

UAE competition law: All bark and no bite?

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Federal Law No. 4 of 2012 (the Competition Law) introduced a regime for the regulation of anti-competitive behaviour in the UAE, which previously did not exist. If implemented strictly this law would have significant effects on UAE business. The law came into force on 23 February 2013 and introduces merger/acquisition clearance requirements and prohibitions against anti-competitive agreements and activities which constitute abuse of a dominant position, as well as some anti-competitive trade practices.

To date, the Competition Law has not been enforced, partly because the law left key details to be set out in regulations that were to follow. The regulations issued do not provide the clarity that is needed. Still, compliance with the Competition Law is (ostensibly) mandatory as it is a current, valid UAE law, and with the issuance of the regulations it could start to enjoy some level of enforcement.

It is worth noting that the regulations set out a mechanism for making complaints against parties allegedly in breach of the Competition Law and the UAE Ministry of Economy's duty to investigate once a complaint is accepted.

Scope of application

The Competition Law applies to all entities undertaking commercial activities in the UAE and to entities operating outside the UAE but whose activities affect competition inside the UAE.

Certain entities and industry sectors are expressly exempted. These include: (a) federal and local government entities and entities owned or controlled by the federal or emirate governments; (b) small and medium-sized entities (not defined in the Competition Law or the regulations); and (c) entities operating in telecoms, financial services, pharmaceutical production and distribution,

cultural activities, oil and gas, postal services including express delivery, electricity and water production and distribution, sewage and waste disposal, transportation and railways.

Prohibitions

The Competition Law requires that entities seek merger clearance from the UAE Ministry of Economy if they are contemplating a transaction that: (a) will result in the acquisition of a direct or indirect, total or partial interest or benefit in assets, equity, and/or obligations of another entity to which the Competition Law applies; (b) will create or promote a dominant position; and/or (c) may affect the level of competition in the relevant market.

In addition, the Competition Law prohibits entities from entering into agreements or arrangements (which should be broadly construed) the aim, object or effect of which is to restrict competition. This includes agreements or arrangements which directly or indirectly fix purchase or selling prices, grant exclusivity with respect to products or geography or other market division (other than through registered commercial agencies), involve collusion in bids and tenders, etc. These restrictions would impact many distribution agreements in the UAE.

The Competition Law provides for potentially far-reaching penalties in the event of violation. These penalties include: (a) fines of between 500,000 and 5 million Emirati dirhams (up to US\$1.36 million) for entering into restrictive agreements or abusing market dominance; and (b) fines of 2% to 5% of the infringing entity's annual revenue derived from the sale of the relevant goods and services in the UAE for a failure to notify a transaction which is required to be notified pursuant to the Competition Law.

An entity violating the Competition

Law also exposes itself to possible criminal sanctions.

Exemptions

The Competition Law allows for entities to seek an exemption from the law. The procedure for seeking such an exemption is set out in the regulations. It involves a written application to the Ministry of Economy seeking an exemption for a transaction.

The entity seeking the exemption must provide copies of its constitutive documents and financial statements (for the latest two financial years). In addition, it must submit an economic rationale for the transaction and its reasons for requesting the exemption. All documents submitted must be in Arabic, but may be accompanied by an English translation. The Ministry of Economy must respond to such a request within 90 days, but may extend this period by a further 45 days. If no response is received within this time frame, approval is deemed to have been given.

Implications

As compliance with the Competition Law is now mandatory, businesses must consider the effect of the law on their business. It remains to be seen how the Ministry of Economy will interpret or enforce the law or the implementing regulations. As a minimum, the Competition Law and its potential effects need to be considered by any business operating commercially in the UAE or any entity which intends to acquire a UAE business.

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