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MERGERS AND ACQUISITIONS: APPRAISAL OF REGULATORY FRAMEWORK IN NIGERIAN BANKING SECTOR

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Abstract

Due to the ever-changing process of life and nature, one event giving way and one thing for another, most changes in life's activities are owed to providence. The need to reconstruct becomes more glaring when all other remedies have been applied and it has defied solutions. Mergers and acquisitions are contemporary developments in the Nigerian Banking Industry and under Nigerian Law. Today, banks in Nigeria are saddled with the task of reconstructing by means of mergers and acquisitions for a number of reasons, ranging from inadequacy of working capital, lack of focus, underutilization of resources, inadequate equipment, foreign exchange decline, high cost of production, et cetera. This research work broadly examines the concept of mergers and acquisitions in the Nigerian banking industry from a legal perspective; it examines the challenges that accompany it and provides appropriate recommendations.

Keywords:

Acquisitions; Appraisal, Banking Sector; Mergers, Nigeria

1 INTRODUCTION

The global phenomenon in the financial services industry is the consolidation of the financial activities. It has become a way of resolving problems of financial distress. Its occurrence is rapid pace in most countries of the world, particularly in emerging markets. The growing pace of consolidation is traced to global forces, in particular, changes in economic environment, which have altered the constraints faced by banking firms. Such changes like technological innovation, improvement in financial condition, optimum capacity in the industry, international consolidation of markets, and the deregulation of financial services are partly responsible for the recent rapid

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pace of consolidation within the globe. Equally important are changes in corporate behavior such as the growing disintermediation and increased emphasis on shareholder value.[1]

Although there has been a considerable research on financial services, industry consolidation, much is yet to be understood. Some analysts are of the view that the main motivation behind consolidation is to maximize shareholders value. Others believe that consolidation will not only bring about increase shareholders worth but also contribute to the exploitation of economies of scale. In spite of the benefits of mergers, it is not without its consequences.

Its consequences include not only the direct effects of increased market power or improved firm efficiency, but also some indirect effects. One potential indirect consequence may be a reduction in the availability of financial system. In principle, policy makers often try to ensure a balance between the expected social benefits and costs of these consequences in setting rules on consolidation or in approving or disapproving individual Mergers and acquisitions (M & As). In practice, however, it may be difficult to quantify these benefits and costs.

In the Nigerian Banking Industry, the Central Bank of Nigeria, as a regulatory body, is charged with the responsibility of overseeing and monitoring of the other banks. It was created in 1959, its legal legitimacy is now contained in section 1 (1) of the Central Bank of Nigeria Act.[2] The banking sector has to be monitored such that discordant tunes are not allowed among industry players.

Not quite long, the Nigerian banking sector witnessed the emergence of reformer who dreamt of a strong, stable and viable banking sector. The proponent and brain behind this proposition was Chukwuma Soludo, who at the same time was the Governor of the Central Bank of Nigeria.[3]

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[1] H.T Sanni Acib: The mega banking in Nigeria Business Environment emerging issues, The Chartered Institute of Bankers of Nigeria, vol.7, no 2 (April- June 2007) 4.

[2] The Central Bank of Nigeria Act as codified in Cap C4, LFN 2004, even though it came into effect on 20th July 1991.

[3] V. Akomaye Agba, & E. Enofe: The mega banking in Nigeria Business Environment Emerging Issues. The Chartered Institute of Bankers of Nigeria vol. 7, No 2 (April-June2007) 5.

The nature of the reformation was to make consolidation and recapitalization through mergers and acquisitions; of course, this would definitely affect the structural and management disposition of the banks. The Central Bank of Nigeria was to be the overseer of this return.

Precisely, Charles Soludo held an interactive session with the Bankers Committee, charging that banks recapitalize to the tune of N25 billion (US $ 190 million) as against N2 billion, before or on 31 December, 2005. Professor Soludo spoke further that this must be done through Mergers and Acquisitions with the supervision of the Central Bank of Nigeria and the Nigeria Deposit Insurance Corporation (NDIC) as well as the Securities and Exchange Commission.

Banking is of antiquated origin; but little is known about it prior to the 13th century origination. In Medieval period, the knight Templar, an international military religious order, who were well trained and disciplined, not only stored a valuable and granted loans but also arranged for the transfer of money from one Nation to another. The knights Tempers background as both military and religious were to be able safeguard the funds in their custody when attacked by bandits on trade routes and also to facilitate their adherence to the tents that the money in their custody would be used for private purposes.[4]

The great banking families of the Renaissance, such as the Medici (13th to 17th centuries) influence, in the modern day, Italy were involved in lending money and financing international trade. Giovannidi Bicci, one of the Medici family created the medicine Bank. One of the contributions of the general ledger system for tracking credits and debits. This system was first used by the accountants working for Medici family in Florence.

A cursory look at the above means, we would see that other than that banking industry in many ways and in its crude form carried out in way that met the purpose [5] of day to day activities. Many of the early "banks" dealt primarily in coin and gold bullion, much of their businesses being money changing and the supplying of foreign and domestic coin of the correct weight and finesse[6].

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[4] J.M Hawkins, The Oxford English Dictionary, (New York; 2nd Edition Oxford press, 1987) pg. 594
[5] The New Encyclopedia Britannical 15th Edition volume 14, 2007, Page 868.
[6] The New Encyclopedia Britannical 15th Edition volume 1, 2007, Page 870.

As trade routes expanded, Bankers devised means for their agents to make payment at a distance in an exchange rate profitable to the banker, without physically transferring any coins[7]. Being that their agents or workers were already with money who would only be instructed by information to pay a certain merchant. This enhanced safety to the banks and their agents.

Recently, it was revealed that exchange and lending activities were carried out in a recognizable way or manners which invariably guarantee features of the banking businesses. As it was shown in the modern banking, a lot of the middle ages banking system, its origin can always be traced to such epoch. The first modern bank was established in 17th century, notably, the Riksbank in Sweden (1656) and the Bank of England (1694).

In the 17th century, the English goldsmith provided the model of contemporary banking system. Gold was stored with the artisans for safe keeping who in turn would issue transferable notes of title to the gold in his custody. Thereafter, it then jumped to the goldsmith that customers were not coming for their gold deposits at the same time. This prompted the rate of lending of gold to customers and other persons interested. The customers utilized their cash invoice for the gold in the goldsmith's custody to make payment to the other persons or third parties.

However, in the 18th centuries and in the early 19th centuries, banks started taking forms and they also started building up asset and later to the level of international. All tentacles which invariably culminating into formalized organizational and this began the journey of many thousand miles.[8]

2 DEFINITION OF CONCEPTS

The terms Mergers and Acquisition and other similar terms such as reconstruction, reorganization, scheme of arrangement are basically foreign concepts. They are a product of liassez faire economy where there is minimal governmental interference in the economy in which the optimal utilization of the available national resources will be achieved if people are allowed and given ample economic freedom to pursue those commercial activities which they regard as commercial advantageous.[9]

[7] Collin Thomas: History and development of Company law, , (London, 2nd Edition, Oxford Press Ltd, 1976) pp. 1-7

[8] G. Omotayo Gbede, Strategic Mergers and Acquisition, (Lagos, 3rd Edition, West Bourne Business School, 2005) pp.1-5

[9] L. CB Gower. Gower, The Principles of Modern Company Law, (London. 4th Edition, Oxford Press Ltd, 1979),

The terms "Mergers" and "Acquisition" according to Gower are "not terms of art with clearly defined and distinguishable meaning". This assertion is supported by Asomugha who posits as follows[10]. "However, it is generally acceptable, that these structural charges which may result in schemes of arrangements which is the result of a combination of factor". J.M Guillick in his own opinion called "Mergers" as amalgamation".

He further defines it as:- "the merger of two or more companies.[11] The definition clearly enjoys some appreciable level of simplicity and with literal rule application in the interpretation, means the marriage of two companies. O.O Oladele[12] on his own part reveals the context in which mergers are applicable as he professes thus: "to cause to combine, unite or to blend gradually by stages that blur distinction or become combined into one". Alternatively, "to blend together without abrupt charge"[13] It should be noted that word 'acquire' has been defined as:- "to get as one" or "to come into possession or control."[14]

Whereas the word "Acquisition" is defined as:- "the act of acquiring."[15]

Also, the Black's Law Dictionary[16]defines acquisition as "the fusion or absorption of one thing or right into another, general spoken of a case where one of the subjects is of less dignity or important ceases to have an independent existence". It went further to describe "merger" under a corporation as:- an amalgamation of two corporation survives and the other disappears; the absorption of one company by another, the former losing its identity and acquiring assets, liability, franchises, and power of former and absorbed company ceasing to exist as a separate business entity.

It may also be defined as:- an arrangement whereby the assets of two companies becomes vessel in or under the control of one company (which may or may not be one of the original two companies), which was as it shareholders all, or substantially all the shareholders of the two companies.

pp. 682-688.

[10] E.N Asomugha, The Company Law in Nigeria under The Companies and Allied matters Act 1990, (Lagos, 1st Edition, Boot services Ltd, 1994), pp 394.

[11] J.W. Bruck, Merger and Takeover, (London, 13th Edition, Sweet and Maxwell, 1910), pp 270-276.

[12] O.O. Oladele, Lecturer Faculty of Law O.A.U Ile-Ife, lecture Note on Company Law, 2008 p.251

[13] Webster, The New Collegiate Dictionary, (New York, 9th Edition, Oxford Press Ltd, 1968), p. 10

[14] ibid

[15] ibid

[16] A. Bryan Gamerr, Black Law Dictionary, England, 7th Edition, Oxford Press Ltd, 1990) p 988.

A Senior Advocate of Nigeria and a renowned Jurist C.O Okonkwo[17] defines mergers as:- where two or more companies transfer their business and assets to a new company (or to one of themselves) and in consideration, their members receive shares in the transferee company. The definition appears to be more encompassing by the fact that members will receive shares of the transferee company. In addition, O.A. Osunbor[18], while adopting the definition in section 590 of the Companies and Allied Maters Act added two principal reasons namely; for business efficiency and regulatory compliance'.

Therefore, from the definition above, the following are the basic elements of what mergers constitute in law. Coming together of two or more companies i.e. for a merger, two or more incorporated entities must come into a corporate marriage. This "marriage" automatically obliterates the corporate status of the "merging company for a new" merged entity. Shareholders in the transferee company, that is, a company, seeking to merge with another will hold the transferee company share. It should be noted that the words "Mergers" and "Acquisition" have acquired technical meaning in law. Section 849 of the Companies and Allied Matters Act of 2020,[19] defines a merger as: any amalgamation of the undertaking or any part of the undertaking or interest of two or more companies registered, but with similar aims and objectives to form one company or organization.

The term "acquisition" has not been defined in the said Companies and Allied Matters Act 2020 or the Investment and Security Act, 2007 but the definition of take over close to acquisition: thus, according to Sections 131 – 134 of Investment and Security Act, 2007, take over is acquisition by one company of sufficient share in another company to give the acquiring company control over that other company.

Similarly, according to M.A Weinberg and M.V Blank "Acquisition" would also be defined as:- an offer to acquire shares of a company, whose shares are not closely held, addressed to the general

[17] C.O Okonkwo, "Legal framework for Mergers and acquisitions", paper presented at the retreat on Mergers and Acquisition in the Nigerian Banking Industry organized by the Central Bank of Nigeria (Lagos 2006) p 2.
[18] L. Fagbohun, "Mergers and Acquisition", a legal paper presented at the advanced Law and Practice of Banking Scheme, Lagos, 2006.
[19] Codified in Chapter 19. Laws of the Federation of Nigeria, 2004.
Note: Section 849 CAMA, 2020. Formally part XVII, section 590 CAMA 1990, which has been repeated by Section 263 of the Investments and Securities decree No. 45 of 1990.

body of shareholders, with a view to obtained at least sufficient shares to give the voting control of the company.[20]

Also in the words of Farrar and Brenda[21], they see take over as:- the acquisition by one company called the bidder of sufficient shares in another called the target to give the purchasers control of the other company which according to them will lead to corporate expansion. Akamiohor concludes that acquisition even though not defined in the Companies and Allied Matters act describes it as:- to describe a business combination in which ownership and management of independently operating enterprises is brought under the control of a single management.[22]

Also, Prof C.O Okonkwo perceives that acquisition occur when one company acquires sufficient shares in another company so as to give it control of that other company. It should be of note that the "Acquisition "is used interchangeably with the term "Take Over". However, the above jurist suggested that with the definition of the words "Mergers" and "Acquisitions" in the Companies and Allied Matters Act (hereinafter called 'CAMA' 2020) the mix up in the meanings should come to an end.[23]

3 EXAMINATION OF MERGERS AND ACQUISITIONS

3.1 Conceptual Issues

Frequently used concepts under bank consolidation include Merger, Acquisition or takeover and consolidation. Each of these concepts will be briefly defined or examined.

3.1.1 Bank Consolidation

This is a reduction in the number of Bank and other deposit taking institutions with a simultaneous increase in size and concentration of the remaining entities in the sector[24]. According to these authors, several arguments have been advanced regarding the input of increased size concentration on banking sector or industry risks and returns; and these include increased bank returns through

[20] M.A Weinberg and M.V Blank, Takeover and Amalgamation, (London, 2nd Edition, Sweet and Maxwell, 1971) p 215.

[21] J.H Farrar Modern Company Law, (London, 3rd Edition, Butter Worth Ltd, 1991) pp 921-928.

[22] C. Akamiokhor, "Mergers and Acquisitions: The Nigerian Experience", Seminar Paper Presented on 11/05/1989 Lagos Institute of Legal and Advance Studies University of Lagos, Nigeria.

[23] F. Harry, Element of Company Law, (London, 6th Edition, Greeg Publishing Co., 1949) pp 28-32

[24] R.R Pennington, Pennington's Company Law, (London, 7th Edition, Butterworth, 1995), pp 56-58.

the elimination of weak banks (especially after banking crisis) and better diversification opportunities open for the remaining larger banks, increased propensity toward risk taking through increases in leverage and off-balance sheet operations. Other gains are unlimited economics of scale, reduction in competition and disincentive for efficiency improvements; and concentration in industry with undue influence of government.,

Reason advanced by the drivers of consolidation include technological innovation, deregulation of the financial sector, opening up its international competition, changes in corporate behavior such as growing dis-intermediation and increased environment on shareholder value, repeated privatization of state-owned banks, especially in emerging market countries (Bank for international settlements, 2001; international monetary fund, 2001). In Nigeria, banks that are undergoing consolidation shall continue to transact business under their old names and licenses but should not embark on further expansion on new capital projects until Central Bank of Nigeria final approval is given to the successor banks[25].

Consolidation entails two or more companies that come together to form a new one that is more viable and vibrant indispositions, granted, corporate bodies reposition so as to be able to meet new business challenges and still experience growth and economic of scale.

However, there are three broad options available for Banks consolidation in the legal system:

i. Mergers:
ii. Acquisition:
iii. Take-over

In the recent waves of consolidation in Nigeria, merger and acquisitions were favored more so directed by the CBN in its guidelines for consolidation of the Nigerian Banking Industry.

3.1.2 Mergers

This is a reorganization process involving the coming together of two or more banks whereby a new bank with a new legal status (the success or bank) is created and merger banks are

[25]A.N., A Saunders, J.M Scalise, and G.F. Udell, The Effects of Bank Mergers and Acquisition on Small Business Lending., (London, 5th Edition, Bourd Press Ltd, 1998), p.54

simultaneously liquidated. All the lights and obligations of the merged banks pass to the successor objective is to have stronger bank [26].

In Nigeria, there are three stages of approval for Merger. Pre –Merger consent, approval –in-principle, and final approval. Pre-Merger consent, involves CBN preliminary consent to the banks wishing to merge to the effect that it has no objection to the proposed merger. This is to enable it forward its application for merger to the Securities and Exchange Commission in accordance with the investments and securities Act (ISA), for processing and approval. Approvals –in-principle represents CBN's conditional approval of the merger or takeover. Final approval is given after the merger or takeover has been approved by the Securities and Exchange Commission or on presentation of take over application to CBN. The successor bank, after the mergers, will then be issued a new banking license. The banking license (s) of the merged banks(s) shall be withdrawn and revoked (CBN, 2004)[27]. An amalgamation of two corporations pursuant to provision in which one of the corporation survives and the other disappears, the absorption company by another former losing its identity, and latter relieving its own name and identity and acquiring assets, liability, franchise and power of former, and absorbed company ceasing to exist as a separate business entity.

The above definition opines where two corporations amalgamate in relation to laid down rule so that the disappearance of one means the survival of the other, while then assumes a new identity and power, taking the liabilities and assets of the former company while in acquisition, where a more viable company simply take over another, two companies would Merge here so that the two may agree for the strongest to return its former identity. Or where they are of equal size, a new name may emerge.

However, section 590 now repealed Companies and Allied Matter Act[28], now found under Cap C20 Laws of the Federation of Nigeria defines Merger to means "any amalgamation of the undertaking or any part thereof of two companies, it also recognized the amalgamation of more companies.

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[26] ibid

[27] http: /www.centralbank.org. (accessed) on August 23rd 2021.

[28] Codified in cap C 20 Laws of the Federation of Nigeria 2004.

3.1.3 Regulation of Merger and Acquisition

3.1.3.1 Reasons for Regulating Merger and Acquisition

According to Chris Wigwe,[29] one of the reasons for going for a merger/acquisition is to enhance the fortunes of the integrating companies. Economic theorists argue that it is necessary to regulate merger and acquisition because independent agents in an economy in their drive for economic wealth do produce socially undesirable consequences termed "externalities". These externalities, the theorists argue, create detrimental effect which is passed on to the larger society. While pollution is may be the most commonly cited externality, horizontal mergers and acquisition, which may be beneficial to the integrating companies, could produce socially undesirable consequences if such integrations restrain competition or lead to monopolies.

3.1.3.2 Regulation of Merger under the Investments and Securities Act (ISA) 2007

The present Investments and Securities Act (ISA) 2007 came into force on June 25, 2007 and repealed the 1999 Act. Unlike the repealed Investment and Securities Act 1999 which has restrictive definition of 'company', the new Investment and Securities Act 2007, extended the definitions of 'companies' for the purposes of merger and acquisition to even partnership and other associations of persons. Section 100(7) of the repealed Investment and Securities Act (ISA) 199 restricted the meaning of 'company' to only a company within the meaning of the Companies and Allied matters Act (CAMA). On the other hand, Section 117 of the new Investment and Securities Act 2007 provides a wide definition of companies for the purposes of amalgamation provision. It provides that: "Company without prejudice to the provisions of the Companies and Allied Matters Act… means anybody corporate and includes a firm or association of individuals"

The legal implication is that, the new Investment and Securities Act 2007 has effectively brought to its regulatory ambit all types of mergers of business and non-business organization such as organizations such as companies, firms, partnership and incorporated trustees (association of individuals). Specifically, Section 118 of the new Investment and Securities Act 2007 extends the application of the Act to mergers, acquisitions and business combinations by partnerships.

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[29] Chris C. Wigwe; Introduction to Company Law and Practice, (Ikeja, 2nd edition, Princeton & Associate Publishing Company Ltd., 2022) pp 363-365

3.1.3.3 Acquisition

The term Acquisition and Take over are use synonymously, so the use of one or the other refers to the same thing. G.Omotayo Gbede [30], simply defines acquisition as: The gaining of something for oneself or acquired". While the above definition may be said to appear quite simplistic in relation to our present pre-occupation, it indeed recognizes acquisition as something taken.

According to section 99 (1) of [31] Investment and Securities Act (18A), Acquisition means to take over by one company control of sufficient shares in another company to give the acquiring company control over that other company". The definition pointed out taking over of another company by one company through buying up of the shares of the to-be acquired company.

According to Weinberg on take-over and Mergers[32]. "A take –over may be defined as a transaction or series of transaction whereby a person (individual, group of individuals or company) acquire control over assets of a company, either directly by becoming the owner of these assets or indirectly by obtaining control of the management of the company".

The definition points out a direct control of a company assets or indirect control through the obtainment of the management of the company. By every implication, an acquisition is essentially the purchase by one company of all or substantial interest of another to the event that acquired company may become a subsidiary or division of the acquirer or be wholly absorbed. In generic terms, mergers and acquisitions are often used synonymously, other terms like take over, amalgamation and consolidation are also used depending on the circumstance, to express the various variants of business combinations.

3.1.3.4 Differences Between Mergers and Acquisitions

However, much would have been seen in the definition of the above concepts, but such difference may be expanded further. "The major difference between a merger and acquisition is that in a merger there are no disinvestments of the shareholders of the amalgamating companies while the

[30] ibid

[31] Section 99 (1) of Investment and Securities act (18A) now contained in sections 131 -134 of Investment and Securities Act. 2007 and rule 447.

[32] ibid

reverse is the case in an acquisition[33]. Also, a takeover bid is a means for effecting either a takeover or a merger". When it relates to a takeover, the bid is frequently against the wishes of the management of the offered company. In respect of a merger, the bid generally by consent of the management of both companies.

Section 849 of the Companies and Allied Matters Act 2020 (CAMA),[34] defines a merger as any amalgamation of the undertakings or any part of the undertakings or interest of two or more companies and one or more corporate bodies. In the same vein, CAMA[35] defines takeover as the acquisition by one company of sufficient share in another company to give the acquiring company control over the company. Whenever a bid is used to effect a takeover, it may take the form of an offer to purchase shares for cash or a share for a share exchange or a combination of both. With respect to merger, it is always share for share exchange.

3.2 Kinds of Mergers and Acquisitions

Mergers and acquisition can be classified into three broad headings namely:-Horizontal; Vertical and Conglomerate.

3.2.1 Horizontal Mergers and Acquisitions

Farrar defines horizontal mergers as takeover or merger of companies at the same stage of production process.[36] Also, Okonkwo[37]in his own view describes Horizontal Merger as a situation where two companies involved in a takeover or mergers produce the same kind of goods or renders identical services, where companies produce similar commodities or provide identical services which compete directly with each other in the same industry, this combination is horizontal[38]. Thus, the acquisition in 1987 of American Motors by Chrysler represented a horizontal Merger or combination. It is often geographic in nature and accompanied by economy of scale, that Merger

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[33] ibid

[34] Companies and Allied Matters Act, 2020 formerly section 590, CAMA 1990.

[35] Section 849.of CAMA 2020

[36] H.Farrar's Company Law, (London, 4th Edition, Butterworths, 1991), pp 80--81

[37] Prof C.O. Okonkwo Lecturer Faculty of Law University of Benin, Benin City Lecture Note Companies Law p 68

[38] ibid

of Guinea Glass Plc. It was noted that majority of takeover or Mergers in recent times have been horizontal and by its nature involves a reduction in the number of competing firms in the industry.

In most occasions, it is the combination of companies in the same section or industry which in turn produce the same line of goods or services, in most of the circumstances oligopolies or monopolistic companies may result from this line or amalgamation. The recent Mergers and Acquisitions in Nigerian Banking Industry in view of the Central Bank of Nigeria directive was Horizontal Merger and Acquisitions. Another classical illustration of this horizontal mergers and acquisition was the combination of Total Nigeria Plc and Elf Oil Limited, acquisition by Celtel of Vmobile Nigeria Limited and Zain Nigeria Limited in July 2008 Translife Limited and Bendel Line companies, are all horizontal Merger and Acquisitions. Internationally, the merger of Exon Mobil, Companies in Petrol-chemical business, is another example of horizontal merger.

Also, a horizontal merger is one that involves enterprises in the same line of business who are more or less competitors. A good example of this merger is the acquisition of Citi Trust Merchant Bank Limited by Union Bank Plc (in Nigeria). Horizontal Merger as earlier explained can lead to efficient use of share resources and exploitation of the learning and experience curves due to increased scale of production. However, such mergers can lead to the creation of stiff competition, where such mergers are more likely to face opposition from anti-trust agencies and regulatory authorities[39].

3.2.2 Vertical Mergers and Acquisitions

A vertical merger is one between two or more companies at different levels in the value chain, such as manufacturing company, acquiring a retail outlet company, or manufacturer's acquisition of a producer of its raw materials. Vertical Mergers are usually triggered off by value chain integration or the need to exploit profit pools and annex cross economies of scale across industries[40]. It normally leads to forward/and backward integration by the acquiring firm, with sizable advantages and economies.[41] Mergers and acquisition are vertical because, two companies that are in complementary line of business merge or consolidate. Complementary in the sense that,

[39] ibid
[40] ibid
[41] J.Fred Weston. Take Over, Restructuring and Corporate Governance, (London, 2nd Edition, Sweet & Maxwell, 1990) pp 169-170.

while one of the companies is the producer of the finished goods or services, the other engages in supplying the raw materials. A perfect example may be where an automobile company merges with or acquires a steel producing company.

Gbede submits that a business combination is considered vertical when the merging companies have a customer / supplier relationship.[42] The object is usually to ensure a source of supply or an outlet for products and services, but the effect of the merger may be that it improves efficiency through improving the production and reducing stock holding and handling costs. There may be many reasons why firms might want to be vertically merged at different stages. There are technological economies or benefit such as the evidence of relegating and transportation cost in the case of an integrated iron and steel producer. Also transactions within a firm may eliminate the cost of searching for prices, contracting, payment collecting and advertising and may also reduce the cost of communicating and or coordinating production. A recent example is the merger between the American online and Time Warner Company.

3.2.3 Conglomerate Mergers

A conglomerate merger however, is one between enterprises engaged in dissimilar activities with the ultimate intention of risk diversification and wealth maximization. Such mergers always result in the creation of conglomerates, for example, a merger between an automobile company and a soft drink manufacturer. Gbede identifies three types of conglomerate merger which are: product-extension mergers, geographic market-extension mergers and pure conglomerate mergers.[43]

A production extension merger involves the meeting of companies in related activity areas in order to extend the merged entity product range, while a geographic-market extension merger involve the merger of two companies operating in different geographic markets. Where a conglomerate merger differs from the foregoing is called a pure conglomerate Merger.

Another example of conglomerate merger and acquisition is between Lever Brothers Nigeria Limited and Cheseborough Product Industry Limited. On another hand, conglomerate mergers and acquisition takes place when companies that are in completely unrelated lines of business or

[42] ibid
[43] ibid

in diametrically different industries or sectors amalgamate. One glaring thing about the type of mergers and acquisition is that, in terms of production, marketing and even technology. A shocking example may be when a construction company takes over a cosmetic manufacturing company. It is on this that we say a conglomerate may result in subsidiaries and holdings.[44] Gbede as such recognizes concentric mergers and statutory mergers.[45]

3.2.4 Concentric Mergers

Concentric merger involves companies that can be integrated with one another such that share resources and share specialization are jointly utilized. This will increase cross mobility of labour and capital resources and can unlock a lot of scale potential. In concentric mergers, back office activities like stock procurements, inventory management marketing, finance and so on are jointly carried out for all the entire components of the business entity.

3.2.5 Statutory Mergers

These are mergers that are strictly guided by the statutory codes promulgated by government in terms of how the shareholders are expected to approve the merger arrangement. Most mergers are statutory mergers due to the need to protect the interest of shareholders. It must be made crystal clear always that all mergers are regulated by law. Statutory mergers are characterized by how much percentage of shareholders are expected to approve its what form proxy fights should take as well as how court ordered meetings shall be held among other factors.[46]

3.3 Motive behind Mergers and Acquisitions

Varied reasons abound for mergers and acquisitions:

3.3.1 Growth

Now in the corporate world, growth is the in-thing. The annual net profit of a company is synonymous with how much investment will attract. Therefore, companies amalgamate so as to grow and increase profit, through economies of scale, and cost cutting. It may however be argued that the expected profit maximization may never come in view of militating factors.

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[44] ibid
[45] ibid
[46] ibid

3.3.2 Synergy

Synergy is seen as giving the merging banks some levels of complementary strengths and therefore a rationale for consolidation.[47] The case of *Exon Mobil International* is a good example of this reason for merger. With synergy, companies reduce cost of production and would witness an increased margin in revenue or profit and may even become more competitive in the sector it operates.

3.3.3 Do away with Unnecessary and Unprofitable Rivalry

When a company realizes that another poses some sorts of nuisance to it by its current competition in the same market, it may decide to acquire such company to stop the rivalry.

3.3.4 Technology

A company may decide to merge with another company with the most advanced technology. In most cases, it is because the company that is desirous of merging realizes it lacks the capital, the technology capable of enhancing its operations.

3.3.5 Empire-building

Realistically, managers and governments seem to have more influence over merging of financial institutions than other non-financial companies. Therefore, governments may be concerned with empire-building or efficiency gains, while managers may want mergers and acquisitions because of possible increase in remunerations.[48] But while government interest may be justified, it may be said that higher pay, for managers of mega institutions is the result of greater skill and outcomes and not merely the aftermath of mergers and acquisitions.

3.3.6 Poor Performance

Demonstrating that mergers and acquisitions enhance better performance in a given economic sector is one of the reasons why an unhealthy company may want to merge with a more viable and vibrant one. No doubt, the poor performance of many banks in the Nigerian Banking sector was

[47] Olisa Agbakoba (SAN) "Issues on Bank Consolidation and Recapitalization, Capital Market, Law and Economic Development" (Lagos Dec, 2004). p.12.
[48] ibid

one of the cardinal reasons that CBN gave the directive to consolidate through mergers and acquisitions. At the end, mergers and acquisitions improve the efficiency of banks, both in terms of gains and savings to customers through lower prices and improved service provisions.

3.3.7 Capital Base

To increase the capital base of a company, mergers and acquisitions are options. The combined capital of Damlerchrysler, Exon Mobil and Citigroup is now at the level exceeding the Gross Domestic Production of countries like Canada, a member of the G.7 countries. Notably the Central Bank of Nigeria, in a bid to increase the capital base of bank operating in Nigeria proposed mergers and acquisitions as the only options for consolidation.[49]

4 CONCLUSION

The Central Bank of Nigeria, through its regulations has brought harmony in operations of banks in the Country. Mergers and acquisition have been a yardstick to measure the growth and performance of Nigerian economy. Mergers and acquisitions of banks in Nigeria have contributed to the growth and development of Nigerian economy.

The consolidation through mergers and acquisitions is an activity which meets the constraints faced in the banking industry. Consolidation maximizes shareholders value. Others believe that consolidation will not only bring about increase shareholders worth but also contribute to the exploitation of economies of scale.

[49] A.Azeez. Banking Industry Reforms and Developing the Nigeria Economy, The Chartered Institute of Bankers of Nigeria vol. 8, No 3 (July-Sept 2007).