

24 NOVEMBER 2021

# COMPETITION LAW ALERT

## IN THIS ISSUE >

### Mozambican merger filing fees fall

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.

FOR MORE INSIGHT INTO OUR  
EXPERTISE AND SERVICES

CLICK HERE 



INCORPORATING  
KIETI LAW LLP, KENYA

## Mozambican merger filing fees fall

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 meticaïs (approximately ZAR 550,000), aligning with best practices.

**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 meticaïs (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 meticaïs (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.

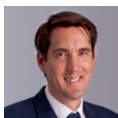
This has now been changed, thankfully. The ARC has significantly reduced its filing fee from 5% to 0.11% of the turnover in the year before filing, with a maximum limit of 2,25 million meticaïs (approximately ZAR 550,000), aligning with best practices. While it is not expressly clear, it is expected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

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

*Susan Meyer and Craig Thomas*

## OUR TEAM

For more information about our Competition Law practice and services in South Africa and Kenya, please contact:



**Chris Charter**  
Practice Head  
Director  
T +27 (0)11 562 1053  
E [chris.charter@cdhlegal.com](mailto:chris.charter@cdhlegal.com)



**Sammy Ndolo**  
Managing Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E [sammy.ndolo@cdhlegal.com](mailto:sammy.ndolo@cdhlegal.com)



**Albert Aukema**  
Director  
T +27 (0)11 562 1205  
E [albert.aukema@cdhlegal.com](mailto:albert.aukema@cdhlegal.com)



**Lara Granville**  
Director  
T +27 (0)11 562 1720  
E [lara.granville@cdhlegal.com](mailto:lara.granville@cdhlegal.com)



**Andries le Grange**  
Director  
T +27 (0)11 562 1092  
E [andries.legrange@cdhlegal.com](mailto:andries.legrange@cdhlegal.com)



**Susan Meyer**  
Director  
T +27 (0)21 481 6469  
E [susan.meyer@cdhlegal.com](mailto:susan.meyer@cdhlegal.com)



**Njeri Wagacha**  
Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E [njeri.wagacha@cdhlegal.com](mailto:njeri.wagacha@cdhlegal.com)



**Craig Thomas**  
Senior Associate  
T +27 (0)11 562 1055  
E [craig.thomas@cdhlegal.com](mailto:craig.thomas@cdhlegal.com)



**Preanka Gounden**  
Associate  
T +27 (0)21 481 6389  
E [preanka.gounden@cdhlegal.com](mailto:preanka.gounden@cdhlegal.com)



**Reece May**  
Associate  
T +27 (0)11 562 1071  
E [reece.may@cdhlegal.com](mailto:reece.may@cdhlegal.com)



**Nelisiwe Khumalo**  
Associate Designate  
T +27 (0)11 562 1116  
E [nelisiwe.khumalo@cdhlegal.com](mailto:nelisiwe.khumalo@cdhlegal.com)

### 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.

### PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

### JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

### CAPE TOWN

Merchant Square, 3<sup>rd</sup> floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.  
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114 E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

### NAIROBI

CVS Plaza, Lenana Road, Nairobi, Kenya. PO Box 22602-00505, Nairobi, Kenya.  
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114 E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

### STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.  
T +27 (0)21 481 6400 E [cdh Stellenbosch@cdhlegal.com](mailto:cdh Stellenbosch@cdhlegal.com)

©2021 10636/NOV



INCORPORATING  
**KIETI LAW LLP, KENYA**



COMPETITION LAW | [cliffedekkerhofmeyr.com](http://cliffedekkerhofmeyr.com)