

THE REGULATION OF THE MOZAMBIKAN COMPETITION LAW: DECREE 97/2014 OF 31 DECEMBER

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Law 10/2013 of 11 April, which approved the legal framework for competition in Mozambique (the “Competition Law”), gave the Council of Ministers power over the respective regulation. This was done to enable the Council of Ministers to define certain concepts and procedures in competition law and to set out the rules on some issues that were merely announced in the law.

Decree 97/2014 of 31 December was approved to achieve the above aims and establishes the Regulation of the Competition Law (the “Regulation”).

Like the Competition Law, the regulation establishes rules very close to those enshrined in European competition law and particularly Portuguese competition law. The rules centre on anti-competitive practices and control of the concentration (merger) of companies.

When it comes to anti-competitive practices, among other issues, the Regulation defines the concepts of dominant position and economic dependence in order to determine the scope of the offences of abuse of dominant position and abuse of economic dependence, which are provided for in the law.

The Regulation also defines a set of rules on reducing fines for companies and individuals that have participated in infringements but cooperate in investigations by providing information that makes it possible to prove unlawful practices and to identify the others involved. The Regulation provides that these rules should be included in the “Leniency Programme” to be approved by the Competition Regulatory Authority.

When it comes to control of concentrations of companies, one important provision is the establishment of criteria that make the notification of certain operations to the Competition Regulatory Authority mandatory.

In the Competition Law, the legislature had already announced the need for the regulator to control concentrations involving the acquisition of (i) the majority of the share capital of the company by another, and (ii) rights that give one company a dominant influence over the strategy of another. The above-mentioned criteria now provide specific requirements for the notification of concentrations.

Now, it is mandatory to give notification of concentrations that involve:

- i. Creating or increasing to a market share of 50% or more; or
- ii. Creating or increasing to a market share of 30% or more but below 50% when, in the last financial year, the turnover in Mozambique of at least two of the companies taking part in the concentration was above 100 million meticals; or
- iii. When, in the last financial year, the turnover of all the companies participating in the concentration in Mozambique was above 900 million meticals, net of any applicable taxes.

The Regulation establishes a series of rules to calculate the market share and turnover of companies involved in concentrations. Importantly, when defining the turnover of the participants, the turnover of businesses of companies over which those participants have a dominant influence is also taken into account.

A further important point on concentrations is that the Competition Law provides that, as a rule, the concentration cannot take place until a non-opposition decision has been taken by the Competition Regulatory Authority.

This rule is a clear reflection of the importance the legislature places on the substantive assessment by the regulator of the specific terms of the concentration.

That importance is even more evident as the Regulation makes it possible to adopt a simplified assessment procedure for concentrations when the conditions requiring notification set out above are not met. Under this procedure, the Competition Regulatory Authority uses a faster and simpler investigation to assess whether concentrations raise significant barriers to competition in face of the criteria also set out in the Regulation.

As far as we are aware, the Competition Regulatory Authority is not yet set up and fully operational. However, there is no doubt that the approval and publication of this Regulation is a decisive step in the rule-making necessary to effectively implement a policy to protect competition in Mozambique.

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