

LEGAL ALERT

CAPE VERDE

APPOINTMENT OF THE MEMBERS OF THE BOARD OF THE COMPETITION AUTHORITY OF CAPE VERDE

The members of the Board of Directors of the recently established Competition Authority of Cape Verde (AdC – Autoridade da Concorrência), which is currently in the process of becoming operational, were appointed on 30 September 2022.

Competition Authority

The AdC, established by Decree-Law no. 21/2022, of 10 June 2022, which also approved its Statutes, is an independent administrative entity, with organic, functional and technical independence. The AdC's main objective is to enforce the rules for the promotion and defense of competition contained in Decree-Law no. 53/2003, of 24 November 2003, with a view to the efficient operation of the markets, a good allocation of resources and the interests of consumers.

The AdC is endowed with broad regulatory, supervisory, and sanctioning powers, which apply to all companies, both private and State-owned, in all sectors of commerce, industry and services. In particular, the AdC is responsible for investigating and punishing with fines behaviors restrictive of competition (such as cartels or abuses of dominant position), as well as approving or prohibiting mergers that are subject to prior notification in Cape Verde.

The Competition Authority is gradually becoming operational

Under Resolution no. 67/2022, of 30 September 2022, the first President of the AdC is Emanuel Duarte Barbosa, and the board is further composed by two members, Eveliny Fernandes da Lomba and Rito Lopes Correia.

With the appointment of the members of the Board, a period of “installation” of the AdC has formally begun. This period will last for a maximum of 120 calendar days, and the AdC should be considered fully operational by 30 January 2023.

During the installation period, the Board should carry out all necessary acts for the assumption of the full extent of its powers, notably approving necessary regulations and hiring staff. The Board should also set up a plan for the transfer of pending cases in existing regulatory agencies, which is to be published in Cape Verde’s Official Bulletin.

Mandatory filing of mergers in Cape Verde

With the entry into force of the AdC, "concentration" between undertakings meeting the criteria foreseen in Decree-Law no. 53/2003, of 24 November, will be subject to prior notification.

The notion of “Concentration” includes full mergers between two or more hitherto independent undertakings, the acquisition of direct or indirect, sole or joint control over an undertaking or parts of a company, or the creation of a joint venture constituting an autonomous economic entity on a lasting basis.

Concentrations filling at least one of the following thresholds are subject to prior notification:

1. Creation or reinforcement of a share exceeding 30% in the domestic market of a given good or service or in a substantial part thereof; or

2. Combined turnover of all the undertakings involved in Cape Verde exceeding 1 billion CVE (8.8 million USD), in the last fiscal year, net of taxes directly related to turnover.

Infringing the duty to file a transaction subject to prior notification constitutes an administrative offense punishable by a fine up to 40 million CVE (354,000 USD). All contractual instruments related to a transaction subject to mandatory filing are ineffective in the territory of Cape Verde until the issuance of a (written or tacit) clearance decision by the AdC.

Parties contemplating M&A transactions which may have effects in Cape Verde are therefore well advised to assess whether the transaction constitutes a concentration meeting one of the relevant jurisdictional thresholds.

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