



REGULATION OF THE COMPETITION LAW

Presidential Decree no. 240/18 of 12 October (the “**Regulation**”) was published recently and further develops the framework of Law no. 5/18 of 10 May - the Competition Law. The Regulation clarifies and put into effect certain rules and procedures in the context of competition law. In particular, they address the rules on restrictive practices, merger control and procedural rules.

In the context of restrictive practices, the Regulation clarifies the concept of dominant position and make it clear that such a position will exist when the market share is 50% or more. Additionally, if there are significant barriers to the entry of competitors, there may be a dominant position even if the market share is less than 50%. Holding a dominant position does not, in itself, amount to a violation. The restrictive practice will only exist if there is abusive behaviour by a dominant undertaking. Such behaviour occurs when the undertaking commits one of the acts listed for this purpose in the Competition Law.

When it comes to the control of merger control, the Regulation has implemented some important provisions left blank by the Competition Law, in particular, as regards the thresholds for notification. Operations that meet any of the following conditions are subject to prior notification to the Competition Authority:

- (i) The operation leads to or reinforces a market share of 50% more; or
- (ii) The operation leads to or reinforces a market share of 30% or more, provided that, in the last financial year, the turnover achieved individually in Angola by at least two of the undertakings participating in the operation exceeds 450 million kwanzas; or
- (iii) In the last year, the undertakings involved in the transaction have achieved a turnover exceeding 3.5 billion kwanzas in Angola.

The Regulation clarifies the concept of dominant position and make it clear that such a position will exist when the market share is 50% or more. Additionally, if there are significant barriers to the entry of competitors, there may be a dominant position even if the market share is less than 50%.

In addition, the Regulation addresses the splitting up of operations, albeit in a somewhat unclear manner. Two or more operations carried out within a period of 5 years between the same entities, even if not individually subject to prior notification, are subject to the duty of prior notification if they cumulatively exceed the limits identified above. We believe that the wording is unclear, but it is expected that the Competition Authority will interpret and apply the rule in this way.

Concentration operations subject to the prior notification rules must be communicated to the Competition Authority using the form created for this purpose, in a format to be approved by that body.

Furthermore, the Regulation excludes the following concentration operations from the scope of the Competition Act:

- (i) Operations involving a temporary or transitional change of control of the whole or part of one or more entities that do not result in an actual concentration of economic power between the acquiring and the acquired undertaking, or in a change in the structure of the market;
- (ii) Acquisitions by the insolvency administrator in the context of insolvency proceedings;
- (iii) Acquisition of shareholdings merely for security purposes;
- (iv) Acquisitions by certain financial institutions (banking and non-banking) in relation to undertakings with a corporate object different to that of the acquiring undertaking, provided that certain conditions are met as to the exercise of the voting rights.

The Regulation also defines the criteria for the calculation of turnover and market share in the context of merger control. First, the calculation of turnover must include all the entities that are directly or indirectly in a control relationship with the company involved in the merger operation. The turnover will include the value of products sold and services provided to businesses and consumers in Angola, net of taxes directly relating to turnover and excluding intra-group transactions. Certain special rules will apply to the calculation of the turnover of credit institutions, financial companies and insurance companies.

The Competition Authority must publish the essential information on the operation within 20 days in the newspaper with the largest national circulation, in order to obtain comments from interested parties for and against the operation. The Competition Authority must issue its opinion on the operation within 120 days or, in the case of in-depth investigations, within 180 days.

The Regulation completes the provisions of the Competition Law. However, an essential element to ensure effective protection of competition is still missing under the new legislation - the creation of the Competition Authority itself. The Office of Prices and Competition has been in place since 2015 and its responsibilities include *the economic analysis of practices or conduct that restrict competition*. However, as the Competition Law states, the President of the Republic of Angola should formally establish the Competition Authority in specific legislation, and this is expected to happen in the near future.



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