



DUALE, OVIA &
ALEX-ADEDIPE

The Merger Review (Amended) Regulations, 2021

On the 2nd of August 2021, the Federal Competition and Consumer Protection Commission (“the Commission”) introduced the Merger Review (Amended) Guidelines 2021 (“Amended Merger Regulations”). The Amended Merger Regulations introduced a significant amendment for computing the processing fee for notified merger transactions and made clarifications for computing the turnover for Private Investment Entities such as private equity and venture capital fund.

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Processing Fee Computation

Under the Merger Review Regulations 2020 (2020 Merger Regulations) stipulated that the processing for notified mergers are calculated as follows:

- a. 0.3% for the first N500,000,000 both for consideration of the transaction and last combined annual turnover of the merging undertakings;
- b. 0.225% for the next N500,000,000 both for consideration of the transaction and last combined annual turnover of the merging undertakings;
- c. 0.15% of any consideration sum after (a) and (b) above or 0.75% of the remainder combined annual turnover after (a) and (b) above

In response to complaints that the fees chargeable under the 2020 Merger Regulations significantly increased the transaction costs of the notified transaction and may serve as a disincentive for mergers specifically and investments generally, the Commission introduced a new basis for computing the relevant processing fees as follows:

S/N	Threshold	Fee (Consideration of Transaction)	Fee (Last Combined Annual Turnover)
1.	First N500,000,000	0.45%	0.45%
2.	Next N500,000,000	0.40%	0.40%
3.	Any Sum Thereafter	0.35%	0.35%

Calculating Turnover for PE/VC Funds

PE/VC funds are typically registered as limited liability partnerships (“LLPs”) and make investments in target undertakings through special purpose entities or vehicles (“Investment Vehicles”). The Commission’s Notice of Threshold for Merger issued 9th September 2019 (“Threshold Notice”) did not stipulate whether the applicable turnover for PE/VC Funds should be the turnover of the entire fund at the LLP or that of the relevant Investment Vehicle which is the party to the merger. Paragraph 6 of Amended Merger Regulations stipulate that the relevant turnover for “Private Investment Entities” is that of the fund. By implication, the relevant turnover is that of the PE/VC fund at the LLP level and not that of their Investment Vehicles. For international PE/VC funds with inter-jurisdictional operations, while the Amended Merger Regulations is silent as to whether the relevant turnover is their global turnover or turnover attributable to their Nigerian investments and fund raising, Par.1.1(a) of the Threshold Notice clearly stipulates that the applicable turnover is the turnover in, into and from Nigeria. Put simply, the relevant turnover of a PE/VC fund will be the turnover in terms of their investments into and/or returns from Nigerian investments.



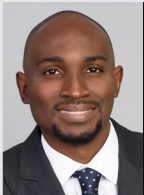
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It depends on the nature of the transaction.

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For more information, please contact us at info@doa-law.com or visit our website at www.doa-law.com.



Oluwaseye Ayinla

Partner

+234 705 801 7112

s.ayinla@doa-law.com

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1, Prof. Olagoke Olabisi Street, Off Folashade Awe Street,
Remi Olowude Way, Lekki Phase 1, Lagos, Nigeria

Tel.: +234 1 631 2150
Email: info@doa-law.com
www.doa-law.com