Commencement of Angolan Merger Control Regime

1. The Angolan competition law regime became active in early 2019 with the appointment of the board of the Competition Regulatory Authority (CRA). During the course of 2018, Angola had passed the Angolan Competition Act, Regulations and a Decree establishing the CRA and its By-laws, which together establish a comprehensive competition law regime, including prohibitions on horizontal and vertical agreements that substantially restrict competition in the Angolan market\(^1\) and a merger control regime.

2. The CRA has not yet made any decisions relating to prohibited conduct or imposed any fines, but it started accepting merger notifications shortly after its establishment. We were involved in the third filing made to the CRA. As would be expected, the CRA is still in the very early stages of its operations and much remains to be settled in relation to its processes and approaches to certain aspects of the merger control regime. We set out below some insights that we have gained through our recent experience in this jurisdiction.

3. Thresholds

3.1 Concentrations between undertakings (i.e. mergers, acquisitions of control, and the creation of full-function joint ventures) are subject to prior notification to the CRA when they fulfil one of the following conditions:

(A) as a consequence of the concentration, a market share equal to or higher than 50 per cent in the domestic market of a specific product or service, or in a substantial part of it, is acquired, created or reinforced;

(B) as a consequence of the concentration, a market share equal to or higher than 30 per cent but lower than 50 per cent in the domestic market of a specific product or service, or in a substantial part of it, is acquired, created or reinforced and the individual turnover of at least two of the undertakings involved in the concentration in Angola in the previous financial year is higher than AOA 450 million;\(^2\) or

(C) the undertakings involved in the concentration reached an aggregate turnover in Angola in the previous financial year higher than AOA 3.5 billion.\(^3\)

3.2 The CRA may also require the notification of a concentration that does not meet the thresholds for mandatory filing if it considers that the transaction may significantly restrict competition. A simplified procedure will be adopted in such cases, although the CRA retains the power to ultimately prohibit the transaction.

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\(^1\) The Competition Act prohibits agreements between undertakings, concerted practices and decisions by associations of undertakings, both those of a horizontal nature (such as price fixing agreements and market sharing agreements) and of a vertical nature (resale price maintenance, exclusive supply agreements and discriminatory pricing), insofar as they substantially restrict competition in the Angolan market.

\(^2\) Approx. EUR 880,000 or USD 980,000.

\(^3\) Approx. EUR 6.8 million or USD 7.6 million.
4. **Public interest considerations**

4.1 In addition to the effect of the transaction on competition in the domestic market(s), the CRA also has a public interest mandate and will consider the effect of the concentration on:

(A) a specific region or economic sector;

(B) employment levels;

(C) the ability of small enterprises or enterprises pertaining to historically disadvantaged individuals becoming competitive; or

(D) the ability of national industry to compete on the international market.

5. **Formalities for documents to be submitted**

5.1 Although the requirements are not yet clearly defined, the CRA may require that certain formalities are observed in relation to the certification/notarisation of various documents required to be submitted along with the merger notification (including, for example, company registration documents and financial statements).

5.2 Signature of the merger notification itself (which is usually done by the acquiring firm) can be complicated if there is no separately registered local entity. In these cases, a power of attorney permitting local counsel to sign the merger notification on behalf of the acquiring firm will need to be executed and notarised.

6. **Filing fee**

No filing fee has yet been prescribed for merger notifications to the CRA. As such, no fees are currently payable when notifying a merger to the CRA.

7. **Timelines**

7.1 In terms of timing, the Angolan regime provides for an investigation divided into Phase I (which may last for up to 120 days) and, when deemed necessary, a Phase II (which may last for up to 180 days). These time limits will be suspended for as long as is considered necessary by the CRA if the parties make submissions regarding remedies.

7.2 Even in the simplest case, the timeline for approval will need to accommodate an initial notice and public comment period as provided for in the Regulations, which allows the CRA 20 days from notification to publish the relevant notice and a further 10 business days for any interested parties to make submissions.

7.3 The review process in respect of the first merger filing to the CRA was completed in around two months. The second involved the filing of a major transaction and took 6 months from publication until approval in October 2019. The third notification to the CRA was approved in a period of just over two months.

7.4 Overall, it appears that the CRA will be responsive to the parties’ commercial considerations and aim to accommodate their requirements in completing the review expeditiously to the extent possible.

8. **Hold separate arrangements**

The Angolan Competition Act includes a standard provision preventing the implementation of a concentration before a clearance decision. It may theoretically be possible to implement a hold separate arrangement that carves-out the effects of the transaction in Angola until clearance is obtained. The CRA has not however, to our knowledge, considered this issue and it may be necessary to engage the CRA regarding the permissibility of such an arrangement in the context of a given transaction.
9. **Potential fines (including for gun-jumping)**

9.1 Undertakings may be subject to fines of between 1% and 10% of their annual turnover if they are found to have implemented a notifiable concentration before being cleared by the CRA.

9.2 Undertakings are further liable to fines of between 1% and 5% of their annual turnover if they refuse to cooperate with or provide information to the CRA, or are found to have provided false, inaccurate or incomplete information.

9.3 It is unclear from the legislation whether such fines are assessed in relation to the firms' global turnover or local turnover in Angola only.
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