is portrayed as the acquirer or the acquired.³⁰

3.0 Legal Frameworks on Merger and Acquisition

Mergers and acquisitions are regulated under the Federal Competition and Consumer Protection Act, the Companies and Allied Matters Act 2020, and the Investment and Securities Act, 2025.

3.1 Federal Competition and Consumer Protection Act 2018

The Federal Competition and Consumer Protection Bill received presidential assent on February 6, 2019. Given that Nigeria had no prior comprehensive legislative framework for regulating competition, this development was hailed as a turning point in the regulation of consumer protection and competition law in Nigeria. The Federal Competition and Consumer Protection Act of 2018 (FCCPA) has a significant impact on the way merger and acquisition transactions are conducted in Nigeria, in addition to providing a comprehensive framework for competition and consumer protection.³¹

It is important to note that, in contrast to the ISA, which distinguishes between mergers and acquisitions (in the context of business combinations), the FCCP Act uses the general term "merger" to encompass all types of corporate restructuring transactions, including acquisitions, which is consistent with practices found in other international frameworks like the European Union merger control framework. The FCCP Act, establishes the Federal Competition and Consumer Protection Commission (FCCPC) which is the apex regulator of acquisition transactions in Nigeria.

When one or more company endeavors directly or indirectly obtain or establish direct or indirect control over all or a portion of another business endeavor, a merger takes place. This can be accomplished through a joint venture, amalgamation, or other combination with the other undertaking in issue, or by buying or leasing the other undertaking's shares, interest, or assets. ³²An undertaking is considered to have control over another's business if it: beneficially owns more than half of the undertaking's issued share capital or assets; has the ability to cast a majority of the votes at a general meeting of the undertaking; has the power to veto or appoint a majority of the undertaking's

³⁰ O Ainrinwa, 'An Overview of Mergers and Acquisitions under Nigerian Law' (2017) 1(1) *UNILAG Law Review* 3.

³¹ A Akinyemi, 'An overview of recent changes to the regulatory framework for mergers and acquisitions in Nigeria' (2021) <<https://www.clrnn.net/2022/03/17/an-overview-of-recent-changes-to-the-regulatory-framework-for-mergers-and-acquisitions-in-nigeria-part-1/>> accessed 30 September 2024

³² Section 92 of the FCCP Act, 2018

directors; is a holding company, and the undertaking is a subsidiary of the company as defined by the CAMA.

The Act also looks at what constitutes an undertaking having control over another undertaking's operations. This includes, among other things, holding 51 percent or more of an undertaking's shares or assets, having majority voting rights, having the power to veto the appointment of a majority of the undertaking's board of directors, and having the ability to materially influence the undertaking's policy in a way that is comparable to the elements of control listed in the Act.

As a result, when a share/asset transfer or business combination grants one company or group of companies control over another company in any of the ways mentioned above, the transaction will be considered a merger under the Act. In determining the value of the transaction that will constitute a merger within the ambit of the Act, the FCCPC is empowered to determine the threshold, i.e. for small or large mergers through regulation to that effect. As a result, the FCCPC published a notice, which stipulates that the commission must receive notification within the fiscal year before to the merger: The acquiring and target undertakings combined yearly turnover in, into, or from Nigeria is one billion naira or more; the target undertaking's yearly turnover in, into, or from Nigeria is five hundred million naira or more. A merger is considered modest if its yearly turnover is less than the threshold, and large if it exceeds the threshold.³³

Small mergers and other transactions below the specified threshold may be carried out without the FCCPC's consent and may at any time be voluntarily reported to the Commission. On the other hand, it stipulates that all significant mergers must be reported and cannot be carried out without the Commission's approval, with or without conditions.³⁴

The Act grants the FCCPC concurrent jurisdiction over actions that have an impact on consumer protection and competition with other government bodies. For situations involving consumer protection and competition, the FCCPC has precedence over other agencies.³⁵ The FCCP Act is applicable outside national borders. It covers actions taken outside of Nigeria by anybody relating to the purchase of shares or other assets outside of Nigeria that change control of a company or any asset in Nigeria.³⁶

³³ Notice of Threshold for Merger Notification Pursuant to S. 93(4) FCCPA 2018, <<https://fccpc.gov.ng/wp-content/uploads/2022/07/Notice-of-Threshold-for-Merger-Notification.pdf>> accessed 28 September 2024.

³⁴ Section 96(4) of the FCCP Act, 2018

³⁵ Section 102 of the FCCP Act, 2018

³⁶ Gun jumping occurs where parties fail to obtain the approval of the FCCPC prior to implementing a merger. It will attract penalty.

3.2 Investment and Securities Act (ISA) 2025

It came into force on March 2025 and repealed the 2007 Act. It defined company to mean a company within the meaning of the Companies and Allied Matters Act.³⁷ It also extended the definitions of companies for merger and acquisition to even partnerships and other associations of persons.

In addition to extending the Act's application to mergers, acquisitions, and business combinations by partnerships, the new Investment and Securities Act 2025 has effectively brought all forms of business and non-business mergers, including those involving companies, firms, partnerships, and incorporated trustees (associations of individuals), under its regulatory purview.³⁸ Additionally, the law updates the way our markets function. It categorizes different kinds of stock exchanges, offers a framework for regulating important market infrastructure (such as trading repositories and clearing houses), and even facilitates state governments' ability to raise cash.

Pursuant to section 142(4) of the Act³⁹, a person intending to acquire 30% or more of the shares specified in subsections (2) and (3) shall make a takeover bid to other shareholders.

3.3 The Companies and Allied Matters Act 2020

It similarly introduced changes to the legal framework for Merger and Acquisition transactions in Nigeria. There is a gap in the market regarding the process for carrying out merger transactions as a result of the elimination of the pertinent provisions of the Investment and Security Act, which were not replicated in the FCCP Act. The Act establishes the previously found in the SEC Rules procedures for executing mergers (business combinations) and schemes for compromise, arrangement, or reconstruction between two or more corporations. It also incorporates a substantial chunk of the ISA's deleted portions.⁴⁰ Additionally, it has altered some aspects of how share allocations and acquisition-related transfers are carried out.⁴¹

³⁷ Investment and Securities Act, 2025, s. 357

³⁸ Investment and Securities Act, 2025, ss. 140, 141

³⁹ Investment and Securities Act, 2025

⁴⁰ See sections 711 and 712 of the Company and Allied Matters Act 2020

⁴¹ A Akinyemi, 'An overview of recent changes to the regulatory framework for mergers and acquisitions in Nigeria'(2022) <<https://www.clrnn.net/2022/03/24/an-overview-of-recent-changes-to-the-regulatory-framework-for-mergers-and-acquisitions-in-nigeria-part-2/>> accessed 26 September 2024

4.0 Comparison between the Investment and Security Act and Federal Competition and Consumer Protection Act

Under the terms of the Investments and Securities Act 2025 and the Consolidated Securities and Exchange Commission Rules & Regulations, 2013, mergers and acquisitions in Nigeria were mainly under the Securities and Exchange Commission's regulatory purview prior to the passage of the FCCP Act. The Federal Competition and Customer Protection Commission, a new body created under the FCCP Act, has been given the authority to approve mergers and acquisitions, limiting the SEC's role to transactions involving public companies. This is in response to the FCCP Act's passage and the subsequent repeal of the Investment and Security Act's sections that previously regulated mergers and acquisitions.

The argument that the assumption of control in a corporation would not necessarily occur in an asset acquisition arose from the Investment and Security Act's repeal since it made no mention of establishing control in an asset acquisition. However, since the FCCP Act expresses security and considers establishing control after acquiring an asset, this issue has been resolved.

A merger transaction originating in Nigeria or having an impact there must be reported to the FCCPC prior to implementation under the Act if, in the previous fiscal year, either: the combined annual turnover of an acquiring undertaking and a target undertaking in, into, or from Nigeria equals or exceeds One Billion Naira; or the annual turnover of the target undertaking in, into, or from Nigeria equals or exceeds Five Hundred Million Naira. This is in contrast to the Investment and Securities Act, which defines three categories of mergers, namely small, large, and intermediate mergers.

Regulatory Approval for Merger and Acquisitions

The Federal Competition and Consumer Protection Commission: The requirement to obtain the prior approval of the FCCPC applies irrespective of whether the entity being acquired is a private or public company.

Securities and Exchange Commission: Only mergers and acquisitions by or involving public companies, as well as transactions involving a change in shareholding of capital market operations, fall under the SEC's regulatory purview. They have the authority to enforce rigorous adherence to the regulations established under the Act⁴². In the event that the violator is a publicly traded firm, order the securities exchanges to either stop trading in the company's securities, halt the company's listing, or forbid the listing of any of its securities. or a merger plan that is conditionally approved under any of the following categories for the reasons listed below⁴³: inaccurate information for

⁴² Investment and Securities Act, 2025

⁴³ Investment and Securities Act 2025, s. 148

which one of the merging parties is accountable; approval acquired through deception; or any of the merging parties' violation of a merger-related responsibility.

Central Bank of Nigeria: In order to ensure high standards of banking practices and financial stability through its surveillance activities and to promote an effective payment system, the Central Bank of Nigeria (CBN) is responsible for administering the Banks and Other Financial Institutions Act (BOFIA), 2020.⁴⁴

The Nigerian Exchange Limited: Requirement to obtain NGX approval where the shares of one of the acquiring/merging entities are listed on the NGX

The NASD: The NASD Plc. is a self-regulatory organization/securities exchange registered by the Securities and Exchange Commission. It provides a trading platform where securities not listed on any traditional exchange registered by the SEC can be traded through licensed stockbroking houses.⁴⁵

5.0 Merger and Acquisition in the Nigerian Banking Sector

Nigerian banks frequently merge to become stronger and more efficient. The Central Bank of Nigeria normally encourages these mergers to ensure the stability of the banking industry and its ability to support the country's rising economy. Mergers also help banks handle larger sums of money safely, spread their risks, and comply with the CBN's financial standards, all of which are critical for averting bank failures and protecting people's money.⁴⁶ Some of the merged banks include:

Providus and Unity Bank: On Tuesday, August 6th, 2024, Unity Bank and Providus Bank announced a strategic merger to strengthen their financial position in response to the Central Bank of Nigeria's recapitalization mandate. The CBN would provide N700 billion in banking support for the merger, the first in Nigeria's banking industry in five years.⁴⁷

⁴⁴ AOC, 'The Legal aspects of Mergers and Acquisition in Nigeria' (2024) <[https://aocsolicitors.com.ng/the-legal-aspects-of-mergers-and-acquisition-in-nigeria/#:~:text=Federal%20Competition%20and%20Consumer%20Protection%20Act%20\(FCCPA\)%202018&text=Section%2093%20\(4\)%20of%20the,create%20monopolies%20C%20or%20harm%20consumers.](https://aocsolicitors.com.ng/the-legal-aspects-of-mergers-and-acquisition-in-nigeria/#:~:text=Federal%20Competition%20and%20Consumer%20Protection%20Act%20(FCCPA)%202018&text=Section%2093%20(4)%20of%20the,create%20monopolies%20C%20or%20harm%20consumers.)> accessed 31 October 2024

⁴⁵ A Oyetunde, 'Merger and Acquisition' (2024) <Key Steps in the M&A Process (19.10.24) 1.pdf> accessed 31 October 2024.

⁴⁶ U Nsima, 'Top Seven Bank Mergers in Nigeria' (2025) <<https://businesslitesafrica.com/top-7-bank-mergers-in-nigeria/?v=66e10e9ff65e>> accessed 7 January 2025

⁴⁷ D Olujimi, '2024 in Focus: Top Mergers and Acquisition in Nigeria' Business Day (Lagos, 26 December 2024) <<https://businessday.ng/companies/article/2024-in-focus-top-mergers-and-acquisitions-in-nigeria/>> accessed 5 January 2025.

Access Bank: Marina Bank and Access Bank were first combined in 2005. The year 2013 saw Access Bank purchased Intercontinental Bank. 2019 also saw the merger of Access Bank and Diamond Bank, resulting in Access Bank as a whole. The logo was further modified to better represent both institutions. Diamond Bank Plc. had already merged with other banks before the Access Bank and Diamond Bank merger. In 2005, Devcom Bank, Lion Bank, and Diamond Bank combined.⁴⁸

United Bank for Africa: In the past, UBA merged with two other banks to create a stronger partnership. Continental Bank and Nigerian Standard Trust Bank were the two banks that amalgamated to form the United Bank for Africa (UBA).

Stanbic Bank: In 2007, IBTC Bank and Stanbic Bank combined to establish Stanbic IBTC Bank Nigeria. From its beginnings as an investment bank and Trust firm Limited (IBTC) as a commercial bank, the firm, Stanbic IBTC Bank Nigeria, has developed into an end-to-end financial service provider in the nation with subsidiaries spread across several economic sectors. Currently, Stanbic IBTC Bank Nigeria has assets and capital bases of around 2 trillion and 500 billion naira, respectively. Nigeria is commemorating the 30th anniversary of Stanbic IBTC Bank. IBTC Bank had undergone a number of bank mergers in the years prior to the merger with Stanbic Bank. IBTC Holdings, Regent Bank Plc, and Chartered Bank Plc are among the banks that are involved in the merger with IBTC bank.⁴⁹

First Bank: One of the most prominent banks in the financial industry, First Bank of Nigeria, was forced to combine with other banks in Nigeria in 2005 when the Central Bank of Nigeria issued a law. FSB (merchant Bank), Intl Bank, and MBC are the banks that are merging. There are persistent rumors that First Bank Plc. and Heritage Bank of Nigeria and Fidelity Bank are in negotiations to merge.⁵⁰

First City Monument Bank: NAMBL, Cooperative Development Bank, and First City Bank are the three banks that make up FCMB. Additionally, talks of a merger between Finbank and First City Monument Bank (FCMB) began in 2009. The merger came to an end in 2012. In advance of the central bank's deadline in

⁴⁸ TNP, 'Diamond and Access Bank Merger - Changing Financial Landscape in Nigeria' (2020) <<https://tnp.com.ng/insights/diamond-and-access-bank-merger-changing-financial-landscape-in-nigeria-1>> accessed 28 September 2024.

⁴⁹ Naijnaira, List of banks that have merged in Nigeria (2024) <<https://naijnaira.com/banks-merged-nigeria/>> accessed 28 September 2024.

⁵⁰ NairaMetrics, 'update: FBN Holdings Plc reacts to merger speculations' (March 13, 2020) <<https://nairametrics.com/2020/03/13/breaking-fbn-holdings-plc-reacts-to-merger-speculations/>> accessed 18th May, 2025.

September, Finbank opens the way for recapitalization. One of the nine lenders that the central bank provided a \$ 4 billion bailout to in 2009 was Finbank.⁵¹

Polaris Bank: In order to create a stronger alliance, Skye Bank merged with a few Nigerian banks. Bond Bank Ltd. and ETB International were the banks that merged. Cooperative Bank Ltd., Reliance Bank Ltd., Prudent Bank Plc., and Bank Ltd. After Skye Bank went out of business in 2018, Polaris Bank acquired its assets and services.

Wema Bank: National Bank merged with Wema Bank. Thus far, WEMA Bank has run ALAT, the biggest digital banking system in Nigeria, since 2019. Nigeria's fastest-growing commercial bank is Wema Bank.⁵²

Union Bank Plc: One of Nigeria's largest banks, Union Bank Nigeria Plc, also combined with a few other banks to create a stronger partnership and boost efficiency. The merger was created by the joining of three banks. These three financial institutions were Broad Bank of Nigeria, Union Merchant Bank, and Universal Trust Bank Nigeria Ltd.⁵³

6.0 Types of Merger and Acquisitions

Generally, Mergers and acquisitions can occur in four different ways, which include: Vertical, Horizontal, Concentric and Conglomerate mergers.⁵⁴ However, the Nigeria legal system mainly adopts the following three ways: Horizontal Mergers and Acquisition, Vertical Mergers and Acquisition, and Conglomerate Mergers and Acquisition.⁵⁵

6.1 Horizontal Mergers and Acquisition: This type of merger occurs when two or more companies that produce comparable goods in the same area come together to form a single company. It is a consolidation of direct competitors, commonly called horizontal integration.⁵⁶ It refers to merging direct competitors, such as two or three commercial banks.⁵⁷ It also refers to the merger or takeover

⁵¹ Ibid.

⁵² Rank by Popularity, 'Wema Bank' <<https://rankbypopularity.com/preview.php?id=75>> accessed 18th May, 2025.

⁵³ Ibid.

⁵⁴ E Okonkwo, Legal Framework for Merger and Acquisitions, A paper presented at the retreat on Mergers and Acquisitions in the Nigerian banking industry organized by Central Bank of Nigeria and West African Institute for Financial S: Economic Management (WAIFEM) Abuja.

⁵⁵ O Ainrinwa, An Overview of Mergers and Acquisitions under Nigerian Law' (2017) 1(1) *UNILAG Law Review* 3.

⁵⁶ BA Garner, Black's Law Dictionary (8th edition, 2004)

⁵⁷ C Wigwe, 'Merger and Acquisition in the Nigerian Banking Industry: A Legal Perspective' *Journal of Commercial and Contemporary Law* <MergersandAcquisitionsintheNigerianBankingIndustryALegalPerspective (1).pdf> accessed 20 September 2024

of companies at the same stage of the production process.⁵⁸ The banks acquired through horizontal acquisition are Afribank Plc, which was purchased by Mainstreet Bank Ltd.; Equatorial Trust Bank, which was purchased by Sterling Bank Plc.; First Inland Bank, which was purchased by First City Monument Bank; and Intercontinental Bank Plc., which was purchased by Access Bank Plc.; additionally, Access Bank and Diamond Bank merged in 2019.⁵⁹ Consequently, the Central Bank of Nigeria states that Banks functioning in the country are now financially stable, from a capital position, following the review.

6.2 Vertical Mergers and Acquisition: It pertains to the amalgamation of two enterprises within the same industry, although at distinct stages of the production and distribution process of a product, such as raw material production, final product manufacturing, and marketing.⁶⁰ Similarly, Vertical mergers occur between firms in a non-competitive relationship, such as a raw materials producer merging with a finished goods manufacturer. It is a merger between enterprises at various operational tiers for the same product, exemplified by the combination of a producer and a retailer; a merging of purchaser and vendor. For example, a computer manufacturer may aim to acquire a semiconductor producer, or an oil refining company may seek to purchase a retail petrol station. A baking industry may also acquire a flour milling enterprise. The rationale for vertical mergers and acquisitions typically stems from the desire to ensure a reliable supply of essential resources or services.

6.3 Conglomerate Merger and Acquisitions: A conglomerate merger occurs between unrelated businesses that do not compete with one another and are neither clients nor suppliers of each other. It is merely a merger that is neither vertical nor horizontal. it is a merger or takeovers whereby businesses in unrelated or only indirectly related industries are combined.⁶¹ A pure conglomerate merger occurs when there are no economic connections between the acquiring and acquired firms. Conglomerates are collections of enterprises that function across various industries.

6.4 Concentric Merger and Acquisitions: Concentric mergers and acquisitions entail organisations with distinct operational patterns that, while disparate, may be closely related in terms of production and technology.⁶² It pertains to

⁵⁸ H Farrar, *Company Law* (London 4th Edition 1991) 80-81

⁵⁹ Harlem, Insight into the Operation of Mergers and Acquisitions in Nigeria (2022) <[⁶⁰ O Orojo, *Company Law and Practice in Nigeria* \(LexisNexis 2008\) 340](https://www.harlemsolicitors.com/2022/04/09/insights-into-the-operation-of-mergers-and-acquisitions-in-nigeria/#:~:text=A%20famous%20example%20of%20a,Access%20Bank%20Plc%20in%202019.> accessed 31 October 2024</p></div><div data-bbox=)

⁶¹ Ibid

⁶² C Wigwe, 'Merger and Acquisition in the Nigerian Banking Industry: A Legal Perspective' *Journal of Commercial and Contemporary*

companies that can be interconnected to collectively utilise shared resources and specialisation. This will enhance the mobility of labour and capital resources, potentially unlocking significant scalability. Also, bank office functions such as stock procurement, inventory management, marketing, and finance are collaboratively executed for all components of the corporate unit.⁶³

7.0 Justification for Merger and Acquisition

Mergers and acquisitions are integral to the strategic frameworks of most firms. The motives for mergers and acquisitions are determined by the acquirer's corporate or business strategy objectives, which vary among different companies.

7.1 Growth Strategy: Numerous companies, motivated by their vision and mission statements, seek to attain greater public recognition. Consequently, they employ acquisitions to implement a growth strategy. For some, the focus is solely on turnover, market share, and profitability. In other cases, purchases occur due to the managerial advantages they provide. There is a necessity for the company's restructuring to address overstaffing or excess capacity. Similarly, the financial outlook and advantages might occasionally incentivize mergers and acquisitions. This is a significant reason or theory driving the majority of mergers and acquisitions in Nigeria.⁶⁴ An illustrative example were the purchase that occurred in the banking sector in 2014, Skye Bank purchased Mainstreet Bank (previously Afribank), while Keystone acquired Bank PHB.⁶⁵

7.2 Synergy: It pertains to the amalgamation of resources from two or more distinct firms, resulting in a value for the newly merged entity that exceeds the combined worth of the individual firms. This incentive indicates that mergers and acquisitions transpire when the amalgamation of two entities yields economic benefits. It positively influences targets, acquirers, and overall gains.⁶⁶ Businesses reduce manufacturing costs through synergy, which boosts sales margins and may make them more competitive in their industry.⁶⁷ For

Law<MergersandAcquisitionsintheNigerianBankingIndustryALegalPerspective (1).pdf>
accessed 20 September 2024

⁶³ A A Adepoju, 'Merger and Acquisitions: An appraisal of Regulatory Framework in Nigerian Banking Sector' (2021) 1(1) *PPLRUNLAW Review* 122.

⁶⁴ O Ainrinwa, 'An Overview of Mergers and Acquisitions under Nigerian Law' (2017) 1(1) *Unilag Law Review* 3.

⁶⁵ D Runsuwe, 'Mergers & Acquisitions in the Banking Sector and Opportunities for Real Estate Service Providers' (2019) <<https://estateintel.com/news/banking-ma-and-opportunities-for-real-estate-service-providers>> accessed 30 October 2024.

⁶⁶ C Wigwe, 'Merger and Acquisition in the Nigerian Banking Industry: A Legal Perspective' *Journal of Commercial and Contemporary*

Law<MergersandAcquisitionsintheNigerianBankingIndustryALegalPerspective (1).pdf>
accessed 20 September 2024

⁶⁷ A A Adepoju, 'Merger and Acquisitions: An appraisal of Regulatory Framework in Nigerian Banking Sector' (2021) 1(1) *PPLRUNLAW Review* 122.

instance, the chairman of United Bank for Africa Plc explained the following in order to explain the reasoning behind the combination of United Bank for Africa Plc and Standard Trust Bank Plc: With a significant asset base and a wide range of banking services, from basic products for the low-income individual market to customized solutions for the commercial and corporate sectors, the merger's main goal is to create the top bank in West Africa and one of the biggest banks in Sub-Saharan Africa. Following the completion of the merger, the combined company would have NGN365 billion in total assets, run over 360 branches across the country, and dominate the sub-regional banking market.⁶⁸

7.3 Defensive Reasons: Nevertheless, certain corporations acquire others for investment management purposes; such entities are referred to as "corporate raiders." Corporate raiders are attracted to the prospective advantages of acquisitions. They seek undervalued companies to acquire at a low cost and rapidly realize value, potentially by disaggregating the acquired entity into smaller sections that can be resold for a profit.⁶⁹

7.4 Minimum Capital Base: Mergers and acquisitions are possibilities for companies looking to enhance their capital base. Recent macroeconomic issues and headwinds generated by global and domestic shocks have highlighted the importance of banks increasing and maintaining sufficient capital to strengthen their resilience, solvency, and ability to support Nigerian economic growth. To improve the capital basis of Nigerian banks as well as the stability of the banking sector, the Central Bank advocated mergers and acquisitions as a consolidation option. Thus, the Central Bank of Nigeria in 2024, gave a directive to all banks in Nigeria that any bank who wished to operate in the country must not later than March 31st 2026 have a minimum capital base of five hundred billion for Commercial banks with international authorization, two hundred billion for commercial banks with national authorization and fifty billion for commercial banks with regional authorization.

8.0 Challenges in Merger and Acquisitions Transactions

Significantly, while mergers and acquisitions facilitate the expansion of a company's operations, they are not devoid of adverse implications. Despite the existing legislative frameworks designed to facilitate seamless mergers or acquisitions, these structures and theoretical approaches frequently fail to accomplish their objectives. Some of the challenges include:

- a) Discord in cultural and social contexts may hinder the achievement of established objectives.

⁶⁸ Letter from the Chairman of United Bank for Africa Plc dated May 18, 2005, in the Scheme of Merger between United Bank for Africa Plc and Standard Trust Bank Plc. <<http://www.ubagroup.com>> accessed 30 September 2024

⁶⁹ O Ainrinwa, An Overview of Mergers and Acquisitions under Nigerian Law' (2017) 1(1) *UNILAG Law Review* 3.

- b) The conflict of interests and mistrust among promoters impede the success of mergers and acquisitions.
- c) The absence of sufficient expertise or experience, along with a scarcity of professionals in the subject, frequently results in the failure of mergers and acquisitions.
- d) An inadequately managed merger frequently results in collective disaster and the demise of synergy. We have observed cases where acquiring firms become incapacitated, akin to a serpent consuming its victim. Occasionally, prolonged digestion of a meal might result in adverse metabolic effects, manifesting as corporate frustration and boardroom hostility.⁷⁰
- e) Lack of Proper due diligence and valuation before engaging in merger.
- f) Litigation and disputes that are still pending in certain companies prior to the merger.
- g) Nigerian lawyers knowledgeable about the extant merger regulations are not consulted and instead operate within the stipulations set by financial advisers, unlike in other jurisdictions.⁷¹

9.0 Conclusion and Recommendations

The Central Bank of Nigeria, through its regulations, has established harmony in the activities of banks within the country. Merger and acquisition activities have served as a benchmark for assessing the growth and performance of the Nigerian economy. Indeed, mergers and acquisitions, particularly in the banking sector, are primarily intended to attain economies of size and breadth. Over time, they have led to more efficient banking systems, and the expansion of this sector correlates with an increase in the Gross Domestic Product (GDP) of every nation. The banking industry faces limits, hence consolidation through mergers and acquisitions is a strategy used to address them. The value to shareholders from consolidation is maximized and it utilizes the laws of economics of scale as well as boost shareholders' wealth.

Even if the ecosystem has undergone several changes, there seems to be more clarity around the procedures and standards for carrying out merger transactions in Nigeria. A strong merger control system also has the tendency to improve Nigeria's regulatory environment, as is obtained in other nations like the UK where the Competitions and Market Authority is a primary regulatory body to this effect.⁷² Merger control is a crucial tool used by nations to stop the

⁷⁰ O Ainrinwa, *An Overview of Mergers and Acquisitions under Nigerian Law* (2017) 1(1) *UNILAG Law Review* 3.

⁷¹ E A Okojie Ph.D, 'Global Company Crisis- How Effective is the Merger Solution in Nigeria' (2015) (3)(2) *Global Journal of Politics and Law Research* 109

⁷² ICLG, 'Merger Control Laws and Regulations Report 2025' (December 2024) <<https://iclg.com/practice-areas/merger-control-laws-and-regulations>> accessed 24 May, 2025

emergence of monopolistic and anti-competitive markets since Merger and Acquisition transactions may have an anti-competitive impact on the market.

Amidst its numerous benefits, it also has its pitfalls which have been identified above and this paper hereby recommends the following:

1. Board members and company promoters should ensure they demonstrate confidence and trust in the system in the context of mergers and acquisitions. They ought to have a positive rather than a negative perspective on significant managerial challenges.
2. Recognised experts in mergers and acquisitions should be thoroughly engaged to ensure seamless and successful execution of takeovers. Legal opinions regarding potential mergers and acquisitions should be solicited and acquired from experts in the field. This will equip firms with a proactive mindset that will aid in anticipating potential issues and devising solutions. This pertains to the regulatory frameworks that oversee the execution of mergers and acquisitions.
3. Integration must be comprehensive, adaptable, and well implemented. The determinants of post-merger performance and long-term sustainability hinge on the engagement and integration of employees from the outset to establish a unified identity centered around a collective goal.
4. A co-designed process from the outset will render the merger seamless and fluid, fostering a high level of positive engagement throughout the organisation.
5. A value-driven emphasis and company loyalty must be established from the outset of the merger.