

# Putting the Pieces Together: Anti-Corruption and Competition Defence Mechanisms



**Ibtissem Lassoued**  
Partner, Head of Advisory  
Financial Crime  
i.lassoued@tamimi.com



**Mariam Sabet**  
Senior Associate  
Competition,  
Intellectual Property  
m.sabet@tamimi.com

The old adage of crises providing useful opportunities for reform posits a bright outlook for dark times, but businesses trying to sustain their livelihood through difficult periods often face more confronting circumstances. Irrespective of the source or scale of a crisis, all such events have the potential to cause significant disruption to businesses that are attempting to operate within the affected vicinity. This can be through interruptions to the supply chain, diminution in consumer demand, collapse of operations infrastructure, or severance from consumer markets. Whether these obstacles occur suddenly or are looming on the horizon behind an impending catastrophe, businesses are faced with serious cash flow problems, and in some cases existential threats to their survival.

Companies that are affected by such circumstances are put under exceptional pressure to find ways to sustain their business and, in some instances, this can be sufficient

to persuade them to compromise their values, attempting to gain undue advantage over market competitors by crossing the ethical line. The nefarious methods available to companies that vie for advantageous position are multifarious, with schemes that can include both anti-competitive and corrupt practices. Despite the divided nomenclature, both anti-corruption and anti-competition risks arise in similar circumstances and often plans involving one will contain elements of the other. Procurement processes in particular, for example, exhibit significant linkages between anti-competitive practices and corruption methodologies, whereby bids can gain more favourable responses by way of paying bribes or by colluding with other companies for example.

The laws that govern these two separate types of wrongdoing are divided: UAE Federal Law No. 4 of 2012 sets out the initial competition protections with its implementing regulations passed in 2014 and further Cabinet Resolutions



**Oliver Schibli**  
*Time is Precious*  
Acrylic, gold metal leaf on canvas  
170 x 150 cm

@oliverschibliart





## Anti-corruption and competition policies are interrelated pieces of a company's defence, and companies need to make sure they are locked in place and functioning effectively.

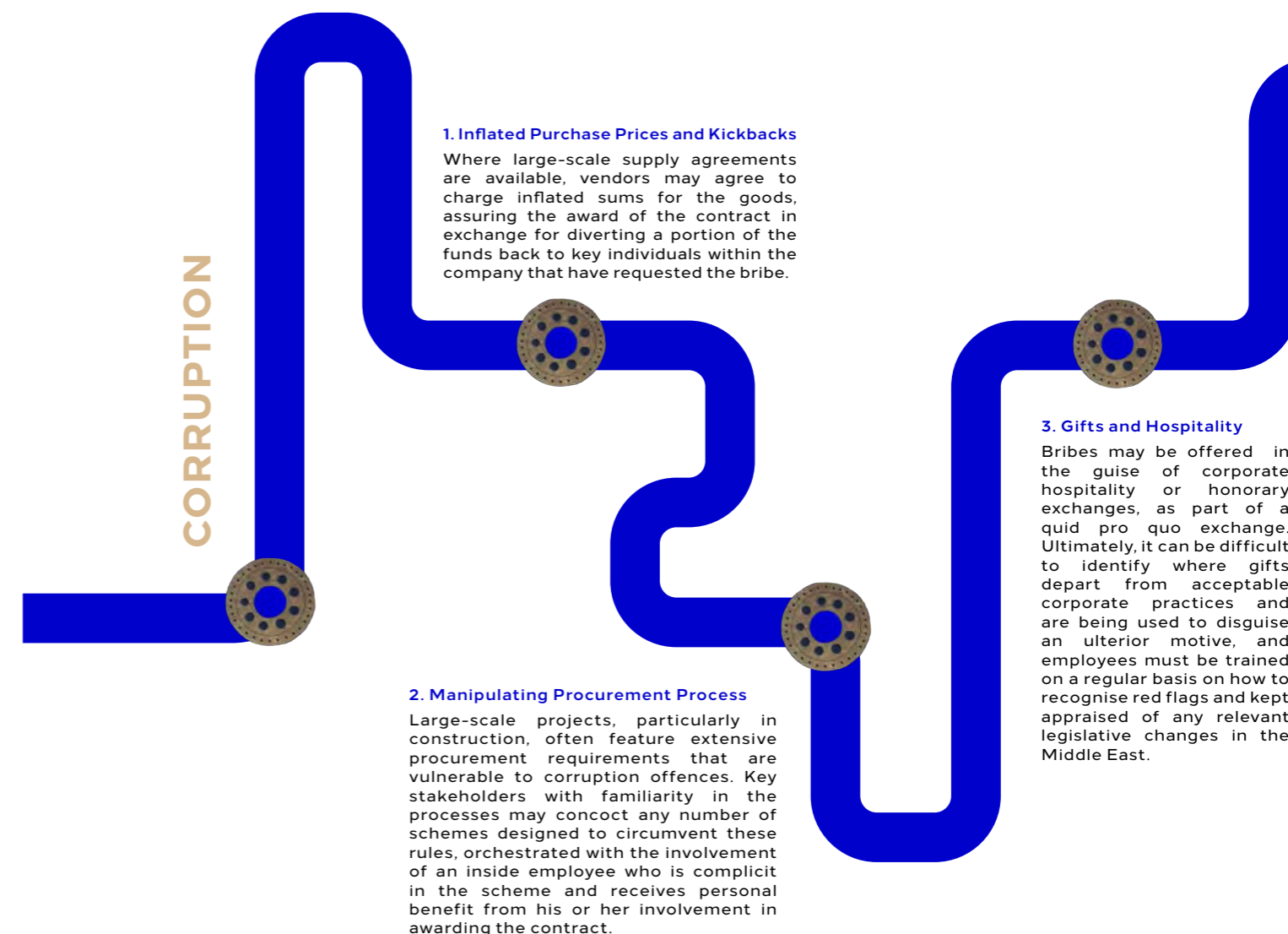
passed in 2016 with respect to market share thresholds; in Saudi Arabia, more recent legislation was passed in September 2019. Anti-corruption provisions, meanwhile are contained in widespread laws in both the UAE and Saudi Arabia. In practical terms, however, there is significant overlap in the defences that are deployed against them. The primary measure that is used by companies against such practices, which carry significant legal implications under the law, is internal compliance programmes that prohibit certain types of behaviour that would invoke liability for anti-competitive practices or corruption offences.

Internal policies need to be robust, but they also need to be user friendly and understood by employees in order for implementation to be effective. Controls that address the relevant points under the law in Middle Eastern countries but which fail to take into account the risks and scenarios that arise for employees on a daily basis are rarely effective, as they fail to demonstrate to employees how they should be applied to routine occurrences in the course of operations. For example, if the internal code of ethics of a UAE company prohibits employees from accepting any improper benefit (in compliance with Law No. 3 of 1987 (as amended) promulgating the Penal Code) yet it does not offer any guidance to employees on how to assess and/or identify gifts that may constitute a bribe (and those that do not), the effectiveness of the policy will be fatally undermined. Likewise, internal competition policies may demonstrate a

general commitment to avoiding behaviours that would exploit market power, but this is only fractured protection if the policy does not also identify and explain how certain commercial decisions, such as pricing and discount, may trigger accusations of abusing a dominant position.

The specific competition and corruption risks that arise in the course of business vary between sectors and countries, shaped to the wider context of the regulatory environment, business and compliance culture and economic conditions. As such, it is important that policies are tailored to anticipate the specific risks and scenarios they are designed to prevent, and that employees are properly trained on how to understand and implement them. In the event of crisis, internal controls are put under intense stress as external conditions ramp up the pressure and companies are driven to look for new ways to navigate the market. Anti-corruption and competition policies are interrelated pieces of a company's defence, and companies need to make sure they are locked in place and functioning effectively to keep themselves running, even during a time of crisis.

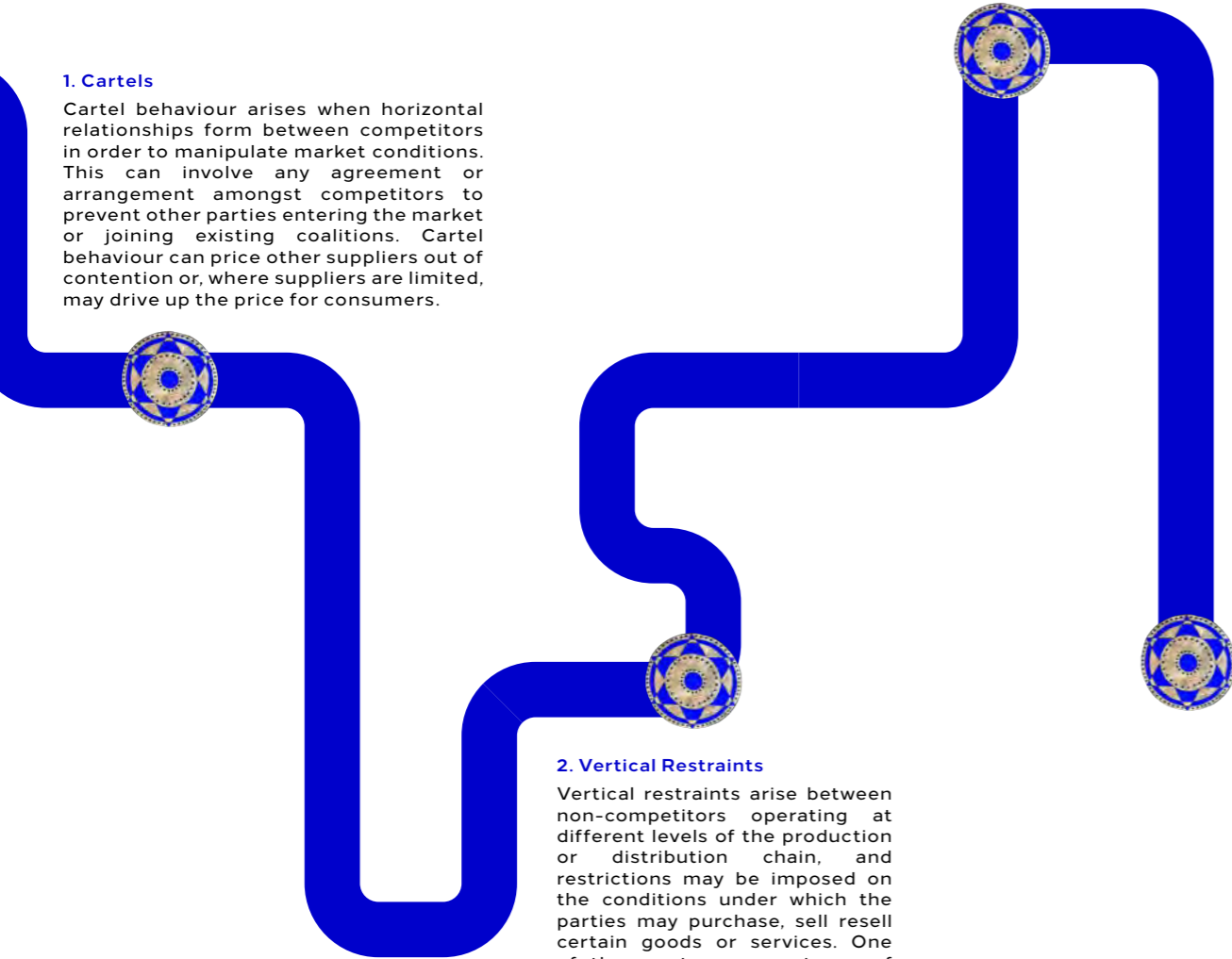
## Common Mechanisms Used to Gain Advantage



## COMPETITION

### 1. Cartels

Cartel behaviour arises when horizontal relationships form between competitors in order to manipulate market conditions. This can involve any agreement or arrangement amongst competitors to prevent other parties entering the market or joining existing coalitions. Cartel behaviour can price other suppliers out of contention or, where suppliers are limited, may drive up the price for consumers.



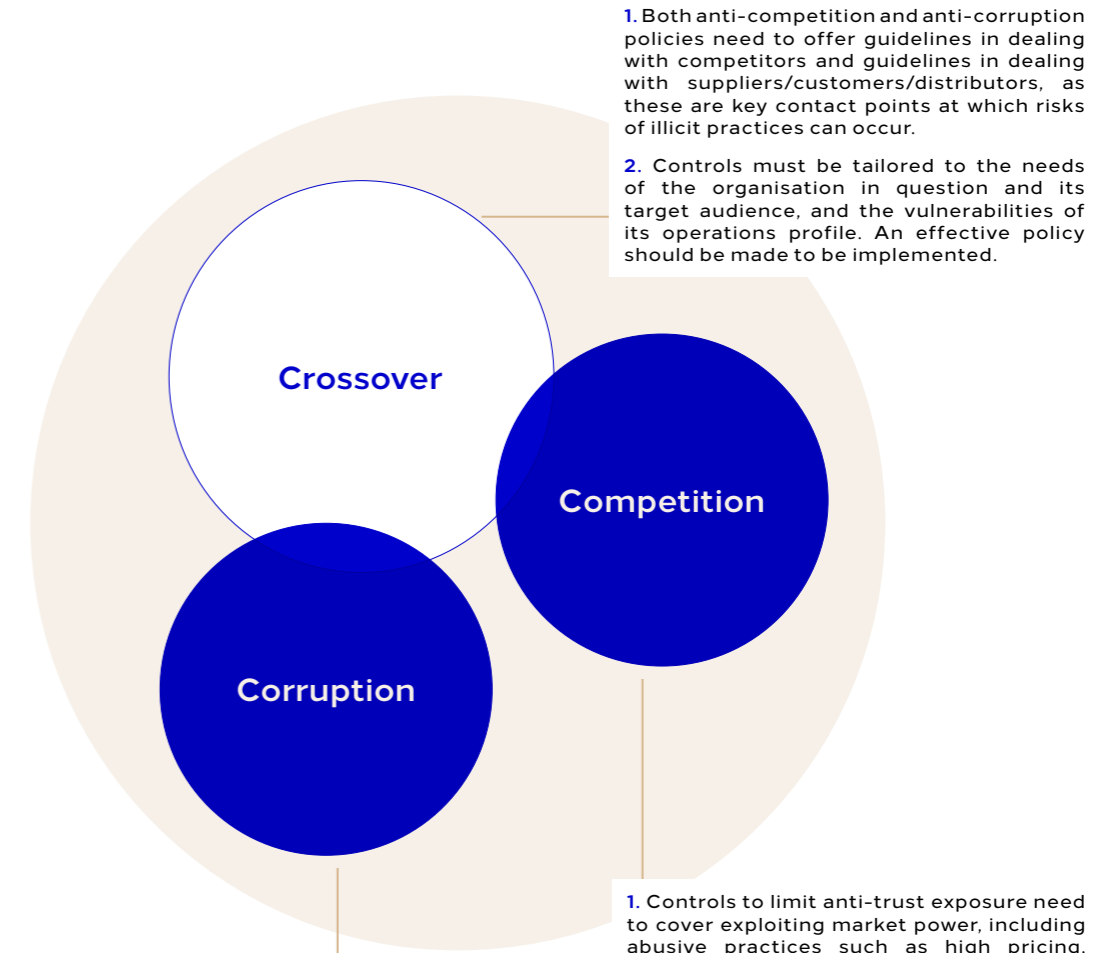
### 3. Abuse of Dominant Positions

Whilst it is not illegal to hold a dominant market position, anti-competition laws prohibit abuse of such positions, which attracts a higher level of scrutiny. Abuse of a monopolistic or an oligopolistic position can involve various practices, including quantitative manipulation creating false supply or demand, or refusing to deal under customary commercial conditions.

### 2. Vertical Restraints

Vertical restraints arise between non-competitors operating at different levels of the production or distribution chain, and restrictions may be imposed on the conditions under which the parties may purchase, sell resell certain goods or services. One of the most common types of vertical restraint is that of Resale Price Maintenance ('RPM').

## Assembling Effective Defences



1. Both anti-competition and anti-corruption policies need to offer guidelines in dealing with competitors and guidelines in dealing with suppliers/customers/distributors, as these are key contact points at which risks of illicit practices can occur.

2. Controls must be tailored to the needs of the organisation in question and its target audience, and the vulnerabilities of its operations profile. An effective policy should be made to be implemented.

1. Policies must cover requirements that strictly abide by the tender process as well as how to handle circumstances whereby improper conduct is solicited. Checks and balances need to be imposed on employees with control of the bidding process as well as a proper oversight and record mechanism for all communication with the potential Client.

2. All circumstances where gifts and hospitalities are permitted to be exchanged must be clearly outlined, in addition to indicators that signify where a gift or offer of hospitality may be construed as a bribe under the broad provisions of anti-corruption laws.

3. From a practical perspective, policies must offer guidance on scenarios that pose higher risk of corruption and correct procedures for responding to them. High-risk scenarios may include points in operations that engage with the public sector, which is commonly subject to stronger protections, or specific activities that involve bidding for commercial contracts.

1. Controls to limit anti-trust exposure need to cover exploiting market power, including abusive practices such as high pricing, refusals to supply, price discrimination, and setting discounts at predatory levels or in a manner aimed at foreclosing the market.

2. Anti-competitive typologies often involve collaboration between companies. Whilst collaborative efforts in areas such as research and development can be hugely productive, safeguards need to be imposed against the exchange of competitively sensitive information. All forms of collaboration must be vetted to avoid cartel behaviour.