



FCCPC AMENDS PROCESSING FEES APPLICABLE TO NOTIFIABLE TRANSACTIONS

AUGUST 2021

The Federal Competition and Consumer Protection Act, 2018 (the Act) vests the Federal Competition and Consumer Protection Commission (the Commission or FCCPC) with powers to make regulations relating to imposition and collection of fees. Accordingly, the combined provisions of Regulation 15 and Schedule 1 to the Merger Review Regulations 2020 (the 2020 Regulations) lay out different fees payable to the Commission for the transactions requiring its approval. The fees provided in Schedule 1 of the 2020 Regulations include Application, Expedited Procedure Service, Negative Clearance Procedure and Notification Fees.

On 6th August 2021, the Commission released the Merger Review (Amended) Regulations 2021 (the 2021 Regulations) which amends Schedule 1 of the 2020 Regulations and effectively brings about significant changes to the manner of determining Notification Fees payable to the Commission in respect of notifiable transactions. The 2021 Regulations introduced a new table showing the manner of determining the applicable Notification Fee as shown below:

S/N	Threshold	Fees (Consideration of Transaction)	Fees (Last Combined Annual Turnover)
1.	First ₦500 Million	0.45%	0.45%
2.	Next ₦500 Million	0.40%	0.40%
3.	Any sum thereafter	0.35%	0.35%

As with under the 2020 Regulations, the applicable Notification Fee is the higher of:

- i. An amount being a percentage of the consideration of the transaction calculated using the table above: and
- ii. An amount being a percentage of the last combined annual turnover calculated using the table above.

The 2021 Regulations takes effect immediately and accordingly the changes to the Notification Fee payable to the Commission in respect of notifiable transactions are effective immediately. The effect of the changes is that the Notification Fee now payable to the Commission will be reduced significantly for transactions whose consideration and/or parties combined annual turnover are well over N1,000,000,000 (One Billion Naira).

Under the 2021 Regulations, the Application Fee – N50,000 (Fifty Thousand Naira) per undertaking, Expedited Procedure Service Fee – N10,000,000 (Ten Million Naira) and Negative Clearance Procedure Fee – N2,500,000 (Two Million Five Hundred Thousand Naira) remain the same as they were under the 2020 Regulations without any change whatsoever.

The 2021 Regulations also formalises the practice that had been adopted by the Commission prior to the enactment of the 2021 Regulations, which is that the relevant turnover to be considered in determining Notification Fees payable in respect of notifiable transactions involving offshore undertakings with local component will be only the turnover attributable to the relevant local entity.

A novel provision introduced by the 2021 Regulations is Regulation 6 which provides as follows:



“the relevant turnover for the purpose of calculating the applicable fees¹ for transactions involving Private Investment Entities is the combined turnover of the relevant fund (subject to applicable conditions set out by the Commission) and the target”

However, the distinction between “Private Investment Entities” and other foreign investors is unclear and neither the Act nor the 2021 Regulations provides any clarification in this regard. It is also unclear what “relevant fund” referred to in the provision entails – the private equity fund from which the private equity firm is making investment from? or the private equity firm itself? or all the funds being managed or advised by the private equity firm? The “applicable conditions set out by the Commission” referred to in the provision is also not clear and the 2021 Regulations does not contain indications of such conditions.

¹ This provision, though refers to “applicable fees” only relates to calculation of the applicable application fee as all other kinds of fees are already dealt with by separate provisions of the 2021 Regulations.



One thing that seems to be clear however is that the provisions will most likely impact transactions involving private equity investors and other private investment undertakings in the market as well as their potential investee companies. It is therefore expected that the Commission provides clarification on these issues so that there will be certainty in this aspect of the Commission's regulatory purview.

It is our advice that private equity investors and other private investment undertakings, their advisers, and their potential investee entities should consider this novel provision in structuring transactions that are notifiable to the FCCPC.

The Commission's decision to amend the provisions relating to quantum of the Notification Fee with a view to reducing same appears to be in response to the views of stakeholders that the hitherto applicable Notification Fee was too high. Whilst we expect the Commission to provide clarifications to the issues raised in respect of the new provision in the 2021 Regulations, we note that the reduction to the Notification Fee effected by the 2021 Regulations is a welcome development.

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