

Statute of the Competition Regulatory Authority of Mozambique

A step further towards the implementation of competition law in Mozambique was taken recently with the publication of the Statute of the Competition Regulatory Authority of Mozambique (*Autoridade Reguladora da Concorrência*) on 1 August 2014.¹ Once operational, the Competition Authority will be responsible for the application of the new Competition Law of Mozambique of 2013,² which is currently still in need of regulation regarding several aspects.

The Authority, endowed with administrative, patrimonial, financial and technical autonomy, will be an independent and impartial entity in the performance of its duties. As already stated in the Competition Law, statutes provide wide regulatory, supervisory and sanctioning powers to the Authority, similarly to the Portuguese Competition Authority (whose statutes inspired the Mozambican legislator) and other national competition authorities in many jurisdictions worldwide.

The Competition Authority will be in charge of investigating and deciding on sanctioning procedures with regard to restrictive competition practices (such as cartel agreements and abuses of dominant position), as well as clearing or prohibiting concentrations between undertakings that are subject to mandatory notification in Mozambique. The Statute determines that the Authority's decisions may be appealed in court, namely to the Judicial Court of the City of Maputo in the case of procedures leading to the application of fines and other sanctions, and to the Administrative Court with regard to merger control procedures and requests for exemptions relating to restrictive agreements. The Statute also establishes a duty of cooperation on the part of undertakings and other entities subject to the activities of the Competition Authority in order to ensure the adequate performance of the Authority's duties.

When the new Competition Authority starts functioning the provisions on prohibited practices restrictive of competition and respective sanctions shall be fully applicable

Recently a proposal for a regulation implementing the Competition Law was made public,³ which, among other topics, further defines the subjective and material scope

1 Cf. Decree no. 37/2014, 1 August. Cf. article "The New Competition Law of Mozambique" in the newsletter of June 2013.

2 Law no. 10/2013, 11 April

3 Cf. Proposal of Regulation of the Competition Law of the Ministry of Industry and Commerce of Mozambique, 11 June 2014.

of the prohibitions under the Competition Law and determines the legal criteria for mandatory notification of concentrations to the Competition Authority with regard to the market shares and turnover of the parties. Specifically, pursuant to the referred proposal, notification is mandatory of undertakings having a market share equal or superior to 20% and an annual turnover over 100 million meticals (approximately EUR 2.5 million and USD 3.3 million).

Even though the application of the rules on merger control is dependent on the approval of the new regulation, when the new Competition Authority starts functioning, the provisions on prohibited practices restrictive of competition shall be fully applicable, and the violation of such rules subjects the undertakings concerned to fines up to 5% of the turnover of the preceding year, as well as other negative procedural consequences.

It is therefore advisable that undertakings having activities in Mozambique consider carefully the impact of the Competition Law, both in taking strategic decisions as well as in their ordinary course of business in the market in order to mitigate the risk of any incompatibility with the new Mozambican competition system.

