

UAE Competition Law: New Regulations Issued

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However, to date, there have not been any significant enforcement actions taken by the UAE Ministry of Economy (the relevant authority tasked with administering the competition law) nor any major UAE court cases enforcing the provisions of the competition law.

One of the reasons for this is that the law contemplates a number of procedures being detailed in further executive regulations which, until recently, had not been issued. However, the UAE's Federal Cabinet of Ministers (Cabinet) has now issued executive regulations which took effect on 27 October 2014. These regulations deal with procedures relating to (i) seeking exemptions from rules relating to restrictive agreements and abuse of dominant position, (ii) pre-merger approvals where the aggregate relevant market share of the parties involved exceeds a certain percentage, and (iii) complaints being made by any "concerned person" to the Competition Department of the UAE Ministry of Economy (Department).

In general terms, applications for exemptions or pre-merger approvals will be submitted to the Department together with certain specified accompanying information/documentation and the Department shall then make a recommendation to the UAE Minister of Economy. The Minister shall either approve, conditionally approve or reject the application within a maximum of 135 days from the date that the concerned parties have been notified of the Minister's receipt of the application. Complaints, again which must be accompanied by specified information/documentation, are made to the Department which will either determine that there are sufficient grounds for further investigation or reject the complaint. If the complaint is accepted for further investigation, the Department will notify all parties involved, allow them to make submissions in respect of the matters raised, seek further information if required and then issue a report and recommendation to the Minister. The Minister shall issue a resolution regarding the matter within 30 days of receiving the report from the Department.

While the issuance of the regulations should be seen as a positive step, they do raise a number of further issues and it remains to be seen how they will be implemented in practice. By way of example, one of the documents required to be submitted as part of any pre-merger approval is the "draft contract" relating to the merger. It is unclear whether this allows parties to enter into a legally binding sale agreement that is conditional on approval being granted. Further, while the regulations allow a party to require that information and documents that are submitted to the Department remain confidential there is also an obligation on that party to produce a non-confidential summary of such information/documents that is sufficient to indicate the content of confidential data. It is unclear as to what level of detail such a summary will require.

Finally, another major gap that still remains with regard to the UAE competition law is that there are certain matters that are referred to in the law as being the subject of separate specific resolutions to be issued by the Cabinet. One such matter is the relevant percentage market share threshold that will trigger the requirement for pre-merger approval. To date these resolutions have not been issued and until they are, and until further guidance is received from the Department/UAE Courts on how certain concepts referred to in the law will be interpreted (for example, what constitutes the "relevant market" for goods), the impact of the competition law on economic activity within the UAE remains unclear.