

## Regulation approves jurisdictional thresholds for merger control in Mozambique

Decree 97/2014, of 31 December, made public in the course of last month, approves the Competition Law Regulation, which implements a number of substantive and procedural rules of the Competition Law (No. 10/2013), and in particular defines the jurisdictional thresholds for prior notification of concentrations in Mozambique.

Under the Competition Law, concentrations meeting the legal criteria to be defined by the Council of Ministers are subject to mandatory prior notification to the new Competition Regulatory Authority for Competition (*Autoridade Reguladora da Concorrência* or “ARC”).

The concept of concentration includes all acquisitions of control over one undertaking or parts of an undertaking (in result of the acquisition of a majority of the share capital or of veto rights conferring a decisive influence over the commercial strategy of the target company).

Pursuant to the Competition Law Regulation, concentrations will be subject to mandatory filing to the ARC whenever they meet at least one of the following thresholds:

- a) The **combined turnover** of all the undertakings concerned in Mozambique in the preceding year is **equal to or exceeds 900 million Meticais** (approximately € 23.45 million);
  - b) The transaction results in the **acquisition, creation or reinforcement of a share of or above 50%** of the national market of a given good or service;
  - c) The transaction results in the **acquisition, creation or reinforcement of a share of or above 30%** of the national market of a given good or service, as long as each of at least two of the undertakings concerned achieved in the preceding year a turnover of at least 100 million Meticais (approximately €2.6 million) in Mozambique.
- Transactions meeting the jurisdictional thresholds are subject to mandatory filing to the ARC

Transactions subject to mandatory filing should be notified within seven working days from the conclusion of the agreement or of the acquisition project, using a form to be approved by the ARC.

The ARC will assess the prospective effects of notified transactions over the structure of competition in the relevant markets. Concentrations should be blocked when they create or reinforce a dominant position which may significantly impede competition in the relevant markets, although transactions may nevertheless be justified under certain public interest reasons set forth in the Competition Law.

Gun-jumping, i.e., the early implementation of a concentration subject to mandatory filing before clearance, exposes the infringing undertakings to fines up to 5% of the annual turnover of each economic group concerned in the previous year. In addition, not filing a concentration within the legal deadline is punishable with fines up to 1% of annual turnover.

At present the ARC is not yet functioning, as the President and the four other members of the Board, the decision-making body of the ARC, still remain to be appointed. This means that the Law's provisions on merger control are not yet applicable, given that the ARC has exclusive competence to receive and review notifications of concentrations under the Competition Law.

**However, since relevant developments are expected in the near future, transactions that potentially meet the jurisdictional thresholds of the Competition Law Regulation should be the object of a careful legal analysis.**

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Not complying with the duty to notify exposes the parties to serious sanctions

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