THE ENERGY MERGERS & ACQUISITIONS REVIEW

FOURTH EDITION

Editors
Sean T Wheeler, Kristin Mendoza, Roald Nashi
and Robert Fleishman

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Chapter 3

NIGERIA

Gbolahan Elias, Okechukwu J Okoro and Emeka Ezekwesiri[1]

I OVERVIEW

There are two broad sub-markets of relevance in Nigeria: the oil and gas sub-market and the electric power sub-market. Each sub-market has a separate regulator. The Nigerian Electricity Regulatory Commission (NERC) is responsible for electric power, and the newly enacted Petroleum Industry Act 2021 (PIA) created two separate regulators for the oil and gas sub-market: the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), which regulates the upstream sector (petroleum exploration, prospecting and mining), and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), which regulates the midstream and downstream sectors (petroleum refining, storage, transportation, distribution and sale of refined petroleum products). Each of the sub-markets caters primarily to different major buyers: foreign traders for oil and gas, and domestic consumers and business customers for electric power. The contrast between the two markets is considered throughout this chapter.

The combination of fluctuating international prices and climate change concerns about oil and gas, and low prices for electric power domestically mean that acquisition financing has been harder to access than previously. The fluctuating prices for oil and gas are functions of the foreign markets, post-covid-19 pandemic economic recovery difficulties, increasing international commitment towards green energy, and volatility in the market as a result of several disruptive events on the international scene. The low price of domestic electric power is a function of local regulation.

The enactment of the PIA has introduced far-reaching changes in the Nigerian oil and gas sub-market. The PIA introduced new institutional, regulatory, licensing and fiscal regimes for the Nigerian petroleum industry. Actors in the Nigerian petroleum industry (regulators and private and public participants) are currently transitioning to the new PIA regime. In accordance with the provisions of the PIA, Nigeria's national oil corporation, the Nigerian National Petroleum Corporation (NNPC), has transitioned to a private limited liability company and is now the Nigerian National Petroleum Company Limited (NNPC Ltd)

On the mergers and acquistions (M&A) front, the oil and gas market has been especially active because the largest international oil companies (IOCs) in this market have been carrying out a programme to divest a range of onshore acreage assets with a view to focusing on larger offshore acreage assets. Following the successful conclusion of the marginal field bid round, more M&A activities are expected in the petroleum industry. The electric

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power market has also been active with the federal government programme to sell several generation companies. The divestment and privatisation programmes are winding down and will run their course soon.

Also, there have been owners selling and would-be buyers bidding to buy or trying to sell oil and gas assets upstream, midstream and downstream. The success of the divestment programme mentioned above has prompted other IOCs to initiate their own acreage divestment programmes. Interest in buying and selling electric power companies also remains strong, although few deals have actually been concluded. There have also been signs of initial activities related to the sale and acquisition of cash-strapped distribution companies.

II YEAR IN REVIEW

Although the covid-19 pandemic, with its attendant lockdown period, affected the market during 2020 and most of 2021, significant economic recoveries were made in the final quarter of 2021. However, these now seem to have been weakened by the volatility in the oil and gas market occasioned by the unrest around the world, and the soaring price of oil and global inflation have kept the oil and gas market on edge.

Nevertheless, the reforms introduced by the PIA have picked up steam this year. In July 2022, the federal government announced the transition of the NNPC into a limited liability company and the new NNPC Ltd has since commenced operations.

On the regulatory front, the enactment of the PIAhas been the most significant development in the Nigerian petroleum industry in more than two decades. The legislation, comprising five chapters and 319 sections, is expected to drive the development of Nigeria's oil and gas sector. The PIA has introduced much-needed clarity into the regulatory framework for the sector, overhauling the fiscal regime for all companies in the petroleum industry, providing a regulatory framework for host community relations, introducing a new licensing regime and commercialising the government-controlled NNPC, among other notable changes.

Following the lead provided by enactment of the PIA, the regulatory front has also been a hive of activity, with the NUPRC and the NMDPRA each releasing more than 10 draft regulations and sets of guidelines, and these are currently at different stages of stakeholder engagement. Essentially, the purpose of these regulations is to fully implement the reforms introduced by the PIA. Of particular interest is the Nigerian Upstream Petroleum Host Communities Development Regulation 2022, which, among other things, seeks to regulate the incorporation of host community trusts. This regulation prescribes (1) timelines for compliance of upstream petroleum companies with host community obligations, and (2) penalties for non-compliance.

In addition, in August 2021, NERC issued the Meter Asset Provider and National Mass Metering Regulations 2021, which were designed to provide regulatory guidelines for the provision of meters to customers of electricity distribution companies. Primarily, the aim of the Regulations is to close the metering gap in Nigeria through an accelerated roll-out of meters, and to eliminate the prevalent practice of estimated billing in the electricity supply industry. The Regulation is an important development in the electricity sector as it will improve revenue generation and liquidity in the market, which is a major hindrance for development in this energy industry subsector.

The award of the marginal field following the 2021 bid round has now been completed and the relevant licences issued to the successful bidders. A total of 57 oil fields, spread across land, swamp and shallow water terrain, were awarded to 161 successful bidders. There were joint awards of most oil fields to two or more unrelated bidders. The joint awardees are currently developing joint structures and development plans for the relevant oil fields.

In the year under review, Seplat Energy completed the acquisition of the entire interest of ExxonMobil in Mobil Producing Nigeria Unlimited, in a deal valued at over US$1.5 billion, although regulatory approval for the deal has yet to be finalised. Other recent major M&A deals in the oil and gas industry include Rainoil's acquisition of a 61 per cent equity stake in Eterna Oil; the Transnational Corporation of Nigeria Plc acquisition of Shell Petroleum Development Nigeria Limited, Total E&P Nigeria Limited and ENI's combined 45 per cent participating interest in Oil Mining Lease 17 in the Eastern Niger Delta; and Ardova Plc completed the acquisition of a 100 per cent equity stake in Enyo, making Ardova Nigeria's largest indigenous publicly listed downstream company.

Other major M&A deals have also recently been concluded and announced in the downstream (e.g., Forte Oil), midstream (e.g., Seven Energy) and upstream (e.g., Transcorp) oil and gas subsectors, and also in the thermal (e.g., Transcorp Afam) and solar power (e.g., NEOT) sectors. In all these sectors, there are a number of other deals still being negotiated but yet to be announced and this is also the case in the electric power distribution sector. Further, in 2020, the federal government sold its interest in Afam Power plc and Afam Three Fast Power Limited (one of the six successor generation companies incorporated following the unbundling of the Nigeria power sector) for 105.3 billion naira to Transcorp Power Consortium.

Nigeria now has a dedicated, sector-neutral merger control regulator in the Federal Competition and Consumer Protection Commission (FCCPC), established under the Federal Competition and Consumer Protection Act 2018 (FCCPA). Before the FCCPA, the capital markets regulator doubled as the merger control regulator, and changes of control that were either indirect or occurred at the level of foreign parent companies rather than within a Nigerian company were not regulated under Nigerian general merger control law. All this has now changed. Following enactment of the FCCPA, the FCCPC exercised its powers thereunder and in November 2020 issued the Merger Review Regulations 2020 (the Regulations). The Regulations:

a stipulate the requirements for the approval of a merger by the FCCPC;
b outline the jurisdictional limits of mergers under the FCCPA;
c clarify the process for merger notification and handling of notified mergers;
d provide guidance on the regulatory review process; and
e prescribe the procedure for remediation and disposition of notified mergers.

Also, in 2021, the President of Nigeria, Muhammadu Buhari, signed into law the Finance Act 2021 and, subsequently, a further amendment to the Act. The Finance Act amended the existing tax regime in Nigeria and this has had an impact on M&A transactions. Following the amendment to the Act, acquisition and disposal of shares no longer enjoy automatic exemption from capital gains tax. To be exempt, proceeds from the disposal of shares must be worth less than 100 million naira in any period of 12 consecutive months; or the proceeds must have been invested in acquiring shares in any Nigerian company. Where only a part of the proceeds has been invested in acquiring shares in a Nigerian company, capital gains tax will apply proportionately on the part that is not so invested.

In addition, the Finance Act has clarified the uncertainties around M&A deals between related entities. The Act provides for tax exemption for corporate reorganisation between related parties. However, the conditions for tax exemption are that the entities must have been so related for at least 365 days prior to the date of the reorganisation and that the acquirer will not dispose of the asset within 365 days of the date of the reorganisation. Failure to meet of any of the above conditions means the transaction will be subject to applicable taxes.

The Finance Act has also expanded the scope of 'instruments' liable to stamp duty to include electronic documents. With this, M&A documents relating to Nigerian entities that are assessed electronically in Nigeria will attract stamp duty. The Finance Act also amended the new Companies and Allied Matters Act 2020 (the new CAMA) to deal with unclaimed dividends in Nigeria. Dividends of a public quoted company that remain unclaimed for a period of six years or more are to be transferred to the Unclaimed Funds Trust Fund established under the Finance Act. The dividend becomes a debt due from the government to the dividend owner. In addition to the Finance Act, the new CAMA brings major changes to the M&A landscape in Nigeria. Under the extant companies law regime:

a private companies are mandated to restrict transfer of their shares;

b companies are restricted from acquiring their own shares (share buyback and repurchase); and

c financial assistance to shareholders and prospective shareholders is generally prohibited, although some exceptions exist.

In addition, the new CAMA provides for the disclosure of significant control and substantial shareholdings in companies by notice to the Corporate Affairs Commission (the Nigeria companies' registry).

III LEGAL AND REGULATORY FRAMEWORK

Energy M&A deals require both sector-regulator approval (the NUPRC for upstream petroleum operations, the NMDPRA for midstream and downstream petroleum operations, and NERC for the electric power sector) and sector-neutral merger control approval from the FCCPC prior to being concluded. General merger control approval is needed for all energy sector mergers where the combined annual turnover or assets of the acquirer and the target is worth the equivalent of US$2.4 million, or where the target is worth the equivalent of US$1.2 million in either turnover or assets. This is the position under the FCCPA whether the merger is structured as an acquisition of shares or otherwise.

The approval of the stock exchange and the securities regulator is also needed where merging companies are either listed or just public companies. The focus of these approvals is on making full disclosure to investors, while that of the general merger control regulator is on protecting competition and consumers.

A simple asset or shares acquisition may be effected purely by contract. Where liabilities (not only assets) are to be transferred, the parties may achieve their aims either by contract with the consent of the creditors (novation) or by court order where the court is satisfied that the interests of the creditors will not be unfairly prejudiced.

The new CAMA sets out the statutory mechanism for effecting a transfer of liabilities by court order, empowering the courts, following a meeting of the shareholders and the approval of a 75 per cent majority, to 'sanction an arrangement' whereby the assets and liabilities of two or more companies may be vested in only one company.

The approval of the sector regulators is also required by both statute and regulation. The Minister for Petroleum Resources, acting on the recommendation of the NUPRC (for upstream companies), must approve acquisition transfers, whether of acreage, assets or operating licences in petroleum companies. For midstream and downstream companies, only the consent of the NMDPRA is required. Where the assets are marine vessels or licences to operate them, disclosure to the shipping regulator is needed but not its consent. Similarly, NERC's approval is required for acquisition and transfers of shares, licences or assets of companies holding NERC licences. Every company operating assets generating more than 1MW or running a distribution network with more than 100kW capacity or transmission network must have an NERC licence.

Clearance from the tax authorities is also needed in respect of companies' income tax, capital gains tax and stamp duty where there is to be a merger or an acquisition by transfer of shares or assets.

IV CROSS-BORDER TRANSACTIONS AND FOREIGN INVESTMENT

Both foreign and domestic participants have been active in the oil and gas and electric power sub-markets. For example, of the deals mentioned in Section II:

a the divesting parties in the Transcorp deal are all foreign IOCs;
b the parties in both the Forte Oil and the Ardova plc deals were Nigerians;
c Seplat is Nigerian but listed in London, and acquired Eland, which is a UK company listed in the United Kingdom;
d the other acreage-divesting IOCs are all foreign; and
e NEOT is European.

There are no prohibitions against foreign involvement in the energy market in Nigeria. Foreign nationals may fully own, invest and participate in Nigerian companies except enterprises producing arms and ammunition; narcotics and psychotropic substances; and military and paramilitary, police, customs, immigration and prison service uniforms and accoutrements. However, in practice, the now defunct DPR does not give more than 40 per cent of the equity (as distinct from economic) interest in an oil field to a foreign-controlled company; and will give that 40 per cent to the foreign-controlled company only where that company has incorporated a subsidiary in Nigeria for the purpose. We expect that the new regulators will also continue in this tradition.

Further, a foreign company can invest in but cannot operate assets in Nigeria directly and in its own right. It must incorporate a company in Nigeria to do so (except in very rare cases where it gets special exemption from registration as an invitee to Nigeria by the federal government to execute any specified individual or loan project, or as an engineering expert engaged in an individual specialist project).

The Nigerian company must then be registered with the Nigerian Investment Promotion Commission (NIPC) before it starts operations. The NIPC's prevailing practice is to decline to register businesses in which foreign nationals do not invest at least 10 million naira.

However, the Nigerian Oil and Gas Industry Content Development Act 2010 (LCA) provides for exclusive consideration to be given to Nigerian indigenous service companies in the award of certain contracts in the oil and gas sector.[2] The LCA also provides for preferential rights to be given to Nigerian independent operators in the award of oil blocks, oil field

2 Local Content Act, Section 3(2).

licences and oil lifting licences.[3] While the terms 'Nigerian indigenous service company' and 'Nigerian independent operator' are not defined, a Nigerian company is defined under the LCA as 'a company formed and registered in Nigeria in accordance with the provision of the Companies and Allied Matters Act with not less than 51 per cent equity shares held by Nigerians'. The LCA does not exclude companies registered in Nigeria with majority foreign participation from participating in the Nigerian oil and gas sector. The LCA only provides that companies that are majority-owned by Nigerians will have priority over companies with majority foreign participation regarding obtaining rights to oil leases, oil lifting, oil trading, providing training services and funding from the government and third parties. Companies operating in the oil and gas sector (particularly companies with foreign participation and expatriates) are required under the LCA to commit to human capital development for their Nigerian personnel. Consequently, oil and gas companies are required to set aside between 1 per cent and 3 per cent of the budget for projects with a value of not less than US$1 million for the training of their Nigerian personnel.

Similarly, under the NERC Regulation on National Content Development for the Power Sector 2014 (the Regulation), licensees under the Electric Power Sector Reform Act 2005 are to ensure that qualified Nigerian companies are given first consideration for the supply of goods and works, and for the provision of services in the electric power sector. The term 'Nigerian company' is not defined under the Regulation; however, a Nigerian operator is defined as 'a company incorporated in Nigeria with the object of providing goods and services for the Nigerian Electricity Supply Industry'.

Parties to M&A transactions are free to choose the governing law and dispute resolution clauses for their transaction documents. The parties' choice of law to govern the transaction documents would be upheld by Nigerian courts in proceedings on all matters regarding the construction, validity and performance of the transaction. Such a choice of law would be upheld by Nigerian courts, provided the choice of law was not made in bad faith or contrary to mandatory Nigerian statutes or Nigerian public policy.

V FINANCING

Loans, bonds, equity offerings (whether private or public) and share exchange, cash holdings and sales have all been used extensively to pay for energy sector M&A transactions. This has been so across the various areas of the sector. Existing cash holdings are an obvious way to pay for smaller acquisitions.

Some electric power privatisation acquisitions are paid for by the parent company of the acquirer issuing bonds and shares to put in place a 'war chest' for the acquisition. It is also not unusual for acquirers to take out loans and issue bonds to pay off or pay down the creditors of target distressed companies as part of the process of acquiring them. Three points deserve further comment.

First, the old common law rules prohibiting a company from financing the acquisition of its own shares have now been revised by the new CAMA. Where an acquisition is to be financed with debt, there will typically be an acquisition vehicle that will be the borrower of record and hold shares in the target, and the target's assets may or may not be used as collateral. Most privatisation energy acquisitions were financed using a structure of this

3 Local Content Act, Section 3(1).

kind. The use of the target's assets as collateral was absolutely prohibited under the previous financial assistance rule. However, the new CAMA has modified the financial assistance rule as follows:

a by defining financial assistance as 'a gift, guarantee, any form of credit or any other financial assistance given by a company, the net assets of which are thereby reduced up to 50 per cent or which has no net assets', thereby allowing assistance that does reduce the target's company's net assets by up to 50 per cent; and

b by allowing private companies to give financial assistance where:
   - the net assets of the company are not reduced and, where such net assets are reduced, the assistance is provided out of distributable profits;
   - the assistance is approved by special resolution of the company in a general meeting; and
   - the directors of the company or holding company make a statutory declaration before the financial assistance is given.[4]

Second, the use of forward sale financing structures to pay for oil and gas sector acquisitions is emerging. These structures were originally developed in project contexts. Under the structure, the acquirer would sell future oil production forward, get a large payment immediately of much of the price and apply that to pay for the acquisition.

Third, careful tax planning is critical to optimal structuring. At the risk of oversimplification, it is broadly correct to say that acquisitions of shares and formal mergers are more tax-efficient than asset acquisitions with respect to capital gains tax, value added tax, stamp duty rates and other perfection costs. Further, the rules governing official clearance for the adjustments to be made to companies' income tax on the commencement and cessation of business apply to all oil and gas companies and electric power companies. On the face of the legislation, capital gains tax at 10 per cent, value added tax at 7.5 per cent and stamp duty on sale documents for acreage at 1.5 per cent are chargeable on asset sales transactions. Compliance with these rules and their enforcement have both been patchy. Formal mergers are exempt from capital gains tax where the disposal of assets is after one year of the merger process and there is no subsequent disposal of assets within one year of the merger. As noted in Section II, under the Finance Act 2021, acquisition and disposal of shares no longer enjoy automatic exemption from capital gains tax. To be exempt, proceeds from the disposal of shares must be worth less than 100 million naira in any period of 12 consecutive months or they must have been invested in shares in a Nigerian company. Capital gains tax will apply proportionately if only a part of the proceeds has been invested in acquiring shares in a Nigerian company. These rules present obvious opportunities for tax planning.

VI DUE DILIGENCE

Undertaking a due diligence exercise is one of the essential aspects of entering into an energy M&A transaction. Legal, financial and environmental due diligence are commonly conducted in energy M&A transactions in Nigeria. There are no peculiarly Nigerian considerations on project and asset evaluations.

The pertinent aspects of the legal due diligence are usually in respect of the corporate structure, regulatory (including environmental) compliance, security arrangements over

4 Section 183 of the new CAMA.

assets, existing litigation or arbitration. The NUPRC and NMDPRA are required under the PIA to maintain registers of memorials and proprietary interests in upstream acreage. The registers are to show every extension, transfer, surrender, revocation, exemption, relinquishment, change of address, change of name, security interest and any other matter affecting an interest. The register is conclusive evidence of the conditions of a lease, licence, permit or authorisation disclosed in it. A starting point of legal due diligence for merging parties will be the registers. Depending on the target company, a search may have to be conducted at the lands registry, Corporate Affairs Commission (CAC) and other relevant registries. Other aspects of legal due diligence in energy M&A transactions include:

a material contracts;
b assets;
c bank and pension liabilities;
d employment contracts;
e intellectual property and technology rights;
f pending and potential litigations and claims; and
g tax and other statutory and regulatory compliances (including environmental impact assessment approvals and work programme approvals in the oil and gas sector).

It is crucial to conduct the above due diligence enquiries prior to the consummation of M&A transactions, as this will help the purchasing company to assess and provide possible solutions to mitigate legal risks and obligations identified.

It is advisable to ensure that the target company and its shareholders make representations and warranties in the transaction documentation to the effect that there are no existing liens and regarding the authority and title to, and tax of, critical assets. The target company and shareholders should also undertake to indemnify the acquirer in the event of a breach of any of the representations and warranties, and in relation to other commercial matters that the parties may agree.

However, an acquirer cannot completely eliminate the risk that there may be prior security interests, because there are security interests that are not required by law to be registered at the CAC (e.g., charges over shares, and pledges of goods) and prior registered interests may not be disclosed in the course of a search owing to possible administrative lapses at the relevant registry.

This is not unusual under company charges registration regimes that, like Nigeria's, are descended from the prevailing English law position in the 20th century. Similarly, for litigation, arbitration or administrative proceedings, there are no electronic, complete and publicly available docket-disclosure sources.

A financial due diligence exercise is usually undertaken by financial advisers to evaluate the financial prowess or position of the target company and to reveal the accounting and financial control systems of the company, the value of its assets and liabilities, product development and competitors, solvency or insolvency status of the company, capacity of the company to raise short- and long-term loans and to service its outstanding debts, loans, etc.

VII PURCHASE AGREEMENTS AND DOCUMENTATION

The enactment of the FCCPA has resulted in purchase agreements being structured for completion to occur after the approval of the FCCPC has been obtained. Parties ensure that no action that may be interpreted as an 'implementation' of the merger is undertaken until this approval has been sought and obtained. Even for purchases structured as asset sales, it is imperative to obtain this approval; thus, there is no longer any uncertainty about whether merger control approval is required for asset sales. The criteria for the determination of whether an asset sale requires prior merger control approval are now clearly stated in the FCCPA.

For a typical energy M&A, whether in the oil and gas sector or in the electric power sector, it is usual for the target company and, in some cases the shareholders, to give extensive representations and warranties in respect of:

a the good standing of the target;
b ownership of the shares;
c authority to consummate the transaction;
d ownership of assets; and
e the financial standing of the target company.

Others include representations and warranties in respect of liabilities that may arise from environmental issues in the purchase agreements. Such representations and warranties are considered fundamental and, therefore, claims may be made against these for longer periods than is the case for other warranties. It is also advisable to ensure that the target company and the shareholders make representations and warranties in the transaction documentations to the effect that there are no existing liens. It is also usual to have the target company and shareholders undertake to indemnify the acquirer in the event of a breach of any of the representations and warranties, and in respect of unpaid taxes.

VIII KEY REGULATORY ISSUES

As previously mentioned, the key regulatory issues are the need for sector-neutral merger control approval from the FCCPC and sector-specific approval from NERC (for holders of NERC licences) or the NUPRC or the NMDPRA, as may be applicable (for oil and gas sector actors). There are also requirements relating to tax, obtaining environmental impact assessments, meeting environmental standards and holding the right permits.

To the extent that the employer of record of any employee is to change as a result of an M&A deal, approval is needed from the following:

a the NUPRC in the case of oil and gas targets;
b the Minister of Labour and Employment for manual or clerical employees in both subsectors; and
c the Minister of Interior for foreign employees in both subsectors.

IX INSURANCE

Representations and warranty insurance is still quite uncommon in Nigeria and is largely unused in energy M&A deals. It is usual for the parties under an M&A transaction to escrow a certain part of the consideration to mitigate transaction risks.

X DISPUTE RESOLUTION

For most M&A contracts, the dispute resolution clause contains one or more options to be adopted in resolving disputes that may arise in connection with the transaction. The agreement often provides for both informal and formal dispute resolution mechanisms. M&As resulting from insolvency are usually characterised by acrimonious litigations. However, the courts will enforce the parties' choice of dispute resolution and governing law.

Parties may agree to subject any eventual disputes to either negotiation, mediation or arbitration, or a combination thereof. The formalities governing the resolution mechanism will be spelled out under the dispute resolution clause. The parties may also choose to resolve their disputes by way of litigation.

In either case, the parties are at liberty to agree the governing law and the courts with jurisdiction with respect to claims arising from the contracts. Nigerian courts will recognise and enforce choice of foreign law and foreign jurisdiction clauses subject to public policy-type considerations. In any event, tax, immigration and other matters asserting claims against governmental authorities and matters on the dissolution or corporate status of a Nigerian insolvent company are ultimately controlled by mandatory domestic legislation, irrespective of contractual agreements between the parties.

Arbitration is fast becoming popular and the preferred dispute resolution mechanism for most oil and gas contracts in Nigeria. It is also common for parties to agree to international arbitration with a foreign seat and venue for the arbitration. Nigerian courts generally recognise international arbitration contractual provisions and awards. There are grounds for refusal of recognition or enforcement, including because of public policy issues and where the subject matter is not arbitrable under Nigerian law.

Nigeria is a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and the ICSID Convention. Criminal matters are not arbitrable in Nigeria.

XI OUTLOOK

The pipeline of energy sector M&A deals remains robust, but the closing of deals may be delayed. The pipeline is robust for several reasons, including the following:

a some IOCs have acreage divestment programmes;
b the recently concluded marginal field awards are expected to trigger more deals in the oil and gas space;
c the federal government is expected to embark on its own divestment programme soon;
d a number of energy sector companies are distressed and many of their creditors are keen for them to be sold; and
e the federal government is keen to sell off privatised power sector companies that are in breach of the targets agreed with them at the time of privatisation.

Delays may arise for the following reasons:

a the targets may have owners who are unwilling to sell although they are under pressure from their creditors and the federal government to do so (pursuant to (d) and (e) above);
b financing is not easy to obtain in these times of widespread volatility and fluctuating prices; and
c regulators may be their usual dilatory selves in giving the approvals needed.

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