

24 NOVEMBER 2021

COMPETITION LAW ALERT

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Mozambican merger filing fees fall

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Mozambican merger filing fees fall

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Notifying mergers across a multitude of Southern African jurisdictions can be a drawn-out process. While the merger notification documents are often broadly similar, each jurisdiction's competition authority requires that merging parties pay the applicable merger filing fee.

Most of South Africa's neighbouring countries have merger notification regimes with relatively low financial thresholds for mandatory notification. Accordingly, South African merging parties that have sales into neighbouring countries, or local subsidiaries in those jurisdictions, may find themselves being required to notify multiple competition authorities and paying several merger notification fees.

The Mozambican competition regime is nascent, and the Competition Regulatory Authority of Mozambique (ARC) has only just begun accepting merger notifications.

Mergers are required to be notified in Mozambique, where one of the following thresholds are met:

- 1) Combined turnover of all the undertakings concerned in Mozambique in the preceding year is equal to or exceeds 900 million meticais (approximately ZAR 222 million).
- 2) The transaction results in the acquisition, creation or reinforcement of a share of or above 50% of the national market of a given good or service.
- 3) The transaction results in the acquisition, creation or reinforcement of a share of or above 30% of the national market of a given good or service, if each of at least two of the undertakings concerned achieved in the preceding year, a turnover of at least 100 million meticais (approximately ZAR 24 million) in Mozambique.

Notification to the ARC must be made within seven working days from the conclusion of the agreement or acquisition project. Prior implementation is prohibited and a failure to notify the ARC of a notifiable transaction may incur a penalty. There is still some uncertainty in respect of the quantum of the applicable penalties, which will hopefully be resolved soon.

This was all in line with requirements in other jurisdictions, however one bone of contention was the filing fee. The filing fee was calculated as being equal to 5% of the locally generated turnover, for the previous financial year, of the parties to the merger. Importantly, there was no cap on this filing fee, so parties were required to pay 5% of local turnover, with no upper limit on the fee. Accordingly, any sizable business in Mozambique could have attracted a filing fee far overshadowing the value of the deal at hand.

This has now been changed, thankfully. The ARC has significantly reduced its filing fee from 5% to 0.11% of the turnover in the year before filing, with a maximum limit of 2,25 million meticais (approximately ZAR 550,000), aligning with best practices. While it is not expressly clear, it is expected that the calculation will be based solely on Mozambican turnover.

This a welcome change, and as more mergers are notified in Mozambique, there is no doubt the ARC will continue to grow.

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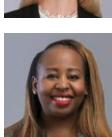
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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