

Mozambican Competition Authority Issues Ministerial Decree to Amend Merger Filing Fees

By Nicola Taljaard

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On the 16th of August 2021, the Competition Authority of Mozambique (“CRA”) made certain vital amendments to its merger filing fees as per Decree no. 77/2021 (“Decree”). The amendments come at a crucial time considering the recent operationalisation of the CRA in Mozambique and long period of time for which the filing fees remained exorbitantly high. Until recently, the fees were inordinately high compared to both the neighbouring countries of Mozambique, as well as those on the broader global spectrum. The amendments consequently hold potential for improvement of the steadily strengthening African mergers and acquisitions market, and it is expected that similar developments will continue to follow.

It is provided in the Decree that the applicable filing fees are now 0.11% of the turnover in the year before filing with a maximum filing fee value of 2.25 million Meticais (approx. R530 000 as the exchange rate stands on 25 August 2021). Before this amendment was passed, Ministerial Decree no. 79/2015 set the applicable filing fee as an exceptionally high 5% of the turnover in the year before filing. This position was highly controversial, and potentially dissuaded potential investors.

An issue which remains unresolved following the publication of the Decree is that of the relevant companies’ turnover. Although the legislative procedure intended to clarify exactly which companies’ turnover should be used to determine the notification fee, it has failed to do so. However, upon interpreting Article 12 of the Competition Law Regulation systematically, it may be concluded that the turnover applicable to the transaction is that



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realised in Mozambique in the preceding financial year by all of the companies who are party to the deal. Such an interpretation is also consistent with common practice.

As of the 23rd of August, the Decree officially entered into force, and consequently should be applied by the CRA to cases both pending and upcoming, insofar as the filing fee has not yet been paid. This rationale is based on Resolution no. 1/2021 which stipulates that notification is only fully effective once payment of the filing fee has occurred. Thus, various notifications which have been submitted to the CRA, but not yet finalised with the relevant payment due to concerns regarding the high notification fees, are predicted to be paid for and processed in accordance with the modified rates soon.

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