

THE  
MERGERS &  
ACQUISITIONS  
REVIEW

TWELFTH EDITION

Editor  
Mark Zerdin

THE LAWREVIEWS

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ACQUISITIONS  
REVIEW

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# PREFACE

Despite a slight decrease in overall activity compared with 2016, 2017 was a strong year for global M&A activity as, for the fourth consecutive year, global deal-making activity exceeded US\$3 trillion with announced transaction volumes reaching US\$3.7 trillion. Even though 2017 did not replicate the record-breaking number of mega-deals in 2015 nor the high volume seen in 2016, market participants in a number of sectors took advantage of continued access to cheap capital globally to engage in M&A activity.

The United States remained the most active region, although aggregate deal value decreased by 16 per cent year on year. However, deal volume surged with a record 12,400 individual deals, largely due to an increase in transactions with a value of less than US\$1 billion. The relative decline in mega-deals in 2017 is largely attributable to continued regulatory uncertainty, particularly in the United States, where President Donald Trump's electoral rhetoric on antitrust has led to an increase in scrutiny for M&A deals. In Europe, however, continuing uncertainty arising out of the stuttering progress in the Brexit negotiations and a number of significant elections within the European Union did little to halt the momentum of the M&A market as aggregate deal value in Europe increased by 12.1 per cent in 2017 to reach a post-financial crisis high of more than €830 billion. Notably, the industrials and chemicals M&A sector flourished, with record high aggregate deal value and deal volume. Chinese outbound M&A was limited during 2017 by both a new capital-controls regime and increased scrutiny from the US and European governments.

On the back of tax reform in the United States and encouraging economic growth in Europe, the first quarter of 2018 has displayed record-breaking deal-making activity. However, global political uncertainty presents a threat to global M&A in 2018. Although there were positive signs from the European M&A market in 2017 and Europe registered the largest year-on-year increase in deal volume in the first quarter of 2018, the rise of anti-EU populist parties threatens to derail the buoyant global M&A market. Notably, the election of an anti-EU populist government in Italy, formed from a coalition of the Five Star Movement and the League, threatens to unnerve foreign investors and increase uncertainty about the integrity of the eurozone.

In addition, President Trump's imposition of tariffs and protectionist instincts have raised concerns about the possibility of a global trade war. It is hoped that a resolution to Brexit-related uncertainty and a settling of trade worries will foster an environment in which markets can thrive. All that being said, markets have shown during the past two years that despite an ever-evolving geopolitical landscape, there are numerous opportunities for those market participants who are keen to pursue them.

I would like to thank the contributors for their support in producing the 12th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 50 chapters will provide a richer understanding of the shape of the global markets, and the challenges and opportunities facing market participants.

**Mark Zerdin**

Slaughter and May, London

July 2018

# UNITED ARAB EMIRATES

*James Bowden, Danielle Lobo and Abdus Samad<sup>1</sup>*

## I OVERVIEW OF M&A ACTIVITY

Global reported mergers and acquisitions have demonstrated a steady incline, reaching a record high in the first quarter of 2018. Reports vary on the exact value of these transactions; however, some claim that aggregate deal values are as high as US\$1.2 trillion.<sup>2</sup> Despite variations on the exact value, this headline mirrors several others, substantiating claims that 2018 appears to demonstrate a healthy upward trend for M&A activity as a whole.

Current events, such as the steady rise in the price of crude oil, US tax reform and economic growth in Europe, are thought to be contributing factors leading to an increased confidence in chief executives facilitating the recent increase,<sup>3</sup> the end of 2017 showing a much-needed shift from the year's general trend of underperformance.<sup>4</sup> Global M&A in 2017 fell short of previous years, dipping 3.2 per cent by value to US\$ 3.15 trillion (18,433 deals) in comparison to 2016 (US\$3.26 trillion, 18,592 deals).<sup>5</sup> Some attributed the underperformance during 2017 to political and market uncertainty taking a toll on investments.<sup>6</sup> However, there was a surge in deal making at the end of 2017 that carried into 2018. While the value of M&As was unanimously reported as increasing, the number of M&A transactions appears to be on the decline. This indicates that while transactions may appear fewer in quantity, the transactions taking place tend to be more substantive as the values continue to rise. Some major industries to note include those in the technology sector. Developments in 'the internet of things', autonomous vehicles and blockchain technology have sparked interest among investors helping this industry acquire the highest annual deal count since 2001.<sup>7</sup>

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1 James Bowden is a partner, Danielle Lobo is a counsel and Abdus Samad is an associate at Afridi & Angell.

2 'Mergermarket Release 2017 Full Year Global M&A Trend Report', Mergermarket (online), 3 January 2018, <https://www.mergermarket.com/info/mergermarket-releases-2017-full-year-global-ma-trend-report>.

3 'Global mergers and acquisitions reach record high in Q1', *The Guardian* (online), 30 March 2018, <https://www.theguardian.com/business/2018/mar/30/global-mergers-and-acquisitions-reach-record-high-in-q1>.

4 *Ibid.*

5 *Ibid.*

6 Silvia Amaro, 'Global M&A activity hits record high on mega US health care deals', CNBC (online) 4 April 2018, <https://www.cnbc.com/2018/04/04/global-ma-activity-hits-record-high-on-mega-us-health-care-deals.html>.

7 *Ibid.*

## In the UAE

As with the global trend demonstrating an increase of M&A activity nearing the end of 2017, the UAE and the wider Middle East are no exception.<sup>8</sup> The Middle East (including the UAE) saw significant increases in deal volumes generally outperforming those reported on a global scale in the fourth quarter.<sup>9</sup> As a whole, however, 2017 did not see this type of deal activity, with reports claiming that M&A activity fell sharply in 2017 compared to the previous year.<sup>10</sup> Some reports state that the upward shift at the end of 2017 did not last for the Middle East, and that, unlike global trends for 2018, the Middle East and North Africa region (MENA) appears to have seen a decline of up to 20 per cent.<sup>11</sup> This decline is far from the rally led by the UAE at the end of 2017, with deal volumes rising by eight per cent and aggregate value by 21 per cent at US\$6.6 billion compared to the previous quarter.<sup>12</sup> Fortunately, this decline is not predicted to remain for 2018, as several sources report upward predictions for the second, third and fourth quarters, repeating what was seen in 2017.

While the decline in outbound transactions appears widespread, one report states that inbound transactions appear to be on the rise, driven by Total SA's acquisition of 20 per cent of Umm Shaif and the Nasr concession of Emirati state-owned Abu Dhabi National Oil Co for US\$1.1 billion. MENA inbound M&A currently stands at an all-time high.<sup>13</sup> At the same time, outbound M&A decreased from US\$3.3 billion in the first quarter of 2017 to US\$779 million so far this year.<sup>14</sup> Energy and power deals accounted for 54 per cent of MENA involvement in M&A by value and despite having the same number of transactions as the financial sector, the latter only accounts for 10.7 per cent of the region's M&A activity.<sup>15</sup> Some cite unprecedented economic reforms, openness to foreign investment and future infrastructure requirements in the Middle East as major motivations creating opportunities in the medium and long term as well as sustaining current levels of regional M&A activity. M&A analysts have said that, in the coming months, domestic and interregional M&A activity is expected to get a boost with a new round of mergers and acquisitions in the banking sector in the wake of a move initiated by Kuwait Finance House and Ahli United Bank of Bahrain.<sup>16</sup>

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8 Issac John, 'UAE leads charge in Middle East M&A rally during Q4', *Khaleej Times* (online) 26 January 2018, <https://www.khaleejtimes.com/business/local/uae-leads-charge-in-middle-east-ma-rally-during-q4>.

9 Ibid.

10 'Middle East M&A activity falls in 2017', *Gulf Business* (online) 21 January 2018, <http://gulfbusiness.com/middle-east-ma-activity-falls-2017/>.

11 Babu Das Augustine, 'Mena merger deals down 20 per cent in Q1 2018', *Gulf News: Banking* (online) 9 April 2018, <https://gulfnews.com/business/sectors/banking/mena-merger-deals-down-20-in-q1-2018-1.2202521>.

12 Ibid.

13 Ibid.

14 Ibid.

15 Ibid.

16 See footnote 6.

## **II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A**

The UAE is a federation of seven Emirates that was formed on 2 December 1971 by Abu Dhabi, Ajman, Dubai, Fujairah, Sharjah and Umm Al Qaiwain following the end of the British protectorate over the Trucial States. The Emirate of Ras Al Khaimah joined the federation the following year.

The currency is the UAE dirham. The exchange rate is pegged at approximately 3.67 dirhams per US dollar since 1997. There are no currency import or export controls.

The UAE Federal Constitution apportions powers between the federal government (based in Abu Dhabi) and the governments of the constituent Emirates. Some fields are regulated only at the federal level (e.g., immigration and labour relations) although local interpretations and practices sometimes differ from one Emirate to another. Other matters are regulated only at the Emirate level (e.g., each Emirate retains sovereignty over its own natural resources, including its petroleum reserves). Still other matters are regulated at both the Emirate and federal levels (e.g., company formation and registration).

Any business operating in the UAE must hold a licence authorising its business activity in the UAE. These licences are issued by the concerned authorities in each Emirate. A licence allows the licensed entity to carry on the business it is licensed to conduct within the Emirate that issues the licence, from the business premises identified in the licence. For example, a Dubai business licence authorises the conduct of business in the Emirate of Dubai. If the licence holder wishes to conduct business in the Emirate of Abu Dhabi (for example), then it must apply for and obtain a business licence in Abu Dhabi.

In addition to the licensing rules that are imposed in each Emirate, there is a separate layer of federal regulation that a business must comply with. Business licences are available to foreign and local businesses, although there are restrictions that vary from Emirate to Emirate on the types of business activities that are available to foreign businesses and to local businesses with partial foreign ownership. A foreign business is required to appoint a UAE national shareholder as part of its application for a licence. Companies that are incorporated in the UAE (outside a free zone) must be at least majority-owned (51 per cent) by a UAE national or wholly GCC owned. Companies established in any of the UAE's many free zones may be wholly foreign-owned. No corporate or personal income tax is currently imposed anywhere in the UAE, except for the income taxes that are paid by foreign banks and foreign petroleum companies.

A business that wishes to operate in a free zone must obtain a licence from the authority for that free zone. The resulting licence authorises the conduct of the licensed activity within the geographical limits of the free zone. For example, a company licensed to trade certain goods in the free zone can import its goods into the free zone and re-export to destinations outside the free zone (and the wider UAE). However, the free zone licence does not authorise it to engage in any of these commercial activities in the UAE (outside the geographical limits of the free zone). No local ownership requirements are imposed in the free zones. An additional feature of most of the free zones is that they are not part of the customs territory of the UAE. The import of goods into a free zone from overseas does not attract customs duty. Instead customs duty (5 per cent on most items) is paid when goods move from the free zone into the UAE proper. The free zones also observe a simplified process for hiring personnel. Shares in onshore and free zone entities can be freely transferred, but it is important to note that any transfers are subject to approval by the relevant authority of the incoming shareholder.

### III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

The UAE government has recently announced that it is working on changes to the foreign ownership requirements under UAE law for companies that are registered outside a free zone. It is yet to be seen which industries these changes will affect and what conditions (if any) will be attached to any waiver or exemption from the applicable foreign ownership requirements. Depending on the nature and extent of any such changes, a waiver of the foreign ownership requirements could act as a trigger for a fresh wave of inbound M&A activity in the UAE and could also assist in the development of home-grown businesses in the UAE.

### IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

Inbound M&A transactions appear to be at an all-time high in the Middle East, while outbound transactions continue to decrease.<sup>17</sup> The UAE is reported to have been the top target country (in the MENA region) for inbound deals by volume in the last quarter, attracting 15 of the 31 deals, valued at US\$516 million, while Kuwait was the top target country by value, with US\$1.2 billion from three deals.<sup>18</sup>

Purchasers in the United States were the top bidders both by volume and value during the same quarter, with six deals valued at US\$1.2 billion. At this time, it was also recorded that the energy and power sector was the most active in respect of inbound Middle East investment, both by volume and value in the fourth quarter of 2017, registering seven deals amounting to US\$1.3 billion.<sup>19</sup>

The UAE was the top bidder for deals in the MENA region, by both volume and value, comprising more than half the total outbound M&A activity, with 19 of the 37 deals originating from the Middle East amounting to US\$1.07 billion. The top target countries for outbound M&A by volume included the United Kingdom, the United States, Spain and Italy with three deals each, while India was the top target country by value, with two deals valued at US\$1 billion, including the acquisition of the Indian unit of the National Investment and Infrastructure Fund by the Abu Dhabi Investment Authority.<sup>20</sup> The industrials sector is the most active both by volume and value of deals originating from the Middle East, with a total of 10 deals valued at US\$1.03 billion.

Elsewhere in the region, one major M&A was Kingdom Holding Company's (KHC) US\$1.5 billion investment in Banque Saudi Fransi. The deal, signed on 12 September 2017, made KHC the largest shareholder in the French bank. KHC (which is listed on Tadawul, the Saudi stock exchange) agreed to acquire the sizeable 16.2 per cent stake from Crédit Agricole Corporate and Investment Bank, the corporate and investment banking arm of Crédit Agricole SA, which had been the largest shareholder bank before signing the deal, with a 31.11 per cent stake.<sup>21</sup> According to KHC's Chief Financial Officer, Mohamed Fahmy, the transaction represents the culmination of management efforts during the past

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17 See footnote 10.

18 Ibid.

19 Ibid.

20 Ibid.

21 Ranju Warriar, 'Kingdom Holding Company agrees to buy 16.2 per cent of Banque Saudi Fransi for \$1.5B', *Middle East Forbes* (online), 14 September 2017, <https://www.forbesmiddleeast.com/en/kingdom-holding-company-agrees-to-buy-16-2-of-banque-saudi-fransi-for-1-5b/>.

three years to increase KHC's recurring cash flow and profitability.<sup>22</sup> Fahmy believes the solid financial performance of Banque Saudi Fransi will have a positive effect on KHC's financial forecast once the transaction has been closed.<sup>23</sup> Prince Alwaleed Bin Talal, the Chairman of KHC, contends that the investment is a demonstration of their confidence in the outlook for the Saudi economy underpinned by Saudi Arabia's Vision 2030 and the National Transformation Plan.

Other notable M&A transactions during 2017–2018 include the 12.1 per cent stake acquired by Oman Telecommunications Company in Mobile Telecommunications Company for US\$1.4 billion. One of the worst performing M&A sectors in the MENA region was construction, with deal value falling from US\$1.3 billion in 2016 to just US\$59 million in 2017, despite a consistent deal count.<sup>24</sup>

## V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

As discussed further in Section VIII, the UAE and Saudi Arabia have introduced value added tax to their respective local markets. In a first at least for the UAE, vendors and purchasers must consider, seek advice on and address tax matters in their transaction documentation. Furthermore, the advent of value added tax will no doubt put pressure on the cash flows of many small and medium-sized businesses and it remains to be seen whether this will in turn have an effect on distressed M&A activity.

Furthermore, we have seen the UAE Federal Ministry of Economy (being the regulator in charge of administering the competition regime) become active in accepting and reviewing merger control notifications filed in connection with UAE transactions. Though still a developing area of law, the very fact that merger control notifications are now being submitted and reviewed indicates that the relevant authorities are serious about ensuring that those that are party to transactions that concern the UAE market consider and, where required, notify their transactions. It is also of note that the lack of publicly available decisions concerning such notifications creates a degree of uncertainty for those transactions that are caught by the relevant filing requirements.

## VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

External financing for acquisitions continues to be less prevalent in the UAE in comparison to other jurisdictions and the large majority of acquisitions continue to be financed in cash.

Where acquisition financing is made available on a transaction, it is usually structured as a long-term loan, which is almost always secured by personal or corporate guarantees, among other securities over target assets. In addition to the primary facility documentation, the borrower may also issue a promissory note, a subordination agreement for any remaining debt and an assignment of certain identified assets depending on the nature of the acquisition.

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22 Ibid.

23 Ibid.

24 Issac John, 'Mena M&A market picks up', *Khaleej Times*, 20 April 2018, <https://www.khaleejtimes.com/business/local/mena-ma-market-picks-up>.

Although most acquisitions that are financed are funded through conventional finance, various other Islamic finance structures are used as well, particularly the *Murabahah*, *Musharakah*, *Mudarabah* and *Ijarah* structures. However, note that the financial covenants of the Islamic structures are often more onerous than those found in conventional facilities.

In terms of the availability of private equity investment, the private equity market continues to feel the effects of global financial uncertainty, including the US and European sovereign debt crises. Regionally, the UAE continues to lead the market in terms of volume and value, partly due to the stability and availability of investable companies. However, gaps are still visible between company valuations and investors' expectations for returns, which has hindered activity. A move away from traditional sectors, such as oil and gas, was witnessed in 2017, with an uptrend into consumer-driven sectors, such as education, retail, food and beverages and healthcare, where value added opportunities have arisen.

## VII EMPLOYMENT LAW

Federal Law No. 8 of 1980 on Regulating Labour Relations (as amended) (the UAE Labour Law) regulates most employment relationships in the UAE. The UAE Labour Law imposes minimum standards on termination of employment, working hours, annual leave and safety standards, among other things, which cannot be contracted out of. In addition to the UAE Labour Law, certain UAE free zones have implemented their own employment regulations, which apply to all companies licensed to operate in that free zone. In general, these employment regulations act as a supplement to the UAE Labour Law, with the exception of the Dubai International Financial Centre free zone, where the DIFC Law No. 4 of 2005 applies, and the Abu Dhabi Global Market, where the ADGM Employment Regulations 2015 apply.

On the sale of a business, there is nothing in the UAE that is akin to the TUPE regulations in the United Kingdom. Consequently, for employees to be transferred to a purchasing entity the employees' employment contracts with the selling entity must be terminated and new employment contracts entered into with the purchasing entity.

On the termination of employment, transferring employees must be paid their share of service gratuity in accordance with the UAE Labour Law, their salary for any accrued but unused annual leave and any other entitlements as set out in their employment contracts.

The end of service gratuity payment must be paid to any employee who completes one year or more in continuous service. If the employer has terminated the employment contract, the gratuity is (1) 21 days' basic salary for each of the first five years of employment and (2) 30 days' basic salary for each additional year over five years. The UAE Labour Law caps the end of service gratuity to an amount equal to an employee's basic salary for two years. An employee will also be entitled to a gratuity payment for fractions of the year worked provided that the employee has completed one year in continuous service. The selling entity would therefore be required to make payment of the end of service gratuity and all other contractual payments to employees when they are transferred to the purchasing entity. Alternatively, the end of service gratuity and all other contractual payments due to the employees could be paid by the purchasing entity and then deducted from the consideration payable for the business. However, one practical matter to consider with the latter approach is that the transferring employees will, on termination of their employment with the selling entity, be required to sign an undertaking confirming receipt of all amounts due by the employer. An employee

will be reluctant to do so unless this is in fact the case and it is unlikely that a prospective purchaser will want to make any payments in connection with the transferring employees until after the completion of the transfer of the business.

Transferring employees may also raise concerns about the termination of their current employment contracts and the payment of their end of service gratuity as this will result in the end of their period of continuous service and they will therefore require to work for the purchasing entity for a year before being entitled to an end of service gratuity payment. Generally there is no procedure for the transfer of the continuous service period from one employer to another.

As part of the sale of a business in the UAE and the transfer of employees, the amendment or cancellation and reissuance of UAE residence visas for each transferring employee will also need to be considered. Also, as the number of employees that a company can sponsor for visa purposes is dependent on the space that it leases or owns, a purchasing entity will need to ensure that it occupies sufficient space to sponsor all the transferring employees.

In addition, the applicability of Federal Law No. 7 of 1999 concerning Pensions and Social Securities (the UAE Pensions Law)(as amended) will also need to be considered in any transfer of a business in the UAE. The UAE Pensions Law will have implications for any company that employs UAE or GCC nationals.

## **VIII TAX LAW**

The UAE issued a substantive law on value added tax (VAT) in 2017. Pursuant to Federal Decree Law No. 8 of 2017 (the VAT Law), the imposition of VAT in the UAE commenced on 1 January 2018 at a rate of 5 per cent.

Registration for VAT is mandatory for any taxable person or business if the total value of its taxable supplies made within the UAE exceeds the mandatory registration threshold of 375,000 dirhams during the previous 12 months or, if it is anticipated that the taxable supplies will exceed the threshold in the next 30 days.

A taxable supply refers to a supply of goods or services made by a business in the UAE that may be taxed at a rate of either 5 per cent or 0 per cent. Reversed charge supplies and imports are also taken into consideration for this purpose if a supply of such imported goods and services would be taxable if it were made in the UAE.

Entities that are not based in the UAE but provide goods or services in the UAE are also required to apply for registration if they meet the threshold requirements.

The supply by a taxpayer of either exempt or zero-rated goods or services will not attract VAT; however, a supplier of zero-rated goods or services will be able to claim a refund on any VAT paid on their purchases unlike a supplier of exempt goods or services who will be unable to recover any VAT paid on their purchases. The VAT Law sets out a list of zero-rated and exempt supplies.

The VAT Law also permits tax grouping, which allows group companies to be treated as one entity for the purposes of VAT. Each group company will be jointly and severally responsible for each other group company's VAT liabilities and no VAT will be payable on transactions between entities within the group.

Generally a VAT-registered customer must account for VAT paid in respect of purchases; however, certain transactions between entities within the GCC will be subject to VAT by reverse charge. The concept of reverse-charging VAT allows the simplification of transactions within a single market (i.e., the GCC states). The reverse charge removes the obligation to

account for the VAT on the sale from the supplier and places it on the customer. It should be noted that for the purposes of a single market VAT treatment, only those countries that have implemented VAT at the relevant time will be taken into account; the non-implementing countries would be treated like any foreign country.

Cabinet Decision No. 59 of 2017 specifies all designated zones for the purposes of implementing the designated zone provisions in the VAT Law. A designated zone is required to be a specific fenced area with security measures and customs controls in place to monitor entry and exit of individuals and the movement of goods to and from the area. Concessional VAT treatment may be available for transactions involving the supply of physical goods within designated zones. No VAT concessions are available for transactions involving the supply of services within designated zones. The Cabinet has the authority to amend the list of Designated Zones as required.

With respect to the applicability of the VAT Law to M&A transactions, it provides that 'the transfer of the whole or independent part of a Business from a Person to a Taxable Person for the purposes of continuing the Business that was transferred'<sup>25</sup> shall not be considered a supply and therefore will not be subject to VAT. Consequently, in common with other European jurisdictions, the sale and purchase of a business in the UAE should not attract VAT. Note, however, that there is no clear guidance in the law as to what 'continuing' the business involves nor is there any detail on what constitutes the 'whole' or 'independent' part of a business.

Note also that pursuant to Article 42 of Cabinet Decision No. 52 of 2017, the transfer of title to equity securities is exempt from VAT.

## IX COMPETITION LAW

Federal Law No. 4 of 2012 on the regulation of competition (the Competition Law) was introduced into the United Arab Emirates as a means of regulating anticompetitive practices. The Competition Law deals with three key areas; a restriction on anticompetitive agreements, the regulation of dominant market positions and a requirement that acquisitions over a threshold combined market share obtain merger clearance from the UAE Ministry of Economy (the Ministry).

Although the Competition Law was introduced in 23 February 2013, it initially had minimal impact as a result of it failing to establish the market share thresholds at which its restrictions became applicable. It also failed to define the small and medium establishments that were stated to be outside the purview of the Competition Law.

Then in 2016, two new Cabinet Decisions were introduced, which supplemented the Competition Law and provided guidance on these outstanding aspects: Cabinet Decision No. 13/2016 (the Ratios Decision) in respect of market share thresholds and Cabinet Decision No. 22/2016 (the SME Decision) in respect of small and medium establishments.

As a result of the Competition Law and the two Cabinet Decisions, merger clearance will be required in advance of any proposed merger, acquisition or other consolidation of two or more entities that would result in a market share of 40 per cent or more. The concerned market is broadly defined in the Competition Law to comprise markets in which commodities or services are replaceable or may be substituted to meet specific needs according to price, properties and use. Although it is difficult to define the relevant market in legislation and

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25 Article 7 of Federal Decree Law No. 8 of 2017.

more often than not markets are only identifiable on a case-by-case basis, on a practical level the application of the Ratios Decision is somewhat difficult as a result of the concerned market not being clearly defined.

In addition, as a result of the SME Decision, the Competition Law does not apply to certain small and medium establishments as detailed in the SME Decision. The definition of a 'small and medium establishment' varies according to whether the relevant entity operates in the trade, industry or services sector. Small and medium establishments are also identified in the Ratios Decision according to turnover and number of employees.

Finally, note that the Ministry also has the power to investigate a potential violation of the Competition Law of its own initiative or otherwise following a complaint brought before it. Failure to notify a reportable economic concentration may result in a fine of between 2 and 5 per cent of turnover generated by the relevant undertaking in the UAE in the last financial year or, if data is not available, a fine of between 50,000 and 5 million dirhams.

## **X OUTLOOK**

It is widely anticipated that a new investment law will be enacted by the end of 2018 and it is expected that the new law will permit higher levels of foreign investment in certain sectors. At present, entities incorporated onshore in the UAE must have at least 51 per cent UAE national ownership. The introduction of the new investment law is therefore likely to lead to increased foreign investment in the UAE. It will also allow for the diversification of the UAE's economy in an attempt to reduce the country's dependence on oil revenue.

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