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ANGOLA

COMPETITION AUTHORITY CREATED IN ANGOLA

On 21 December 2018, Presidential Decree 313/18 approving the bylaws of the Angolan Competition Regulatory Authority (“CRA”) was published, putting in place the last piece of the Angolan competition law regime.

The decree completes the Angolan Competition Act (“ACA”), of 10 May 2018 (see [Flash here](#)), and the corresponding Regulation, approved by Presidential Decree 240/18, of 12 October 2018 (“Regulation”).

The CRA takes over the personnel and the ongoing cases from the Prices & Competition Institute. It will kick-off with a staff of 100 officials at its headquarters in Luanda and the possibility of 21 additional officials in provincial branches throughout the Angolan territory.

Nature, mission and powers

The CRA is designed as a public agency enjoying administrative, financial and regulatory autonomy. It is subject to the supervision of the President of the Republic, through the Ministry of Finance. The supervision of the CRA by the President comprises the power to appoint or remove the members of the Board, the establishment of CRA’s goals and priorities and the exercise of disciplinary powers over the members of the Board.

The core mission of the CRA is to apply competition law rules such as to promote efficiency, consumer welfare and economic development, as well as to foster a general culture of competition among economic agents. For this purpose, it has the power to investigate and sanction anticompetitive practices, and may put forward proposals for the attention of the Government to achieve those goals.

For the accomplishment of its mission, the CRA has regulatory, supervision and sanctioning powers.

Within the scope of its regulatory powers, the CRA may issue instructions related with competition matters, adopt guidelines on good practices of undertakings and associations of undertakings, and comment, at the request of a public authority, any relevant competition matter.

Within the scope of its supervision powers, the CRA investigates behaviours capable of restricting competition, review concentrations between undertakings and supervises the formation of prices in the market.

As regards its sanctioning powers, the CRA investigates and punishes infringements of competition law. It may also adopt interim measures when necessary.

Anticompetitive practices

The Competition Act prohibits the following restrictive practices:

- agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect a substantial restriction of competition in the market;
- abuse of a dominant position;
- abuse of economic dependency.

In the context of an investigation of an antitrust infringement, the CRA has the power to:

- search and seize documents in the premises of any undertaking or association of undertakings;
- question legal representatives of undertakings or associations of undertakings;
- seal off the premises of undertakings for as long as necessary for the gathering of evidence.

It bears emphasis that the Regulation establishes a presumption of existence of an individual or collective dominant position when one or, jointly, more undertakings, have a market share equal to or higher than 50%.

Merger control

Merger review is triggered by a merger between two or more undertakings, the acquisition by an undertaking of control or assets of another undertaking, or the creation of a joint-venture, whenever one of the following thresholds is met:

- the undertakings concerned have reached an aggregate turnover in Angola in the previous financial year higher than 3.5 billion kwanzas (related with the scope of the transaction);
- as a consequence of the concentration, a market share equal to or higher than 50% in the Angolan market of a specific product or service is created, acquired or reinforced. This analysis requires a careful definition of the relevant (product and geographic) market;
- as a consequence of the concentration, a market share equal to or higher than 30%, and below 50%, in the Angolan market of a specific product or service is created, acquired or reinforced, provided at least two of the undertakings concerned reached an individual turnover in Angola in the previous financial year higher than 450 million kwanzas.

The CRA may on a case-by-case basis request the filing of transactions that do not meet the abovementioned thresholds.

The implementation of a concentration is conditional on previous clearance by the CRA: all the effects of the transaction are suspended until the CRA approves it explicitly or tacitly. The deadline for the CRA to clear a

concentration varies between 120 and 180 days. If the CRA fails to adopt a decision within the prescribed time, the concentration is deemed to be tacitly approved.

Sanctions

Anticompetitive practices and the implementation of concentrations prior to clearance by the CRA are sanctioned with fines of between 1% and 10% of the turnover generated in the preceding year by each of the undertakings or the group of undertakings involved.

The following conducts are sanctioned with a fine of between 1% and 5% of the turnover made in the preceding year by each undertaking:

- failure to notify a transaction subject to mandatory filing;
- failure to respond to a request for information;
- submission of false or incomplete information to the CRA;
- lack of collaboration with the CRA and or obstruction to the exercise of the CRA's powers.

Furthermore, a fine of between 1% and 10% of the annual income deriving from the exercise of functions in the undertaking concerned may be applied to persons who, having been duly served, fail to appear before the CRA as witnesses, experts or representatives of an undertaking.

Without prejudice to the foregoing, the CRA may also apply the following ancillary sanctions if the seriousness of the infringement or the general public interest so justifies:

- spin-off of an undertaking, transfer of shareholder control, sale of assets, winding-down of activities, or any other measure necessary to eliminate harmful effects on competition;
- prohibition of participation in public tenders for a period of up to three years;
- publication of the punitive section of a decision in the Angolan newspaper with the highest circulation.

Structure of the CRA

The CRA is built around two bodies: Board of Directors and Supervisory Board, each composed of three members.

The Board of Directors is the governing body of the CRA and its members are appointed for three-year (renewable) term. The Supervisory Board is in charge of ensuring compliance, particularly as regards annual accounts, annual reports and budget proposals.

As regards enforcement, the CRA will count with five departments:

- Merger Control;
- Conduct Investigation;
- Study and Market Follow-Up;
- Legal & Litigation;
- State Aid.

The awaited appointment of the members of the Board of Directors and Supervisory Board is now the only missing element for the CRA to become fully operational.