

Morocco

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Legislation and jurisdiction

1 What is the relevant legislation and who enforces it?

The Moroccan merger control rules are set out in Law No. 06-99 of 5 June 2000 (Dahir No. 01-00-225) on free pricing and competition (the Law) and its enforcement decree No. 2-00-854 (the Decree).

The Moroccan merger control authorities consist of:

- the prime minister, who has decision-making power; and
- the Competition Council, which has a consultative role when the notified concentration is likely to infringe competition.

It should be noted that two bills, Bill No. 104-12 on freedom of prices and competition and Bill No. 20-13 relating to the Competition Council, are currently being examined by the Moroccan parliament that would replace the Law and transfer the merger control function to the Competition Council (for further details, see question 36).

When the notified concentration concerns specific sectors, sectoral regulators are consulted by these competition authorities. This includes the National Telecommunications Regulatory Authority (ANRT) for the telecommunications sector; the High Authority for Audio-visual Communication (HACA) for the audio-visual market; the Bank Al Maghrib for banks; the Council for Ethical Standards in the Securities Market (CDVM) for the stock exchange; the Insurance and Social Security Directorate for insurance; and the National Ports Agency (ANP) for ports.

Legally, there is no mandatory consultation procedure that requires competition authorities to consult with other sectoral regulatory bodies about the notified concentrations affecting their sector.

For the specific case of the telecommunications industry, Law No. 55-04 and its enforcement decree authorises the sectoral regulatory agency (ANRT) to enforce the concentration control provisions (article 10 et seq of Law No. 06-99) in its industry. To the best of our knowledge, this jurisdiction has never been implemented by the ANRT.

2 What kinds of mergers are caught?

The Moroccan merger control applies to ‘concentrations’ which, according to article 11 of the Law, may result from any measure, regardless of its form, which:

- leads to a transfer of ownership or a transfer of right of use over all or part of the assets, rights and obligations of an undertaking; or
- as its object or effect, allows an undertaking or a group of them to exercise, directly or indirectly, a decisive influence on one or several other undertakings.

According to the Moroccan Competition Council:

- the transfer of ownership or right of use can result notably from absorption mergers, mergers, partial transfers of assets or acquisitions; and
- the ‘decisive influence’ means the power to block decisions that determine the commercial strategy of a company.

3 What types of joint ventures are caught?

Despite the fact that the provisions of the Law do not expressly refer to them, joint ventures might fall under the scope of the Law provided that they fulfil the definition of a concentration set out in question 2 and the threshold stated under question 5.

No definition of the types of joint ventures that might be caught has been provided at this stage by the Moroccan competition authorities.

4 Is there a definition of ‘control’ and are minority and other interests less than control caught?

There is no definition of ‘control’ but it appears that control arises from any measure, regardless of its form, which leads to a transfer of ownership or a transfer of right of use over all or part of the assets, rights and obligations of an undertaking; or as its object or effect, allows an undertaking or a group of them to exercise, directly or indirectly, a decisive influence over one or several other undertakings.

Minority interests or other interests might be caught as long as they allow an undertaking or a group of them to exercise, directly or indirectly, a decisive influence on one or several other undertakings.

5 What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

The Law provides for a market share threshold: under article 10 of the Law, the notification of a concentration should take place when the undertakings which are parties to the concentration, or which are the subject of the concentration, or the undertakings which are economically linked to them, have generated altogether, during the previous calendar year, more than 40 per cent of the sales, purchases or other transactions on a national market of identical or substitutable goods, products or services, or on a significant part of such market.

Moroccan legislation does not define the undertakings which are ‘economically linked’ to the undertakings which are parties to the concentration or the subject of the concentration and we assume that this term includes at a minimum their subsidiaries, their parent companies and their sister companies.

The Law is not clear as to the necessity to notify a transaction when only one of the parties involved, for example the target company, has a market share exceeding the 40 per cent threshold and when the planned concentration will thus not lead to any addition of market shares. However, the Competition Council has already examined concentrations where the acquirer was not present on the same sector than the target company in Morocco (Opinion No. 36/13 relating to the acquisition of 6 per cent of the capital of CMA CGM by the Strategic Investment Fund) and where only the target company was active in Morocco (Opinion of November 2011 relating to the acquisition by CCPL of Ono Packaging Maghreb and Opinion No. 37/13 relating to the acquisition of 49 per cent of the shares and voting rights of Terminal Link by China Merchants). It is therefore

highly recommended to notify where at least one the undertakings involved in the concentration has a market share that exceeds the 40 per cent threshold.

To the best of our knowledge, the Moroccan competition authorities have not defined any circumstances under which transactions falling below this threshold may be investigated.

6 Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

Under article 12 of the Law, the filing is mandatory and the Law does not provide for any exception to this rule.

7 Do foreign-to-foreign mergers have to be notified and is there a local effects test?

Foreign-to-foreign mergers have to be notified as far as they fulfil the market share threshold set out under question 5. No specific local effects test is needed.

8 Are there also rules on foreign investment, special sectors or other relevant approvals?

Concerning foreign investments, a convertibility regime has been set up in favour of foreign investments by the 'Instruction Générale des opérations de change 2013' of the Foreign Exchange Office. Concerning foreign exchange regulations, the convertibility regime guarantees to foreign investors concerned total freedom to carry out their investment operations in Morocco, transfer any income from such investments, and transfer back any income resulting from the transfer or liquidation of their investments when the investments have been made in foreign currencies. The convertibility regime holds that an investor must, within six months from the date of the Foreign Investment, file a report with the Foreign Exchange Office including all the details and supporting documents of the transaction (investor's identity, business sector, amount, bank certificates, etc).

Concerning special sectors, some sectoral authorities are in charge of the regulation of sectors such as:

- telecommunications with the ANRT;
- the audio-visual market, with HACA;
- banks with the Bank Al-Maghrib;
- the stock exchange with the CDVM; and
- insurance with the Insurance and Social Security Directorate; and
- ports with the ANP.

These regulators are consulted by the competition authorities when the notified concentration concerns their areas.

Legally, there is no mandatory consultation procedure that requires competition authorities to consult with other sectoral regulatory bodies about the notified concentrations affecting their sector.

For the specific case of the telecommunications industry, Law No. 55-04 and its enforcement decree authorises the sectoral regulatory agency (ANRT) to enforce the concentration control provisions (article 10 et seq of Law No. 06-99) in its industry. To the best of our knowledge, this jurisdiction has never been implemented by the ANRT.

Notification and clearance timetable

9 What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

The Law does not provide any deadline for filing. The authorisation of the Prime Minister should be asked as soon as the concentration plan is established.

Under article 46 of the Law, upon failure to file a notification, the Prime Minister can, after consulting the Competition Council, refer the matter to the King's Prosecutor at the relevant First Instance Court for prosecution.

The sanctions for not filing are as follows: for legal entities, a fine which amounts to 2 to 5 per cent of the pre-tax turnover made in Morocco during the last fully closed financial year and for natural persons, a fine of 200,000 to 2 million dirhams (article 70 of the Law).

If an undertaking operates in different business sectors, the turnover to take into account is the one made in the sectors where the offence was committed.

The fine is individually determined for each undertaking or body being punished and takes into consideration the seriousness of the offence, the scale of the damage caused to the economy, the financial situation and the size of the company or the body being punished. This fine is also based on the role played by each company or body involved.

The maximum amount of the applicable fine may be doubled in the event of a subsequent offence within five years;

- the publication and display of the decision at the offender's costs; and
- the adoption by the prime minister of conservatory measures to order the undertakings involved to revert to the previous state of affairs.

10 Who is responsible for filing and are filing fees required?

Those responsible for filing are the undertakings which are parties to the concentration. There are no filing fees.

11 What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

Under article 12 of the Law, the filing has a suspensive effect. The parties are thus not entitled to implement their concentration plan as long as the prime minister has not authorised the transaction. There is no derogation to this rule in the Moroccan legislation.

The prime minister must make his decision known within two months of the filing. A two-month silence from the prime minister is considered as a tacit acceptance. This two-month term is raised to six months if the prime minister submits the case to the Competition Council, which is the case whenever the concentration is likely to infringe competition, particularly by creating or strengthening a dominant position.

12 What are the possible sanctions involved in closing before clearance and are they applied in practice?

No sanction is provided by the Law. Nevertheless, we can assume that closing a concentration before clearance may lead to the application of the sanctions imposed upon failure to file a concentration as set out in question 8.

13 Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

No specific rules concerning the sanctions to apply in cases involving closing before clearance in foreign-to-foreign mergers are established by the Law and we assume that the sanctions for closing before clearance set out in question 12 are applicable in these cases.

14 What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

Moroccan legislation provides no solution permitting the closing before clearance in a foreign-to-foreign merger.

15 Are there any special merger control rules applicable to public takeover bids?

No specific merger rules are applicable to public takeover bids. The Competition Council seems to apply the general rules and principles of the Moroccan legislation to assess such concentration, as illustrated in its Opinion No. 9/10 relating to the public takeover bid launched by Kraft Foods Inc over Cadbury PLC.

16 What is the level of detail required in the preparation of a filing?

According to article 7 of the Decree, the notification file submitted to the prime minister must be accompanied by the following documents and information:

- a copy of the draft instrument which is subject to notification and a memo related to the concentration's anticipated impact;
- the list of the managers and main shareholders or partners of the undertakings which are parties to the concentration or the subject of the concentration;
- the summary statements of the concerned undertakings for the last four accounting years and the evolution of the market shares of each concerned undertaking over the same period of time;
- a memo related to the main concentration transactions carried out by these undertakings over the last four years, if any;
- the list of their subsidiaries together with for each of them, if applicable, the amount of their shares participation, and the list of the undertakings which are economically linked to them with regards to the contemplated concentration; and
- if applicable, the remedies proposed by the undertakings involved (article 12 of the Law).

The notification file should contain precise information and the memo related to the concentration's anticipated impact should in particular detail the relevant markets, the markets' structure, the importations and exportations on the relevant markets and the competitors, suppliers and customers of the undertakings involved.

All the documents must be submitted either in Arabic or French. The notification file is sent directly to the prime minister (by mail or any other way, such as direct filing with the prime minister's offices, with proof of delivery in the form of a statement of receipt).

17 What is the timetable for clearance and can it be speeded up?

The maximum deadline for examining the concentration operation is six months following the receipt of full notification. The timetable for clearance is as follows:

First phase (maximum two months after receipt of full notification)

The Ministry of General Affairs and Governance, who has received an express delegation of powers from the prime minister in matters of merger control, and more specifically the Directorate of Competition and Pricing, examines the file and drafts a report to the prime minister. Within a period of two months, the prime minister may:

- authorise the concentration;
- authorise the concentration subject to the remedies proposed by the notifying parties; or
- request the opinion of the Competition Council.

The prime minister is not entitled to impose remedies upon the notifying parties in the first phase. He is only allowed to either authorise the concentration as presented by the parties in the notification file or to request the opinion of the Competition Council where the merger is likely to infringe competition rules by creating or strengthening a dominant position.

The prime minister is not entitled to refer the concentration plan to the Competition Council after the two-month deadline has expired, except in the event of non-compliance with the remedies proposed in the notification file (article 12 of the Law).

When he refers the matter to the Competition Council, the prime minister informs the undertakings involved (article 42 of the Law).

A two-month silence from the prime minister is considered as a tacit acceptance of the concentration plan and of the remedies proposed by the parties, if any.

Second phase (four additional months)

The prime minister refers the case to the Competition Council whenever the planned concentration is likely to infringe competition, particularly by creating or strengthening a dominant position.

The Competition Council assesses whether the concentration plan provides a sufficient contribution to the economic progress to offset its adverse effects on competition. The Competition Council takes into account the competitiveness of the involved undertakings in the context of international competition.

After receiving the opinion of the Competition Council, the prime minister may, with a reasoned decision:

- authorise the concentration;
- prohibit the concentration on the grounds that it would create or strengthen a dominant market position and, if needs be, order the undertakings involved to revert to the previous state of affairs; or
- request changes or additions to the notified concentration or order the undertakings involved to take any measures that will ensure or establish sufficient competition. The implementation of the contemplated transaction may also be subject to compliance with instructions destined to provide a sufficient contribution to economic and social progress to offset the adverse effects on competition.

According to article 43 of the Law, remedies decisions can only be imposed by the Prime Minister in the second phase, because they require the opinion of the Competition Council.

The Moroccan competition legislation does not contain any accelerated procedure.

18 What are the typical steps and different phases of the investigation?

During a first two-month phase, the Ministry of General Affairs and Governance, who has received an express delegation of powers from the prime minister in matters of merger control, and more specifically the Directorate of Competition and Pricing, examines the file and draft a report upon which the prime minister will base his decision.

The Ministry can request information from the parties.

If the prime minister considers that the planned concentration is likely to infringe competition, he submits the case to the Competition Council who designates a case officer to follow up the file and conduct the investigation. The case officer generally submits additional questions to the undertakings involved, either in writing or during hearings, and might also request information from the parties' suppliers, competitors, customers or from professional organisations.

At the end of his investigation, the Law provides that the case officer should issue a report to which the parties may reply within one month from the date said opinion was submitted (article 44 of the Law) and a hearing usually takes place.

The sending procedure of the report drafted by the case officer to the notifying parties is not mandatory in all cases. This procedure takes place only if the investigation may lead to a refusal decision or to a conditional authorisation decision submitted to remedies or commitments.

Substantive assessment

19 What is the substantive test for clearance?

The substantive test for clearance is whether the planned concentration is likely to infringe competition, particularly by creating or strengthening a dominant position.

At the end of the second phase, the prime minister will also take into account whether the concentration provides a sufficient contribution to economic progress to offset its anti-competitive effects and particularly the competitiveness of the involved undertakings in the context of international competition.

20 Is there a special substantive test for joint ventures?

The Moroccan legislation does not provide for a special substantive test for joint ventures.

21 What are the ‘theories of harm’ that the authorities will investigate?

The authorities will assess the effects of the concentration on competition and determine whether the transaction leads to:

- horizontal effects: the Council will examine whether the concentration would lead to an overlap of the merging parties’ activities and to an addition of their market shares that would create or reinforce a dominant position on the relevant market and allow the merging parties to act independently from their competitors and customers;
- vertical effects: the Competition Council will assess whether the concentration would foreclose the access to the upstream markets (Opinion relating to the acquisition by Vitol and Helios of Shell du Maroc and Butagaz Maroc);
- conglomerate effects: the Competition Council will examine whether the concentration would lead to an expansion and a diversification of the merging parties’ product ranges and trademarks that would increase their market power and enable them to impede competition through practices such as tie-in sales or bundled rebates (Opinion No. 31/12 relating to a concentration concerning the SNI and Kraft Foods Maroc); and
- coordinated effects: the Competition Council will assess whether the merging parties will, after the transaction, be able to coordinate their behaviour on the market and whether the transaction will thus lead to the creation or the strengthening of a collective dominant position (Opinion No. 9/10 relating to the public takeover bid launched by Kraft Foods Inc over Cadbury PLC).

To carry out this assessment, the authorities will define the relevant product or services market and the geographical dimension of these relevant markets and conduct an analysis of the markets structure, the market shares of the parties involved and of their actual and potential competitors, the entry barriers, the importations and exportations on the relevant markets, the customers and the suppliers of the parties involved.

22 To what extent are non-competition issues relevant in the review process?

During the second phase of the investigation, the Law requires the Competition Council to assess whether the concentration plan provides a sufficient contribution to the economic progress to offset its adverse effects on competition and to take into account the competitiveness of the involved undertakings in the context of international competition.

Thus, the Competition Council conducts not only a competitive assessment but also an economic assessment of the concentration.

For example, in its Opinion relating to a concentration concerning the SNI and Danone (No. 32/12), the Competition Council has taken into account the fact that Danone’s strategy was in line with the goals of a Moroccan environmental programme.

Therefore, the parties involved in the concentration may also be asked by the Moroccan authorities about the aim of the transaction and the strategic business plan of the acquiring party (the contemplated investments, the anticipated impact of the transaction on the employment situation of the target company, the evolution of the range of products or services offered to the consumers, etc).

23 To what extent does the authority take into account economic efficiencies in the review process?

Economic efficiencies are taken into account during the second phase of the review process. Indeed, under article 42 of the law, the Competition Council has to assess whether the concentration

provides a sufficient contribution to economic progress to compensate its anti-competitive effects.

In particular, the Competition Council assesses whether the efficiency gains will benefit the consumers.

The efficiencies that are taken into account are, in particular, the improvement of product quality, product diversification, technical improvement in the relevant sector; price reductions, job creations, increase in exports and the stimulating effect of the transaction on the competitive environment of the relevant market.

Remedies and ancillary restraints**24 What powers do the authorities have to prohibit or otherwise interfere with a transaction?**

The prime minister may at the end of the six-month investigation prohibit the concentration on the grounds that it would create or strengthen a dominant market position and, if needs be, order the undertakings involved to revert to the previous state of affairs or request changes or additions to the notified concentration.

Moreover, according to article 45 of the Law, if a company abuses its dominant position, the Competition Council may propose the prime minister to enjoin the companies concerned to modify, complete or terminate all the agreements and measures that gave rise to the concentration of economic power which enabled these abuses.

The Competition Council can apply these provisions even if these measures have already been subject to the merger control process.

25 Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

Structural or behavioural remedies can be proposed by the notifying parties or imposed by the prime minister to remedy or compensate the adverse effects of the planned concentration on competition.

In 2012, the Competition Council has rendered its first opinion regarding commitments (Opinion No. 31/12 relating to a concentration concerning the SNI and Kraft Foods Maroc) where it recommended the Prime Minister authorise the transaction subject to Kraft Foods respecting various behavioural commitments, such as not practising tie-in sales or offering bundled rebates, and complying with competition code of conduct and compliance programme. The Council highlighted the fact that these commitments should be made public.

26 What are the basic conditions and timing issues applicable to a divestment or other remedy?

Moroccan legislation provides that:

- the parties are allowed to propose commitments in the notification file (article 12 of the Law and article 7 of the Decree); and
- at the end of the second phase of the merger control process, the prime minister can order the companies involved to take any measures that will ensure or establish sufficient competition and subject the implementation of the contemplated transaction to compliance with instructions destined to provide a sufficient contribution to economic and social progress to offset the adverse effects on competition (article 43 of the Law).

Nevertheless, we assume that remedies may be proposed by the parties at any stage of the merger control process.

Failure to comply with the commitments taken in the notification file or with the orders and instructions imposed by the prime minister may lead to the application of the fines set out in question 8.

27 What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

To the best of our knowledge, the Competition Council, which was reactivated in 2009, has not yet required remedies in a foreign-to-foreign merger.

28 In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

To date, this is uncertain. The decisional practice of the Moroccan authorities will certainly clarify this point in the future and should follow the position of the European Commission.

Involvement of other parties or authorities

29 Are customers and competitors involved in the review process and what rights do complainants have?

If the merger has not been notified to the prime minister

According to article 12 of the Law, the entities listed in article 15 section 3 may inform the prime minister of any concentration transaction that has been implemented without having been notified in breach of the legislation. These entities are: regional councils; urban communities; chambers of commerce, industry and of services; chambers of agriculture and craft industries; chamber of sea fishing; trade union and professional organisations; and public utility consumer associations.

If the merger has been notified to the prime minister

Moroccan legislation does not provide for complainants and third parties such as customers and competitors to take part in the merger review process.

Nevertheless, the Moroccan authorities have the faculty to hear third parties and ask them questions in order to appreciate the foreseeable impact of the merger on the relevant markets.

Finally, third parties whose interests have been infringed by the prime minister's decision are entitled to challenge the decision before the tribunal having jurisdiction.

Moroccan legislation does not provide for complainants and third parties such as customers and competitors to take part in the merger review process.

30 What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

According to article 46 of the Law, the prime minister's decisions are published in the Official Bulletin together with the opinion of the

Competition Council. Moreover, the opinions of the Competition Council are available on its website.

However, article 33 of the Law forbids the president of the Competition Council to communicate any document involving business secrets, unless the communication or the consultation of this document is necessary to the proceeding or to the exercise of rights of defence of the parties involved.

Therefore, to protect commercial information from disclosure, the undertakings involved should specify the competition authorities which information they consider as business secret.

Moreover, is punishable by a 10,000 to 100,000 dirham fine the disclosure by one the undertakings involved of information obtained during the process concerning another party or a third party.

31 Do the authorities cooperate with antitrust authorities in other jurisdictions?

Since its reactivation in 2008, the Moroccan Competition Council has started to liaise with foreign antitrust authorities.

Indeed, an association between Morocco and the member states of the European Communities was established by the Euro-Mediterranean Agreement in 2000 and a mechanism of cooperation between European and Moroccan competition authorities was put into place by the decision No. 1/2004 of the EU-Morocco Association Council of 19 April 2004 adopting the necessary rules for the implementation of the competition rules.

In the framework of this cooperation, the Moroccan Competition Council has developed a twinning cooperation with the German competition authority thanks to which it has benefited

from trainings proposed by European experts, technical assistance and visits of studies in European competition authorities.

A bilateral cooperation has also been established with Tunisia and many exchanges have since taken place (training courses, conferences, etc).

Furthermore, the Competition Council has been a member of the International Competition Network (ICN) since April 2010 and the last annual conference of the ICN took place in Marrakech in April 2014.

The Moroccan Competition Council is also a founding member of the Euro-Mediterranean Competition Forum (EMCF), an informal regional network that was set up in 2012, and is presiding the Coordinating Committee of the EMCF together with the Austrian Federal Competition Authority.

Judicial review

32 What are the opportunities for appeal or judicial review?

The merger decisions of the prime minister may be appealed to the administrative court having jurisdiction.

The administrative jurisdiction will determine whether the decision adopted by the prime minister is justified or not, by assessing whether the concentration can create or strengthen a dominant position.

The decisions which can be appealed are not only the prohibition decisions but also the authorisation decisions insofar as competitors and other third parties whose interests are infringed by an authorisation decision can also challenge this decision.

33 What is the usual time frame for appeal or judicial review?

The Moroccan legislation does not provide for any specific time limit to file an appeal against a merger decision.

Upon failure of specific time frame for appeal, the common provisions contained in the administrative jurisdiction law are applicable (Law No. 41-90 dated 10 September 1993). According to article 28 of this Law, the appeal of administrative decisions must be brought within 60 days from the date of the publication or the notification of the decision.

Enforcement practice and future developments

34 What is the recent enforcement record of the authorities, particularly for foreign-to-foreign mergers?

No foreign-to-foreign merger has recently been examined by the Moroccan competition authorities.

35 What are the current enforcement concerns of the authorities?

Despite the fact that the Law came into force a decade ago, the Moroccan competition authorities were only reactivated in 2008 and the number of merger cases treated to date is not sufficient to clearly identify these concerns. However, the Moroccan Competition Council appears concerned to articulate the competition law with the improvement of the purchasing power of the consumers and the augmentation of the competitiveness.

36 Are there current proposals to change the legislation?

The Competition Council was listed by the new Moroccan Constitution of 2011 as one of the institutions in charge of good governance and reforms currently take place, in particular to comply with article 159 of the Constitution which requires all institutions in charge of good governance to be independent.

Two bills, Bill No 104-12 on freedom of prices and competition and Bill No. 20-13 relating to the Competition Council, which would replace the Law are currently being examined by the Moroccan parliament. If Law No. 104/12 is adopted, it would take effect only after the entry into force of the regulations necessary to its full application.

The main changes and clarifications of these bills concern:

Update and trends

Legislative developments

Two bills are currently being examined by the Moroccan parliament: Bill No. 104-12 on freedom of prices and competition and Bill No. 20/13 relating to the Competition Council, which would replace Law No. 06-99 and transfer the merger control function to the Competition Council.

Recent cases

The following opinions have been published by the Competition Council in 2013:

- Opinion No.31/12 dated 25 December 2012 relating to the transfer by the SNI of its 50 per cent shares in BIMO to Kraft Foods Maroc;

- Opinion No. 32/12 relating to the acquisition by Danone of 37.78 per cent of the shares and voting rights owned by the SNI in Centrale Laitière;
- Opinion No. 36/13 dated 28 May 2013 relating to the acquisition of 6 per cent of the capital of CMA CGM by the Strategic Investment Fund;
- Opinion No. 37/13 dated 28 May 2013 relating to the acquisition of 49 per cent of the shares and voting rights of Terminal Link by China Merchants.

The Competition Council has issued a favourable opinion in all those cases. In Opinion No.31/12, its favourable opinion was subject to the respect by Kraft Foods Maroc of behavioural commitments.

- the jurisdiction: the merger control function would be transferred to the Competition Council, which would have exclusive jurisdiction over the merger control cases; the administration would be granted an evocation power and a final call on the decisions of the Competition Council for matters of public interest;
- the consultation with sectorial regulatory bodies: a mutual consultation procedure with the sectorial regulators would be introduced in concentration cases;
- the party responsible for filing: the party responsible for filing the notification would be either the acquirer of control or all the concerned undertakings for mergers and creations of joint companies;
- the thresholds: two turnover thresholds (global and domestic), that remains to be defined by regulations, would be introduced parallel to the market share threshold;
- the clearance deadlines: the Competition Council would have to make its decision known within 60 days from the filing and, if the Competition Council considers that the concentration is likely to infringe competition, a second phase of 120 days would be opened (these phases could be expanded, notably in case of

commitments). The administration could then exert its evocation power within an additional period of 60 days,

- the remedies: the parties would be allowed to propose remedies either with the notification file or at any moment before the expiration of the first or the second phase;
- the sanctions: a fine, which would amount to 5 per cent of the pre-tax turnover made in Morocco during the last fully closed financial year by the party responsible for filing (to which could be added the turnover made in Morocco during the same period by the acquired party) is provided upon failure to notify or closing before clearance;
- the closing before clearance: in the event of a duly justified special need, the notifying parties would be able to ask the Competition Council for a derogation allowing them to carry out all or part of the transaction before clearance, and
- the judicial review: the Administrative Court of Rabat would be granted jurisdiction over the appeals brought against the concentrations decisions of the Competition Council and the administration. The appeal should occur 30 days from the date of the notification of the decision.



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Morocco					
Voluntary or mandatory system	Notification trigger/filing deadline	Clearance deadlines (Stage 1/Stage 2)	Substantive test for clearance	Penalties	Remarks
The filing is mandatory.	<p>The notification of a concentration should take place when the undertakings which are parties to the concentration, or which are the subject of the concentration, or the undertakings which are economically linked to them, have generated altogether, during the previous calendar year, more than 40 per cent of the sales, purchases or other transactions on a national market of identical or substitutable goods, products or services, or on a significant part of such market.</p> <p>The law does not provide any deadline for filing. The authorisation of the Moroccan prime minister should be asked as soon as the concentration plan is established.</p>	<p>The prime minister must make his decision known within two months of the filing.</p> <p>This two-month term is raised to six months if the prime minister submits the case to the Competition Council.</p>	<p>The substantive test for clearance is whether the planned concentration is likely to infringe competition, particularly by creating or strengthening a dominant position.</p>	<p>Upon failure to file a notification, a fine which amounts to 2 to 5 per cent of the pre-tax turnover made in Morocco during the last fully closed financial year can be imposed on legal entities.</p>	