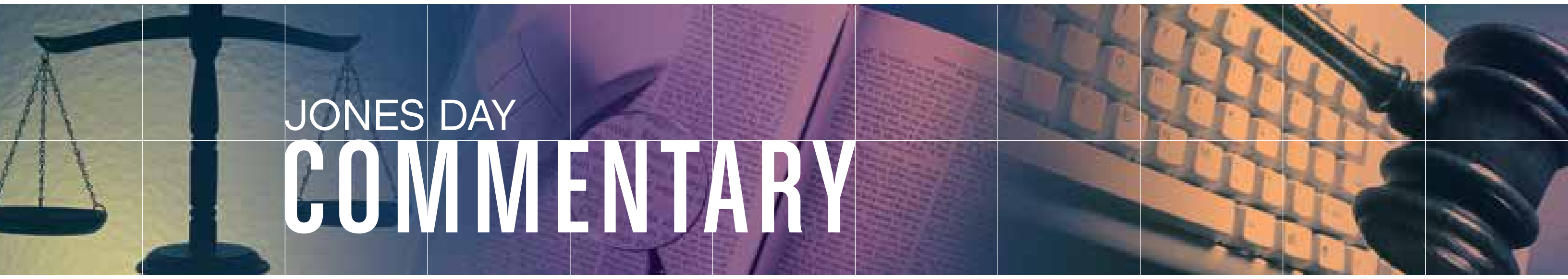
FEBRUARY 2013



UAE COMPETITION LAW: A NEW BEGINNING

The United Arab Emirates (the "UAE") is soon to enact its first regulatory framework governing anti-competitive behavior and monopoly practices. Federal Law No. 4 of 2012 Concerning Regulating Competition (the "UAE Competition Law") is to come into effect on February 23, 2013 and is set to bring with it significant consumer protection. The scope of the UAE Competition Law is far-reaching and is likely to affect commercial practices and transactions across the UAE for both local and international entities. Each entity undertaking relevant business activities in the UAE is encouraged to undertake a thorough review of its current trade practices and agreements, as well as to familiarize itself with the related merger control rules that are being introduced as part of the new UAE Competition Law, to ensure compliance with the new regulatory framework.

The stated aim of the UAE Competition Law is to create a "competitive market in the UAE, governed by the market mechanisms in accordance with the economic freedom principle." This aim is to be achieved by protecting and enhancing competition and combating monopoly practices.

The Ministry of Economy (the "Ministry") is the supervisory and regulatory authority responsible for implementing, monitoring, and enforcing the UAE Competition Law. A new body, to be known as the "Committee of Competition Regulation," is being established to assist the Ministry in its regulatory role.

SCOPE OF THE LAW

The UAE Competition Law applies to all entities operating in the UAE. In addition, it applies to any entity whose activities outside the UAE may affect competition in the UAE. A range of sectors and activities, including telecommunication, cultural activities, and land, sea, and air transport sectors are, however, explicitly excluded from the scope of the law.

Any actions by the Federal Government of the UAE or the local government of an Emirate (including "establishments owned or controlled by the Federal Government or any of the Emirates' Governments") are exempted from the application of the law. The exact scope of this exemption, such as the level of required state control or ownership, is currently unclear. Certain small and medium-sized entities may also be excluded from the application of the law; however, the criteria that needs to be satisfied to benefit from these exemptions is as yet undefined.

The UAE Competition Law introduces standard international competition law principles and focuses on: (i) merger controls, (ii) restrictive agreements, and (iii) abuse of dominance.

MERGER CONTROLS

Wide Scope. The UAE Competition Law covers a range of commercial transactions (including mergers, acquisitions, proprietary rights, etc.), all of which are referred to in the law as "economic concentrations". New merger control rules will be introduced by the UAE Competition Law pursuant to which an economic concentration must be approved by the Ministry. The Ministry, in undertaking its assessment, is likely to consider whether (i) the parties to the economic concentration transaction are likely to exceed a given percentage of total transactions in the relevant market, and (ii) the economic concentration would either affect competition in such market or create or enhance a dominant position.

Filing Requirements. Requirements related to filing include the following:

- **Filing Obligation:** A transaction falling into the category of an economic concentration must be notified to the Ministry in writing at least 30 days prior to the completion of the proposed economic concentration. The UAE Competition Law is currently silent on the form of application, documents, fees, and information necessary to accompany the application and any conditions relating to the approval of the economic concentration.
- **Review Period:** The Ministry is given a review period relating to an economic concentration of 90 days from the date of filing. This period may, in certain circumstances, be extended by a further 45 days. During the review period, the parties cannot take any actions with a view to completing the economic concentration.
- **Approval:** The Ministry may approve a transaction resulting in an economic concentration if the Ministry is of the opinion that the economic concentration will not adversely affect competition, or if it may otherwise have a positive impact or economic benefit that exceeds any adverse competitive effects.
- **Completion of the Transaction:** The parties to an economic concentration transaction may complete the transaction only (i) upon receipt of the Ministry's written approval; or (ii) upon the expiration of 90 days from the initial filing in instances where the Ministry has not provided a notice in writing of its decision within the applicable time frame.

Implications for Businesses. The UAE Competition Law is likely to have a significant impact on mergers and acquisitions in the UAE, including any multijurisdictional transaction involving the UAE that may result in an economic concentration. Going forward, it would be prudent for the UAE to be added to any checklist of competition authorities from which mandatory approval may be required in multijurisdictional transactions. If an approval is required, the requirements under the UAE Competition Law, and especially the review period, must be taken into account when planning transaction timetables. Businesses will need to carefully consider the potential implications of this new regime and be mindful of the potential delays in relevant transactions as a result of lengthy review processes, potentially suspended transactions, onerous filing fees, and heavy sanctions for noncompliance.

RESTRICTIVE AGREEMENTS

The UAE Competition Law prohibits restrictive agreements, which are defined as agreements (including arrangements, practices, and alliances between entities) that aim to limit or prevent competition, for example by price fixing, prohibiting or limiting production, or the free flow of goods and services in the UAE, or that intentionally divide markets ("Restrictive Agreements").

Certain agreements that may otherwise be seen as Restrictive Agreements are exempted from the application of the law. Such exempt agreements are referred to as "weak-impact agreements" and include agreements entered into between entities whose overall market share does not exceed a certain percentage of the total overall transactions in the relevant market.

ABUSE OF DOMINANCE

The UAE Competition Law prohibits entities that have acquired a dominant position in the market from abusing such a position. The following actions, if undertaken by an entity that is deemed to be dominant, may, among others, be deemed to constitute an abuse of a dominant position: price fixing, discriminating between customers, obliging a customer not to deal with a competing entity, refusing to deal, disseminating false information, or artificially increasing or decreasing quantities in a market.

A dominant position is defined by reference to an entity's share in a relevant market and includes a position where an entity can, by itself or in collaboration with other entities, control or affect the relevant market. As with Restrictive Agreements, the dominance threshold of the relevant market share remains to be defined. Once defined, the Ministry will have the power to increase or decrease the threshold at any time with reference to prevailing economic conditions.

EXEMPTIONS

The UAE Competition Law allows for entities to apply for exemptions from the law for (i) certain agreements that may otherwise fall into the category of Restrictive Agreements or (ii) practices that may otherwise be seen as an abuse of a dominant position. While the exact procedure and requirements for obtaining such an exemption remain to be detailed, the Ministry may approve an application for exemption if the Ministry believes that the Restrictive Agreement or practice by a dominant entity would enhance the economic development of the UAE or realize specific benefits for consumers.

PENALTIES

The UAE Competition Law contains a number of sanctions designed to deter entities from engaging in anticompetitive behavior. Sanctions range from fines or suspension of the relevant activities pending final judgement to the closing of the offending business in the UAE for a period of three to six months. Fines range from AED 500,000 (US$136,240) to AED 5,000,000 (US$1.36 million) for violation of the law's prohibition of Restrictive Agreements or abuse of a dominant position. Entities that enter into reportable economic concentrations without the Ministry's approval are subject to a fine of a minimum of 2 percent and a maximum of 5 percent of the overall annual sales revenues for the prior years' operations of the violating entity operating in the UAE. If annual revenues cannot be determined, a financial penalty of between AED 500,000 (US$136,240) and AED 5,000,000 (US$1.36 million) may be imposed. For repeat offenders, the fines are automatically doubled. Readers should note that any offending entity remains subject to civil claims for damages arising from violations of the UAE Competition Law as well as penalties under any other applicable laws.

IMPLEMENTING REGULATIONS

Although the UAE Competition Law is scheduled to come into force in February 2013, entities subject to the new provisions may benefit from a six-month grace period to ensure that their agreements and practices are in compliance with the new law.

During this period, it is anticipated that implementing regulations relating to the UAE Competition Law will be adopted, which will give further guidance on the various thresholds and procedural requirements that currently remain outstanding.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

Eric J. Milne
Partner
Dubai
+971.4.709.8484
emilne@jonesday.com

Eleonore Bengtsson
Associate
Dubai
+971.4.709.8404
ebengtsson@jonesday.com