MERGER: GOODBYE INVESTMENT AND SECURITIES ACT; WELCOME FEDERAL COMPETITION AND CONSUMER PROTECTION ACT*

Abstract

Merger is an important aspect of corporate law practice in Nigeria and other jurisdictions. Merger is generally referred to as the fusion of two or more companies or corporate entities into one. Before now in Nigeria, merger was governed by Investment and Securities Act (ISA) which was signed into law in 2007. However, a little after a decade, merger in Nigeria is now governed by Federal Competition and Consumer Protection Act (FCCPA) signed into law in 2018. While ISA had Securities and Exchange Commission (SEC) as its regulatory agency, FCCPA had Federal Commission and Consumer Protection Commission (FCCPC) as its administering agency. This paper examined merger under the new Act. It began with conceptual clarifications. The different types of mergers were adequately analysed. The categories and thresholds for mergers and more importantly the procedure for the different categories of merger were adequately covered. This research work highlighted the innovations, challenges and prospects of the new Act. A comparative approach was also adopted as merger in South Africa was appraised. There were findings in this work which include among others; merger leads to economic stability, it also leads to economic growth. Recommendations were also made, prominent was that corporate entities should not be in a hurry to merge or merge out of desperation. This paper in addition recommends merger in other sectors of the economy like airline companies in the aviation sector can merge to promote a more efficient service delivery.

Keywords: Merger, Acquisition, Fusion, Business, ISA, FCCPA

1. Introduction

Economic realities in Nigeria, the region and the world have made merger of corporate entities inevitable. This paper shall examine the concept merger generally and specifically under the new Act in Nigeria. The different types of merger shall be itemised and discussed. The categories of merger and the thresholds for merger will be adequately covered in this paper. The innovations introduced by the new Act shall be appraised and its positive and otherwise effects critically examined. The new Act is not without challenges, this research work equally takes a critically look at the challenges in the implementation of the new Act. Finally, the prospects of the Act will be elucidated upon as the Act seem to be more practicable and close to reality of the current political economy of the Nigerian state. This paper will put down its findings and make needed recommendations that will add value to the present and future implementation. Merger in ordinary parlance means two separate items or entities coming together or joining to become one. Merger in Nigeria was formally governed by Investment and Securities Act (ISA). Presently, it is governed by Federal Competition and Consumer Protection Act (FCCPA). This research work adopts the synergy theory. Emilie R. Feldmannn and Exequiel Hernandez[1] discussed synergy theory as that which arises when the value of the acquirer and the target as a single entity exceeds the summed value of the two firms operating individually. It follows therefore, that firms merge because the value of the combined firms are usually greater than the sum of the values of individual firms. Thus, both the acquirer and the target undertaking benefit from the merger through higher revenue or lower cost.

2. Conceptual Clarifications

Under the new Act, merger occurs when one or more undertakings directly or indirectly acquire or established direct or indirect control over the whole or part of the business of another undertaking.[2] Merger is the coming together of two or more separate entities to become one. Agbonika[3] opined that a merger takes place when the assets and undertakings of more than one company are brought under the ownership and control of a single company, which may be one of the companies involved or a new one. The resultant effect of merger therefore is that the shareholders who were members of several amalgamating companies now come together to own and control the same enterprise as one aggregate venture. Alobo[4] described merger as a form of reconstruction of a company which occurs when a company transfers its business and assets to a new company formed for that purpose in consideration of the issue of shares of the new company to the members of the old company. It is therefore implied that if the debentures of the old company have not been paid off, then shares or debentures of the new company are issued to debenture holders of the old company to satisfy their claims. Subai[5] posit that merger is a form of external restructuring of a company. He distinguishes it from internal restructuring like corporate buy out or arrangement and compromise. Halliday and Okara[6] described merger as a combination of two companies into one larger company for some economic or other strategic reasons. The duo further posits that merger involves the combination of two or more companies in which the assets and liabilities of the selling firm are absorbed by the buying firm.

Mergers involve coming together of two or more independent companies or businesses to either form a new or merge into one of the existing companies. It is expected that when two or more companies merge to become one, they jointly become stronger and more stable to do the business object of the company. The pulling of resources and sometimes personnel enable the new company to operate on a better pedestal to do business and achieve sustainable growth. Merger seems to be a better path in the global economic reality. Udu[7] defined merger as a business combination which involves the fusion of two or more corporate entities into one, largely of equal terms. One unique feature of mergers remains that after the fusion by the companies; only one of the companies continues to exist while the other companies cease to exist as a legal entity. Akinola[8] conceptualized

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[1] Emilie R. Feldmannn and Exequiel Hernandez Synergy in Mergers and Acquisitions: Typology, Lifecycles, and Value available @ file:///C:/Users/OBI/Downloads/Synergy-in-Mergers_FeldmanHernandez.pdf (last accessed on 30 November, 2023).

[2] [FCCPA 2018] s 92(1)(a)

[3] J A M Agbonika, *Modern Nigerian Company Law* (Ibadan; Ababa Press Ltd 2021) 527

[4] Eni Eja Alobo, *Company Law & Practice in Nigeria* (Lagos; Princeton & Associate Publishing Co. Ltd 2022) 794

[5] Prereowei Subai, *Company Law in Nigeria* (Port Harcourt. DOK Consults & Research LLP; 2023) 327

[6] C E Halliday and G C Okara in C.C. Ohuruogu (edn) *Law of Business Associations in Nigeria* (Lagos; Princeton &Associate Publishing Co. Ltd 2022) 626 'Company Reconstruction'

[7] Eseni Azu Udu, *Principles of Company Law and Practice in Nigeria* (Lagos; Mbeyi & Associates Nig. Ltd 2017) 270

[8] O B AKINOLA, *Understanding Nigerian Corporate Law Practice with Ethical Issues* (Enugu; Chenglo Limited 2010) 310

merger as any amalgamation of the undertakings or any part of the undertakings or interests of two or more companies or the undertakings of one or more companies and one or more bodies corporate. Furthermore, he added that merger can take the form of an amalgamation of two or more companies into one of them; or an amalgamation of two or more entities into a new one formed for that purpose.[9] Bhadmus[10] opined that once merger is contemplated, it becomes necessary that a memorandum of understanding be drafted to provide the necessary foundation for the negotiation. Due diligence by the parties involved in merger is a *sine qua non* for successful merger. Ogbuanya[11] defined merger as one of the options for addressing business problems and enhancing efficiency and profitability of business organisations. Business combination has become very relevant to both national and international contemporary business environment which have been characterised by business failures, distress and slow business growth. He defines merger as a business combination which involves the fusion of two or more corporate entities into one largely on equal terms.[12] Davies and Worthington[13] discussed merger as that which requires the consent by way of resolution of the shareholders of the companies involved and of their boards of directors. They described a merger as that which involves a corporate decision taken on behalf of each of the companies adopting the merger plan and distinguished it from takeover. Morse[14] opined that there is a difference between merger and takeover. Takeover more often occurs, according to him, when mergers fail. Udu[15], again defined merger and acquisition as one of the most expedient external restructuring option which has an enduring effect of addressing business problems as well as enhancing business efficiency and profitability.

3. Types and Reasons for Mergers

Three major types of mergers according to Ogbuanya[16] are: Horizontal, Vertical and Conglomerate. This paper will elucidate on them briefly:

Horizontal Integration: This involves the combination of business entities that previously were in the same line of business. Two banks can come together and merge as one united big bank which will be more stable. The striking point here remains that the companies coming together to fuse operate similar or same kind of business endeavours.

Vertical Integration: This merger involves companies or firms in non competitive relationship. In other words, two or more companies who are rather in complementary business activities fuse together in this type of merger. A very good example is bread and butter companies merging into one company.

Conglomerate Integration: As the name implies, it is a fusion between two or more companies who are into two very different and unrelated businesses. A typical example is a bank and telecommunication company fusing into one united company.[17]

Other none popular types of mergers are: triangular, reverse, defacto and downstream mergers.

The reasons why companies merge together and become one are numerous. Some of the popular reasons for merger are briefly treated below:

Diversification of risk

This can be explained from two angles. First, instead of a conglomerate going into a new business with its attendant risk factor, it can merge with a company in that business if it is a viable one, such merger will reduce or diversify the risks than the parent company going into that other line of business. On the other hand, there are so many risks associated with any business undertakings. Where two or more companies merge, the risks are shared among them. There is reduction of effect of any negative happenings on the company as the aforesaid risk is shared and or diversified.

Technological drive

Acquisition and transfer of technology is another reason companies merge. Where special skills are required, a company with the requisite skill can merge with another company that has the market for such skills. Where that happens, the new company will easily blossom and maximise the comparative advantage inherent in each of the companies that have come together to become one.

Economies of Scale

Economies of scale are cost advantages that companies get when production is efficient and there are increases in output. This is one major benefit of mergers. Thus, where different companies come together, there is increase in expertise. This will naturally lead to increase in production at a reduced cost. Where there is increase in production at a reduced cost, the company is said to operate on good economies of scale which leads to greater profit.

Technological Advantage

One positive effect of merger is technological combination. It is usually not very easy for companies to acquire all the needed technology for its operations. Where merger takes place, the merging companies contribute their technological ability for the smooth operations of the new company. This combination of technologies is very much advantageous to the company. Therefore, one of the reasons merger occurs is for combination of available technology to the growth and advancement of the company.

[9] ibid
[10] Y H Bhadmus, *Bhadmus on Corporate Law Practice* (Enugu; Chenglo Limited 2009) 434
[11] Nelson C.S. Ogbuanya, *Essentials of Corporate law practice in Nigeria* (Lagos; Novena Publishers Ltd 2010) 587
[12] ibid
[13] Paul L Davies and Sarah Worthington, *Gower and Davies Principles of Modern Company Law* (9th edn, Lomdon; sweet and Maxwell Publisher 2012) 1104
[14] Geoffrey Morse, *Company Law* (12th edn, London; Stevens & Sons Ltd 1983) 717
[15] Eseni Azu Udu, *Principles of Company Law and Practice in Nigeria* (2nd ed, Enugu; Miridam Prints 2021) 266
[16] Ogbuanya (n 10)
[17] B A Garner (ed), *Black's Law Dictionary* (9 edn) 1009

Survival of Regulatory Requirement for Consolidation

This point can be best explained using the benchmark for Nigerian commercial banks to deposit twenty-five billion deposit with Central Bank of Nigeria. The twenty-five banks[18] that met that requirement did so mostly via merger. Merger affords different banks to fuse and survive such amount imposed the government. Any bank which did not merge and is not able to deposit the aforementioned amount will be liquidated. Sourcing out such amount of money is not easy for an individual bank. Merger between two or more banks was one of the way out of the quagmire and should always be encouraged.

4. Goodbye Investment Securities Act; Welcome Federal Competition and Consumer Protection Act

The statute governing merger in Nigeria changed a little after over a decade. Investment and Securities Act was signed into law in 2007 and became the cornerstone statute for merger with Security and Exchange Commission (SEC) as its institutional operational base. However, merger is now governed by Federal Competition and Consumer Protection Act (FCCPA) with Federal Competition and Consumer Protection Commission (FCCPC) as its institutional operational base. This paper informed that prior to this time merger was governed by Investment and Securities Act which defined merger as any amalgamation of undertakings or any part of the undertakings or interest of two or more companies or the undertakings or part of the undertakings of one or more companies and one or more bodies.[19] Merger in Nigeria is currently administered by FCCPA. The Act clearly repealed provisions of sections 118-128 of Investment and Securities Act (ISA) 2007 dealing with merger. Furthermore, the Act[20] stated that the provisions of any other enactment, including the ISA, regulations or subsidiary laws in force relating to or connected with the matter of this Act shall be read with such modifications as are necessary to bring them in conformity with the provisions of this Act[21] Currently, the thresholds for small or large mergers are determined by instrument issued by FCCPC. It is called "Notice of threshold for merger notification". This instrument became effective on 9th September 2019. The Notice states that mergers are notifiable thus:

> a merger shall be notifiable before implementation if, in the financial year preceding the merger: the combined annual turnover of the acquiring undertaking and target undertaking (combine figure) in, into or from Nigeria equals or exceeds One Billion Naira (₦1, 000, 000,000.00) or if the combined turnover of the target undertaking in, into or from Nigeria equals or exceeds Five Hundred Million Naira (₦500,000,000.00)[22]

The above can be explained from two perspectives. First, a merger shall be notifiable before implementation where the combine annual turnover of both the acquiring company and the target company in, into, or from Nigeria equals or exceeds One Billion Naira (₦1, 000, 000,000.00) on one side. The other side is where the annual turnover of the target company only, in, into or from Nigeria equals or exceeds Five Hundred Million Naira (₦500, 000,000.00) then such merger is notifiable to FCCPC before implantation. The procedure for small and large mergers shall be discussed next.

5. Procedure for Small and Large Mergers under the FCCPA 2018 Small Mergers

The procedure for small mergers under the Federal Competition and Consumer Protection Act goes thus:

a) Participants may notify the FCCPC before effecting the merger. Section 95(1) provides that a party to a small merger is not required to notify the commission of that merger unless the commission requires it to do so in accordance with the provision of subsection (3); and may implement the merger without the approval of the commission unless the commission requires it to do so in accordance with the provision of subsection (3). s 95(2) emphasizes the discretionary right of the parties to notify the FCCPC about the merger where it provides that a party to a small merger may voluntarily notify the commission of that merger at any time.

b) The commission requests information on the merger from the parties. Section 95(3) provides that within 6 months after a small merger is implemented, the commission may require the parties to that merger to notify it of the merger in the prescribed manner and form f, in the opinion of the commission, having regard to the provisions of the section, the merger may substantially prevent or lessen competition.

c) Section 95(4) provides that the notification of the merger referred to subsection (3) shall be published within 5 business days after receipt by the commission.

d) Section 95(6)(a**)** provides that within 20 business days after parties to a small merger have fulfilled the notification requirement referred to in subsection (3), the commission may extend the period in which it has to consider the merger by a single period not exceeding 40 business days and in that case, the commission shall issue an extension notice to any party who notified it to the merger; or

e) Section 95(6)(b) provides that after having considered the merger as required this section, issue a report in the prescribed form: approving the merger, approving the merger subject to any conditions, prohibiting the implementation of the merger, if it has not been implemented, or declaring the merger prohibited.

f) Section 95(7) provides that if within the expiration of the 20 days business notice or the 40 days extension the FCCPC has not written the written, the merger will be deemed to have been approved.

g) Section 95(8) provides that the commission shall- a) Publish a notice of any decision it makes pursuant to this section in the FG *gazette*; and b) Issue written responses for the decision if- i) It prohibits or conditionally approves a merger, or ii) requested to do so by a party to a merger.

6. Large Mergers

The procedure for large mergers under the Federal Competition and Consumer Protection Act goes thus:

a) Parties to a large merger are statutorily required to notify the FCCPC of the merger. Section 96(1) provides that a party to a large merger shall notify the commission of the merger in the prescribed manner and form.

b) Section 96(3) provides that the primary acquiring undertaking and the primary target undertaking shall each provide a copy of the notice contemplated in subsection (1) to- a) Any registered trade union that represents the employees in the acquiring

[18] https://www.cbn.gov.ng/out/publications/bsd/2006/banks%20with%2025%20billion.pdf last accessed on 1 November, 2023.

[19] (ISA 2007) s 119(1)

[20] (FCCPA 2018) S 165(1)

[21] (FCCPA 2018) S 164

[22] (Notice of Threshold for Merger Notification) s 1(1) (a) & (b)

undertaking and the target undertaking; or b) The employees or representatives of the employees of the employees in the acquiring undertaking and the target undertaking, if there are no such registered trade unions.
c) Section 96(2**)** the notification of merger referred to in subsection (1) shall be published within 5 business days after receipt by the commission.

7. Important Notes

a) Section 96(4) provides that the parties to a large merger shall not implement the merger unless approved, with or without conditions, by the commission in accordance with the provisions of this Act.
b) Section 96(5) provides any action taken by any party in violation of the provisions of subsection (4) is void.
c) Section 96(7) provides that any undertaking that violates the provisions of subsection (4) commits an offence and is liable on conviction to a fine not exceeding 10% of turnover of the undertaking business year preceding the date of the commission of the offence or to such other percentage as the court may determine having regard to the circumstances of the case.
d) Section 97(1)(a): within 60 business days after the parties to a large merger have fulfilled all notification requirements referred to in Section 96 of this Act, the commission; may extend the period in which it has to consider the proposed merger to 120 business days and issue an extension notice to all parties to the merger, or
e) Section 97(1)(b**)**: or after having considered the merger in accordance with the provisions of this Act, issue a report in the prescribed form- i) Approving the merger, ii) Approving the merger subject to conditions, or iii) Prohibiting the implementation of the merger.
f) Section 97(2): where upon the expiring of the 60 business day period provided for in subsection (1), the commission has not issued an extension notice as provided for in that subsection or, upon the expiry of an extension period contemplated in subsection (1)(a), the commission has not issued a report referred to in subsection (1)(b) the merger shall be regarded as haven been approved, subject to the provision of section 99 of this Act.
Note- The said s 99 empowers the commission to either revoke its own decision to approve or conditionally approve a small or large merger at any time and it doesn't matter that a limit was set out for the commission to dissent approving the merger has elapsed.
g) Section 97(3): the commission shall publish a notice of any decision it makes pursuant to this section in at least 2 national newspapers; and issue written reasons for the decision if – i) It prohibits or conditionally approves the merger, or ii) requested to do so by a party to the merger.

8. Innovations, Challenges and Prospects of the Act

There are a number of innovations regarding merger under the new Act. The present writer observes some important takeaways from the new Act. They include but not limited to the following:
a) There are only two categories of merger under FCCPA, small and large. This is unlike the previous Act that had small, medium and large. This is a very big innovation in the new Act.
b) Only large mergers are notifiable, thus, there is no need to notify the commission if the merger is small except the commission makes the request. Although this existed in the previous Act but significant differences exist.
c) Where the annual turnover of the acquiring undertaking and the target company in the preceding year in, into or from Nigeria equals or exceeds one billion naira then it is large.
d) Also, when annual turnover of the target undertaking in, into or from Nigeria equals or exceeds five hundred million naira, it can be deduced that such is a large merger.
e) Where the annual turnover in, into or from Nigeria is less than the above, then it is a small merger.
f) The words "acquiring" & "target" used in discussing acquisition are embedded in here. Mergers and acquisition seemed not to be separated in the Act.
g) There is the use of the term "business days" as against "working days" used in the old Act. The writer concurs with the business days usage as it demonstrate that companies merging as business entities and days are counted as business days.

9. Prospects and Challenges of the Act

The challenge the Act therefore faced is inability to separate merger and acquisition as both though similar but different. Acquisition is essentially the purchase by one company of all or substantial interest of another company, such that the acquired company becomes a subsidiary or division of the acquiring company.[23] It can be deduced that though acquisition has some resemblance of merger but distinction exist. Merger can be by two companies on equal terms. Two companies can horizontally merge to boost their business output and reduce competition. Such merger is not necessarily acquisition. One other area of concern to many industry watchers is what could be the reason for reduction in threshold of large merger to One Billion Naira? This is against the backdrop that under the old Act that had three categories of small, medium and large, it was five billion naira and above as threshold for large merger. The present researcher is of the view that such lowering in threshold for large merger could be as a result of economic reality and dwindling resources in Nigeria.

There exist prospects in the new Act. The Act seemed to have taken the complex nature of current business realities into consideration. It has increased the number of days the authorizing institution has to finish the process of large merger. The present writer feels it is in line with current complex economic realities in Nigeria. In the old Act[24], within 40 working days after all parties to a large merger have fulfilled all the prescribed notification requirements, Securities and Exchange commission should forward to court a statement either approving the merger, approving subject to condition or prohibiting the merger. By the new Act[25] within 60 business days after the parties to a large merger have fulfilled all notification requirements referred to in the Act, the commission may extend the period in which it has to consider the proposed merger to 120 business days and issue an extension notice to all parties to the merger. It is expected that after the 60 or 120 business days as the case may be, FCCPC should issue a report in the prescribed form approving the merger, approving the merger subject to conditions, or prohibiting the implementation of the merger. The present researcher is of the view that these striking modifications adds

[23] Ogbuanya (n) 587
[24] (ISA 2007) s 126(b)
[25] (FCCPA 2018) s 97(1) & (2)

to the prospects of the new Act. The increased number of days gives the commission amiable allowance and requisite time and opportunity to do a better job. Another identifiable prospect in the new Act is the fact that it gives the merging parties opportunity to deem that the merger is approved after 60 or 120 business days as the case may be. Thus, after the prescribed period by the Act, but no news is heard from the commission, it can be deemed that merger is approved.[26]

10. Lesson from South Africa

The legal framework for mergers in South Africa is Companies Act 71 2008. The Act[27] allows two or more profit companies, including holding companies and subsidiary companies, may merge if upon implementation of the merger, each merged company will satisfy the insolvency and liquidity test. It is copious from the above law that multiple companies can come together for purposes of merger. The only requirement as stated by the Act is passing solvency test. The Act further states that the two or more companies proposing to merge must enter into agreement setting out the terms and means of effecting the merger and, in particular, setting out:

a). The proposed memorandum of incorporation of any new company to be formed by the merger;
b). The name and identity number of each proposed director of any proposed merged company;
c). The manner in which the securities of each merging company are to be converted into securities of the proposed merged company;
d). If securities of any of the merging companies are not to be converted into securities of any merged company, the consideration that the holders of those securities are to receive in addition to or instead of securities of any proposed merged company;
e). The manner of payment of any consideration instead of the issue of fractional securities of a merged company or of any other juristic person , the securities of which are to be received in the merger;
f). Details of the proposed allocation of the assets and liabilities of the merging companies among the companies that will be formed or continue to exist when the merger agreement has been implemented;
g). Details of any arrangement or strategy necessary to complete the merger, and to provide for the subsequent management and operation of the proposed merged company or companies.
h). The estimated cost of the proposed merger.[28]

The Act also provided that if the securities of one of the merging companies are held by or on behalf of another of the emerging companies, such securities must be cancelled when the merger is effected.[29] Other features of the South African model includes holding of the shareholders meeting of the merging companies and making available to each shareholder a copy of summary of the merger agreement.[30] The major procedure in South Africa begins after a special resolution have been adopted by persons entitled to exercise voting rights on such matter, at a meeting called for such purpose and at least 25% or more of all voting rights that are entitled to exercise their right on the matter.[31] Where 15% of the members of the company oppose the resolution they can approach the court.[32] The final sets of the procedures are thus; after the resolution for merger is adopted by each company, that is a party to the merger, the following steps are necessary.

a) Each of the merging companies must cause a notice of the merger to be given in the prescribed manner and form to every known creditor of the company.

b) Within 15 business days after delivery of the notice, a creditor may apply to court for review of the merger only on the grounds that the creditor will be materially prejudiced by the merger.

c) The court may grant leave if it is satisfied that: i) Applicant for leave is acting in good faith; ii) If implemented, the merger would materially prejudice the creditor; and iii) There are no other remedies available[33]

It should be pointed out that the minister of finance gives consent if required.[34] After receiving notice, the commission must issue a registration certificate for each company, if any that has been newly incorporated in terms the merger and deregister any of the merging companies that did not survive the merger.[35] The merger takes effect in accordance with merger agreement and does not affect any existing liability of a party to the agreement or of a director of any of the merging companies. Finally, when a merger is implemented, the property of each merging company becomes the property of the newly merged company.[36]

11. Conclusion and Recommendations

This paper observes that merger leads to economic stability. This is understandable as companies come together and merge as one with greater manpower and finance to pursue their business object. The fusing of two or more companies leads to enhanced finance to adequately do greater business. Merger stimulates economic growth. This is achievable as companies that merged having pulled resources both manpower and finance contribute to the growth of the economy. The activities of companies doing business in any economy contributes to the growth of such economy and by extension should lead to better wellbeing of citizenry. Mergers when properly institutionalized will to a great extent prevent liquidation of companies. This is because companies can come together and merge thus pulling resources together for good. Liquidation of companies doesn't portend good for any economy. It is therefore a good thing that mergers afford companies the opportunities to merge and sustain jobs rather than people losing jobs. This paper has x-rayed the concept of merger. A thorough conceptualization of the concept was carried out with references to some of the best authors in this area of law. A critical analysis of merger was carried out by the present writer juxtaposing merger procedures under FCCPA and ISA. The changes noticeable in the new Act were highlighted

[26] (FCCPA 2018) s 97(2)
[27] (CA 2008 S. A.) S. 113(1)
[28] (CA 2008 SA) S.113(2)a-h
[29] (CA 2008 SA) S.113(3)
[30] (CA 2008 SA) S.113(5)
[31] (CA 2008 SA) S.115(2)(a)
[32] (CA 2008 SA) S.115(3)(a)-(b)
[33] (CA 2008 SA) S.116(3)(a)&(b)
[34] (CA 2008 SA) S.116(4)
[35] (CA 2008 SA) S.116(5)
[36] (CA 2008 SA) S.116(7)

and explained. The innovations, challenges and prospects of the Act were brought forward for readers to appreciate. Some recommendations of this paper include the following: Merger should not be out of desperation by companies. It should be thoroughly thought out and systematically carried out to add value to the economy of the country when successfully carried out. FCCPC should endeavour to conclude merging process within the aforesaid period stated in the Act. This is to avoid a forth and back movement for instance where the parties to a merger deem the merger to have been approved only for the commission to do otherwise. Such forth and back movement would not be good for the economy of any country. This paper recommends merger for some other businesses in Nigeria such as airlines and oil refining. Where this is done, it will lead to stability in those sectors of the Nigerian economy and enhance effective service delivery. This paper encourages the adoption of some aspect of the South Africa merger model. Among others, the one that states that details of the proposed allocation of the assets and liabilities of the merging companies among the companies that will be formed or continue to exist when the merger agreement has been implemented. Merger includes inheriting assets and liabilities. It is a good idea that merging companies know about them before they merge.