

Mozambique



MDR ADVOGADOS

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GENERAL

1. What is the relevant competition legislation and who are the enforcers?

Competition Law is regulated in Mozambique primarily by Law 10/2013 of 11 April 2013 (the Competition Law and Glossary to the Competition Law), and the Competition Law Regulation, approved by Decree 97/2014 of 31 December 2014 (**Regulation**). The administrative authority with exclusive jurisdiction to enforce the Competition Law is the Autoridade Reguladora da Concorrência (**CRA** or **Authority**), an independent entity endowed with administrative and financial autonomy and with broad supervisory, regulatory, investigatory and sanctioning powers. The Statute of the Authority was recently amended and is presently contained in Decree 96/2021 of 31 December 2021 (**Statute of the Authority**).

2. Have there been any recent developments in the law? Are any proposed amendments or new regulations expected to come into force?

Authority Resolution 1/2021 of 22 April 2021 established the notification forms for the filing of concentrations subject to mandatory notification. Ministerial Decree 77/2021 of 16 August 2021 (repealing Ministerial Decree 79/2014 of 5 June 2014), establishes the fees applicable to merger control notifications and requests for exemption of restrictive agreements.

In December 2021, the Government approved a new Statute of the Authority (Decree 96/2021 of 31 December 2021, which repealed Decree 37/2014 of 1 August 2014). The jurisdictional thresholds for mandatory merger notification were amended by Decree 101/2021 of 31 December 2021, which amended the Competition Law Regulation (approved by Decree 97/2014 of 31 December 2014).

Additional regulations, notably on the exemption of anti-competitive agreements, leniency policy and the treatment of complainants, are expected to be published by the Authority, although no drafts have yet been made public.

3. Is the law actively enforced?

The Authority became operational during 2021. Mergers are notified to, and cleared by, the Authority on a regular basis, with more than 40 transactions filed between August 2021 and November 2023. During 2022, the Authority also imposed its first fining decisions on gun jumping and on the breach of procedural obligations, issued its first prohibition decision on a horizontal price-fixing agreement and ordered interim measures for

the immediate suspension of that agreement. Additional investigations are pending.

These decisions, adopted less than two years after the CRA came into operation, show that the Authority intends to be proactive, not only in reviewing mergers subject to mandatory filing, but also in enforcing the substantive prohibitions of the Competition Law and its wide investigatory powers.

4. What are the current priorities or focus areas of the competition authorities?

The President of the Authority has highlighted a number of industries which appear to raise competition issues, suggesting they will be among the investigative priorities for the Authority in the future:

- cement and construction;
- beverages;
- consumer goods, in particular flour, vegetable oils, soap and sugar;
- pharmaceuticals (medicines);
- financial; and
- telecommunications.

The Authority is currently conducting sector inquiries on cement and sugar, and has announced the opening of a further inquiry on flour and vegetable oils.

MERGER CONTROL

5. What kind of transaction constitutes a notifiable merger and how are joint ventures treated?

The Competition Law provisions on merger control apply to transactions that (i) are considered to be 'concentrations between undertakings', and (ii) meet the jurisdictional thresholds.

The following operations are deemed to constitute a concentration between undertakings:

- a merger between two or more independent undertakings;
- the acquisition of control, by one or more undertakings, over other undertaking(s) or part(s) of other undertakings; and
- the creation of a joint venture performing, on a lasting basis, all the functions of an autonomous economic entity (ie a fully functioning joint venture).



- any other conduct listed in articles 17 and 18 of the Competition Law as prohibited horizontal or vertical agreements.

The Competition Law also prohibits the abusive exploitation, by one or more undertakings, of the state of economic dependence of any supplier or client which does not have an equivalent alternative. Abusive conduct may take the form of any of the vertical agreements and practices prohibited by the Competition Law.

25. Are there examples of the authorities pursuing firms for abusing a dominant position?

There are none as yet.

26. Does the legislation provide for penalties to be imposed on firms for the abuse of a dominant position?

Parties involved in the abuse of a dominant position and the abuse of economic dependence are liable for fines of up to 5% of their consolidated turnover, as well as to the ancillary sanctions referred to in question 20.

27. Are there rules in relation to price discrimination?

Price discrimination is listed as a prohibited practice in the context of vertical agreements, the abuse of a dominant position and the abuse of economic dependence of a supplier or client.

Price discrimination is considered an abuse of a dominant position where it:

- is likely to prevent, distort or restrain competition;
- relates to equivalent transactions of goods and services of the same type and quality; and
- refers to sale prices, discounts, payment conditions, granted credit or other services rendered that relate to the supply of goods and services.

28. Does the authority publish its decisions and, if so, is there a website where such decisions are available?

The Statute of the Authority provides that decided cases are published on the Authority's website (www.arc.gov.mz). The website is currently being implemented and decisions are expected to be gradually uploaded.

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Cape Verde



GENERAL

1. What is the relevant competition legislation and who are the enforcers?

Competition law in Cape Verde is regulated in terms of Decree-Law No. 53/2003 of 24 November 2003 (**Competition Law**); and Decree-Law No. 21/2022 of 10 June 2022, creating the Autoridade da Concorrência (**AdC**) and approving its statute (**Statute of the AdC**).

At a national level, the law is enforced by the AdC, which became operational in January 2023. Prior to this date, merger notifications were made to the General Directorate of Trade (**GDT**).

At a regional level, Cape Verde is a member state of the Economic Community of West African States (**ECOWAS**), where competition is enforced on a regional level by the ECOWAS Regional Competition Authority (**ERCA**). (A chapter on ECOWAS competition law is included in this guide).

2. Have there been any recent developments in the law? Are any proposed amendments or new regulations expected to come into force?

There have been no amendments to the Competition Law since its approval. However, there has been a Government proposal to amend the Statute of the AdC, concerning additional funding sources for the AdC.

3. Is the law actively enforced?

Yes, the AdC is an active enforcer of competition law in the country, both in respect of merger control and anti-competitive practices.

By way of example, the AdC recently approved the merger between Cabo Verde Telecom and CVMultimedia. The AdC is also currently investigating several complaints of suspected anti-competitive practices. The AdC has also committed to collaborate with the ERCA to conduct investigations and collect additional information to produce a final report on a complaint under assessment by the ERCA.

4. What are the current priorities or focus areas of the competition authorities?

The AdC has focused this year largely on investigating complaints and assessing notified merger transactions.

The AdC's strategic plan is based on three pillars: completing the setting up of the Authority; enforcing the competition rules and making an effective contribution to boosting the national economy; and defending services of general interest and protecting consumer rights.

MERGER CONTROL

5. What kind of transaction constitutes a notifiable merger and how are joint ventures treated?

The Competition Law refers to mergers as concentrations between undertakings.

An undertaking is defined as any physical or moral person who, in durable fashion, pursues an economic objective. A group of companies that, although juridically distinct, maintain between them interdependence or subordination ties (ie, are subject to a common control structure) are considered to form a single undertaking.

A concentration between undertakings is said to have occurred when (a) there is a merger of two previously independent enterprises; (b) there is an acquisition of direct or indirect, sole or joint control of the whole or parts of one or of various other undertakings; or (c) a joint venture is created, constituting an autonomous, permanent economic entity on a lasting basis.

6. Is it necessary to obtain approval for foreign-to-foreign mergers?

Yes. There is no basis in law to exclude a Cape Verde filing for foreign-to-foreign transactions that meet the notification requirements. Physical presence is not a requirement for a merger to be notified, as combined annual turnover generated, or market share, in Cape Verde is sufficient to trigger a notification.

7. What are the thresholds for mandatory merger notification (eg financial and/ or market share)?

A merger is subject to mandatory filing to the AdC if it results in: (a) the creation or increase of the merging parties' national market share to over 30% for a specific good or service; or (b) the realisation of a combined annual turnover of the merging parties in Cape Verde in the last fiscal year of greater than CVE 1 billion, net of taxes directly related to turnover. Mergers involving credit and banking institutions or insurance companies, however, are not notifiable.



22. Is minimum resale price maintenance prohibited?

While not specifically prohibited in the Competition Law, such conduct can amount to fixing sale prices or interfering in the determination of a price by artificially increasing or reducing it and is therefore prohibited under the Competition Law.

23. In what circumstances are exclusive agreements unlawful? If exclusive agreements raise concerns in specific circumstances, what factors are relevant to their lawfulness or unlawfulness?

Exclusive agreements may in certain circumstances produce anti-competitive effects and therefore may fall within the scope of the prohibition of the Competition Law. At present there is no enforcement practice of the AdC concerning exclusive agreements.

24. Does the legislation prohibit the abuse of a dominant position? If so, what is the threshold for dominance and what conduct amounts to an abuse?

Yes, conduct that amounts to the abuse of a dominant position for the purpose of distorting or restricting competition is prohibited in terms of the legislation.

Under the Competition Law a dominant position is presumed to exist where:

- the undertaking concerned has a market share equal to or greater than 30% for a particular good or service; and
- two or three undertakings acting in concert have a share greater than 50%, or four or more undertakings acting in concert have a share greater than 65%.

The Competition Law does not provide an autonomous list of examples of abusive behaviour, but states, inter alia, that the categories of agreements listed in Article 2 of the *Competition Law* (see question 18 above) can amount to an abuse of a dominant position.

25. Are there examples of the authorities pursuing firms for abusing a dominant position?

So far, there is no evidence that the AdC is pursuing firms for abusing a dominant position.

26. Does the legislation provide for penalties to be imposed on firms for the abuse of a dominant position?

The penalty in respect of the abuse of a dominant position amounts to a fine of between CVE 50,000 and CVE 75 000 000.

27. Are there rules in relation to price discrimination?

Under the Competition Law, the application of discriminatory conditions, including on pricing, is considered a restrictive practice and, therefore, can be prohibited under both the prohibition of anti-competitive agreements and practices and as an abuse of a dominant position.

28. Does the authority publish its decisions and, if so, is there a website where such decisions are available?

No. At the time of writing, the AdC has not yet published any of its decisions.

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