

## LEGAL ALERT

### CAPE VERDE

## THE COMPETITION AUTHORITY BECOMES OPERATIONAL

The new Competition Authority of Cape Verde (*Autoridade da Concorrência*, **AdC**) has recently become fully operational. According to its President the AdC intends to play an active role in enforcing the competition rules and in competition advocacy, both within the Cape Verde territory and internationally.

### Competition Authority

The AdC, established by [Decree-Law no. 21/2022, of 10 June 2022](#), which also approved its Statute, is an independent administrative entity whose main objective is to enforce the Cape Verde Competition Act (approved by [Decree-Law no. 53/2003, of 24 November 2003](#)), with a view to the efficient operation of markets, a good allocation of resources and the interests of consumers.

The AdC is endowed with broad regulatory, investigative, and sanctioning powers, which apply to all companies, both private and State-owned, in all sectors of commerce, industry and services. In particular, the AdC is responsible for investigating and punishing with fines behaviours restrictive of competition (such as cartels or abuses of dominant position), as well as reviewing mergers that are subject to prior notification in Cape Verde.

Following the appointment of the members of the AdC's Board of Directors by [Resolution no. 67/2022, of 30 September 2022](#), a 120-day installation period began, which ended on 30 January 2023. To all intents and purposes, the AdC is now to be considered fully operational.

## **Priorities of the AdC**

The AdC recently hosted the 6th meeting of the Competition Advisory Committee of the ECOWAS Regional Competition Authority<sup>1</sup>, which took place on 6-9 March 2023 in Praia.

In his opening statement, Emanuel Barbosa, the President of the AdC, assumed the commitment to safeguard and promote competition in Cape Verde. He also stated the intention to play an active role at the international level, fully integrating the AdC in regional and international competition networks, such as ECOWAS, the Community of Portuguese Speaking Countries (*Comunidade dos Países de Língua Portuguesa, CPLP*), and the African Union, and cooperating closely with its competition authorities.

As originally stated during his investiture in October 2022, the President of the AdC highlighted as his priorities the creation of a culture of competition among companies and consumers in Cape Verde, as well as enforcing the competition rules in the public, private, cooperative and social sectors in Cape Verde, in coordination with other regulatory authorities.

## **Merger notifications to the AdC**

With the entry into operation of the AdC, concentrations meeting the criteria set out in the Cape Verde Competition Act, which until now were under the competence of the National Directorate of Industry, Trade and Energy, will now be subject to prior notification to this new specialized authority.

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<sup>1</sup> The Economic Community of West African States (ECOWAS) is a regional integration organization that is comprised of fifteen West African countries, whose main objectives are economic integration, regional trade, and political cooperation.

The notion of “concentration” includes full mergers between two or more hitherto independent undertakings, the acquisition of direct or indirect, sole or joint control over an undertaking or parts of a company, or the creation of a joint venture constituting an autonomous economic entity on a lasting basis.

Under the Cape Verde Competition Act, concentrations meeting at least one of the following criteria are subject to prior notification to the AdC:

- Creation or reinforcement of a share exceeding 30% in the national market of a given good or service or in a substantial part thereof; or
- Combined turnover of all the undertakings involved in Cape Verde exceeding 1 billion CVE, in the last fiscal year, net of taxes directly related to turnover.

Infringing the duty to file a transaction subject to prior notification is an administrative offence punishable by a fine of up to 40 million CVE. Until express or tacit authorization of the merger by the AdC any related contractual instruments are ineffective in Cape Verde.

Companies planning M&A transactions with effects on the territory of Cape Verde should now seek specific legal advice to assess whether the transaction is subject to mandatory filing to the AdC. Companies are also well advised to ensure that their daily business and strategic decisions comply with the rules prohibiting anticompetitive agreements and abuse of dominance of the Competition Act.

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