

25 of June 2015

Expensive merger filing in Mozambique

[Decree 79/2015](#), of June 5, was disclosed yesterday, setting out the fees to be charged by the incoming Mozambican Competition Authority for a number of services.

Procedure	Fee
Merger Filing	5% of the turnover of the year preceding the request for the review of the transaction. The turnover is determined according to Article 12 (3) of the Regulation of the Competition Act, approved by Decree 97/2014, of 31 of December.
Request for an exemption	200,000.00 MT
Exemption annuity	150,000.00 MT
Legal Opinion	40,000.00 MT

Setting the level of the merger filing fee at 5% of the annual turnover of the participant undertakings is striking, to say the least. It follows from Article 12 of Decree 97/2014 that “turnover” corresponds to the net income generated by the products sold or services rendered in Mozambican territory (not including intra-group transactions).

In cases of acquisition of exclusive control, the obligation to file the transaction rests on the acquiring party. The filing fee is therefore, in principle, due by the acquiring party and calculated on the basis of its individual turnover. However, in cases of mergers, acquisitions of joint control and creation of joint-ventures, the duty to file the transaction rests on all parties involved. Hence, it appears that the filing fee is due by all parties and calculated on the basis of the sum of all companies’ turnovers. This certainly remains far from an encouraging measure to any M & A activity in Mozambique.

It bears emphasis that, according to the Competition Act, the fines for gun-jumping vary from up to 1% to 5% of the undertakings’ turnover. If compared with the 5% filing fee, gun-jumping may surprisingly turn into an appealing alternative.

Also worth noting is the fact that exemptions are subject to an annual fee of 150,000.00 MT (approximately € 3,500.00), on top of the fee due for the initial request. This is an unusual solution when compared with the more common one-off fee model in those jurisdictions charging a fee for this kind of service.

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