

Morocco

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Competition law in Morocco

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Competition law in Morocco is quite new (Dahir no 1-00-255 dated June 5 2000), and has been largely inspired by French and European legislation. This legislation regulates, in particular, concentration projects.

In this respect, companies that are planning to merge or concentrate their activities have to comply with the strict procedures provided by Moroccan law. Sanctions are provided in case of non-compliance with the procedures. However, there is no case law regarding this in Morocco.

Notification of the concentration project by the prime minister

According to article 10 of the law, any concentration that might pose competition problems in Morocco is submitted by the prime minister to the Competition Authority for review.

Threats to competition exist where the parties (or their subsidiaries) have had a combined market share of 40% or more of the market for that product in Morocco during the previous year.

Moreover, Article 11 of this law states that a concentration results from any type of act that implies a transfer of property in whole or part of the goods or the obligations of one company, or that allows a company or a group of companies to exercise a direct or indirect controlling influence over other companies. These are the only situations in which the prime minister should be notified of the transaction.

Documents to be attached to the notification

According to Article 7 of Decree No 2-00-854 dated September 17 2001, the following documents should be attached to the notification:

- a copy of the transaction documents, and a note related to the expected consequences of the transaction;
- the list of the managers and main shareholders of the companies that plan to merge or concentrate;
- the accounting documents related to the four previous financial years of both companies, and the evolution of the market share of each company during this period;
- a note detailing the main merger transactions carried out in the four past financial years by the concerned companies; and
- a list of the company's subsidiaries, with the amount of their participations and a list of the companies economically linked to the current transaction.

Examination of the project

After receiving the notification, the prime minister has two months to consider whether any competition issue exists. In this respect he should respond expressly or tacitly to the parties. Alternatively, he can request the advice of the Competition Authority. If he does so, the response to the parties must be given within six months.

Under Article 12 paragraph 5 of the law, the transaction can not be completed while the prime minister is examining the transaction. Once clearance has been given, Moroccan law does not stipulate that the transaction must be completed within a given time.

Sanctions

Under Article 12 paragraph 6 of the law, the following persons can inform the prime minister that a merger transaction has been completed realized without notification: (i) regional advisers; (ii) urban communities; (iii) industrial and trade chambers of commerce; (iv) agricultural and artisan chambers; (v) trade unions; and (vi) consumer associations.

Under Article 46, the prime minister can, on the Competition Authority's advice, refer the matter to the public prosecutor in the court of first instance.

This court can then condemn the parties, who are considered criminally liable if the circumstances justify it (taking into account bad faith, and the seriousness of the offences), without prejudice to the civil sanctions that can be pronounced by the relevant courts.

Moreover, the companies can be ordered to pay a fine equal to between 2% and 5% of their annual pre-tax turnover achieved in Morocco during the previous year (as detailed in Articles 46 and 70 of the law).

The court can also pronounce injunctions either to: (i) not complete the merger; (ii) reestablish the situation as it was before the merger took place; or (iii) modify the transaction, or to take any measure suitable, to remove the competition issue.