

Cartels

Enforcement, Appeals & Damages Actions

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CONTENTS

Preface	Nigel Parr & Euan Burrows, <i>Ashurst LLP</i>	
Angola	Ricardo Bordalo Junqueiro & Cláudia Coutinho da Costa, <i>VdA</i>	1
Australia	Dennis Miralis, Jasmina Ceic & Phillip Gibson, <i>Nyman Gibson Miralis</i>	7
Belgium	Hendrik Viaene & Karolien Van der Putten, <i>McDermott Will & Emery</i>	17
Canada	Randall Hofley, Cassandra Brown & Gillian Singer, <i>Blake, Cassels & Graydon LLP</i>	30
China	Zhan Hao & Song Ying, <i>AnJie Law Firm</i>	49
Denmark	Olaf Koktvedgaard, Søren Zinck & Frederik André Bork, <i>Bruun & Hjejle Advokatpartnerselskab</i>	65
European Union	Irene Antypas, Jessica Bracker & Marie Florent, <i>Ashurst LLP</i>	76
Finland	Ilkka Aalto-Setälä & Henrik Koivuniemi, <i>Borenius Attorneys Ltd</i>	103
Germany	Dr. Ulrich Schnelle & Elisabeth S. Wyrembek, <i>Haver & Mailänder Rechtsanwälte Partnerschaft mbB</i>	114
India	Anu Monga & Rahul Goel, <i>AnantLaw</i>	127
Japan	Daiske Yoshida, Tomohiko Kimura & Kazuyasu Yoneyama, <i>Morrison & Foerster LLP</i>	141
Portugal	Ricardo Bordalo Junqueiro & Leonor Bettencourt Nunes, <i>VdA</i>	152
Romania	Mihaela Ion & Vanessa Nistor, <i>Popovici Nițu Stoica & Asociații</i>	163
Russia	Alla Azmukhanova & Anastasia Sidorenko, <i>ALRUD Law Firm</i>	178
Singapore	Lim Chong Kin & Corinne Chew, <i>Drew & Napier LLC</i>	192
Spain	Pedro Moreira, <i>SCA LEGAL, S.L.P.</i>	203
Switzerland	Michael Tschudin, Frank Scherrer & Urs Weber-Stecher, <i>Wenger & Vieli Ltd.</i>	223
Turkey	Gönenç Gürkaynak & Öznur İnanılır, <i>ELIG Gürkaynak Attorneys-at-Law</i>	235
United Arab Emirates	Belinda S Lee, Meaghan Thomas-Kennedy & Ariel Rogers, <i>Latham & Watkins LLP</i>	249
United Kingdom	Giles Warrington & Richard Snape, <i>Pinsent Masons</i>	256
USA	Jeffrey J. Amato, Sofia Arguello & Molly M. Donovan, <i>Winston & Strawn LLP</i>	270

Angola

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Overview of the law and enforcement regime relating to cartels

As a consequence of the profound change in the Angolan administration in September 2017, with the current President of the Republic of Angola, João Lourenço, taking over from the 38-year-old presidency of President José Eduardo dos Santos, new policies started being implemented aimed at restoring macroeconomic stability, improving the business environment and attracting investment.

Given that monopolies and oligopolies were historically dominating key sectors of the Angolan economy (e.g., telecommunications, cement), the government set as a priority the promotion of greater competition in domestic markets. As from 2018, significant reforms in the competition landscape of Angola started to be implemented with the objective of creating a market economy based on fair competition, morality, and ethics.

The ongoing legal reforms, which included the adoption of a competition law framework and Private Investment Law, also intends to align the national legal and regulatory frameworks with international standards, and with the requirements laid out by the International Monetary Fund (“IMF”) in December 2018, in exchange for the USD 3.7 billion credit facility.

In this context, the following legal framework is in force, with relevance for cartels:

- (i) Angolan Competition Act (Law 5/18, of 10 May, hereinafter “Competition Act”), which came into effect on 10 May 2018.
- (ii) Competition Regulation (Decree 240/18, of 12 October 2018).
- (iii) Bylaws of the Competition Regulatory Authority (“CRA”) (Presidential Decree 313/18 on 21 December 2018, modified by Presidential Decree 110/19, of 16 April 2019).
- (iv) Instructive No. 7/20 and Instructive 8/20, both of 25 September 2020, containing the Regulation of the Leniency Regime and the Form for Complaints on Restrictive Practices, respectively.

The CRA is the authority that enforces the Competition Act and the Competition Regulation, invested with regulatory, supervisory and sanctioning powers. Although granted with administrative and financial autonomy, the CRA is overseen by the President of Angola through the ministerial department responsible for public finances.

The Angolan competition framework is largely inspired by the European Union competition rules, and particularly by the Portuguese Competition Act. It is applicable to both private and public sectors as well as cooperatives and trade associations.

Historic and linguistic ties between Angola and Portugal have possibly played a role in the considerable similarities of both competition legal frameworks and might also influence the enforcement of the Angolan legislation closer to the EU experience, notably with respect to cartel enforcement. Nevertheless, the Angolan legislation and enforcement will certainly

have its autonomous development and will present specific outcomes as a result of not only the Angolan culture but also of the evolution of its economy and legal system in other domains.

The Competition Act and Competition Regulation prohibit restrictive practices which include: (i) anticompetitive agreements; (ii) abuse of a dominant position; and (iii) abuse of economic dependency. Undertakings engaging in these types of practices are exposed to substantial penalties, ranging from 1–10% of their turnover, as well as to ancillary sanctions. The Competition Act and Competition Regulation also provide for an *ex ante* merger control regime.

With respect to agreements, the Competition Act prohibits horizontal and vertical agreements between undertakings, concerted practices, and decisions by associations of undertakings that substantially restrict competition in the Angolan market. The following practices are provided for in the competition act as prohibited: price-fixing and market-sharing agreements; output restrictions; resale price maintenance; and discriminatory pricing to equivalent customers or suppliers.

The Competition Act provides for an unusual and somewhat surprising reversion of the burden of proof in relation to these horizontal and vertical practices, being up to undertakings or associations of undertakings to prove that their behaviour does not restrict competition. It is yet to be seen how the CRA will apply this provision in practice, and how it will balance this with the constitutional principle of presumption of innocence enshrined in the Angolan Constitution.

Anti-competitive agreements may be subject to a temporary *ex ante* exemption granted by the CRA, provided that the parties demonstrate that: (i) the agreement contributes to improving the production or distribution of certain goods or services, or to promoting technical or economic progress; (ii) an equitable part of the benefits is passed on to the users of these goods or services; (iii) the agreement does not impose any restrictions which are not indispensable to the attainment of these objectives; and (iv) the agreement does not allow for the elimination of competition.

Although there are no public decisions related to cartel investigation in Angola, the CRA is deemed to be a very proactive authority.

Despite the challenges of the COVID-19 pandemic, in 2020 the authority has carried out eight investigations of anti-competitive practices, celebrated two cooperation protocols, received five merger control filings, issued three regulations (including the above-mentioned Instructions) and four guidelines. In addition, the CRA issued three recommendations, carried out three market studies and organised 12 competition advocacy events.

Overview of investigative powers in Angola

In order to properly carry out an investigation for antitrust infringements, the CRA was invested with broad powers, which include powers to: (i) carry out dawn raids in the premises of companies and to seize documents; (ii) question legal representatives of the undertakings or associations of undertakings, or any other persons deemed relevant for the investigation; (iii) request documents and information from legal representatives of the undertakings or associations of undertakings concerned or any other person deemed relevant for the investigation; (iv) when empowered by an order of the competent judicial authority, seal off the premises of companies where relevant documents may be located; and/or (v) request assistance from any service that is part of the public administration, including the police, provided it is necessary for the attainment of its goals.

Enforcement

The CRA's headquarters are in the Angolan capital, Luanda, and the law provides for the possibility of establishing provincial delegations throughout the territory of Angola. It is staffed with almost 60 officials at the time of writing (January 2021).

The CRA is established as a public entity benefitting from administrative and financial autonomy being under the supervision of the President through the Ministry of Finance. Such supervision encompasses the power to appoint the members of the board, setting objectives and priorities for the CRA as well as exercise disciplinary power over the members of the Board.

The CRA is composed by the Board of Directors and the Supervisory Board, each comprising three members. It is the responsibility of the Board of Directors to decide on the opening and closure of proceedings, and the responsibility of the Chairman of the Management Board to appoint and dismiss the Heads of Departments. The Supervisory Board is responsible for ensuring generic compliance and monitoring all financial or economic nature management affairs.

The Board Members of CRA's are appointed by the Angolan President of the Republic. Ms. Eugénia Pereira was appointed for a three-year renewable mandate as president in 2019, and Ms. Ana Ramalheira and Mr. Nelson Lembe are the current two remaining members of the authority's Board of Directors.

In its two years of activity, and despite the challenges of the COVID-19 pandemic, the CRA has carried out 13 investigations of anti-competitive practices in several sectors, (including one abuse of dominance, seven horizontal agreements and two vertical agreements) of which only three resulted in decisions to open proceedings.

The CRA has an online presence, with an official website, and very active social networks (such as LinkedIn and Instagram). Although it is obliged to publish all the information it considers relevant, including non-confidential versions of its decisions and economic studies, there is still poor access to information on enforcement.

Key issues in relation to investigation and decision-making procedures

Whenever strong evidence of restrictive practices comes to the attention of the CRA, it is bound to open an investigation.

In principle, an antitrust investigation should be closed within 24 months from the opening of proceedings, although compliance with this timeframe is yet to be confirmed in practice.

Following the adoption of a statement of objections, the CRA has a maximum of 12 months to complete the investigation.

Replies to the statement of objections must be presented within 20 working days from the statement of objections.

Rights of access to the file by the investigated parties are provided in the Angolan Competition Act, without prejudice to the protection of business secrets.

Leniency/amnesty regime

The Competition Regulation allows the CRA to adopt and regulate a leniency regime, allowing for a reduction of fines, if the collaboration results in the identification of other participants in the infringement and/or in the gathering of information and documents which ultimately prove an infringement.

Although immunity is excluded, the first undertaking coming forward qualifies for a fine reduction of 50–70%, the second 30–50%, and the third 10–30%, provided that:

- (i) the CRA does not have enough evidence to sustain a fining decision;
- (ii) the applicant must admit to its participation in the infringement and cooperate fully and permanently with the investigation; and
- (iii) the applicant ceases immediately its participation in the infringement.

The Leniency regime was published on 25 September 2020, through Instructive No. 7/20, which regulates the procedure for its application, namely the requirements for the fine reduction, how and where such application should be submitted as well as other procedural and substantial aspects.

Administrative settlement of cases

The Angolan competition framework does not envisage the possibility of settlement of antitrust cases.

Third-party complaints

The CRA is legally bound to open an investigation, whenever strong evidence of restrictive practices comes to its attention. On 25 September 2020 the CRA approved the instruction No. 8/20 – the Regulation on the Form of Complaints on Restrictive Practices (hereinafter “Complaints Regulation”).

The above-mentioned Regulation regulates the preparation, registration and processing of complaints of potential restrictive practices, through a specific form.

The complaints may be carried out by any individual or undertaking that is aware of a restrictive practice prohibited by the Competition Act and it shall have, *inter alia*, a detailed identification of its agents, an objective description of the facts supporting it and proof.

After receiving the Form, the CRA shall register it in the proper platform and initiate a preliminary analysis to assess whether it should open proceedings or dismiss it. Thereafter, the complainant has the right to be informed of the CRA’s decision: (i) to either open proceedings or alternatively, to dismiss; or (ii) to close the case following the statement of objections.

The identity of the complainant will be of restricted access, as well as the information it provides, except if it is injurious.

Civil penalties and sanctions

The adoption of any of the above-referred restrictive practices exposes the infringing companies to fines ranging from 1% to 10% of their last annual turnover.

Ancillary penalties may also apply should the CRA conclude that the infringement is particularly serious. This includes (i) publication in the national newspaper with the highest circulation of the extract of the decision imposing a fine, (ii) a ban on participation in up to three public tenders for up to three years, and (iii) structural measures such as the spin-off of an undertaking, transfer of control, disposal of assets, winding down of activities, or to take any other act or measure that it deems necessary to eliminate the harmful effects on competition.

The Competition Act also allows the CRA to impose daily penalty payments on the infringing companies of up to 10% of their average daily turnover of the previous year, in case of failure to comply with the sanctions imposed by the authority.

The Angolan Competition Act does not foresee the application of sanctions to individuals for participation on competition law infringements.

Right of appeal against civil liability and penalties

Acts and decisions from the CRA are subject to appeal according to the applicable general rules. Angola does not have courts with special jurisdiction for competition matters.

Criminal sanctions

Notwithstanding the application of Angolan criminal law, the Angolan legal framework does not provide for the imposition of specific criminal penalties for antitrust infringements.

Cooperation with other antitrust agencies

On 21 December 2020, the CRA and the Portuguese Competition Authority signed a Memorandum of Understanding formalising the solid partnership between the two authorities. In this document, both authorities expressly reiterate their mutual interest in establishing a strong and stable cooperative relationship based on the exchange of relevant non-confidential information, the sharing of ideas, the transfer of technical knowledge and the mutual exchange of experience in the various areas of competition policy.

The above-mentioned partnership aims for the development and promotion of joint studies and research on competition, the establishment of platforms for technical and institutional assistance, the promotion of training initiatives and exchange of personnel, the sharing of experience in the implementation of best practices in the field of promotion and enforcement, the exchange of publications, studies, or reports, as well as non-confidential information on legislative developments and cases, as well as the promotion of joint events for competition promotion and enforcement.

The CRA has been a member of the International Competition Network since 10 December 2019.

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Ricardo Bordalo Junqueiro rejoined Vieira de Almeida & Associados (VdA) in 2018. As Head of Practice Partner of the Competition & EU practice, Ricardo has been involved in various operations, particularly in the electronic communications, energy, pharmaceutical, financial, media and infrastructure sectors, as well as accompanying economic regulation matters in the electronic communications sector.

Prior to joining the firm, he was a Partner at the Cuatrecasas law firm, which he joined in 2017.

Between August 2013 and December 2016, he was Of Counsel at the law firm Cuatrecasas. Between 2002 and 2013, Ricardo joined VdA as a Lawyer at the Competition & EU practice.

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Cláudia Coutinho da Costa joined VdA in 2011. As the Managing Associate of the Competition & EU practice, she has worked actively in various national and transnational deals in several sectors, including the telecom, energy, civil aviation, retail, infrastructure, financial and insurance sectors.

Before joining the firm, Claudia worked as an Associate at Morais Leitão, Galvão Teles, Soares da Silva & Associados (2005–2010). She has also worked as an advisor to the Minister of Culture of the XVIII Constitutional Government (2011), and interned at the General Court of the European Union (2008).

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