LEGAL PARTNERS

FLASH INFORMATIVO | FLASH NEWS

May 2018

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COMPETITION & EU

ANGOLA APPROVES COMPETITION ACT

On 18 April 2018, the National Assembly of Angola approved the Competition Act (the "Act").

The safeguard of sound competition between economic agents aims at fully implementing a market economy, stimulating the Angolan economy and improving the standing of Angola in the "Doing Business" international rankings. The Act is applicable to all economic sectors, thus covering private, public and cooperative undertakings, as well as business associations.

The main impact of the Act will be felt on two levels:

- commercial practices;
- concentrations between undertakings.

1.) Commercial practices

Firstly, the Act sets forth a prohibition of anti-competitive practices, both collective (restrictive agreements) and unilateral (abuse of dominance).

The prohibition of restrictive agreements concerns both the agreements between competing undertakings (horizontal agreements) and those agreements between undertakings in a vertical commercial relationship (vertical agreements), as is the case with relationships between manufacturers and distributors.

On the one hand, horizontal restrictive agreements include, namely, price-fixing and market sharing. On the other hand, vertical restrictive agreements comprise, for instance, resale price maintenance and discriminatory pricing to equivalent customers or suppliers.

Regarding unilateral conducts, this prohibition concerns the abuse of dominance, which consists of an exploitative abuse of a prevailing position in a certain market. This prohibition covers certain unfair trading practices, such as the break of a commercial relationship in an unjustified manner, dumping (direct or indirect) or the refusal to access an essential facility.

The Act also enshrines the prohibition of "abuse of economic dependence". Even in the absence of a position of market dominance, an undertaking is still not allowed to break a commercial relationship in an unjustified manner or impose unfair terms, when a trading partner has no equivalent alternative and is therefore economically dependent.

Infringements are punishable by heavy fines, which may amount to a maximum of 10% of the turnover of the undertakings concerned, in the previous year.

2.) Concentrations between undertakings

Mergers and acquisitions of undertakings shall henceforth be under the control of the Competition Regulatory Authority ("CRA"). Concentrations shall be subject to prior notification to the CRA and can only be implemented after a clearance decision is obtained. The infringement of such obligation by the concerned undertakings is punishable by fines which may amount to a maximum of 5% of their turnover in the previous year.

However, not all transactions will be covered. Only transactions which exceed a certain threshold, in terms of turnover, invoicing or market share, shall be subject to prior notification. The thresholds shall be determined at a later date by a normative act of the President of the Republic.

3.) Competition Regulatory Authority

The Act shall be enforced by the CRA. However, the adoption of its Statutes and legal framework are dependent from a normative act of the President of the Republic.

The CRA is designed in the image of the Capital Markets Commission and the Insurance Regulatory Agency.

4.) Implementation of the Act

The Act shall enter into force on its publication date.

Nevertheless, its implementation currently relies on the two following factors:

- the establishment of the CRA;
- a normative act of the President of the Republic, establishing the Statutes of the CRA and, especially, defining the thresholds intended for merger transactions.