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Morocco Introduced New Merger Control Thresholds

Nicolas Bremer (BREMER) · Thursday, September 21st, 2023

Effective 24 May 2023 the Moroccan legislator introduced new, increased merger control notification thresholds. While the increase in notification thresholds is welcome, the more relevant change is that the new turnover thresholds always require that the parties have turnover in Moroccan. While this change does not entirely resolve existing problems with a lack of local nexus considerations when applying the Moroccan merger control regime, it does show the legislator acknowledging the issue.

As under the old thresholds an obligation to notify a transaction under the new thresholds may arise in three scenarios including market share and turnover based thresholds. To trigger a filing obligation only one threshold must be met.

Notification is required where the combined market share of the parties to the transaction in Morocco exceeds 40 percent. This market share based threshold was not changed by the most recent amendment. Also, the threshold can still be met by one party's market share alone.

Alternatively, a filing obligation can be triggered by the parties' worldwide and Moroccan turnover. Under the old thresholds a notification was required where either (1) the parties to the transaction achieved a combined annual worldwide turnover of MAD 750 million (approx. USD 73.75 million), or (2) the Moroccan turnover of at least two parties was at least MAD 250 million (approx. USD 24.58 million).

Both of these turnover thresholds have now been amended. The Moroccan based threshold was increased. Under the new thresholds filing is required where the Moroccan turnover of at least two parties was at least MAD 400 million (USD 39.33 million)—instead of MAD 250 million (approx. USD 24.58 million) under the old regime.

While the worldwide turnover threshold has also been increased, the more notable change is the introduction of an additional required that at least one party also has Moroccan turnover. The worldwide turnover of the parties alone cannot trigger a filing obligation under the new thresholds. Under the new thresholds a filing obligation arises where the combined annual worldwide turnover of the parties exceeds MAD 1.2 billion (approx. USD 118 million) and at least one party to the transaction has an annual turnover in Morocco that exceeds MAD 50 million (approx. USD 4.92 million). Still, since the new worldwide turnover threshold only requires that one party has turnover in Morocco, transaction that effectively have no impact on the Moroccan market, may still require notification. Hence, while the lack of local effects corrective appears to have been acknowledged, it has not been effectively resolved by the new thresholds.

This combination of worldwide and domestic turnover introduced by the new Moroccan thresholds is like the Egyptian merger control thresholds under the new pre-closing notification regime in Egypt. As in Morocco, the Egyptian merger control thresholds also allow for a filing obligation to arise, where only one party has turnover in Egypt, provided that the combined worldwide turnover of the parties is sufficiently high. Also the local nexus issue was not addressed by the Egyptian legislator (for a more detailed discussion of the new Egyptian pre-closing notification regime, see our client update on the matter). It remains to be seen what position the authorities in Morocco and Egypt will take in respect to local nexus.

** This piece is a re-post of the author's original client alert, see here.*

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“>Mergers, Morocco
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