



THINK GLOBAL, ACT LOCAL

May 2013

New Mozambique Competition Law

Law 10/2013, which approves the new legal rules on competition in Mozambique (the Competition Law¹), was published on 11 April 2013.

The Competition Law comes into force on 10 July 2013 and the regulations under it should be introduced by the Council of Ministers by 10 October.

The new Mozambique Competition Law has been introduced as a tool to promote competition culture and policy in the context of liberalisation of the Mozambican economy and to be an incentive to private initiative. The need to bring greater dynamism to the economy and the lack of legislative instruments adequate to this new situation led to the approval by the Council of Ministers, on 24 July 2007, of a Competition Policy agenda which made provision for the approval of the necessary legislation and a body to be responsible for its application.

Accordingly, the new Competition Law created the Mozambique Competition Regulatory Authority, which should function as an independent administrative authority, with administrative and financial autonomy, subject to the scrutiny of the Mozambique Parliament. The statutes of this new Authority will be approved by the Council of Ministers. The Competition Law is inspired by the

legislation on competition such as that which has come into force in Portugal and in most European countries.

The new law is grounded on the fight against anti-competitive practices and on merger control. When it comes to prohibited practices, the new law classifies as infringements certain agreements between companies that are horizontal or vertical in nature, as well as unilateral action involving the abuse of a dominant position. The law also establishes an opportunity principle under which the new Competition Regulatory Authority may attribute different levels of priority to the different issues (for example, certain cases or sectors) it has to analyse. **To fully exercise its functions, the Competition Regulatory Authority may make enquiries, carry out inspections, searches and seizure of documents and even seal premises.**

As a result of the said Resolution of the Council of Ministers, which had approved the Competition Policy in 2007, the liberalisation of the economy could lead to increased care by the new Competition Regulatory Authority in the analysis of possible unilateral actions of abuse of a dominant position in sectors previously controlled by the State, such as telecommunications, the ports, the railways or the financial system. Furthermore, the growing openness and

dynamism of the market is bound to lead the new Competition Regulatory Authority to define as priorities the fight against cartels and vertical agreements between suppliers and distributors.

The competition rules on prohibited practices will be applied by the Competition Regulatory Authority in cooperation with the various regulatory bodies whenever the facts relate to a market that is subject to sectoral regulation. The recommendations of the Competition Regulatory Authority are binding on the sectoral bodies.

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As far as merger control is concerned, **the new law makes it mandatory for certain types of mergers between companies to be authorised by the Competition Regulatory Authority before they can be concluded.** The criteria that will determine whether or not prior notification of a merger is mandatory will be defined by the Council of Ministers and they may refer to a certain turnover threshold of the undertakings involved or to a certain value of market share that the merger

will make it possible to achieve. The failure to give notice of a merger will be punishable by a fine of up to 1% of the turnover of the company in question.

While this is an important first step in the creation of a competition policy, it is also worth noting that substantive and procedural rules have some distinctive characteristics. For example, (i) the law may not apply in “cases where there is a need for specific protection of a sector of the economy, to benefit the

interest of the country or the consumer”; (ii) a specific prohibited practice may be deemed justified if it contributes, for example, to the consolidation of entrepreneurship in the country; or (iii) in specific circumstances, companies may apply for an exemption from the prohibition on a determined practice classified as an infringement.

This means that new Competition Regulatory Authority and, in particular, the different stakeholders, will have to invest some time in the acquisition of specialised know-how and in testing the new Competition Law in real cases.



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Separador de página, papel
picado, insectos em pasta
de papel, linhas e cochicos
s/ capulana
7 x 90 x 120 cm
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