Mozambique introduces Competition Law

By Emile Myburgh and Tamara Dini

5 Jun 2013

Mozambique has promulgated Competition Law, 10 of 2013 (the Act), which will enter into force on 10 July, 2013. The Act applies to all economic activities in or having an effect in Mozambique, subject to certain exceptions.

Tamara Dini, Director, Bowman Gilfillan

The Act creates an independent regulating authority (the Authority). The Act prohibits certain horizontal and vertical agreements and the abuse of dominance. The Authority will also regulate "concerted conduct".

Horizontal agreements are prohibited where they substantially impede, distort or restrict competition in all or part of the national market. Prohibited horizontal agreements include agreements resulting in: (i) the direct or indirect fixing of purchase or selling prices; (ii) an unjustified oscillation of prices; (iii) dividing markets or sources of supply by allocating customers, suppliers, territories or types of goods or services; and (iv)limiting access to the market for new entrants.

A range of vertical agreements are prohibited, including those that: (i) apply discriminatory price conditions (whether systematically or occasionally); (ii) make the conclusion of a contract subject to the acceptance of obligations which have no connection with the purpose of the contract; (iii) impose resale prices, discounts, payment conditions, minimum or maximum quantities, profit margins or other conditions; and (iv) impose excessive prices or increase the price of a product or service without justification.

Abuse of a dominant position prohibited

The Act prohibits the abuse of a dominant position by one or more companies. An abuse of dominance includes: (i) refusing to grant access to a network or other essential infrastructure which the dominant firm controls if, without such access, another company cannot compete with the dominant firm (unless the dominant firm can show that access is impossible for operational reasons); (ii) requiring or inducing a supplier or a customer to not deal with a competitor; (iii) selling merchandise below cost price unjustifiably; and (iv) importing goods at a price lower than that charged in the exporting country. The Act includes price discrimination provisions and prohibitions against the exploitation by one or more companies of the economic dependence on them by a supplier or customer which has no equivalent alternative.

The Act provides for exemptions from the prohibited practices provisions where a company can show that the otherwise prohibited practice results in specified benefits, which include: (i) improving the production or distribution of goods or services; (ii) reducing prices to consumers; (iii) promoting national products and services; (iv) promoting exports; and (v) promoting the competitiveness of small and medium businesses.

The Act provides for mandatory notification of mergers where merging parties exceed a certain market share or turnover threshold (yet to be promulgated). Provision is also made for voluntary notification of mergers below the thresholds. Merger notification has a suspensory effect and the Authority has a 60-day review period.

Sanctions that may be imposed under the Act apply in addition to criminal liability that may apply for the relevant conduct. The Authority may impose a fine of up to 5% of a company's turnover in the previous year for any breach of the horizontal or vertical provisions or abuse of a dominant position or prior implementation of a merger. The Authority may impose a fine of 1% of turnover for lesser offences.

ABOUT THE AUTHOR

Emile Myburgh is a consultant at Bowman Gilfillan, and Tamara Dini is a director at Bowman Gilfillan,