



## UAE Competition Law Update: Consequences for M&A Transactions in the UAE

The United Arab Emirates (“UAE”) recently introduced its competition law: Federal Law No. 4 of 2012 (“Competition Law”). In February 2013, we published a *Commentary* on this law, noting that it was the first of its kind to regulate anticompetitive behavior and monopoly practices in the UAE. We also noted that the Competition Law remained silent as to critical issues such as threshold and procedural requirements. The UAE Cabinet now has issued implementing regulations, Cabinet Decision No. 37 of 2014 (the “Regulations”). While these Regulations provide new clarity on the applicable exemption/clearance procedures, there remain significant gaps in its explanation of how the Competition Law will operate.

The UAE’s Competition Law introduced standard international competition law principles, with the aim of creating a “competitive market in the UAE, governed by market mechanisms in accordance with the economic freedom principle.” However, without various thresholds and procedural requirements, legal practitioners remained uncertain about how the Competition Law would operate in practice.

The Regulations, issued in October 2014, aim to resolve some of this uncertainty. For example, they

clarify that the Competition Law applies to any establishment engaging in relevant economic activity in the UAE. The Regulations also provide clarity on the procedures relevant to:

- Applications for approvals of mergers and acquisitions.
- Applications for exemptions from the rules prohibiting restrictive agreements and abuse of a dominant position.
- Complaints relating to violations of the Competition Law.

Of special interest to business are the procedures for premerger approvals. Once the Ministry has received an application for pre-transaction approval of a merger or acquisition, the Ministry has 90 days to issue its decision, and the Ministry can extend this period by a further 45 days. If the Ministry receives a complaint that it deems requires further investigation, it will notify the relevant parties and allow them to defend the allegations by issuing a report to the Ministry. The Regulations also state that the Ministry should issue a decision on the matter within 30 days of receipt of that report. The same timing applies to applications for exemptions from the rules prohibiting restrictive agreements and abuse of a dominant position.

In addition to procedural requirements, the Regulations detail factors for the Ministry to take into account when considering applications in relation to merger approval. In general, a transaction can be allowed if it does not affect competition negatively or if its positive economic impact exceeds any negative impact on competition. The Ministry also may consider the effect on UAE consumers as well as potential barriers to entry by new competitors into the relevant market.

Unfortunately, currently the Regulations leave significant gaps in their guidance. For example, the Regulations do not specify the thresholds for determining what mergers must be reported to the Ministry for advance approval. Merger control rules in other jurisdictions generally specify that they apply to mergers of a certain value or between parties with certain sales into the jurisdiction or certain market shares. In the Kingdom of Saudi Arabia, for example, a merger notification requirement is triggered when the combination will result in control of at least 40 percent of the market, and in Kuwait, filing is required when more than 35 percent of the market is concentrated in one entity. Similarly, the Regulations do not define “small and medium” sized businesses, which are exempt from the Competition Law.

As of today, parties to transactions that may touch the UAE must consider whether to seek pre-transaction approval from the Ministry and build into their deal planning the time needed for a UAE review, as typically is done for other jurisdictions. Prior to the enactment of new competition regulations, a UAE-specific review would not have been taken into account, as the UAE government had not indicated where a pre-transaction filing should be made or what had to be included.

Given the limited detail currently provided by the Regulations, it may be that the Ministry will only over time develop standards as to when it may challenge mergers or acquisitions or take other enforcement actions under the Competition Law.

## Lawyer Contact

For further information, please contact your principal Firm representative or the lawyer listed below. General email messages may be sent using our “Contact Us” form, which can be found at [www.jonesday.com](http://www.jonesday.com).

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