

The United Arab Emirates (the UAE) has recently issued Federal Decree by Law, No. (36) of 2023 on the Regulation of Competition (the New Competition Law), which abrogates and supersedes the previous competition law, Law No. (4) of 2012 (the Repealed Competition Law).

The New Competition Law has introduced some major changes to the regulatory framework of competition in the UAE. The key changes include the following:

### **1. Applicability of the New Competition Law**

Contrary to the Repealed Competition Law, the New Competition Law applies to all entities operating commercial activities in the UAE, including offshore activities and transactions that influence competition in the UAE market. This includes branches and representative offices of foreign entities that are now captured in an updated definition of “establishments” under the New Competition Law.

Additionally, the New Competition Law introduced a very broad definition of “economic activities”, which had the effect of expanding the scope of application of the new law. “Economic activities” include all activities primarily related to production, distribution, provision of products and goods, or performance of services in the UAE (which ultimately encompasses all economic activities to be conducted in the UAE, or outside the UAE to the extent they have an effect on competition within the UAE).

### **2. Sectoral Exemptions**

The New Competition Law has removed the sectoral exemptions set out in the annex under the Repealed Competition Law and has amended the scope of exemptions to only include such economic activities where a sector regulatory body has the specific authority, by sector-specific legislation addressing competition matters, to regulate anticompetitive practices in the relevant sector. The New Competition Law has also removed the exemption related to small and medium businesses, which invites such enterprises to revisit their agreements and practices to ensure compliance with the New Competition Law.

Additionally, it is worth noting that the blanket exemptions for government owned entities pursuant to the New Competition Law has been amended and such exemptions are now limited to entities that will be specified by a Cabinet decision for federally owned entities, and a local government decision for emirate-owned entities.

### **3. Enhanced Competition Protection**

The New Competition Law amended the provisions on the prohibitions against anticompetitive practices, mainly regarding restrictive agreements and abuse of dominant position, and added two new provisions regarding abuse of economic dependency and predatory pricing. The New Competition Law further removed the exemption related to “weak impact” restrictive agreements, making the prohibitions against anticompetitive practices more rigorous, thus reducing exploitative practices.

### **4. General Exemptions**

While the New Competition Law repealed the exemptions pertaining to “weak impact” restrictive agreements, it introduced the ability for entities to submit an application to the Ministry of Economy (the Ministry) for a specific exemption, from prohibitions on restrictive agreements, dominance abuse, economic dependency exploitation and predatory pricing.

The New Competition Law sets out the general process for the issuance of the minister of economy’s decision on such exemptions and provides that the mechanism for applying for such exemptions will be specified in implementing regulations. At the date of this note, the implementing regulations are yet to be issued.

This amendment to the mechanism for obtaining exemptions highlights the importance of allocating the said exemptions in a manner that increases fair market competition.

### **5. Merger Control**

A material change that was introduced by the New Competition Law is the inclusion of an annual turnover threshold alongside the market share threshold (both to be set out by a Cabinet decision) of the establishments in the relevant market as a criterion for determining the requirement to notify the Ministry and to obtain its prior, mandatory and suspensory approval. Notably, the notification period has been increased in the New Competition Law to a minimum of 90 days (instead of 30 days) before the relevant transaction can be completed, requiring M&A transaction parties to plan their transaction timeframe accordingly. The review period of 90 days (with a 45-day extension possibility) has remained unchanged but, in case a decision is not issued by the Ministry within such timeframe, the notified transaction will be considered rejected.

The implementing regulations emanating from the New Competition Law, which are yet to be issued, will also include the controls and processes for an economic concentration application.

Additionally, the New Competition Law allows entities to set forth actions to mitigate the anticompetitive impacts of the proposed transactions, such as altering the structure of the transaction or ensuring that this is split between more than one entity. The New Competition Law also permits the Ministry to disclose details of proposed transactions on its website and to solicit feedback from relevant parties, which could be an area of concern for several clients that prefer keeping elements of the transactions confidential.

## 6. Competition Regulation Committee

The New Competition Law includes the formation of a Competition Regulation Committee, which is a regulatory authority emanating from the Ministry. This Committee will be responsible for setting policies and strategies for competition and for enforcing the provisions of the New Competition Law.

This indicates that the Ministry is seeking to have a less dormant role in relation to anticompetitive practice in the UAE, and an increased oversight on the market. This is in addition to an increase in the competencies of the Ministry and obligations of the Ministry's employees and the Competition Regulation Committee's members.

## 7. Penalties

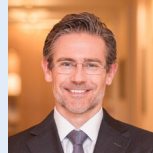
The New Competition Law has introduced more rigorous financial penalties by increasing the maximum threshold for the levied penalties to 10% of the annual turnover for entities conducting anticompetitive practices in breach of the New Competition Law. Additionally, the New Competition Law sets forth penalties that shall be levied on any entity breaching the provisions of the New Competition Law, in addition to a penalty of AED 500,000 for obstructing the Competition Regulation Committee's investigation for anticompetitive practices. This is complemented by enhanced procedures for legal proceedings and appeals, ensuring that enforcement is both efficient and just.

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