Africa Competition Guide - Gabon

Prohibited Practices

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# Please provide information in relation to any noteworthy penalties that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

The DGCC has informed local counsel that no criminal proceedings have yet been initiated and there have been no convictions of persons or entities for engaging in anticompetitive behaviour.

The anticompetitive practices defined in the Law Establishing the Competition Regime are prohibited under penalty of criminal sanctions in accordance with articles 57 to 59 of the said law. Entities engaged in prohibited practices will be punished with a prison sentence of one to 12 months and a fine of CFAF 50,000 (approx. USD 82) to 50,000,000 (approx. USD 82,293).

In addition, in the event of conviction, the court may impose additional penalties, including confiscation of all or part of the seized goods for the benefit of the State, permanent closure of the business, and publication of the decision in a legal gazette and by any other means of posting, the costs of which will be borne by the convicted person.

At Community level, the CEMAC Regulation on competition provides for the following sanctions:

**1. In the case of an agreement or abuse of a dominant position:**

The CEMAC Competition Commission may order the undertakings concerned to put an end to the infringements, by injunction, accompanied, if necessary, by penalty payments, within a given time limit, as well as a fine accompanied by appropriate measures to publicise the decision in the event of non-compliance with its injunctions. (See Article 49)

Note that in accordance with Article 5 of the above-mentioned Regulation, the fine may not exceed 10% of the turnover before tax achieved worldwide and 20% in the CEMAC common market during the last closed financial year or a more appropriate financial year in the period during which the infringement was committed. In the event of a repeat offence, the fine is doubled. Penalties are determined individually and, for each undertaking, where more than one is involved. Account may be taken of the cooperation of the undertaking in establishing the reality of the prohibited practice and of the absence of any dispute on its part.

In accordance with Article 52 of the same Regulation, the Commission may impose on undertakings, groups of undertakings and associations of undertakings periodic penalty payments of between CFAF 1 million (approx. USD 1,645) and CFAF 20 million (approx. USD 32,917) per day of delay, starting from the date set in its decision, to compel them to comply

**2. In case of concentration:**

In accordance with Article 72 of the CEMAC Competition Regulation, the Commission may, by decision, impose a fine on undertakings having participated in a concentration, the amount of which shall take into account the sales of the undertakings concerned in the sector of activity concerned, in relation to the concentration, and which may not exceed 10% of the turnover before tax achieved at the world level and 20% in the CEMAC common market during the last financial year ended, in the following cases:

the operation has not been notified;

after the finding of incompatibility, the injunctions have not been complied with;

the transaction has been notified but is prohibited and yet implemented;

the transaction was cleared subject to conditions that were not complied with; and

the transaction was implemented before the Commission’s decision.

In addition, Article 74 of the above-mentioned Regulation provides that where a concentration incompatible with the common market has already been implemented, the Commission may order the separation of the undertakings or assets brought together, the cessation of joint control, or decide on any other appropriate course of action, by way of interim measures, to restore effective competition, where necessary.

In accordance with Article 77 of the same Regulation, the Commission may also, by decision, impose on undertakings, penalties of between 1 million (approx. USD 1,645) and twenty20 million (approx. USD 32, 917) CFA francs per day of delay, from the date fixed in its decision, for any failure to comply with its prescriptions.

# Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation? If so, please provide details.

According to local counsel’s discussions with the DGCC, the Competition Authority has not yet initiated any proceedings against parties to a vertical relationship for breach of competition law.

# Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecution against entities for implementing exclusivity clauses or non-compete restraints? If so, please provide details.

According to the provisions of Article 102 of the CEMAC Competition Regulation, companies in a legal monopoly situation are subject to the rules governing anticompetitive practices, and in particular, those relating to the abuse of a dominant position, subject to limitations justified by reasons of public order, public security, public health and environmental protection.

Article 102 (2) and (3) specify that a monopoly is said to be legal when the State grants exclusive rights to a private or public undertaking to operate a public service or to produce goods and services. In particular, companies in a monopoly situation must avoid abusive practices such as

tying;

imposing discriminatory or unfair conditions of sale;

refusing to sell;

unjustified termination of commercial relations; and

using the revenue they derive from their monopoly activities to subsidise their activities in other sectors.

Thus, according to Article 4 of the Law on Competition, prices of goods and services as well as imports and exports may be determined freely in Gabon.

However, there are exceptions to this principle. In this regard, Article 4 paragraph 2 of the above-mentioned law provides that the Government may, if necessary and after the opinion of the Competition Authority, regulate the prices of goods and services, particularly when price competition is distorted in sectors where monopolies have been established or which are subject to special price regulations.

In addition, the Government may also, where necessary and notwithstanding the operation of competition, take measures to:

prevent excessive price increases resulting from a crisis situation or an abnormal functioning of the market for a good or service; and

prohibit or restrict, after the opinion of the Competition Authority, the import of one or more specific products which cause or threaten to cause injury to established national production, or clearly jeopardise the start-up of national production. They may be subject to quotas or surcharges.

Finally, Article 6 of the same law states that the freedom of imports and exports must not undermine the protection of national treasures and industrial, commercial or intellectual property, nor the fight against goods and services resulting from counterfeiting of which an economic operator is guilty. Thus, in accordance with Decree No. 325/PM/CPMEADS of 2 July 2015 on the application of certain provisions of the Law Establishing the Competition Regime, the government may, by order of the Minister in charge of the Economy, grant exclusive import exceptions for certain products of nascent industries for a specified period. The implementation of this procedure gives rise to the establishment of specifications between the beneficiary entity and the administration. These specifications will serve as a basis for the administration to conduct periodic audits and controls to ensure that the beneficiary entity complies with the terms and conditions of the exclusivity granted by the Government. In case of default or failure by the beneficiary entity, the Government may terminate the exclusivity granted.

Therefore, in accordance with the law in force, we understand that only the Government is entitled to grant exclusivities under the conditions indicated above. Thus, exclusivity clauses and non-competition restrictions implemented outside this context are contrary to the law and may lead to sanctions.

However, according to local counsel’s exchanges with the DGCC, no entity has been prosecuted for applying exclusivity clauses or non-competition restrictions in Gabon.

# Has the authority launched and publicised any new investigations since January 2021 against any entities for engaging in prohibited practices? If so, please provide details.

According to local counsel’s discussions with the DGCC, the Competition Authority has not launched or made public any new investigations since January 2021 against entities for engaging in prohibited practices.

# Does the competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power? If so, please provide details.

Yes. The competition legislation in force in Gabon contains provisions on the abuse of buyer power. In fact, according to Article 10 of the Law on Competition, it is prohibited to use practices aimed at abusing the state of economic dependence of an enterprise or group of enterprises on a client or supplier enterprise that does not have an equivalent solution.

The law also prohibits the situation of economic dependence in which a company voluntarily places itself, as long as it has an equivalent solution. This practice constitutes an infringement of the Competition Act, when it has the object or effect of preventing, restricting or distorting competition in the national market or in a substantial part of it.

Nevertheless, according to local counsel’s exchanges with the DGCC, it seems that the Competition Authority has not yet initiated proceedings against entities accused of abuse of buyer power.

# Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct? If so, please provide details.

Yes. As mentioned above, anticompetitive conduct is prohibited in Gabon. In accordance with Article 23 of the Competition Regime Act, anticompetitive practices are prohibited under penalty of criminal sanctions on the basis of Articles 57 to 59 of the said Act, without prejudice to the penalties provided for in Article 56 thereof.

However, the DGCC has informed local counsel that no criminal proceedings have yet been initiated and there have been no convictions of persons or entities for engaging in anticompetitive behaviour.

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