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COMPETITION ALERT

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Competition law in Africa - Recent updates

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Tanzania

The recently issued Finance Bill, 2020 (Bill) seeks to amend, amongst other things, section 60(1) of the Fair Competition Act (FCA) which provides for penalties in respect of offences committed. Presently, the Fair Competition Commission (FCC) may impose on an offending person, "a fine of not less than 5% of his annual turnover and not exceeding 10% of his annual turnover".

Zimbabwe

In terms of newly issued Statutory Instrument 126 of 2020, Competition (Notification of Merger) Regulations, 2020 (Regulations), the financial thresholds for mandatory merger notification in Zimbabwe have been amended as follows:

There is no specification or limitation in this FCA provision that the penalties apply to local turnover only, and therefore, the FCC was free to interpret it to apply to global turnover. The Bill offers welcomed clarity by replacing the words "of his annual turnover and not exceeding 10% of his annual turnover" with "but not exceeding 10% of his annual turnover which has a source in Mainland Tanzania".

The Bill's proposed amendment will exclude annual turnover which has its source outside Mainland Tanzania when computing a fine to be paid for contravention of offences referred to in that section (including anticompetitive agreements and prior implementation of notifiable mergers).

Previous Thresholds	New Thresholds
<p>A merger is notifiable where:</p> <p>(a) the combined annual revenue in or from Zimbabwe of the acquiring group and the target group is equal to or exceeds USD 1.2 million; or</p> <p>(b) if the combined gross asset value in Zimbabwe of the acquiring group and the target group is equal to or exceeds USD 1.2 million.</p>	<p>A merger is notifiable where:</p> <p>(a) the combined annual revenue in or from Zimbabwe of the acquiring group and the target group is equal to or exceeds ZWD 10 million; or</p> <p>(b) if the combined gross asset value in Zimbabwe of the acquiring group and the target group is equal to or exceeds ZWD 10 million.</p>

Competition law in Africa - Recent updates...continued

These modifications to Zimbabwe's merger control regime are key when considering that the failure to notify/prior implementation of a notifiable merger attracts a penalty of up to 10% of either or both merger parties' annual turnover in Zimbabwe.

Given that the value of ZWD 10 million is the equivalent of some USD 27,631.94 (converting at the exchange rate on 29 June 2020), the Regulations appear to significantly lower the threshold for mandatory merger notification thereby extending the ambit of transactions subject to review. It is not clear to us whether the full impact of the conversion from USD to ZWD has been considered by the Zimbabwean Competition and Tariff Commission (CTC).

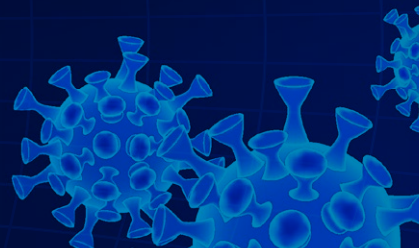
The merger filing fee payable is still 0.5% of the combined annual revenue or the combined gross value of assets in Zimbabwe of the merging parties' (whichever is higher). Notably however, the filing fee is now capped at a maximum of ZWD 800,000 (previously USD 50,000, now approximately USD 2,210) with a minimum filing fee of ZWD 100,000 (previously USD 10,000, now approximately USD 276.32). This decrease in filing fee payable for merger notifications may temper the consequence of an increased number of transactions subject to competition.

These modifications to Zimbabwe's merger control regime are key when considering that the failure to notify/prior implementation of a notifiable merger attracts a penalty of up to 10% of either or both merger parties' annual turnover in Zimbabwe. The CTC has displayed a keen willingness to address such offending behaviour as was evidenced by its recent prohibition of Inncor Africa Limited's (Inncor) acquisition of control over Profeeds Proprietary Limited (Profeeds) which was implemented in 2015 prior without requisite competition approval, the latter only being sought in 2019. This was coupled with the CTC ordering an immediate divestiture of Profeeds and payment of approximately 6.43% of Inncor's annual turnover (approximately ZWD 40,591,483) for contravening Zimbabwean Competition Act merger notification provisions.

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BBBEE STATUS: LEVEL TWO 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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