
MERGERS AND THE SUSTAINABILITY OF SMALL AND MEDIUM ENTERPRISES (SME) IN NIGERIA





Introduction

Nigeria has, over the years, suffered multiple setbacks in her industrialisation drive leading to a record high unemployment, near absence of manufacturing activities, inflations and a devaluation of the Naira. Several factors are responsible for these setbacks, one of which is the absence of a conducive environment to encourage Medium Enterprises (SMEs). According to a recent report on the performance of SMEs in Nigeria, the Central Bank of Nigeria (CBN) reported that **“In Nigeria, there has been gross underperformance of the SMEs sub-sector, and this has undermined its contribution to economic growth and development. The key issues affecting the SMEs in the country can be grouped into the unfriendly business environment, poor funding, low managerial skills and lack of access to modern technology”**¹.

Knowing the importance of SMEs in the drive for economic growth, the government has implemented several policies, some of which include the establishment of the Small and Medium Enterprise Development Agency of Nigeria (SMEDAN)², restructuring of the Bank Of Industry³ and also the several Central Bank Nigeria (CBN) direct and indirect interventions which are geared towards encouraging financial institutions to provide SMEs friendly facilities to drive economic growth across the country⁴. Despite these steps, Nigeria is still laid back in industrialisation and providing support systems for SMEs to thrive⁵.

In addition to those pointed out in the CBN’s report, the reason for this unimpressive run for Nigeria’s SMEs would range from lack of access to credit, poor infrastructure, which bears more on the cost of production/services and lack of protective policies aimed at protecting the local market from over subsidized foreign competitors e.t.c. The direct consequences has been the low survival rates of small businesses and companies, 65% of which, according to recent statistics, do not survive the first three years of existence.⁶

Does the question now become, what strategies can these SMEs employ to strive and survive the harsh business climate witnessed in Nigeria, especially in the light of the recent economic downturn?

1 (FSS 2020 SME Sector Report, 2007). <https://www.cbn.gov.ng/devfin/smefinance.asp> Accessed on 10/10/2022

2 Ibid.

3 Small and Medium Enterprise Development Agency of Nigeria ACT 2003

4 Small and Medium Enterprise Credit Guarantee scheme (SMECGS) of the Central Bank of Nigeria which released 200 billion naira as guaranty for access to credit.

5 Ibid

6 The Nigerian Association of Small and Medium Enterprises (NASME) 2013 report <http://businessnews.com.ng/2013/01/29/65-new-businesses-die-within-first-3-years-in-nigeria-nasme/> accessed on the 10/10/2022



In answering this question, I think that while there may be several options available to small businesses, one of the least explored options has been mergers of companies and market interest. The union of firms and enterprises enables two or more struggling companies to pull sufficient capital or credit capacity, industrial machinery and market to stabilise their business activities and enhance their ability to weather the storm, which most times are inevitable in any business climate. This system has worked and is continuously applied in industrial nations and has contributed to high SME yields and earnings.

The Concept of Merger & Acquisition is recognised and provided for in our business regulations, such as the Companies and Allied Matters Act, 2020⁷ and other relevant statute like the Federal Competition and Consumers Protection Commission Act⁸ and the Investment and Securities Act.⁹ These laws govern and regulate merger transactions for businesses in Nigeria. They ensure the process is transparent and that the interest of all parties to the trade and that of the public are considered and protected. We shall dwell more on the concept of Mergers being the much-needed pull to drive the growth and sustainability of SMEs in Nigeria.

The essence of this article is to enlighten small and medium businesses on the hitherto rarely explored option for mergers as a mechanism to sustain, resuscitate or revive a promising venture that may otherwise at been on the verge of packing up. By this, we also intend to advocate for policies that would make the merger process attractive and custom-friendly for SMEs in Nigeria.

We intend to achieve all of the proceedings in the following order:

1. The Concept of Mergers and its potential benefits for SMEs
2. The Regulatory Procedure Provisions for Mergers Under our laws.
3. The recommendations on Mechanisms to make Mergers an attractive option for businesses in Nigeria

1. The Concept of Mergers and Acquisition (Definition and benefits)

i. Definition

Generally, Mergers and Acquisitions (M&A) are business transactions in which the ownership of companies or their operating units are transferred to or consolidated with another company. This is with the strategic interest of allowing the enterprises to grow or stabilise with increased

7 Sections 59 and 711 of the Companies and Allied Matters Act, 2020

8 Federal Competition and Consumer Protection Commission Act, 2018

9 Part XII of the Investment and Securities Act, 2007



capacity to maximise profit. **The Companies and Allied Matters Act 2020** further defines merger to have occurred:

“...if one of the companies concern purposes to acquire all the assets and liabilities of the other in exchange for the issue of its shares or other securities to shareholders in the other company.”¹⁰

The Investment and Securities Act defined it all the more succinctly as thus,

“A merger means any amalgamation of the 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 or more bodies corporate.”¹¹

As already pointed out in the introductory part of this work, the term ‘mergers’ is often tagged alongside Acquisition as they both serve as a utility vehicle for consolidating two business entities into one. They are a veritable source of business combinations in any thriving economy. They are arguably the most famous external corporate restructuring tools companies employ to achieve growth and maximise profitability.¹²

The distinguishing factors however in these concepts are that while Merger is seen as a legal consolidation of two business entities into one, an Acquisition on the other hand occurs when one entity takes ownership of another business entity.

Investopedia.com put it succinctly thus **“Merger occurs when one company takes over another and establishes itself as the new owner, the; purchase is called an acquisition.”¹³**

These universal distinctions notwithstanding, we must state that the relevant Nigerian regulations that govern the process do not emphasise these distinctions as the same procedure regulates the procedure.

To sum this up, we would wish to state that while the mechanisms for mergers vary and may be through takeover bids or some voluntary scheme or arrangements provided for in the laws, our emphasis is that it is one of such tools available to SMEs which when explored would lead to a

10 Section 59(6) of the Companies and Allied Matters Act, 2020

11 Section 119(1) of the Investment and Securities Act, 2007

12 Folarin, Akorede, “The New Regime for Mergers and Acquisitions Under the Companies and Allied Matters Act 2020 (August 20, 2020). Available at SSRN: <https://ssrn.com/abstract=3685095> or <http://dx.doi.org/10.2139/ssrn.3685095>

13 Investopedia: Merger & Acquisition(M&A): types, Structure & Valuations. <https://www.investopedia.com/terms/m/mergersandacquisitions.asp> Accessed on 13/10/2022.



more substantial chance of survival and sustainable growth in the face of limited resources or opportunities for growth.

While our emphasis today may be on the merger for SMEs, practical instances where Merger and Acquisitions played a prominent role in Nigeria were seen in 2005, when some commercial banks had to merge and pull together their assets to be able to meet the then CBN's mandatory threshold of 25 billion Naira¹⁴

ii. Advantages Of Mergers & Acquisition For Small And Medium Enterprises

Like the example we provided above, Mergers would benefit SMEs just as it has in most instances to more significant business entities. It is much more helpful to small and medium-sized enterprises. According to the Corporate Finance Institute,¹⁵ companies/businesses do engage in mergers to

- a. Secure more resources, and their scale of operations will increase.
- b. Confer benefits to their shareholders who will receive shares in the new company after the merger.
- c. Enter new markets or diversify their offering of products and services, consequently increasing profits.
- d. Acquire assets that would take time to develop internally.
- e. Lower the tax liability, a company generating substantial taxable income may look to merge with a company with significant tax loss carry forward.
- f. Eliminate competition among them, thus reducing the advertising price of the products. In addition, lowering costs will benefit customers and eventually increase sales.
- g. Aid better planning and utilisation of financial resources.

These advantages are what SMEs in Nigeria can explore to ensure sustainability in an economic climate like Nigeria, where businesses do not have access to credit to undertake some form of expansion or innovative risk.

iii. The Caution For Mergers

As earlier pointed out, SMEs is to serve the purpose of business survival or to increase production quality and benefits to shareholders. While this is intended, Public Policy frowns where the intention is tilted towards establishing a monopoly on products, reducing consumers'

14 Spring Bank Plc and Skye Bank both came from the conglomeration/merger/combination of several other banks who could not meet up the capitalization requirements. https://www.researchgate.net/figure/Banks-that-Met-the-N-25-Billion-Minimum-Capital-Requirement-and-the-Banks_tbl1_336568426. Accessed on the 10/10/2022.

15 CFI on "Merger" <https://corporatefinanceinstitute.com/resources/knowledge/deals/merger/> accessed on 10/10/2022



choices while, on the other hand giving liberty for prices that are not short of extortionist in nature.

The Federal Competition and Consumer Protection Commission was set up to address anti-competition policies by businesses which stifle growth and consumers' options for products or services. Even though minor mergers may, in some cases, not be required to notify the SEC of its unions, where genuine complaints are filed at the FCCPC, such anticompetitive mergers would be objected to.

The Securities and Exchange Commission also uses several anticompetition/monopoly yardsticks in its discretion to approve or disapprove an application for merger or acquisition. This fact cannot be overemphasised as history has repeatedly shown the negative effect of the monopoly of organisations on any society.

2. The Regulatory Framework for Mergers Under the Relevant laws

I. The Laws/Regulations

In this work's introductory part, three (3) significant statutes were pointed out to provide the framework for Mergers and Acquisitions in Nigeria. They jointly exercise various degrees of regulatory governance over any such schemes or arrangement since it would have the same effect as a merger & acquisition. These statutes and the role they play are thus:

a. The Companies and Allied Matters Act 2020 – This provides for and governs the procedures mergers are to follow and how to deal with and resolve issues arising from dissenting shareholders. It also provides for the reregistration

b. The Investment & Securities Act – The Securities & Exchange Rules & Regulations (SERR) made under the Act governs Nigeria's merger and acquisition procedure. However, this may or may not apply to all mergers only, as its applicability depends on the threshold of the Assets of the merging entities. It also considers competitiveness.¹⁶

c. Federal Competition and Consumer Protection Commission Act – This vet the merger scheme to ensure unhealthy monopolies are not intended and weigh in on the overall public interest.

¹⁶ Section 121(3) of the Investment and Securities Act, 2007



d. The Federal High Court Act- In addition to the provisions of Section 251 of the 1999 Constitution as amended, the Companies and Allied Matter Act 2020, provides the enabling jurisdictions for the court to sanction merger schemes where it is required to do.

II. The Regulators

The following agencies regulate the merger and acquisition process in Nigeria.

- a. The Corporate Affairs Commission(CAC)
- b. The Securities and Exchange Commission(SEC)
- c. The Federal Competition & Consumer Protection Commission (FCCPC).
- d. The Central Bank of Nigeria and other regulators overseeing the various sectors where these merging entities operate

III. Thresholds and Categories of Mergers

Mergers are generally categorised based on the network of the combined assets and turnover of the companies. Depending on these factors, they are statutorily classified as:

- a. Small Merger
- b. Intermediate Merger
- c. Large Merger.

We will break down these categories in the second part of this series.

IV. Procedure for Mergers

The procedure to effect a merger or acquisition of a company differs depending on the nature or type of union in question, the merger terms of the coalition and the volume of its collective interest and finally, the sector of the economy itself. The governing regulations categorise mergers into large mergers, intermediate and small mergers. As touching this topic, small mergers often do not require sanctioning processes at the commission.

They are only required to notify the SEC of the mergers of their interest.

Generally, mergers for small businesses would require the following:

- a. The consent of shareholders
- b. A scheme of arrangement sanctioned by directors of the company and approved by the members of the company.
- c. Relevant resolutions.
- d. Notification of the relevant regulators.



3. The recommendations on Mechanisms to make Mergers an attractive option for businesses In Nigeria

Policymakers' general interest in driving the mergers and acquisitions procedures in Nigeria should be less cumbersome to not discourage small business owners from becoming frustrated and seeing it as too rigorous a process to undertake.

Hence it is this present writer's view that the processes be akin to a memorandum or consent of the management and owners of each entity with a transparent procedure to ensure support and, afterwards, a seamless registration with the Commission.

Secondly, an awareness campaign should be systematically initiated to expose companies to the benefits of mergers and the basic procedures to execute one successfully. This task can be embarked upon by the Small and Medium Enterprise Development Agency as a means to ensure a positive growth trajectory for SMEs.

Thirdly, dealing with dissents or opposition should be made less cumbersome and much more transparent to enable a smooth resolution to issues that may complicate the merger procedure. Fourthly, there should be room for tax and other incentives, especially where it is shown that the merger only serves the intent to garner resources to meet certain statutory demands and the rough business terrain.

CONCLUSION

Mergers for small businesses should be encouraged and incentivised in addition to being given the much needed awareness to ensure viable SMEs support systems that provide survival like Mergers.



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Article by:



Jeremiah E. Aneji Esq.