

LEGAL ALERT

THE NEW COMPETITION REGULATORY AUTHORITY OF ANGOLA BECOMES OPERATIONAL

A decisive step was recently taken for the implementation of competition law in Angola, with the creation of the Competition Regulatory Authority of Angola (*Autoridade Reguladora da Concorrência* – ARC) by Presidential Decree no. 313/18, of 21 December, and the appointment of its board of directors announced by press statement of the Office of the President of Angola, last Friday, 25 January 2019.

The new authority, which succeeds the former *Instituto da Concorrência e Preços* (now extinct), is an entity with administrative, financial, patrimonial and regulatory autonomy, endowed with broad supervisory and sanctioning powers, including to summon and question persons, request documents, carry out searches and seizures and seal business premises.

The ARC is responsible, in particular, for the enforcement of the new Competition Act of Angola, approved by Law no. 5/18, of 10 May, subsequently implemented by Presidential Decree no. 240/18, of 12 October. The new Act has a wide scope of application, applying to both private and state-owned undertakings, and covering all economic activities carried out or producing effects in Angolan territory.

Inspired by the laws in force in Portugal and in most other European jurisdictions (which, in their turn, follow closely European Union law), the Competition Act prohibits agreements and anti-competitive practices, both between competitors (“horizontal” practices, the most serious example of which are cartels), as well as between undertakings and its suppliers or customers, within the context of “vertical” relations.

Equally prohibited are abusive conduct practiced by undertakings in a dominant position (including, among others, the refusal to provide access to essential infrastructures, the unjustified rupture of

commercial relations and the practice of predatory prices), as well as the abusive exploitation, by one or more undertakings, of economically-dependent suppliers or clients.

Prohibited practices are punishable with heavy fines that can reach from 1% to 10% of the annual turnover of undertakings involved. Offending undertakings which collaborate with the ARC, by revealing conducts until then unknown or producing evidence on a voluntary basis, may benefit from significant fine reductions, under a leniency program to be developed and implemented by the ARC.

Without prejudice to the investigatory activity that the ARC will carry out in the future, the most immediate enforcement of the new Competition Act will, in all likelihood, relate to merger control.

Indeed, as the new Authority becomes operational, all concentrations with effects in Angola (resulting from the merger between two or more undertakings or from the acquisition of control over an undertaking or its assets) meeting the notification thresholds are subject to prior mandatory filing to the ARC.

The Competition Act Regulation provides three alternative thresholds for mandatory filing:

- The acquisition, creation or reinforcement of a share equal to or higher than 50% in the Angolan market or in a substantial part of it;
- The acquisition, creation or reinforcement of a share between 30% and 50% in the Angolan market or a substantial part of it, as long as at least two of the undertakings concerned achieved individually in Angola a turnover above 450 million kwanzas in the last financial year;
- The combined turnover of all undertakings participating in the concentration in Angola and in the last financial year exceeds 3.5 billion kwanzas.

Failure to file a concentration subject to prior notification constitutes an offense subject to a fine between 1% and 5% of the annual turnover of the infringing undertakings. Should the transaction be implemented without clearance (express or tacit) from the ARC, the participating undertakings are subject to a penalty between 1% and 10% of their respective turnover.

Presidential Decree no. 313/18 determined the transfer to the new ARC of the staff and assets of the former *Instituto da Concorrência e Preços*. With the appointment last Friday of the the members of

the board of directors of the Authority (which has decisional competence to initiate investigations, impose fines and authorise and prohibit concentrations), companies active in Angola should now assume the new Authority is operational and the provisions of the Act are fully enforceable, in particular those on merger control.

Considering the ample powers and potentially heavy sanctions at the disposal of the ARC, companies present in (or planning to enter) Angola are well advised to consider carefully the impact of the new law on their activities, in order to mitigate any risk that its market conduct may be found contrary to the Competition Act.

In addition, companies envisaging M&A transactions with effect in Angola should promptly assess whether such transactions may be subject to mandatory filing to the ARC and, in the affirmative, ensure that closing does not take place before obtaining clearance from the new authority.

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