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GLOBAL LEGAL GUIDES



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SRS Legal

Angola Merger Control Guide



Angola

National Expert

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- Merger Control
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No new regulation adopted

Note that relevant regulations may be changed before your contemplated transaction is completed. Mergerfilers and our national experts keep information on regulations up to date and even provide alerts on adopted or proposed changes that have not come into force yet but may come into effect before the transaction is completed. When this field is green, we have no knowledge of such imminent changes to the relevant regulations.

Relevant legislation and authorities

1) Is a merger control regulation in force?

Yes. Merger control regulation was introduced by Law 5/18, of 10 May 2018.

2) Which authorities enforce the merger control regulation?

The Angolan Competition Council enforces the Angolan Competition Act including the merger regulation contained therein.

3) Relevant regulations and guidelines with links

Merger control rules in Angola are identified below:

Original version	Unofficial English translation
Law 5/18, of 10 May 2018	Competition Act
Decreto Presidencial n.º 240/18, de 12 outubro de 2018	Competition Act Regulation (Translation into English not available)
Decreto Executivo n.º 32/21 de 1 de Fevereiro Aprova as Taxas a Cobrar Pelos Serviços Prestados pela ARC	Executive Decree on Fees to be charged by the Angolan Competition Authority (Translation into English not available)
Decreto Presidencial 313/18 de 21 de dezembro 2018	Presidential Decree 313/18 on 21 December 2018 (Translation into English not available)
Instrutivo n.º 1.20 Regulamento do Formulário de Notificações	Notification Form Regulation (Translation into English not available)

4) Does general competition regulation apply to mergers or ancillary restrictions?



Although the Angolan Competition Act does not directly address ancillary restraints, it should be noted that the notification forms require the parties to identify and justify potential ancillary restraints. This indicates that the Angolan Competition Authority considers that restrictions of competition that are ancillary to the merger, are considered inherent parts of the merger and are not subject to separate scrutiny under the general competition regulation. However, it should be noted that, according to the decisions available on its website, the Angolan Competition Authority has only once assessed ancillary restraints (and considered them directly related and necessary to the merger).

General competition law will apply to all mergers that are not caught by the Angolan Competition Act, as well as to those restrictions that are not considered directly related and necessary to the merger.

5) May an authority order a split-up of a business irrespective of a merger?

Yes. Article 24(c) of the Angolan Competition Act sets out that the Angolan Competition Authority may order the split-up of an existing business, transfer of control, sale of assets, partial termination of a certain activity, as well as any other measures necessary to cease negative effects on competition.

6) Other authorities that also require merger filing or may prohibit transaction

It should be noted that Angola is still a strongly regulated economy. For this reason, several sectoral legislations are in force and must be considered on a case-by-case basis.

Furthermore, whenever mergers take place in industries subject to sectoral regulation (such as banking and financial services, securities exchange markets, insurance, energy, communications, water and waste, media or air, rail and road transport or healthcare services) the Competition Authority requests the relevant regulator to issue a, usually non-binding, opinion on the merger before a final decision is adopted.

Please also see the separate Foreign Investment guide.

7) Are any parts of the territory exempted or covered by particular regulation?

No.

Voluntary or mandatory filing

8) Is merger filing mandatory or voluntary?

Merger filing is mandatory, provided the thresholds are met.

The Angolan Competition Authority may also request that a merger below thresholds be notified. The law does not set a deadline for the Angolan Competition Authority to do so.

Although there is no specific provision, guidance, or case-law in this regard, the parties may consider to file voluntarily in case of a merger below thresholds that has potential to significantly impede competition in Angola.

Types of transactions to file – what constitutes a merger

9) Is there a general definition of transactions subject to merger control?

Yes. According to the Angolan Competition Act a merger subject to merger control is defined as a transaction where a change of control occurs on a lasting basis as a result of:

1. A merger between two or more hitherto independent undertakings;
2. The acquisition of control, by one or more undertakings, over other undertaking(s) or part(s) of other undertakings; and

The creation of a fully functioning joint venture on a lasting basis.

10) Is "change of control" of a business required?

Yes, a merger will only be considered to take place if the transaction results in a change of control over a business. Transactions that consist of the establishment of a new business (that is, a joint venture), jointly controlled by two or more undertakings or persons already controlling one or more undertaking, will also be deemed to be a merger.

11) How is "control" defined?

The definition of "control" under the Angolan Competition Act is inferred from all legal or factual circumstances that confer the ability to exercise decisive influence on the target's activity, in particular through the acquisition of all or part of the share capital, the acquisition of rights of ownership or the use of all or part of an undertaking's assets, and the acquisition of rights or the signing of contracts which grant a decisive influence over the composition or decision-making of an undertaking's corporate bodies.

12) Acquisition of a minority interest

Acquisition of a minority interest that does not result in anyone gaining control over a business is not subject to merger control.

13) Joint ventures/joint control – which transactions constitute mergers?

The concept of "concentration" covers the creation of a full-function joint venture that performs on a lasting basis all the functions of an autonomous economic entity. Such transactions must be filed if they meet the turnover thresholds.

Where the creation of the joint venture has the object or effect of coordinating the competitive behaviour of undertakings that remain independent, that coordination is assessed under the rules applicable to prohibited agreements and practices.

Thresholds that decide whether a merger notification must be filed

14) Turnover thresholds

Note that the Angolan Competition Authority may request that a merger be notified even if the below thresholds are not met.

A merger notification must be filed if:

1. The concentration creates a market share of at least 30 % but lower than 50 % in the domestic market of a specific product or service, or in a substantial part of it, and the individual turnover of at least two of the undertakings involved in the concentration in Angola, in the previous financial year, is higher than 450 million AOA, net of taxes directly related to that turnover; or
2. The group of companies participating in the concentration have achieved in Angola, in the last financial year, a turnover of more than 3,500 million AOA.

**15) Market share thresholds**

A merger notification must be filed if a market share of at least 50 % in the domestic market of a specific product or service, or in a substantial part of it, is acquired, created, or reinforced as a consequence of the merger.

16) Value of transaction thresholds

N/A

17) Assets thresholds

N/A

18) Special thresholds for particular businesses

N/A

19) Other thresholds

N/A

20) Rules on calculation and geographical allocation of turnover

Rules on calculation and geographical allocation of turnover are contained in the Competition Law Regulation, namely in Article 12.

Turnover is calculated on the basis of the accounts of the most recent audited financial year of the participating undertakings as well as any undertakings associated with each participating undertaking, including any direct or indirect parent companies, subsidiaries, joint ventures and subsidiaries of parent companies.

"Turnover" is the net turnover derived from sale of products and services in Angola within the undertaking's ordinary activities after deduction of (i) value added tax and other taxes directly related to the sales and (ii) any turnover between associated undertakings.

21) Is the seller/seller's group turnover relevant in a standard acquisition of sole control?

No.

22) Special rules on calculation of turnover for particular businessesInsurance undertakings

For an insurance undertaking the value of the gross premiums written paid in Angola applies. This includes all premiums received by the undertaking the relevant year. Amounts paid by the undertaking for reinsurance are not deducted.

Credit institutions and other financial undertakings

Turnover is calculated as the sum of:

1. Interest income and similar income
2. Income from securities

3. Income from shares
4. Fees and commissions receivable
5. Net profit on financial operations
6. Other operating income

23) Series of transactions that must be treated as one transaction

Angolan merger control rules are not clear with regard to transactions that take place in stages. In theory, transactions that are interdependent because they are linked by conditions must be treated as one if control in each transaction is acquired ultimately by the same undertaking(s).

Two or more transactions that take place within a period of five years between the same natural or legal persons and which, individually, are not subject to notification, must be filed to the Angolan Competition Authority after the last agreement has been concluded and before it is implemented if the transactions in combination trigger the relevant thresholds.

Exempted transactions and industries (no merger control even if thresholds ARE met)

24) Temporary change of control

Merger filing is only required if there is a change of control on a lasting basis.

25) Special industries, owners or types of transactions

The Angolan Competition Act specifies that there is no obligation to file a merger notification in the following situations:

1. Where control is acquired by a professional who has powers under current insolvency legislation to deal with and dispose of the undertaking;
2. Acquisition of shares with the mere objective of serving as collateral or
3. Where credit institutions, other financial undertakings or insurance companies whose normal activities include transactions and dealing in securities are temporarily in possession of interests in an undertaking acquired with the intention to resell, provided that they a) do not exercise voting rights for the purpose of determining the competitive conduct of that undertaking or b) exercise voting rights exclusively with the aim of preparing the disposal of all or part of that undertaking and that the disposal takes place within one year of the date of acquisition.

26) Transactions involving only foreign businesses (foreign-to-foreign)

There is no exemption for foreign-to-foreign transactions. All transactions that meet the thresholds are subject to merger control regardless of where the undertakings concerned are registered, operate or own assets.

27) No overlap of activities of the parties

There is no exemption for transactions with no overlap of activities, but there is a simplified procedure available if there is no overlap.

28) Other exemptions from notification duty even if thresholds ARE met?

N/A

Merger control even if thresholds are NOT met

29) May a merging party file voluntarily even if the thresholds are not exceeded?

Although there is no specific provision, guidance, or case-law in this regard, this should be possible in theory, particularly considering that the Angolan Competition Authority may request notification of transactions that do not meet the thresholds.

30) May the competition authority request a merger notification ("call in") or oppose a transaction even if thresholds are not met?

Yes. A merger that does not meet the notification thresholds may be subject to notification upon request from the Angolan Competition Authority, if the Authority considers that the transaction may impede, distort or restrict competition and is not exempted under the rules on restrictive agreements.

Referral to and from other authorities

31) Referral within the jurisdiction

N/A

32) Referral from another jurisdiction

N/A

33) Referral to another jurisdiction

N/A

34) May the merging parties request or oppose a referral decision?

N/A

Filing requirements and fees

35) Stage of transaction when notification must be filed

The Angolan Competition Act does not specify when transactions must be filed, merely that filing must occur before it is implemented. There is no deadline to file the notification.

36) Pre-notification consultations

Pre-notification consultations are not a possibility.

37) Special rules on timing of notification in case of public takeover bids and acquisitions on stock exchanges

The Angolan Competition Act does not prevent the implementation of a public takeover bid or an exchange offer that has been duly notified to the Angolan Competition Authority, provided that the acquirer does not exercise the voting rights attached to the securities in question before clearance is granted.

38) Forms available for completing a notification

There are two forms available: one for simplified notification and one for full notification.

However, "simplified notification" is only possible for transactions that do not meet the notification thresholds, i.e. in situations where the Angolan Competition Authority has requested notification of a transaction that does not meet the thresholds.

39) Languages that may be applied in notifications and communication

Portuguese.

40) Documents that must be supplied with notification

The parties are normally required to provide with the filing form, among other less significant annexes:

1. the financial statements and annual reports;
2. the documents directly related to the merger, namely agreements between the parties;
3. any documents, reports or studies prepared and submitted to the management bodies of notifying party in the context of the preparation and assessment of the concentration;
4. preliminary announcements;
5. articles of association;
6. shareholders' agreements;
7. information on suppliers and customers; and
8. non-confidential version of the notification.

41) Filing fees

The following fees are due for merger control review by the ACA:

Combined turnover of the parties in Angola:	Filing fee
Less than 450,000,000 AOA	No filing fee.
450,000,000 - 3,500,000,000 AOA	2,418,944.15 AOA
More than 3,500,000,000 AOA	3,627,916.96 AOA

Implementation of merger before approval – "gun jumping" and "carve out"

42) Is implementation of the merger before approval prohibited?

Yes. A merger subject to prior notification shall not be implemented until tacit or express clearance is granted by the Angolan Competition Authority.

43) May the parties get permission to implement before approval?

Yes, the notifying party may submit a reasoned request prior to or subsequent to the notification requesting that the standstill obligation is waived.

44) Due diligence and other preparatory steps

There are no specific provisions or guidance in this regard.

45) Veto rights before closing and "Ordinary course of business" clauses

An "ordinary course of business" clause that prevents the target company from taking decisions outside the course of its ordinary business until the closing date is generally considered acceptable.

However, it must be assessed on a case-by-case basis to what extent the parties may discuss – or provide each other with veto rights concerning – any decisions in their respective businesses.

46) Implementation outside the jurisdiction before approval – "Carve out"

There are no specific rules on "carve out" of the Angolan part of a transaction to avoid delaying implementation in the rest of the world pending approval in Angola.

47) Consequences of implementing without approval/permission

The Angolan Competition Act foresees a number of possible legal and financial consequences if a merger is not notified:

1. infringement of the standstill obligation may lead to fines between 1 % and 10 % of the annual turnover in Angola in the preceding year of each of the involved undertakings;
2. ancillary penalties may also apply should the ACA conclude that the infringements are particularly serious;
3. lack of legal effects (a concentration implemented before a clearance decision is adopted does not produce legal effects; a concentration implemented in breach of a prohibition decision by the Authority is null and void);
4. if the Angolan Competition Authority adopts a prohibition decision, it may order, in case the transaction has been implemented, the appropriate measures to restore effective competition, namely the separation of the companies.

The process – phases and deadlines

48) Phases and deadlines

Phase	Duration/deadline
<u>Call in:</u> A merger below the thresholds may be "called in" (merger notification requested) by the Angolan Competition Authority.	N/A
<u>Pre-notification phase:</u> There is no pre-notification.	N/A
<u>Phase I:</u> The merger is either declared not subject to prior notification, cleared (with commitments if relevant) or it is decided to initiate a phase II investigation of the merger. Within 20 calendar days of notification, and in order to allow 3rd interested parties to offer	120 calendar days

comments, the Angolan Competition Authority must publish the essential information on the operation in the newspaper with the largest national circulation. When applicable, sectorial regulators are notified to offer any comments within 15 working days.	
<u>Phase II:</u> The merger is either approved, approved with conditions/commitments or prohibited. The merging parties may, at any time, propose remedies to secure the maintenance of effective competition in the market. The clock may stop for as long as the ACA determines in the event that remedies are submitted by the parties (either on Phase I or Phase II).	180 calendar days

These deadlines are extended whenever the Angolan Competition Authority asks for further information from the parties, assesses commitments and conducts a hearing of the notifying parties and third parties who have expressed opposition to the transaction, before issuing a final decision on the procedure. A hearing can be waived by the Authority in case of clearance decisions without commitments and in the absence of interested third parties.

Assessment and remedies/decisions

49) Tests or criteria applied when a merger is assessed

The substantive test for the assessment of a concentration is the 'dominance test', pursuant to which concentrations should be blocked if they are likely to create or strengthen a dominant position that may significantly impede effective competition in the relevant markets (Art. 16 (1) of the Competition Regulation).

The wording of Article 16 (7) of the Competition Law Regulation, however, appears to empower the Authority to block a concentration that gives rise to a significant impediment of effective competition, even in the absence of a dominant position. It is hoped that the administrative practice of the Authority will clarify the scope of the substantive test.

50) May any non-competition issues be considered?

Yes. The Authority is obliged to take into account public interest reasons which may justify any impediments or restrictions to competition resulting from the notified concentration. In its public interest assessment, the Authority should consider the effect of the transaction on (Article 16 (5) of the Competition Regulation):

1. a specific sector or region;
2. employment;
3. the capacity of small enterprises, or enterprises controlled by historically disadvantaged persons, to become competitive; and
4. the capability of national industry to compete internationally.

51) Special tests or criteria applicable for joint ventures

The assessment for joint ventures is the same as for other mergers.

52) Decisions and remedies/commitments available

A merger may be approved, approved with conditions/commitments or prohibited.

Commitments may take any form and they can be either structural or behavioral and with or without time limitations.

Publicity and access to the file

53) How and when will details about the merger be published?

The Angolan Competition Authority will generally make a public announcement when it has received a merger notification and again when a decision has been taken.

A notice of the notification excluding any confidential information is published by the Authority in the largest circulation newspaper within 20 working days of filing.

A non-confidential version of final decisions on merger control should be published on the Authority's website and published on the Official Gazzete as well as in the largest circulation newspapers in Angola (Article 28 of the Competition Regulation).

54) Access to the file – the merging parties

The merging parties have a right to access to the file, which includes correspondence with third parties that the Angolan Competition Authority may have had, including market survey questionnaires as well as an overview of all documents/correspondence in the file. However, the authority may redact third parties' confidential information, often including the identity of such third parties. There is no right of access to the authority's internal documents and correspondence.

55) Access to the file – third parties

Third parties do not have access to the file, but the Angolan Competition Authority may decide to provide third parties with a non-confidential version of the notification and other documents in connection with its market surveys.

Following the publication of a notice of the notification by the Authority in the national newspaper with the largest circulation, any interested third party whose rights or legitimate interests may be affected by the transaction may submit comments within the deadline of 10 working days (see Article 12(2) of the Competition Regulation). In addition, prior to the adoption of a final decision, the Authority must hold a hearing with all interested third parties which have already intervened in the procedure and expressed an adverse opinion of the merger. The hearing suspends the time periods for the adoption of the decision.

Judicial review

56) Who can appeal and what may be appealed?

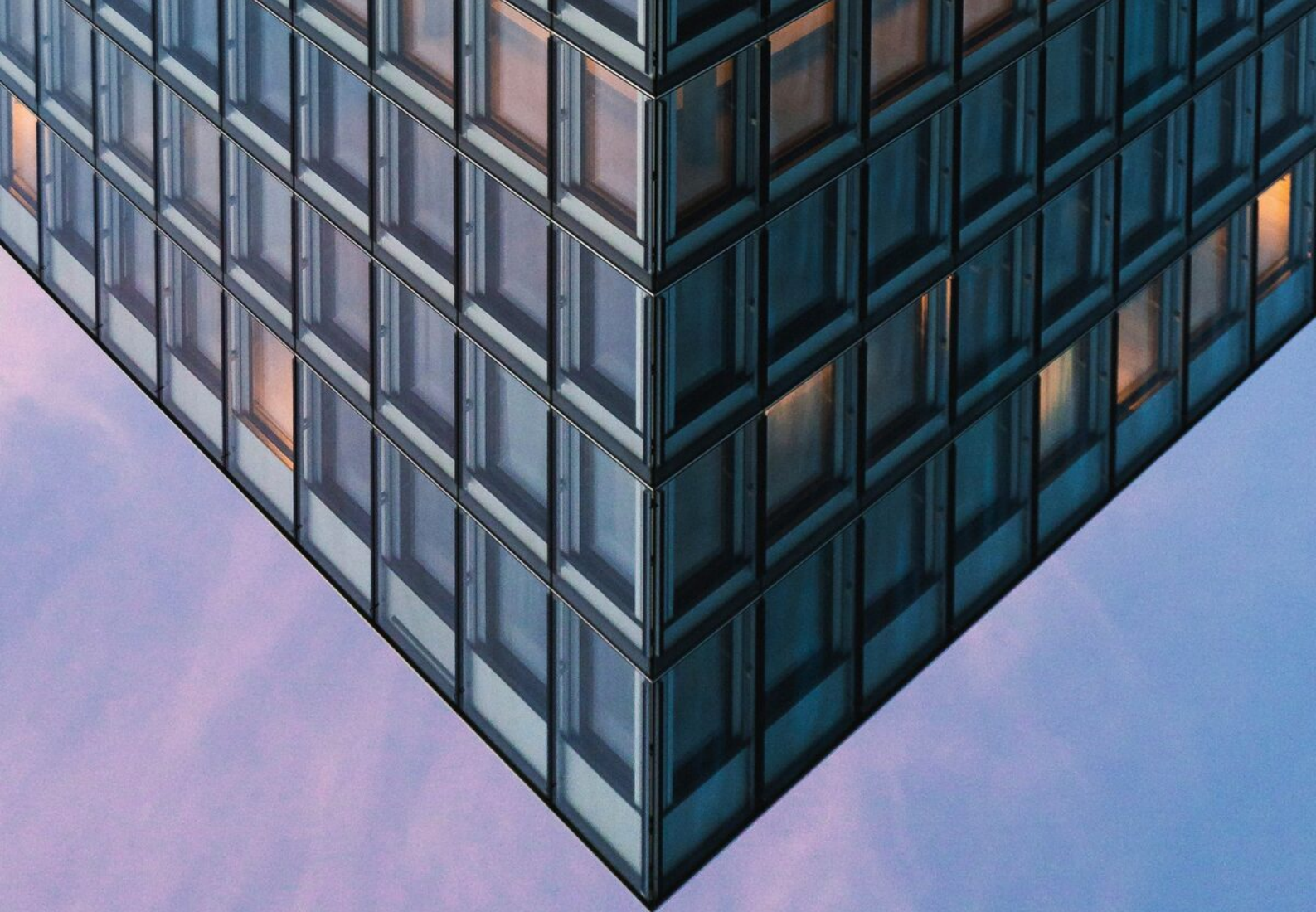
Final decisions are subject to appeal according to the applicable general rules.



As for the legitimacy of appeals against administrative acts, the law establishes that all individuals with subjective rights or legally protected interests who consider themselves to be directly affected by the act have legal standing (see article 237.1 of Law 31/22 approving the Code of Administrative Procedure).

Regarding the jurisdiction of the Courts, the Administrative, Tax and Customs Litigation Division of the District Court has jurisdiction to hear administrative appeals. Decisions taken by this court can be appealed to higher courts.

Concerning the deadlines for lodging an appeal before the Court, it is important to emphasize that an appeal can only be lodged before the courts if all the administrative procedures have been exhausted, i.e. the administrative complaint and the hierarchical appeal. The complaint must be filed 15 days after notification of the act. The administrative appeal must be lodged 30 days after notification. Once the administrative guarantees, which are mandatory procedures, have been exhausted, the interested party can resort to the judicial phase.



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