

How to Obtain a Mergers & Acquisitions Approval Certificate in Nigeria (FCCPC Guide)

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Description

Nigeria’s mergers and acquisitions (M&A) regulatory regime is driven by the **Federal Competition and Consumer Protection Commission (FCCPC)**. Any merger that meets the statutory turnover or consideration thresholds **must** obtain FCCPC approval **before** implementation. Failure to comply attracts penalties, delays, and potential transaction reversal.

This comprehensive guide explains the **requirements, costs, procedures, documents, step-by-step process, timelines, and FAQs** for obtaining an FCCPC M&A Approval Certificate in Nigeria.

What Is the FCCPC M&A Approval Certificate?

The FCCPC M&A Approval Certificate is the official **clearance** issued by the Commission confirming that a notifiable merger or acquisition **does not substantially prevent or lessen competition in Nigeria**.
The approval may be:

- **Unconditional Clearance**
- **Conditional Clearance** (may contain remedies/undertakings)
- **Prohibition** (rare but possible)

Only after this clearance can the parties implement the merger.

When Is an M&A Transaction Notifiable?

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A transaction is notifiable when it meets the **FCCPC merger notification thresholds**, which rely on:

- **Combined turnover of merging parties in Nigeria**, or
- **Value of the transaction consideration**

When the applicable threshold is met, notification becomes **mandatory**, and the transaction **must not be completed until approval is granted**.

If uncertain, the FCCPC allows **pre-notification consultation** through its Merger Notification Portal.

Types of Transactions That Require FCCPC Approval

The following are treated as mergers under Nigerian competition law:

- Share acquisitions

- Asset acquisitions
- Amalgamations
- Internal restructurings that shift control
- Foreign-to-foreign transactions with Nigerian turnover impact
- Any combination resulting in a **change of control**

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Requirements for Obtaining a Merger & Acquisition Approval Certificate

The FCCPC requires filing through its **online Merger Notification Portal**, accompanied by the prescribed form, documents, and fee.

1. Core Documents Checklist

Requirement	Description
Completed FCCPC Form 1	Official merger notification form containing details of parties, market definition, transaction structure, and control analysis.
Non-Confidential Summary (Max 500 words)	Public version of the transaction overview.
Transaction Agreements	SPA, Merger Agreement, Asset Purchase Agreement, etc.
Corporate Documents	CAC incorporation documents, group structure charts, ownership summaries.
Audited Financial Statements	Latest audited accounts of each merging party.

Requirement	Description
Market Information	Competitor list, market shares, customer base, supply structure, barriers to entry, etc.
Calculation of Turnover or Consideration	Used for threshold determination and fee computation.
Proof of Filing Fee Payment	Generated from the FCCPC Portal.

Additional information may be requested during review through RFIs (Requests for Information).

FCCPC Merger Notification Fees

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FCCPC fees are **percentage-based**, calculated using the **higher** of:

1. The **transaction consideration**, or
2. The **combined turnover** of the merging parties in Nigeria.

Below is the standard structure:

Transaction Value Band	Applicable Fee
First ₦500,000,000	0.45%
Next ₦500,000,000	0.45%
Any amount above ₦1,000,000,000	Lower marginal rates (as indicated via the FCCPC portal calculator)

The FCCPC portal contains a **fee calculator** which issues the official fee amount to be paid.

Step-by-Step Guide: How to Obtain the FCCPC M&A Approval Certificate in Nigeria

The FCCPC approval process follows four essential phases:

PHASE 1: Pre-Filing Preparation

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1. **Determine whether the transaction is notifiable**
    - Calculate the higher of the combined turnover or deal value.
    - Compare with FCCPC thresholds.
2. **Hold a pre-notification consultation (optional but recommended)**
    - Used for complex structures or jurisdictional uncertainty.
3. **Prepare all required documents**
    - Complete Form 1
    - Prepare confidential and non-confidential versions
    - Compile financial and market data

PHASE 2: Formal Filing

4. **Create an account and submit the filing on the FCCPC Merger Notification Portal.**

5. **Upload all documents**

    - Clearly mark confidential information as required by FCCPC rules.

6. **Generate and pay the filing fee**

    - Upload evidence of payment.

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Once submitted, the FCCPC will acknowledge receipt.

PHASE 3: Review Process (Phase I or Phase II)

7. **Completeness Check**
   The FCCPC reviews the filing and may request clarifications or additional documents.

8. **Phase I Review (Simplified Review)**

    - Applies to non-problematic transactions.

    - Ends with unconditional approval or a move to Phase II.

9. **Phase II Review (In-Depth Investigation)**

    - Applied when there are potential competition concerns.

    - May require market testing, stakeholder consultations, and remedies.

PHASE 4: Decision and Issuance of Approval Certificate

10. **FCCPC Decision**

- Approval (Unconditional)
- Approval (Conditional with remedies)
- Prohibition (rare)

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11. **Issuance of the Approval Certificate**

- Parties receive a formal clearance letter/certificate.
- Summary may be published by the FCCPC.

12. **Implementation of the Transaction**

- May only proceed **after** FCCPC clearance.
- Parties must comply with conditions if imposed.

Expected Timelines

Timelines depend on the complexity of the transaction:

- **Straightforward transactions (Phase I):**
  Often cleared within a short regulatory window.

- **Complex transactions (Phase II):**
  May extend several weeks or months depending on the number of RFIs and market consultations.

The FCCPC does not provide a rigid statutory maximum for all scenarios, but it aims to complete simple reviews expeditiously.

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Common Mistakes to Avoid

1. Notifying After Closing

Notification **must** occur before implementation.

2. Assuming Foreign Deals Are Exempt

Foreign-to-foreign deals with Nigerian turnover may still be notifiable.

3. Underestimating Filing Fee Costs

Fees scale with turnover or consideration must be verified via the FCCPC fee calculator.

4. Submitting Incomplete Filings

Missing data leads to delays and multiple RFIs.

5. Ignoring the Need for a Public (Non-Confidential) Summary

FCCPC requires this for publication and public record.

Frequently Asked Questions (FAQs)

1. Do all mergers in Nigeria require FCCPC approval?

No. Only mergers that meet the applicable thresholds or fall under FCCPC jurisdiction must be notified.

2. Can a transaction be completed before FCCPC approval?

No. Completing a notifiable merger before approval is a violation and attracts penalties.

3. What documents are required for FCCPC merger notification?

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Completed Form 1, corporate documents, audited accounts, transaction agreements, market data, and proof of fee payment.

4. How much does it cost to file a merger with the FCCPC?

Fees are percentage based and depend on the higher of turnover or deal value. The official fee amount is issued by the FCCPC portal.

5. How long does FCCPC merger approval take?

Simple cases may be cleared quickly (Phase I), while complex mergers requiring investigation may take longer (Phase II).

6. Are foreign mergers notifiable in Nigeria?

Yes, if the parties have turnover in Nigeria that meets FCCPC thresholds.

7. What happens if the FCCPC prohibits a merger?

The transaction cannot proceed. Parties may restructure, propose remedies, or seek reconsideration.

Practical Compliance Checklist

- Confirm whether the merger meets the notification threshold
- Conduct pre-notification consultation
- Complete FCCPC Form 1
- Prepare confidential and non-confidential versions
- Compile all required financial and market documents
- File through the FCCPC Merger Notification Portal
- Pay applicable filing fees
- Respond promptly to RFIs
- Receive and store the Approval Certificate
- Implement the merger only after clearance

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Conclusion

Obtaining a Mergers & Acquisitions Approval Certificate in Nigeria requires careful planning, accurate turnover calculations, thorough documentation, and timely engagement with the FCCPC. With the right preparation and compliance strategy, most transactions proceed smoothly and receive clearance within the regulatory timeline.

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