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## TEA AND SYMPATHY

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# ANGOLA ADOPTS COMPETITION RULES

*In 2018, Angola adopted a comprehensive legal package, another important step towards a fully fledged market economy*

The impetus for the adoption of a competition law regime arose at the end of 2017, when João Lourenço took office as President of Angola. He replaced José Eduardo dos Santos, who ran the country for almost 40 years, vowing to correct the imperfections of the Angolan economy.

In April 2018, the Angolan administration hit the ground running, approving the Angolan Competition Act. In October, it adopted procedural and implementing rules and just before the end of 2018 the Competition Regulatory Authority (CRA) was created.

The recently enacted framework seems to be largely inspired in the EU competition legislation and, particularly – due to the obvious ties between both nations – in the Portuguese Competition Act, from where it has taken, for example, the legal concept of ‘abuse of economic dependency’.

It was possibly also the political urge to approve competition rules and the strong inspiration in the European Union framework that led the Angolan legislator to empower the CRA to control the grant of State aid measures to Angolan companies. It remains to be seen how the CRA will use these powers in the absence of a common market goal as it exists in the EU.

## Scope

Apart from the more unusual field of state aid, the Competition Act covers the classic domains of competition law:

- Anti-competitive agreements between undertakings;
- Abuses of dominant position; and
- Merger control.

The abuse of economic dependency is also covered. The concept applies particularly in the field of distribution agreements.

## Presumption of... guilt?

Agreements between competing undertakings (like price-fixing and market sharing arrangements), but also those between operators in different steps of the production/distribution chain (resale price maintenance and exclusivity agreements), are prohibited, insofar as they are restrictive of competition.

However, it appears that, pursuant to the Competition Act, it is incumbent on the undertakings to demonstrate that the behaviour does not constitute a restriction of competition, rather than for the CRA to prove the existence of one. It is still unclear how these provisions will be interpreted, namely in light of the constitutional principle of the presumption of innocence.

Another disturbing feature of the Angolan Competition Act is a presumption according to which companies with a market share of 50 per cent are dominant.

## Obligation to file certain mergers

Like some jurisdictions in Europe, the Angolan competition legislation provides for notification thresholds related not only to companies’ turnover, but also their market shares.

For example, if the combined market share of the parties is 50 per cent or higher, the transaction has to be notified to, and cleared by, the CRA. Also, a merger will be caught by the filing requirement when a market share of at least 50 per cent is acquired, regardless of whether there is an overlap between the economic activities carried out by the undertakings at stake.

## Investigative powers

In order to prove a competition infringement, the CRA has the powers to carry out dawn raids, seal premises off, question any person, and seize documents.

## Fines of up to 10 per cent of turnover

Anticompetitive practices – both unilateral and collective – and the implementation of concentrations prior to clearance by the CRA may be sanctioned with fines from 1 to 10 per cent of the companies’ turnover.

## Ready, set, go!

In January 2019, President Lourenço appointed the members of the Board of the CRA, including its president Eugénia Pereira.

Pereira started her career at KPMG Africa, later moved to Unitel, the largest telecom services provider in the country, and was lately deputy director-general of the Institute for Prices and Competition.

Bets are being placed as to how competition enforcement will unfold. The IMF is watching attentively, as efforts to step up Angola’s productivity and efficiency are being made.

Companies and their lawyers should be attentive too. It is never too late to get ready for a dawn raid...



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