A REVIEW OF THE REMEDY OF DISSENTING MEMBERS IN MERGER AND ACQUISITION UNDER THE FEDERAL COMPETITION AND CONSUMER PROTECTION ACT, 2019

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Abstract

Mergers and acquisition, have become one of the most preferred routes among several external methods of achieving business growth in a company. Mergers and acquisitions have become a prominent feature of corporate restructuring in Nigeria's evolving commercial landscape. While such transactions are often undertaken to promote efficiency, competitiveness, and economic growth, they may significantly affect the rights and interests of minority shareholders who dissent from the proposed arrangements. The Federal Competition and Consumer Protection Act 2019 (FCCPA) introduced a comprehensive regulatory framework governing mergers, acquisitions, and business combinations in Nigeria, including provisions designed to protect dissenting members. This paper undertakes a critical review of the remedies available to dissenting members under the FCCPA 2019. It critically examines the nature of Merger and Acquisition in Nigeria and as well as the Remedy of Dissenting Members under Federal Competition and Consumer Protection Act, 2019. The article further identifies the Challenges of Dissenting Members in Merger and Acquisition Under Federal Competition and Consumer Protection Act, 2019 and offers suggestions aimed at strengthening minority shareholder protection within Nigeria's merger and acquisition regime.

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1.0 INTRODUCTION

There are several reasons why a company may seek to restructure its outlook after incorporation. This may arise from the company's buoyant performance or, conversely, from a downturn in its economic fortunes. In the face of such challenges, a company that intends to remain viable must design and implement legally permissible survival strategies, many of which are provided for under Nigerian Corporate and Investment Law and Practice.[1] Accordingly, rather than fizzling out due to a harsh operating environment, stiff competition, or onerous regulatory compliance, companies may adopt various corporate restructuring options as a strategic means of avoiding liquidation, achieving enhanced growth and improved operational efficiency. Some of these restructuring options involve internal arrangements between a company and its members or creditors, while others entail transactions between the company and external parties.

The concepts of mergers and acquisitions have emerged as vital tools for economic growth and development in today's commercial world.[2] Mergers and acquisitions are largely used for restructuring business entities. They are common events in the lifecycles of companies. Mergers and acquisitions are among the successful means of enabling companies achieve profits, whether through entry into new markets,

[1] CC Wigwe 'Introduction to Company Law and Practice: With Companies and Allied Matters Act 2020' (2nd edn, Lagos: Princeton & Publishing Company Limited 2020) 341

[2] Adeke Aondongu 'An Appraisal of the Legal Framework of Mergers and Acquisitions in Nigeria' (2017) (7) (5) International Journal of Accounting and Financial Management Research, p.23

taking benefit of economies of scale or reducing costs associated with producing a greater number of products and services.[3] Companies have found a way of bailing themselves out of severe financial distress as well as building for themselves stronger business entities, through the use of mergers and acquisitions.[4]

Most companies in Nigeria have used mergers and acquisitions as a strategy to wither the storm of economic recession that affected the nation's economy or to fulfill regulatory requirement for the purpose of recapitalization. In the same vein, several areas of the Nigerian economy ranging from banking, oil and gas, insurance, health care and telecommunications industry have all actively witnessed mergers and acquisitions transactions.[5] Therefore, merger and acquisition happen to be an essential component of today's commercial activities and has greatly contributed towards the expansion of several businesses thus, playing a crucial role in the economic development of any nation.[6] Mergers and acquisitions are corporate strategies used to penetrate into new markets, gain management expertise.[7]

In Nigeria, mergers and acquisitions are primarily regulated under the Federal Competition and Consumer Protection Act 2019, which vests regulatory oversight in the Federal Competition and Consumer Protection Commission (FCCPC).[8] Mergers and acquisitions have been deployed as mechanisms for addressing financial distress, meeting

[3] Ibid.
[4] Ibid.
[5] Ibid.
[6] Ibid 24
[7] Onyinye O. C. Chukwuocha, 'Competition Issues in Mergers and Acquisitions in Nigeria and Competition and Consumer Protection Act 2019' [2019] (2) African Journal of Law and Human Rights 3
[8] Ibid.

regulatory recapitalisation requirements, and strengthening corporate structures across key sectors such as banking, oil and gas, insurance, healthcare, and telecommunications.[9] Despite their benefits, merger and acquisition transactions may adversely affect minority shareholders who dissent from the proposed arrangements, thereby necessitating adequate legal protection.

2.0 NATURE OF MERGER AND ACQUISITION IN NIGERIA

The term Merger has been defined by the Black's Law Dictionary as the absorption of one organisation especially a corporation that ceases to exist into another that retains its own name and identity and acquires the assets and liabilities of the former.[10]It is any takeover of one company by another and then the businesses and management of both companies are fused together as one.[11] In the recent Supreme Court case of *Unity Bank. Plc v Tambuwal Construction & Trading Co. Ltd. & Anor, Per Mohammed Baba Idris, JSC*[12] on the principle, "Meaning and effect of a merger; whether a merger extinguishes the past dealings of the merging companies" defined Merger as follows: "A merger means any consolidation of the activities or any part of the activities or interest of two or more companies or the activities or part of the activities of one or more companies and one or more bodies corporate. It follows therefore that a merger is a joinder, fusion, or bringing together of the

[9] Ibid.

[10] Bryan A. Garner (ed), Black's Law Dictionary, (9th edn, West Publishing Co 2009) 1078

[11] Fabian Ajogwu 'Mergers and Acquisitions: Identifying the opportunities and Avoiding the pitfalls' (A paper presented at the Corporate Counsel Forum at the Nigerian Bar Association Annual Conference, Port Harcourt, 24 August 2011)

[12] (Pp 70 - 71 Paras F - D)

businesses, clients, capital, debts, and other undertakings of two or more companies".[13]

A merger occurs when two or more companies transfer their businesses and/or assets to a new company and in consideration, members of each company receive shares in the transferee company. The single entity so formed could take the identity of the acquirer or that of the target company. In *Re Lipton Nigeria Limited*,[14] Lipton Nigeria Limited merged with, and into Lever Brothers Nigeria Ltd. In *Re John Holt Investment Ltd and John Holt Ltd*,[15] John Holt Investment Ltd merged with and into John Holt Ltd. In *Re Cheesebrough Products Industries Ltd and Lever Brothers Nigeria Ltd*,[16] the merger resulted into a larger Lever Brothers Ltd. The result of a merger could also take on a new identity and name different from the target and acquirer. In the 2002 merger between Unipetrol Plc and Agip Nigeria Plc, the resultant entity became Oando Plc.

Acquisition on the other hand is the purchase of one company by another company. It is a business combination in which ownership and management of independently operating enterprises are brought under the control of a single management.[17] Acquisition has also been described as the take-over of substantial shares by one company in another company, giving the acquiring company control over the target

[13] UNITY BANK. PLC v. TAMBUWAL CONSTRUCTION & TRADING CO. LTD. & ANOR
(2025) LPELR-80562(SC)
[14] FHC/L/M21/81 (6 June 1985).
[15] FHC/L/M68/87 (18 May 1987).
[16] FHC/L/M49/88 (14 November 1988)
[17] Akamiokhor, 'Mergers and Acquisitions: The Nigerian Experience' (Perspectives and Options in Mergers and Acquisitions Seminar 16 May 1989).

company.[18] It occurs when one company acquires sufficient shares in another company so as to give it control of that other company. Acquisition may be friendly or hostile. It is friendly in cases where the companies cooperate in negotiations, and it becomes hostile when the target company is unwilling to be bought or the board in the target company has no prior knowledge of the offer. In the same vein, acquisition may be referred to as the purchase of a smaller firm by a larger one.

Mergers and acquisitions in Nigeria are primarily regulated under the Federal Competition and Consumer Protection Act 2019, which vests regulatory oversight in the Federal Competition and Consumer Protection Commission (FCCPC). The Act defined merger to mean the acquisition by a company, either directly or indirectly, of the whole or part of the business of another company.[19]The merger contemplated here may be achieved either through the purchase/lease of shares or through amalgamation with another undertaking or through a joint venture.[20]There are circumstances where a company can have control over another company.[21] This implies that the FCCPC may determine that a company is being controlled by another company without acquisition of an interest or asset in that company, especially where it is determined that the company can control the board or majority votes of the other company.[22]Under sections 92-103, the Act made provisions for new merger control regime.[23]

[18] Jide Olakanmi et al, 'Company and Allied Matters Act 2004' (Law Lords Publications 2003) 53

[19] Federal Competition and Consumer Protection Act 2019, Section 92 (1) (a)

[20] The Federal Competition and Consumer Protection Act 2019, S.91(1) (b)

[21] Ibid, Section 92 (2)86

[22] The Federal Competition and Consumer Protection Act 2019

[23] Ibid.

Federal Competition and Consumer Protection Commission (FCCPC) is the overall supervising authority for mergers and acquisitions transaction in Nigeria and under the provisions of sections 104 & 164[24], the Act repealed Sections 118-128 of the ISA 2007 relating to mergers and acquisitions. Section 104 is to the effect that in relation to competition and consumer protection matters, the provisions of this Act shall override the provisions of any other law, subject to the provisions of the Nigerian Constitution.[25] In the same vein, section 164 provides that the provisions of any law or regulation relating to the subject matter of this Act shall be read with such modifications so as to bring them in conformity with the provisions of this Act.[26]Although as regards the rights of dissenting shareholders, the FCCPA however left out Sections 129 & 130 of the ISA which relates to the rights of dissenting shareholders. This means that the FCCPA did not provide similar provision for the rights of dissenting shareholders. However, they are protected under Sections 712 & 713 of Companies and Allied Matters Act, 2020 and by virtue of Sections 104 & 164 FCCPA; it appears that the FCCPC will have to incorporate the provisions of CAMA when the rights of dissenting shareholders are in question.

2.1 Pre-merger Notification and Determination of Merger Threshold

The Act under section 93 (1) is to the effect that a proposed merger shall not be implemented by the parties unless it has been notified to, and approved by the commission.[27] The Act empowers the Commission to make such regulations in order to determine a threshold of annual turnover for the purposes of determining the categories of merger, and

[24] Ibid.
[25] Ibid, s.104
[26] Ibid, s.106
[27] Ibid, s. 93 (1)

to provide method for the calculation of annual turnover. [28] The Commission shall, before the making of a determination, publish in the Federal Gazette, a notice setting out the proposed threshold and method of calculation and inviting written submissions for such proposal. [29] Within 60 days after the publication of the notice as contemplated under subsection (3), the Commission shall publish, in the Federal Gazette, a notice setting out:[30]

a) the threshold and method of calculation of annual turnover and

b) the effective date of the threshold.

Section 1.1 of the Notice of Threshold for Merger Notification provides that merger shall be subject to notification before implementation only if, in the financial year preceding the merger-.

a) the combined annual turnover of the acquiring company and the target company (combined figure) in Nigeria equals or exceeds one billion naira.
b) The annual turnover of target company in Nigeria equals or exceeds Five Hundred Million Naira.

2.2 Categories of Merger and Acquisition under the Federal Competition and Consumer Protection Act

2.2.1 Small Mergers under the Federal Competition and Consumer Protection Act

A small merger is defined as a merger with a value at or below the threshold stipulated by the Commission.[31]A party to a small merger is not required to notify the Commission of that merger unless it requires

[28] Ibid, s. 93 (2)
[29] Ibid, s. 93 (3)
[30] Ibid, s. 93 (4)
[31] Ibid, s. 92 (4) (a)

it to do so, and it may implement such merger without approval.[32]In any case, a party to a small merger may if it wishes, voluntarily notify the Commission of that merger at any time.[33]Within six 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 if it is of the opinion that, having regard to the provisions of the section, the merger may substantially prevent or lessen competition. [34] The notification of a small merger shall be published within five business days after the Commission receives such notification.[35]

A party to a small merger is not required to take any further step to implement such merger until the merger has been approved by the Commission.[36] Section 95 (6) is to the effect that after parties to a small merger have fulfilled the notification requirements, the Commission may within 20 business days, extend the period in which it has to consider the merger by a single period not exceeding 40 business days and shall issue an extension notice to any of the parties that made such notification.[37] It shall, after considering the merger, issue a report either approving the merger with or without conditions, or prohibiting the merger whether it has been implemented or not. If after the expiry of the 20 business days, the Commission has not issued the extension notice or report referred to in this section, the merger shall be deemed to be approved.[38] Under section 95 (8),95 the Commission shall publish a notice of its decision in the Federal Gazette and issue written reasons for such decision.

[32] Ibid, s. 95 (1)
[33] Ibid, s.95 (2)
[34] Ibid, s. 95 (3)
[35] Ibid, s. 95 (4)
[36] Ibid, s. 95 (5)
[37] Ibid, s. 95 (6)
[38] Ibid, s. 95 (7)

2.2.2 Large Mergers under the Federal Competition and Consumer Protection Act

A large merger means a merger with a value above the threshold stipulated by the Commission.[39] A party to a large merger is mandated to notify the Commission of the proposed merger in the prescribed form and manner.[40] Such notification of the merger shall be published within five business days after it has been received by the Commission.[41]Under section 96 (3) of the FCCPA, both the acquiring and target company shall each provide a copy of the notice either to any registered trade union that represents the employees of each company respectively, or if there are no such trade unions, to the employees or their representatives.

A large merger shall not be implemented unless it has been approved, with or without conditions, by the Commission.[42] Any implementation of the merger by the parties without the approval of the commission shall be declared void.[43] Similarly, the Commission may in the exercise of its powers, render void any violation of subsection (3). [44] The commission may within 60 business days after the fulfilment of the notification requirements by the parties, extend the period for the consideration of the proposed merger to 120 business days, and it shall issue an extension notice to all parties . It shall also issue a report of either approving the merger with or without conditions, or prohibiting the implementation of the merger.[45] Where the commission has not issue an extension notice or report after the expiration of 60 days, the merger

[39] Ibid, s. 92 (4) (b)
[40] Ibid, s. 96 (1)
[41] Ibid, s. 96 (2)
[42] Ibid, s. 96 (4)
[43] Ibid, s. 96 (5)
[44] Ibid, s. 96 (6)
[45] Ibid, s. 97 (1)

shall be deemed to have been approved.[46] By virtue of section 97 (3) of the FCCPA, the Commission shall give its decision to the parties and cause a notice of such decision to be published in at least 2 national newspapers, and it shall issue written reasons for such decision.

3.0 CHALLENGES OF DISSENTING MEMBERS IN MERGER AND ACQUISITION UNDER FEDERAL COMPETITION AND CONSUMER PROTECTION ACT, 2019

Generally, merger of companies presents enormous benefits to investors, consumers, employees, and the society at large through the more efficient reallocation of resources. While mergers may enhance efficiency, market competitiveness, and corporate value, they often result in the dilution and neglect of minority interests and the imposition of decisions reached by majority shareholders.

The most fundamental challenge confronting dissenting shareholders in the instance of a merger under the FCCPA is the absence of express statutory provisions addressing their rights and remedies in the Act. While the FCCPA comprehensively regulates merger notification, approval thresholds, and competition assessment,[47] it is conspicuously silent on the position of shareholders who oppose a proposed merger or acquisition arrangement.

The FCCPA contains no express provision recongnising exist rights or compensation for dissecting members. However, it has been argued that since the provisions of sections 104 & 164 of the Act only repealed Sections 118-128 of the ISA 2007, and had carefully left out the provisions of section 129 & 130 of the ISA 2007, which expressly recognise the right of dissenting shareholders to be bought out at a fair

[46] Ibid, s. 97 (2)
[47] Ibid, s. 92-103

value, as well as sections 712 & 713 of CAMA which provide for dissent and share purchase rights in schemes of arrangement, dissenting shareholders can therefore rely on these extant sections of ISA and CAMA to assert and enforce their rights notwithstanding the silence of the FCCPA.

Also, the participation of dissenting shareholders in the merger review process is limited. The process is largely structured around notifications and engagements between the merging parties and the FFCPC. While express provisions are made for the involvement of employees and trade unions in cases of large mergers, there is no provision for dissenting shareholders as stakeholders to be heard or make representation during the FCCPC's review of a proposed merger.[48]

Dissenting members are shareholders who oppose a proposed merger or acquisition on grounds that it is unfair, oppressive, or prejudicial to their interests. One major challenge faced by dissenting members is the imbalance of power between majority shareholders and minority shareholders in corporate decision-making.[49]

In most merger transactions, approval is obtained through special resolutions passed by majority shareholders, leaving dissenting members with limited influence over the outcome. Additionally, dissenting shareholders often lack access to sufficient information to properly evaluate the implications of the transaction, particularly in relation to valuation and future prospects of the merged entity.[50]

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[48] Ibid s. 96(3)

[49] J O Enyia and N U Udodia, 'Challenges and Prospects to the Implementation of the FCCPA2018, (2022) (3) (25) Journal of Legal, Ethical and Regulatory Issues 7

[50] Ibid.

Another challenge lies in the complexity and cost of enforcing dissenting members' rights. Litigation or regulatory intervention may be time-consuming and expensive, discouraging minority shareholders from pursuing remedies. Furthermore, the FCCPA's emphasis on competition considerations may overshadow shareholder protection concerns, thereby limiting the practical effectiveness of dissenting members' remedies.

More importantly, since the FCCPA does not include express provisions for redress for dissenting shareholders, they are required to seek redress under the relevant provisions of the ISA and CAMA for the enforcement of their rights, even though such provisions are, in merger proceedings, subject to the provisions of the FCCPA.

3.1 Procedure for Merger under FCCPCA[51]

The steps are broadly divided into three (3) thus:

3.1.1. Pre-Merger notification to the FCCPC

a. Parties to the merger will prepare a merger proposal document between the merging companies after conducting legal and financial due diligence such as ownership of the business, employees, accounts of the company, tax liabilities of the company, values of assets and liabilities, product development and competitors etc on the target company and bidding company.
b. Parties shall file a pre-merger notification to the Office of the FCCPC within 6 weeks with the scheme documents for review and where there is any deficiency it will be communicated to the applicant.

[51] Samuel Osamolu, Corporate Law Practice in Nigeria (4th Edition: Panaf Press Nigeria, 2023) pp. 404-407

The documents to be submitted are as follows:

i. Letter of intent to merge by the companies.
ii. Extract of board resolution of the merging companies duly certified by the Director and the Company Secretary.
iii. Signed and notarized consent letters of Directors and parties to the merger.
iv. Information Memorandum showing a brief history of the merging companies, objectives of the merger, financial information including balance sheet, profit and loss account, list of competitors of the merging entities, authorised share capital, directors' beneficial interest and list of shareholders with their percentage shareholdings.
v. 2 hard copies of merging scheme document and an electronic copy.
vi. Copies of letters informing the trade union of the relevant industry of the intention of companies to merge.
vii. Copies of the Certificate of Incorporation of the merging companies certified by the Company Secretary.
viii. A letter appointing a financial Adviser (s) and a draft of financial service agreement between the merging companies and their financial advisers.
ix. Certified true copies of the relevant CAC Forms showing share capital, return of allotment (Form CAC 2.1), particulars of Directors (Form CAC 7).
x. A letter of no objection from the company regulators where it is applicable.
xi. Evidence of payment of N50, 000.00 (Fifty Thousand Naira) merger notification fee per merging company.
xii. Evidence of payment of processing fees. The fee paid is based on the value of the scheme shares.

3.1.2. Application for formal approval

a. The merging companies will file an application to the Federal High Court for an order directing the holding of a court-ordered meeting of the members of the merging companies where the scheme will be considered by the shareholders and resolved by special Resolution. The scheme will also be submitted to the trade union of the industry of the merging companies.
b. After the special resolution is passed, a formal application will be filed for approval at FCCPC with the relevant documents for formal approval of the merger.

The documents to be filed are:

i. Copy of Court order convening the meeting.
ii. Copies of executed scheme documents by parties to the scheme and evidence of dispatch of scheme documents to the shareholders of the merging companies.
iii. Copies of executed financial services agreement.
iv. Extract of the executed resolutions passed at the separate shareholders' meetings.
v. Evidence of clearance letter from the Federal.
vi. Inland Revenue Service (FIRS) regarding tax liabilities of the companies.
vii. Any agreement entered into with a trade union of the industry if any.
viii. An amended copy of the Memorandum and Articles of Association of the resultant company where applicable.
ix. Form FCCPC 6 (registration of Securities) if any. ix. No application fees are paid at this stage.

FCCPC will consider the application within 20 days of the submission or the commission can extend the period not exceeding 40 working days

where there is an extension, FCCC would issue a Certificate of Extension to the applicant.[52]

Where FCCPC approves of the merger, it would issue a Certificate indicating its approval of the scheme wholly or with conditions. The notice of its decision is published in a gazette and with it a reason for its decision to approve the merger or prohibit it. FCCC also informs the Court by a written statement of its approval, its prohibition or approval subject to conditions. If the Court sanctions the scheme, a copy of the court order will be published in a national newspaper.[53]

3.1.3. Post-merger notification of compliance to the FCCPC

Post-approval compliance of the merging companies will involve them filing at FCCC within the following documents:

a. A copy of the court order sanctioning the scheme within 7 days of the order of registration of the scheme.
b. A copy of the newspaper publication.
c. A statement of the actual cost of the scheme.
d. A report of the completion of the exercise within 3 months containing the following arrangements.
e. Arrangement relating to the employees of the dissolved company.
f. Settlement of shareholders of the dissolved company.
g. Utilization of money injected into the company.
h. The general implementation of the merger.
i. Report on share adjustment where applicable.
j. No fees are paid at this post-approval stage.

[52] Ibid.
[53] Ibid.

Applicants should also be aware that there will be a post-merger inspection by the commission within 3 months after approval to ascertain the level of compliance and see how the new company is faring.[54]

i. Provision Applicable to Disssenting Shareholders under CAMA, 2020

Where a scheme or contract, not being a takeover bid under the Investment and Securities Act involving the transfer of shares or any class of shares in a company (in this section referred to as "the transfer of company") to another company, whether a company within the meaning of this Act or not in this section referred to as 'the transferee company') has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of at least nine-tenth in value of the shares of the company (other than shares already held at the date of the offer by a nominee for the transferee company, or its subsidiary, the transferee company may at any time within two months after the expiration of the said four months give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.[55]

Section 712[56] defined dissenting shareholder as follows: “In this section, "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer to the transferee company in accordance with the scheme or contract.

When a notice as prescribed under section 712 subsection (1) is given, the transferee company is, unless on an application made by the

[54] Ibid.

[55] Section 712(1) CAMA, 2020.

[56] Companies and Allied Matters Act, 2020Section 712 (6)

dissenting shareholder within one month from the date on which the notice was given, unless the Court deems fit to order otherwise, entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to bè transferred to the transferee company.[57]

Where shares in the transferor company of the said class or classes as the shares whose transfer is involved are already held as specified in subsection (1) to a value greater than one-tenth of the aggregate of their value and that of the share (other than those already held as specified in that subsection) whose transfer is involved, the provisions of this section do not apply unless-[58]

(a) the transferee company offers the same terms to all holders of the shares (other than those already held) whose transfer is involved, or where those shares include shares of different classes, of each class of them; and

(b) the holders who approve the scheme or contracts besides holding at least nine-tenth in value of the shares (other than those already held as aforesaid whose transfer is involved, shall be at least three-quarters in number of the holders of those shares.

Where a notice has been given by the transferee company under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall-[59]

(a) on the expiration of one month from the date on which the notice has been given or if an application to the Court by the dissenting shareholder is then pending after that application has been

[57] Ibid, s.712 (2)
[58] Ibid, s.712 (3)
[59] Ibid, s.712 (4)

disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its behalf by the transferee company; and

(b) pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transteror company shall thereupon register the transteree company as the holder of those shares.

Any sum received by the transferor company under this section shall be paid into a separate bank account, and such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration, were respectively received.[60]

Provisions applicable to dissenting shareholders as contained under section 713(1) of CAMA, 2020 provides as follows:[61] This section applies where, in pursuance of any such scheme or contract, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first mentioned company held by, or by a nominee for the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenth in value of the shares in the first mentioned company or of a class of those shares.

The transferee company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or

[60] Ibid, s.712 (5)
[61] Ibid, s.713

contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holder of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract.[62] A holder may, within three months from the giving of the notice to him, require the transferee company to acquire the shares in question.[63]

If a shareholder gives notice under subsection (3) with respect to any share, the transferee company is entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed on as the Court hearing the application of either the transferee company or the shareholder deems fit.[64]

4.0 REMEDY OF DISSENTING MEMBERS UNDER FEDERAL COMPETITION AND CONSUMER PROTECTION ACT, 2019

As earlier stated, the FCCPA 2019 does not specifically speak to the right of dissenting shareholders in a merger arrangement; the best that can be done is to draw inference from the intersection of FCCPA with other relevant Laws guiding such corporate proceedings.

With the FCCPA's silence on the rights of dissenting shareholders it would appear that dissenting members therefore have no remedy where their rights are being trampled on. However, this may not be entirely true as inference can be made, and rightly so, that, since the provisions of Section 129 and 130 of the ISA was not repealed by the FCCPA which had earlier repealed Sections 118- 128, dissenting members can therefore seek remedy laying claim to the provisions of Sections 129

[62] Ibid, s.713 (2)
[63] Ibid, s.713 (3)
[64] Ibid, s.713 (4)

and 130 of the ISA which can be deemed to have been tancintly approved by the FCCPA.

Therefore, even though the FCCPA is silent about the rights of dissenting shareholders, they are not left without recourse under the law, they may rely on remedies available under general company law principles, including the right to seek fair valuation of their shares and protection against oppressive or unfairly prejudicial conduct. The power of the Commission to impose conditions on approved mergers, may also indirectly protect dissenting members by ensuring fairness and transparency in the transaction.

5.0 CONCLUSION

Mergers and acquisitions remain critical instruments for corporate growth and economic development in Nigeria. The Federal Competition and Consumer Protection Act 2019 represent a significant step towards regulating these transactions and safeguarding competition and consumer welfare. Nevertheless, the protection of dissenting members remains an area requiring further legal development. While the FCCPA offers some indirect remedies through regulatory oversight, dissenting members continue to face structural and practical challenges in asserting their rights. Without clearer statutory protections, minority shareholders may remain vulnerable in merger and acquisition transactions.

6.0 RECOMMENDATIONS

To strengthen the protection of dissenting members under Nigeria's merger and acquisition regime, the following recommendations are proposed:

i. **Codification of Appraisal Rights:** The FCCPA or complementary legislation should expressly provide dissenting

members with appraisal rights to obtain fair value for their shares.

ii. **Enhanced Disclosure Requirements:** Merging entities should be mandated to disclose comprehensive and timely information to shareholders prior to approval of merger transactions.

iii. **Simplified Enforcement Mechanisms:** Regulatory and judicial procedures for enforcing dissenting members' rights should be simplified to reduce cost and delay. Stronger Regulatory Intervention: The FCCPC should adopt a more proactive approach in addressing shareholder protection concerns during merger reviews.

iv. **Judicial Development:** Courts should continue to develop jurisprudence that balances majority rule with minority protection in merger and acquisition transactions.