

# Kluwer Competition Law Blog

## How Are Competition Laws Heating Up in the Middle East? An Insider's Guide to the Recent Surge in Legislation and Enforcement

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This year, we kick off our 'main developments in competition law and policy' [series](#) with this special treat!

### Main Developments in Competition Law and Policy 2018-2024: Bahrain, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Palestine, Saudi Arabia (the KSA), Syria, United Arab Emirates (the UAE), and Yemen

#### 1. Introduction and Background

Antitrust regulation has been a relatively recent phenomenon in the Middle East compared to the well-established legal frameworks in the United States (the Sherman Act, 1890) and the European Union (EU) (Treaty of Rome, 1957).<sup>[1]</sup> The region's national competition laws were all introduced (well) after the EU rules and many have been influenced by them: Middle Eastern countries introduced their first competition laws between 1988 and 2022, starting with Israel (1988) and ending with Lebanon (2022), highlighting a gradual regional adoption of such laws over three decades. (Tunisia was the first Arab country that adopted competition specific legislation in 1991.)

According to the latest report by the United Nations (UN) which evaluates the robustness of Arab competition legislation against international standards ("**ABLF Report**"), the Arab region advanced its ranking from "Moderate" in 2020 to "Developed" in 2023.<sup>[2]</sup> In particular, for the six Arab countries making up the Gulf Cooperation Council (GCC) (Bahrain, Kuwait, Oman, Qatar, the KSA, and the UAE), the average score enhanced from "Developed" to "Strong" due to legislative amendments in Kuwait, Oman, and the KSA.<sup>[3]</sup> Only two countries, Egypt and the KSA, outranked others and obtained the highest score "Very Strong" in 2023.

While the ABLF Report confirms a trend for increased competition legislation across the Middle East, its classifications *do not reflect the enforcement level* of competition laws.

We view the Turkish Competition Authority as active and engaged, comparable to its counterparts in the EU or US, and acknowledge its evolving approach to complex economic reasoning and theories of harm in its decisions. Meanwhile, we observe substantial divergence across the Middle

East, ranging from no practical enforcement (*e.g.*, Iraq and Syria) or only basic enforcement (*e.g.*, Bahrain, Iran, Jordan, Oman, Qatar, Yemen) to an increasingly sophisticated and rigorous approach (especially the KSA).

This article covers the following selected 14 countries: Bahrain, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Palestine, the KSA, Syria, the UAE, and Yemen (together the “**Middle East**” or the “**region**”). References to the “**Arab region**” or “**Arab countries**”, on the other hand, comprise the 22 Arab League member states (Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, the KSA, Somalia, Sudan, Syria, Tunisia, the UAE, Yemen). For the benefit of comparison, we occasionally draw comparisons with the EU, Turkish, and Egyptian competition law frameworks to provide additional context and insights.

This article analyzes key competition law and policy advances in the Middle East, by setting out the legislative evolution and delving into recent developments (2018–2024). We will (i) first discuss the jurisdictions whose competition regime we view as still in the early stages of development, followed by (ii) jurisdictions whose competition authorities we observe to be increasingly rigorous, and (iii) a deep dive into:

1. the KSA, where enforcement has continuously strengthened since its antitrust reform in 2019; and
2. the UAE, which has revamped its competition law at the end of last year, 2023.

We will conclude with a forecast for the region. In brief, considering the recent uptick in antitrust developments, coupled with continued projected economic growth, enforcement of competition rules in the Middle East will only strengthen. To the extent that this will safeguard competitive markets, this is to be welcomed. Given the KSA’s and the UAE’s priority of creating a conducive investment climate, fears of an unduly interventionist approach by antitrust regulators in the Middle East seem misplaced, at least for now. That said, the broad jurisdictional scope of the KSA’s merger control, which often triggers filing obligations even for transactions with a limited direct nexus to the KSA, remains an important consideration.

## **2. Jurisdictions whose competition regime is still in the early stages of development: Bahrain, Iran, Iraq, Jordan, Lebanon, Oman, Qatar, Syria, and Yemen**

### **Bahrain – basic enforcement**

*Consumer Protection Directorate of the Ministry of Industry, Commerce & Tourism – ?????  
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The Kingdom of Bahrain’s first comprehensive competition law, Law No. 31 of 2018 Concerning the Promotion and Protection of Competition, was introduced in 2018.<sup>[4]</sup> In January 2019, Royal Decree No. 8 of 2019 stipulated that the Consumer Protection Directorate of the Ministry of Industry, Commerce & Tourism is responsible for enforcing the law pending the appointment of the Competition Authority.

### *Competition law*

Key aspects of Bahrain's competition law include the prohibition of anti-competitive arrangements, such as price-fixing (Article 3) and collusive bidding (Article 3). The law addresses abuse of dominance, defining a "*dominant position*" as the ability to prevent effective competition in the market, which applies to entities with over 40% market share or groups with over 60% market share (Article 8). While the law prohibits the abuse of such dominance, it does not bar entities from holding a dominant position. Companies in a dominant position are prohibited from engaging in practices that unfairly limit competition, including but not limited to imposing unfair trading conditions or engaging in predatory pricing.

The competition law provides certain exemptions including for facilities and projects owned or managed by the state (Article 2(b)) and on grounds of public policy (Article 15).

Fines for failure to comply with any aspect of the competition law are up to 10% of the party's total annual turnover in Bahrain for the period in which the breach occurred (to a maximum of three years) (Article 49). The competition law states that further guidance should be provided by the authority on the calculation of fines (possibly in the implementing regulations).<sup>[5]</sup> No fines (for antitrust or merger control related violations) have been published to date.

### *Merger control*

The competition law and Regulation No. 72 of 2019 (Regulatory Controls on Economic Concentrations) provide a mandatory and suspensory pre-closing merger control regime. However, Bahrain has not yet adopted the requisite implementing regulations and therefore there are currently no notification thresholds.<sup>[6]</sup> The latest ABLF Report nonetheless, and somewhat surprisingly, upgraded the status of Bahrain's competition legislation from "Developed" in 2020 to "Strong" in 2023, due to minor advancements across the examined components (including in its competition enforcement practices and merger regulatory regime).<sup>[7]</sup>

The competition law generally prohibits an economic concentration that results in the significant reduction of competition in the market. Absent any concrete notification thresholds but given that the current Regulatory Controls on Economic Concentrations are already applicable, merging parties may consider notifying before closing, any transaction that is likely to significantly impede competition in Bahrain to avoid fines post-closing.

### **Iran – unpredictable enforcement<sup>[8]</sup>**

*Competition Council – ???? ? ???? ??? ?????*

Iran's Competition Council was created to achieve the objectives of "*promoting competition and prohibiting monopolies*" and has far-reaching powers, *e.g.*, there is no time limitation on when the authority may commence a review.<sup>[9]</sup> The Council holds sole authority to investigate and make

decisions on anti-competition procedures, initiating probes as necessary (Article 62). The Council is said to operate independently from the government, with its 15 members—experts in law, economy, trade, and finance—appointed by Iran’s President and removable only upon loss of legal capacity. The additionally created National Competitive Council is an independent government institution that manages the Council’s professional, executive, and other affairs.<sup>[10]</sup>

### *Competition law*

While there is only limited transparency and little access to the relevant law, key aspects of Iran’s 2007 Law on Implementation of General Policies of Principles of Article 44 of the Constitution (the “**Privatization Act**”) include the prohibition of anti-competitive practices such as exclusive dealing, price discrimination and dumping (Articles 47 and 48).<sup>[11]</sup> The Competition Council can punish infringements of the competition law with fines and other remedies (pursuant to Article 61). The competition law applies broadly across economic sectors, excluding those tradespeople and businesses engaged in small-scale retail and regulated under the Guild Regime Act (Article 50). Unlike most competition laws in the Middle East, the Privatization Act does not exclude governmental entities from its scope and it also does not provide for maximum fines.<sup>[12]</sup>

### *Merger control*

Iran is the only country in the Middle East with a voluntary, non-suspensory merger control regime (since 2007), *i.e.*, there is no obligation to notify a transaction before or after its completion. As a result, there is no fine for failure to file.

The Executive Instructions of Articles 47, 48, and 49 of the Privatization Act were ratified in 2018 but still leave various gaps and uncertainties particularly with respect to acquisitions. While any merger that leads to extreme market concentration (*i.e.*, above 40% market shares and the Herfindahl-Hirschman Index is more than 4000) is explicitly prohibited, also acquisitions that “*disturb*” market competition are prohibited.<sup>[13]</sup> No criteria are given for the latter.

Indeed, with one exception, there is no publicly available information about the authority’s activities. The one merger control decision that is available concerned the combination of two major Iranian online discount companies, Takhfifan and Netbarg. In December 2022, the authority ordered the transaction to be unwound three years after its completion. This decision was prompted by a competitor complaint. The decision did not set out any reasoning other than that it created an unacceptable concentration in the market. It is not clear from public sources whether the parties appealed to the Competition Board of Appeal.<sup>[14]</sup>

Accordingly, despite the lack of clear rules, merging parties may wish to engage (formally or informally) with the Iranian Competition Council if they contemplate a significant acquisition in Iran which may trigger customer or competitor complaints to the authority.

## Iraq – no enforcement

*Council for Competition and Antimonopoly Affairs – ????? ????????????? ?????????????*

Iraq’s Competition and Prevention of Monopolies Law (14 of 2010) “*aims to regulate the competition and prevent the harmful monopolistic practices in the society by investors, producers, marketers or others in all economic activities*” (Article 2).<sup>[15]</sup>

To date, Iraq has not yet established its competition authority (which is to be named Council for Competition and Antimonopoly Affairs) nor any implementing regulations. As a result, Iraq’s competition law remains unenforced, with its stipulated penalties, including imprisonment of one to three years or fines of c. USD 2,300, currently not being applied.<sup>[16]</sup> There is no indication as to when the dedicated authority might be established.

### *Competition law*

Iraq prohibits any transaction or agreement that would create or increase a market share of 50% or more (Article 9). The law also encompasses provisions against anti-competitive practices such as price-fixing and collusion, aimed at ensuring market fairness. A market share of 50% or greater constitutes a dominant position. The law excludes governmental entities from its scope.

### *Merger control*

However, unlike Iran which provides for a voluntary regime, Iraq has not introduced any merger notification regime at all. The latest ABLF Report downgraded the status of Iraq’s competition legislation from “Developed” in 2020 to “Moderate” in 2023.<sup>[17]</sup>

## Jordan – basic enforcement

*Directorate of Competition of the Ministry of Industry, Trade and Supply – ??????? ?????????? ??*  
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Jordan’s Competition Law No. 33 of 2004 replaced Competition Temporary Law No. 49 (2002) in September 2004 and strives to “*protect and promote competition in Jordan*”.<sup>[18]</sup> The Economic Concentration Instructions No. 2 of 2006 followed thereafter.<sup>[19]</sup>

In July 2022, the Jordanian government proposed amendments to the competition law including additions to the list of anti-competitive practices, increased penalties, and clarifications on the concept of economic concentration, abuse of dominance, and the powers of the directorate. In March 2023, the parliament approved the proposal and on May 16, 2023, the Amended Competition Law No. 12 of 2023 came into effect.<sup>[20]</sup> On August 3, 2023, the Council of Ministers Decision No. 43223 supplemented the amended law to introduce merger control thresholds. The latest ABLF Report upgraded the status of Jordan’s competition legislation from “Moderate” in

2020 to “Developed” in 2023.<sup>[21]</sup>

The Directorate of Competition of the Ministry of Industry, Trade and Supply is in charge of enforcing the competition law, but does not have sanctioning or remedial powers and must refer cases to the public prosecutor for the imposition of penalties. Among the key changes to Jordan’s competition law are the following:

- The Competition Affairs Committee has been created as the advisory body of the Directorate.
- However, the Minister of Industry, Trade and Supply has the power to (i) order the parties to undertake necessary steps to restore the pre-transaction structure and to (ii) annul the directorate’s merger control approval which may be subject to appeal before the administrative court.
- Also, Jordan’s Minister of Industry, Trade and Supply may issue exemptions to competition rules “*if in the public interest*”.
- Although the latest amendments provide more guidance, lack of transparency and independence in competition law enforcement remain. Indeed, former Minister of State for Economic Affairs, Yusuf Mansur, heavily criticized the latest amendments for being “*new, deformed and paralyzed*”, arguing that enforcement should not lie in the hands of a government ministry but in the Directorate.<sup>[22]</sup>

### *Competition law*

Article 3 of the amended law provides for the competition law’s application to “all economic activities conducted inside Jordan or outside it if they impact the internal market”.<sup>[23]</sup>

The new law establishes key definitions, including market and dominant position, and broadens the scope of “*economic activity*” to encompass sectors such as IT and professional services (Article 2). It prohibits anti-competitive practices, including price fixing, market division, and restrictions on production and distribution (Article 5(a)), while granting exemptions under Article 5(b) for agreements with limited market impact, provided they do not involve price fixing or market division.

The competition law further prohibits abuse of dominance, including price fixing, imposing market barriers, suspending purchases, manipulating supply to create shortages or surpluses, and selling below cost. (Article 6(a)). The law now clarifies the concept of “*dominant position*” by listing specific factors to assess market dominance, including market share, financial capacity, access to supply chains, relationships with affiliates, and barriers to competitor entry. It introduces a 40% market share threshold for dominance, considering an enterprise dominant unless it proves exposure to effective competition. Unlike the old law, which only referenced this threshold for economic concentration approval, the amended law explicitly uses it to define dominant market status.<sup>[24]</sup>

The legal maximum fines have doubled to c. USD 141,000. As fines have to be issued by the court, they are a matter of public record. Publicly available sources do not show that fines have previously been imposed and from experience, the Directorate has not applied to the court for fines for failure to notify or gun-jumping.<sup>[25]</sup>

## *Merger control*

Jordan has a mandatory and suspensory pre-closing merger control regime. Among the key changes to Jordan's merger control regime are the following:

- Merger control clearance is required for transactions where the parties' combined market share is above 40% or where the parties' combined local revenue exceed c. USD 9.8 million, or where at least one party has local revenue of c. USD 2.8 million.<sup>[26]</sup> These turnover thresholds are remarkably low in comparison to those in other Middle Eastern countries, but similar to those in Kuwait.
- The party(ies) making the notification must pay the fees incurred by the directorate to publish the transaction details in two daily newspapers.
- The amended competition law empowered the Minister of Industry, Trade and Supply to issue instructions on "*all matters related to economic concentration*" in the Official Gazette, based on recommendations from the Committee (Article 10(f)).<sup>[27]</sup> These instructions have not yet been issued.

## **Lebanon – no enforcement**

*National Competition Authority – ????????? ????????? ?????????*

Lebanon's first comprehensive competition legislation, Competition Law No. 281 of 2022, was issued in March 2022.<sup>[28]</sup> The latest ABLF Report upgraded the status of Lebanon's competition legislation from "Weak" in 2020 to "Moderate" in 2023.<sup>[29]</sup> The National Competition Authority has exclusive competence in competition matters and must approve sector concentration operations, requiring cooperation and technical input from sector regulators before final approvals (Article 6).

However, since the National Competition Authority responsible for enforcing the competition law has not yet been created, Lebanon's competition regime is not yet in force. It is unclear when this might change.<sup>[30]</sup>

## *Competition law*

Chapter 2 of the new Lebanese competition law prohibits anti-competitive practices and agreements, including collusion on prices, restricting goods flow, market sharing, production limits, bid collusion, and blocking market entry (Article 7). Dominant market positions are defined as those with a minimum market share of 35% (individual) or 45–55% (groups), and abuses like price manipulation, discriminatory contracts, and exclusionary practices are prohibited (Article 9). Certain license conditions and restrictive vertical agreements, which harm competition, are also barred (Articles 8 and 11). Exceptions exist for agreements that benefit economic development, improve production, support small enterprises, or boost competitiveness in international markets



(Article 7).

### *Merger control*

Lebanon established a mandatory and suspensory pre-closing merger control regime. Merger control clearance is required for transactions where the parties' combined (or individual) market share is above 30% of the relevant market in the last three fiscal years (Article 14). Article 22 imposes sanctions for unreported or prematurely executed concentration operations. Failure to report requires filing or reverting to pre-concentration status, with fines up to 5% of turnover and operation suspension. Completing a concentration before approval similarly incurs fines and suspension. Omitted or false information can lead to fines, approval withdrawal, and re-reporting.

### **Oman – basic enforcement**

#### *Competition Protection and Monopoly Prevention Centre – ????? ?????????????????????????????????????*

Oman's first competition specific legislation, Royal Decree No. 67 of 2014 Promulgating Competition Protection and Monopoly Prevention Law, was enacted in 2014.<sup>[31]</sup> Originally, the Public Authority for Consumer Protection was in charge of enforcing the competition law. This changed in 2018 with the entry into force of Royal Decree No. 2 of 2018 introducing the Competition and Monopolies Prevention Centre Law. This law (i) created a dedicated competition regulator, the Competition Protection and Monopoly Prevention Centre (under the auspices of the Ministry of Commerce, Industry and Investment Promotion), and (ii) changed the merger control regime.<sup>[32]</sup>

In January 2021, Ministerial Decision 18/2021 issued the executive regulations for Oman's competition law to offer more clarity to the existing legal framework.<sup>[33]</sup> The latest ABLF Report upgraded the status of Oman's competition legislation from "Developed" in 2020 to "Strong" in 2023.<sup>[34]</sup>

### *Competition law*

Oman's competition law prohibits practices that limit competition, including price-fixing, limiting production, market sharing, and bid-rigging (Article 9) and prohibits abusive dominance, such as selling below cost to eliminate competitors, and refusing supply access (Article 10). Dominance is defined as having over 35% market share (Article 4).

Penalties for violations include fines between 5% and 10% of the annual turnover from the last fiscal year and imprisonment from three months to three years, depending on the infraction's severity (Articles 19 and 20). Fines primarily target anti-competitive practices; penalties such as imprisonment and 5%–10% of annual turnover are imposed for violations like price-fixing and abuse of dominance (Article 19). For economic concentration (merger control), non-compliance with reporting or accurate information requirements incurs capped administrative fines of up to c. USD 260,000, rather than turnover-based penalties, reflecting a procedural focus (Article 20).



Oman competition law exempts activities (i) relevant to the public facilities fully owned or controlled by the state or (ii) relating to research and development conducted by any public or private bodies (Article 4). It also permits temporary exemptions from competition rules for agreements or practices that reduce initial costs, benefit consumers, or support restructuring, quality improvements, technical progress, Omani SMEs, or environmental initiatives (Article 5).

### *Merger control*

Oman has a mandatory and suspensory pre-merger notification system, requiring clearance for transactions with a post-merger market share of at least 35% in Oman (Article 11).<sup>[35]</sup> The Ministry has 90 days to approve, conditionally approve, or reject applications, with automatic approval if no decision is made within this period (Article 12).

As is the case for the UAE, Kuwait, Bahrain, and Qatar, there is no publicly available information in Oman about the track record of its competition law enforcement. It is thus not clear how Oman's competition authority operates in practice and whether it has already imposed fines or remedies, and/or blocked any deals.<sup>[36]</sup>

However, it appears Oman is trying to become more active in its competition law enforcement. For instance, the Oman News Agency reported in October 2023 that the competition authority organized a workshop to “*exchange knowledge, experience and create[ing] a greater awareness of the role and importance of the competition*”. More than 100 competition law experts from different governments and private stakeholders attended. The chairman of the board of directors of the competition authority stated that the objective is “*to recognize local and global developments and applying the best international practices in competition*”.<sup>[37]</sup>

### **Qatar – basic enforcement**

*Competition Protection and Antimonopoly Committee – ???? ????? ????????? ???? ????????? ?*

Qatar's Law No. 19 of 2006 Concerning Protection of Competition and Prevention of Monopolistic Practices<sup>[38]</sup> was issued in 2006 and its Executive Regulations No. 61 of 2008<sup>[39]</sup> followed thereafter. The latest ABLF Report showed no change in the “Developed” status of Qatar's competition legislation in 2023, reflecting the absence of legislative developments since 2008.<sup>[40]</sup>

The Competition Protection and Antimonopoly Committee is the national competition enforcement authority and its vision is to “*work towards free competition based on advanced rules far from monopoly practices*”.<sup>[41]</sup> The committee is affiliated with the Minister of Economy and Commerce and includes economic, financial and legal experts.

### *Competition law*

Qatar's competition law prohibits anti-competitive practices, including price manipulation, market division, limiting production, and bid-rigging (Article 3), while dominant firms are barred from practices that restrict competition, such as refusing supply or unfairly setting conditions (Article 4). To date, the authority has not offered explicit guidance on the definition of a dominant market position (see further below).

The Qatari competition law applies to all entities (including activities that take place outside of Qatar that have an effect on competition in the Qatari market) except Qatari state owned bodies/entities or entities subject to state direction or supervision (Article 6). Parties can also seek a special resolution from the Minister of Economy and Commerce to exclude a transaction from the competition law and executive regulations, on grounds of consumer welfare.

A violation of the Qatari competition law can be penalized by a fine of no less than c. USD 27,000 and no more than c. USD 1.37 million. In all cases, the court shall confiscate all profits resulting from activities in violation of the provisions of the competition law (Article 17).<sup>[42]</sup> The court could issue fines and they would therefore be a matter of public record. We are unaware of any fines for failure to notify or gun-jumping being applied for by the committee to the court.<sup>[43]</sup>

### *Merger control*

Qatar has a mandatory and suspensory pre-closing notification regime. However, as of today, the competition law, the executive regulations, and committee decisions do not identify any exact criteria for triggering a notification obligation:

- The law and regulations do not explicitly address a change of control as a trigger for a merger filing. Although the law suggests merger control might apply to change of control transactions, the authority may still require notification for transactions without a change of control. Specifically, it involves acquiring assets, rights, or shares, or merging entities in a way that creates a dominant market position, where one or more entities can effectively control or influence prices and the availability of goods or services, limiting competitive options for others in the market (Article 10).
- The executive regulations state that the Qatari competition authority will assess whether a transaction is notifiable based on: (1) its potential impact on competition in Qatar's market; (2) the benefits to consumers; (3) any increase in efficiency and improvement in product and service quality; and (4) the frequency of similar transactions in the relevant market. Based on (1) above, transactions where the parties have or obtained a 40% market share *could* be seen as one notification threshold, given that this establishes a dominant market position as defined by another law, namely by Article 288 of the Commercial Companies Law No. 11 of 2015.<sup>[44]</sup>
- Ultimately, notification thresholds are, as a matter of practice, determined by the authority on a case-by-case basis, *e.*, considering the potential impact of a particular transaction.

Given that the Qatari merger control regime thus far remains “*largely inactive*”, there is little practical guidance on how the authority will apply the law.<sup>[45]</sup> Absent guidance from the authority, parties should consider whether to approach the regulator for acquisitions that result in a dominant position in a market in (or including) Qatar, even if there is no substantive overlap. The competition law mandates that applications be processed within 90 days of submission to the

committee; if not addressed within this period, the application is automatically approved (Article 10).

There have not been any recent changes to the legislation or implementing regulations and significant uncertainty remains (especially as regards the jurisdictional merger control thresholds). Due to the absence of public information about the committee's antitrust enforcement history, it is difficult to ascertain how active it is.

### **Palestine – no enforcement**

Palestine currently lacks a competition law-specific legislation and as such does not have a merger control regime in place:

- In May 2017, ESCWA organized a capacity-building workshop in Amman, Jordan for Palestinian officials to develop a competition framework, enhancing their capacity to implement competition policies and fostering interest in competition's role in private sector and economic development.<sup>[46]</sup>
- There is thus no ABLF Report, except on Palestine's Consumer Protection Law No. 21/2005, amended in 2018, which addresses consumer rights, product safety, supplier obligations, and redress mechanisms.<sup>[47]</sup>
- At a July 2020 OECD Competition Law & Policy Live Event, Mr. Jamal Abu Farha, Director General of the Competition General Directorate in Palestine, stated that "*Palestine does not have a competition law at the moment*". He explained that Palestinian authorities have adopted an open market policy and signed several trade treaties with countries such as Turkey, the USA, and EU countries. Despite ongoing efforts to finalize a competition law since 2003, no independent competition enforcement body has been established given Palestine's political challenges and limited financial resources.<sup>[48]</sup>

### **Syria – no enforcement**

*Syrian Competition Protection and Anti-Monopoly Commission – ???? ????????? ???? ?????????*

Syria's Law No. 7 of 2008 Competition and Antitrust Law was issued in 2008 "*to promote the Syrian market as a potential base for local and foreign investors*".<sup>[49]</sup> The latest ABLF Report upgraded the status of Syria's competition legislation from "Moderate" in 2020 to "Developed" in 2023, due to advancements in its anti-dominance and monopolization laws and merger regulatory regime.<sup>[50]</sup>

#### *Competition law*

Syria's competition law prohibits anti-competitive practices, including price-fixing, bid-rigging, market division, and limiting production or market access (Article 5). A dominant position is

defined as a market situation where an entity, alone or with others, has substantial control over a market segment, enabling it to limit market access, reduce competition, or influence market conditions (Article 6). Abuse of dominance, such as selling below cost to harm competitors, discriminating in similar contracts, and imposing unfair trade terms, is also restricted (Article 6). Syria's Competition Law specifies a 30% market share threshold for dominance solely for economic concentrations under the merger control regime and thus cannot be taken as definitive guidance for abuse of dominance cases outside this context. (Article 9).

Violations of the law may result in a fine of 1–10% of the annual total sales of goods or revenues of services (Article 23).<sup>[51]</sup> State-owned enterprises (“SOEs”) and sovereign activities are exempted from the provisions of the competition law.<sup>[52]</sup>

### *Merger control*

Economic concentration, defined as transactions that enable an entity to control another entity's operations, requires prior clearance if the resulting market share exceeds 30%, with approval granted if competition is not significantly harmed (Article 9).

There is limited publicly available information regarding the activities of the Syrian Competition Protection and Anti-Monopoly Commission, including due to ongoing political and humanitarian challenges.

## **Yemen – basic enforcement**

*Public Authority to Promote Competition and Prevent Monopolies and Commercial Fraud – ????*  
 ????? ?????????? ????? ???????????

Yemen's Republic Decree Law 19/1999 on Promoting Competition and Prevention of Monopolies and Commercial Fraud aims to ensure a “*free competitive trade framework so that no consumers' interests are harmed or commercial monopolies are created*”.<sup>[53]</sup> In 2007, the Ministerial Decree 128/2007 on the Regulation of Competition and Prevention of Monopolies, issued by the Ministry of Industry and Trade, created the Public Authority to Promote Competition and Prevent Monopolies and Commercial Fraud. The latest ABLF Report showed no change in the “Developed” status of Yemen's competition legislation in 2023, reflecting the absence of legislative developments since 2007.<sup>[54]</sup>

### *Competition law*

Yemen's competition law prohibits anti-competitive practices, including price-fixing, market division, production restrictions, and bid-rigging (Article 7). Abuse of dominance, such as selling below cost to harm competitors, price discrimination, tying sales to other products, and withholding supplies, is also forbidden (Article 8). The law does not specify a particular market share threshold for defining economic concentration or dominance.

Yemen's competition authority may impose fines ranging from c. USD 40 to a maximum of c. USD 400 and supplementary penalties, such as a suspension or revocation of local licenses, closure of business premises, and blacklisting for breaches of the competition law (Article 22). The authority also reserves the right to order the reversal or annulment of transactions. Beyond penalties imposed on transaction parties, the authority can hold directors, general managers, and auditors of violating entities personally liable for any damages resulting from or associated with the failure to notify the authority in a timely manner.

Exemptions can be granted by the competent authorities on a case-by-case basis (Article 4). However, these exemptions are very rare and require significant political endorsement.<sup>[55]</sup>

### *Merger control*

In 2007, Yemen introduced its mandatory and suspensory pre-closing merger control regime. However, the decree is vague and does not provide guidelines on its implementation. For instance, there are no fixed merger control notification thresholds but instead, reference is made to vague definitions of market impact, *i.e.*, “*concentration is prohibited if it leads to restrain or weaken competition*” (Article 9). Local practitioners state that the authority in practice applies a market share notification threshold of at least 30%.<sup>[56]</sup> As a result, even those transactions that do not meet the 30% perceived/practiced market share threshold can be notifiable if they potentially have a competitive impact.

There have been no significant legislative changes or efforts to address merger control in Yemen since 2007. There have not been any noteworthy transactions notified in Yemen in recent years.<sup>[57]</sup> In addition to the lack of clear standards and absence of decisions published by the authority, the effectiveness of competition law enforcement in Yemen is limited by the broader socio-political context of political instability and armed conflict.

## **3. Jurisdictions whose competition authorities have become increasingly rigorous: Israel, Kuwait, the KSA, the UAE**

### **Israel – active enforcement<sup>[58]</sup>**

For an in-depth analysis of the ICA's enforcement practices and activity, please refer to the latest developments published as part of this Kluwer Blog Series. For comparative and completeness purposes, however, we set out the following:

#### *Israeli Competition Authority – ???? ??????*

With the entry into force of Economic Competition Law 5748 in 1988, Israel was the first country in the Middle East to implement competition specific legislation.<sup>[59]</sup> The Israeli Competition Authority (“ICA”) was established in 1994 with the passage of the Antitrust Law Amendment and

the addition of Article 41 to the law.<sup>[60]</sup> The ICA is “*an independent professional authority working to protect the public from harms to competition and to promote competition, for the good of the public*”.<sup>[61]</sup>

The publication of the related Guidelines of the General Director of the Israel Antitrust Authority For Reporting and Evaluating Mergers followed 20 years later, in 2008.<sup>[62]</sup> Since then, the ICA has published multiple additional laws and guidelines (including, *e.g.*, on the merger control process, the calculation methodology of financial sanctions, and the promotion of competition in the food sector, to mention but a few,<sup>[63]</sup> and most notably in 2019 and 2022).<sup>[64]</sup>

### *Merger control*

Israel has a mandatory and suspensory pre-closing notification system. Any transaction in which one company acquires “*substantial influence*” over the decision-making process of another company is deemed a “*merger*”. This includes acquiring over 25% of rights related to appointing directors, voting, dividends, or shares. Acquiring a company’s main assets may also be seen as a merger. There are three alternative threshold tests (one being a 50% market share threshold and the other two are based on local turnover) and meeting any of them triggers a filing, provided that at least two of the merging parties have “*sufficient nexus to Israel*” within the meaning of the guidelines.<sup>[65]</sup> Israel’s Minister of the Economy can grant exemptions where necessary for foreign policy or national security purposes. There is no filing fee. The ICA processes transactions that evidently do not raise competitive concerns in the “*bright green*” expedited review track and frequently clears them within five working days.<sup>[66]</sup>

### *Comparative remarks*

Along with the Turkish Competition Authority, we see the ICA as among the most mature and well-established competition authorities in the Middle East. The ICA works closely with authorities in Europe and the US and is an active member of the International Competition Network.<sup>[67]</sup> Israel is among the three countries in the region (together with Turkey and Egypt) that is a member of the Organization for Economic Co-operation and Development (OECD) and its Competition Committee. On the other hand, Israel, Iran, and Turkey are the only countries in the Middle East (broadly defined) that are not members of the recently launched Arab Competition Network (“*ACN*”), which will be discussed in the final section.

Unlike most countries in the region (except the KSA), the ICA publishes penalty decisions on its website.<sup>[68]</sup>

### **Kuwait – active enforcement**

Kuwait passed its first competition law in 2007 (Law No. 10 of 2007 on the Protection of

Competition) and created the Competition Protection Agency under the Ministry of Commerce and Industry in 2012 to enforce it.<sup>[69]</sup> Articles 4 to 6 of the implementing regulations clarify that the agency is financially and administratively independent.<sup>[70]</sup>

In 2020, Kuwait enacted a new law, the Protection of Competition Law (Law No. 72 of 2020),<sup>[71]</sup> as well as implementing regulations under Resolution No. 14 of 2021.<sup>[72]</sup> In September 2021, the agency issued Resolution No. 26 of 2021 which specified the new pre-merger notification thresholds (based on Kuwaiti turnover/asset thresholds).<sup>[73]</sup> The latest ABLF Report classified Kuwait's competition legislation between 2020 and 2023 as "Strong".<sup>[74]</sup>

### *Competition law*

Kuwait's competition law prohibits anti-competitive agreements, including price-fixing (Articles 5-6) and abuse of dominance which however is not defined by a threshold. The new law introduced new enforcement powers to the authority (*e.g.*, to impose fines of up to 10% of a company's annual turnover including for obstructing an investigation) (Article 34).<sup>[75]</sup>

Certain competition law exemptions exist for transactions involving fully state-owned entities (*i.e.*, activities of public utilities and SOEs that provide basic goods and services to the public, as established by a decision of the Council of Ministers (Article 3)) sectors exempt from merger control by statute, or research and development activities in Kuwait.<sup>[76]</sup> However, clearance from sector-specific authorities may still be required.

### *Merger control*

The new law replaced the previous merger control regime (premised on a 35% combined market share test) with a mandatory and suspensory pre-closing notification regime.

The merger control thresholds are low in comparison to those of other jurisdictions in the region but similar to those in Jordan, namely combined annual sales in Kuwait of c. USD 2.5 million and combined assets in Kuwait of c. USD 8.2 million. While the single party threshold specifies domestic turnover, Ministerial Decree 26/2021 does not state whether the combined party threshold includes worldwide turnover. In practice, the authority considers only domestic turnover for both thresholds.<sup>[77]</sup>

No market share threshold applies (but this information must be provided as part of the notification form). Given that these thresholds refer to combined values, they can be met by the acquirer only—there is no clear exemption for transactions that involve a target with no direct local nexus to Kuwait.

Failure to notify or suspend transactions under Kuwait's merger control may lead to fines of up to 10% of annual turnover, doubled for repeat offenses. Although the CPA has not penalized merger control violations yet, recent fines—including 1% for a steel manufacturer and up to 5% for



supermarkets over anti-competitive practices (see below)—show its willingness to enforce substantial penalties. Both cases involved companies with only Kuwaiti turnover, and the CPA's decisions did not clarify if fines are based on domestic or worldwide turnover, leaving this point unresolved.<sup>[78]</sup>

The agency will calculate the merger filing fee as 0.1% of either the paid capital or the value of the assets of the parties in Kuwait, whichever is lower. This fee is capped at c. USD 328,000, making it the highest in the region, however, in practice, filings fees are likely to remain below this maximum given that their calculation is based on paid capital or assets in Kuwait rather than revenues in Kuwait. By way of context and comparison, the maximum filing fee cap in the KSA was recently almost halved from c. USD 106,000 to c. USD 66,000.<sup>[79]</sup>

The agency was historically dormant and relatively inactive compared to other jurisdictions in the region. However, since the issuance of the new competition law four years ago, the agency has consistently increased its level of enforcement and investigative activity. The agency has started publishing announcements of its activities *e.g.*, its merger control approvals (or conditions), fines, public outreach initiatives.<sup>[80]</sup> For instance:

- The agency has started contacting companies to inquire about transactions that were not filed.<sup>[81]</sup>
- To date, there is no announcement of a denial or rejection of any economic concentration applications.
- In November 2022, the agency imposed a fine of c. USD 806,000 on an unnamed steel distribution company (equivalent to 1% of the company's total revenues achieved during the fiscal year 2020/2021), for the company's failure to provide information in response to the agency's request within the allocated 30 days.<sup>[82]</sup> The request followed from the agency's market study evaluating increased steel prices. In January 2023, fined the same company c. USD 5.7 million (equivalent to 7% of its revenues achieved during the 2022 fiscal year) for withholding products to create scarcity and drive up prices, violating competition rules.<sup>[83]</sup>
- In November 2021, the agency announced its conditional approval of Bahraini company Kalaam Telecom's acquisition of Kuwait-based Zajil Telecom for c. USD 54 million, subject to the agency monitoring the companies' prices and quality of services for a period of one year post-closing.<sup>[84]</sup> The agency also obliged the companies to provide copies of their customer contracts within a month after closing, and not to engage in any refusal to deal, withholding products, or tying arrangements.
- In 2022, the Kuwaiti competition authority signed a Memorandum of Understanding with the Saudi competition authority to hold regular meetings on merger control and competition issues and to exchange information. Initial meetings have taken place, but it is unclear if a continuous information exchange mechanism for filed transactions has been established.<sup>[85]</sup>
- In March 2023, the agency issued its highest-ever fine of c. EUR 26 million against 14 supermarkets for individually abusing their dominant positions by coercing suppliers into offering them free goods.<sup>[86]</sup>

#### 4. Deep-dive into the very active Saudi competition regime

## *General Authority for Competition – ?????? ?????? ????????*

The KSA enacted its first competition law in 2004.<sup>[87]</sup> In October 2017, Council of Ministers Resolution No. 55 renamed the “Council of Competition” to the “General Authority for Competition” (“GAC”). In September 2019, the new competition law promulgated under Royal decree No. M/75 of 29/06/1440H<sup>[88]</sup> and the corresponding implementing regulations<sup>[89]</sup> came into effect, replacing the previous law. This amendment marked a major shift in the Saudi competition law framework. Ever since, the GAC started positioning itself at the forefront of competition law enforcement in the region.

The GAC is solely responsible for overseeing and implementing the competition regime aimed at protecting and encouraging fair competition, while combating monopolistic practices that could harm lawful competition or consumer interests. Unlike most competition authorities in the Middle East (with the exception of Israel, Kuwait, and Turkey), the GAC officially operates independently from the government. Article 2(1) of the GAC regulation grants it separate legal status as well as financial and administrative autonomy. Importantly, this independence extends beyond the institution itself. The implementing regulations mandate that GAC officers adhere to strict impartiality rules and avoid conflicts of interest while performing their duties (Article 67).<sup>[90]</sup>

In 2021, a royal order appointed former royal advisor Ahmed bin Abdulkarim Al Khulaifi as the chairman of the GAC.<sup>[91]</sup> His previous roles at the Saudi Central Bank demonstrate the government’s commitment to establishing a modern competition law regime as part of its Vision 2030 program.<sup>[92]</sup>

The GAC issued two sets of merger guidelines: the first in April 2020, clarifying the calculation of the notification threshold, and the second in July 2021, providing comprehensive guidance on the merger control regime.<sup>[93]</sup> Indeed, the latest ABLF Report upgraded the status of the KSA’s competition legislation from “Developed” in 2020 to “Very Strong” in 2023.<sup>[94]</sup> Egypt and the KSA are the only two Arab countries that the ABLF Report gave its highest ranking. It seems likely that if the Turkish and Israeli competition laws were covered in the ABLF Report, they would also be in the top ranks.

In line with most competition laws in the Middle East, albeit in a more restricted and nuanced way, Saudi competition law exempts public sector corporations or companies fully owned by the state, provided they are exclusively authorized by the government to offer products and services in a specific field (Article 3).<sup>[95]</sup> The GAC may exempt certain practices if they result in improvements to quality, innovation, or consumer benefit that outweigh competitive restrictions. Exemptions are granted only when they do not eliminate competition or competitors. Exemptions are reviewed and may be extended if they continue to provide net consumer benefits without distorting competition excessively.<sup>[96]</sup>

### *Competition law*

Below is a brief overview of the KSA’s key competition law aspects:

- *Prohibited Anticompetitive Practices and Agreements*: Agreements between firms that undermine competition are prohibited, regardless of whether they are formal or informal, written or oral. These practices reduce consumer welfare and market efficiency by limiting competition. The implementing regulations specifically include four categories of practices that are deemed “*per se violations*”: (1) price-fixing or setting sales conditions; (2) blocking market access for certain firms; (3) dividing markets by geography, customer type, distribution points, or time; and (4) colluding in tenders or bids, except when joint bidding is transparently necessary for the project and does not harm competition.<sup>[97]</sup>
- *Abuse of Dominance*: Firms or groups holding a dominant market position (defined as having a 40% or greater share, or the ability to control market conditions like prices or demand) are prohibited from engaging in practices that restrict competition. Abuse can include actions like setting unfair purchase or selling prices, or limiting production to harm competitors. Specifically, the implementing regulations deem two cases “*per se violations*”: (i) when a firm either forces another firm to avoid certain business relationships or (ii) conditions the sale of its products on accepting unrelated obligations or goods. Such practices violate market fairness by distorting competition.<sup>[98]</sup>

### *Merger control regime*

The KSA has a mandatory and suspensory pre-closing merger control system. The GAC requires notification of economic concentrations that meet its turnover thresholds and jurisdictional test.

The GAC’s guidelines require an economic concentration to comprise both (i) the transfer of ownership of a type specified in the guidelines or a joining of two or more managements *and* (ii) a change in control of one or more undertakings.<sup>[99]</sup> The guidelines mention (several times) that “*undertaking*” is a broader concept than the term “*company*”, and that the competition law is of “*very wide application*”.<sup>[100]</sup> Likewise, the GAC considers that “*economic activity*” is a “*wide concept*” that “*refers to any activity consisting of offering products or services in a market*” whereby it is “*not necessary that the activity earns a profit or be intended to earn a profit*”.<sup>[101]</sup>

In March 2023, the GAC doubled the notification threshold from c. USD 26.6 million to c. USD 53.3 million. Further amendments followed in November 2023, when the GAC introduced new local nexus thresholds. Accordingly, the GAC requires notification of an economic concentration (other than a joint venture where the old thresholds continue to apply)<sup>[102]</sup> if it meets all of the following cumulative conditions:

1. the combined annual worldwide turnover of all parties exceeds c. USD 53.3 million (200 million Saudi Riyals),
2. the target has at least a c. USD 10.6 million (40 million Saudi Riyals) annual worldwide turnover, and
3. the combined annual Saudi turnover of all parties exceeds c. USD 10.6 million (40 million Saudi Riyals).<sup>[103]</sup>

As is evident from its guidelines, the GAC intends to follow “*standard international practice*”, explicitly referring to the “*practice in the European Union and its Members States*”.<sup>[104]</sup> The GAC will ask if the transaction will “*have the effect or likely effect of substantially lessening competition*”

in a relevant market”. The GAC’s test is forward-looking and will take into account market shares and concentration levels before and after the completion of the transaction.<sup>[105]</sup>

It would be challenging to obtain approval for a merger that reduces competitive constraints or incentives for competitive rivalry among the remaining market participants. This will be assessed on a case-by-case basis. The GAC will view a transaction as reducing competition if it results in an increased market power that changes the parameters of competition *e.g.*, price, quality, range/variety *etc.*, in a way that is detrimental to customers. However, only a “substantial” lessening of competition will be in contravention of the competition law.<sup>[106]</sup>

The increased notification threshold aims to reduce unnecessary merger control filings in the KSA and should therefore be viewed positively. However, the absence of a robust local nexus test means many foreign-to-foreign transactions still technically trigger filing requirements:

- Article 3 of the competition law states that it applies to “*practices occurring outside the [KSA] that have an adverse effect on fair competition within the [KSA]*”.
- According to its guidelines, the GAC will require economic concentrations taking place outside the KSA to be notified only where there is a “*sufficient nexus*” between the economic concentration and a market inside the KSA.

To fall within the GAC’s jurisdiction, a transaction’s “*potential effect*” must be “*direct, substantial, and reasonably foreseeable*” on competition in the KSA.<sup>[107]</sup> Importantly, the GAC will generally consider it sufficient if one or more of the foreign undertakings has sales in the KSA. “*For clarity, a direct effect is not limited to direct sales and may take place by way of indirect sales (e.g., sales by way of a distributor).*”<sup>[108]</sup> However, sales in the KSA are not necessary to establish a sufficient nexus with a market in the KSA. Ultimately, the GAC decides on a case-by-case basis the existence of a sufficient nexus to a market in the KSA. In case of doubt, the GAC encourages parties to approach it.<sup>[109]</sup>

From our experience, it typically takes about two and a half months to obtain clearance from the GAC if there are no substantial competitive concerns, but the precise timing varies depending on the number of requests for information (“**RFIs**”).<sup>[110]</sup> Also the experience and efficiency of the reviewer matter as well as whether the filing involves a “sensitive” sector such as pharmaceuticals, medical devices, or courier services, which typically receive more RFIs. The timelines for preparing an EU merger control filing and obtaining approval, particularly for complex transactions, are generally longer than in the KSA. In the EU, in-depth reviews often take several months to complete, and this does not account for the additional time required for pre-notification engagement with the European Commission (“**EC**”), which has no statutory time limits. By contrast, there is no equivalent pre-notification process in the KSA, streamlining the overall timeline.

There are two established routes to file with the GAC (in either case, there is no scope for any pre-notification):

- **Short Form Filing (No-Objection Filing):** The GAC introduced this expedited process without filing fees, in 2021. It involves completing an electronic form available on the GAC’s e-portal, which requires less information than the long form. Typically, the GAC issues its decision within

20 working days, subject to its assessment and the volume of RFIs.<sup>[111]</sup> Applicants usually annex a formal letter setting out the rationale for not submitting a long filing, g., emphasizing that the transaction will not result in a dominant market position or that the transaction does not involve a significant overlap in the KSA.<sup>[112]</sup>

- Long Form Filing (Economic Concentration Filing): This more comprehensive process requires the parties to complete a detailed form and additional submission formalities, including extensive commercial, financial, and marketing information, along with an economic report.<sup>[113]</sup> Upon submission, the GAC assesses the completeness of the filing and then issues an invoice for the filing fee. Once the fee is paid, a statutory 90-day review period commences, during which the GAC must render a decision.<sup>[114]</sup> If the GAC fails to decide within this period, the filing is deemed cleared. From experience, the GAC generally issues the invoice within two to three weeks and makes a decision within four to eight weeks post-payment, though this timing varies.

Unlike most countries in the Middle East that do not charge filing fees, the GAC imposes hefty filing fees for merger control notifications. The GAC calculates fees as 0.02% of the combined worldwide turnover of the parties, up to a capped maximum of c. USD 66,000 (which used to be almost double c. USD 106,000 until June 2023).<sup>[115]</sup>

### *Fines and enforcement activity*

The GAC can impose fines of up to 10% of a company's total global annual turnover or a fine of c. USD 2.6 million (*i.e.*, 10 million Saudi riyals).<sup>[116]</sup> Alternatively, the GAC can decide to impose a fine not exceeding three times the profits gained in case of an antitrust infringement.<sup>[117]</sup>

Criminal sanctions are also possible but have to date not been imposed, likely being a last resort. The competition law also allows individuals or entities to take legal action if they can prove they have been harmed by a violation. Therefore, infringements of the Saudi merger control regime may face penalties from the GAC and civil action from affected parties.<sup>[118]</sup>

The GAC's market surveillance unit monitors the international financial press (*e.g.*, the Wall Street Journal, Financial Times, Bloomberg). Investigations therefore often involve transactions reported in the financial press and include at least one well-known company or brand. Additionally, as a member of the ACN, the GAC is notified of any filings made to other member authorities.

In early 2024, the GAC issued four circulars designed to increase competition law compliance:

- In February 2024, the GAC issued a circular stressing notification requirements and penalties for non-compliance under the merger control regime.
- In March 2024, the GAC issued three further circulars on (i) the consumer and economic benefits of enforcing antitrust and merger control laws, (ii) summarizing key legal prohibitions, and even (iii) urging the public to report violations.

Despite a whistleblower section on the GAC's website, there is little public awareness. The GAC is addressing this, as, currently, the program lacks anonymity, requiring personal information, including an email address, to complete the form.

Another way the GAC stands out from (almost) all competition authorities in the Middle East is the fact that it publicly discloses its ever-so-increasing enforcement activities. Since 2009, the GAC's annual reports have evolved significantly in length and detail, shifting from an Arabic-only publication to a bilingual Arabic-English publication in recent years, with the latest comprehensive reports containing extensive statistics on competition efforts and internal metrics. Along with Israel and Turkey, the GAC is only one of three competition authorities in the region that publish annual reports on their activities<sup>[119]</sup>

As illustrated by **Figure 1** and in accordance with data from its annual reports, the GAC's activity level has recently reached a peak:

- In 2023, the GAC received 313 economic concentration requests, 141 complaints and launched initiatives, and had a total of c. USD 23.9 million in revenues (including from fines imposed on competition law violators).

**Figure 1: The GAC's enforcement evolution 2018-2023**



These statistics are impressive not only in comparison to other countries in the Middle East, but even when comparing to the EU. In the EU (which covers (now) 27 Member States), the number of merger control notifications also varies around 300–400 filing annually (*i.e.*, in 2023, the EC received 356). On the other hand, and naturally so, the EC's total competition-law related fines are well above those collected by the GAC.<sup>[120]</sup>

The fact that the GAC's budget for 2022 (c. USD 26.6 million) was roughly 15% of the EC's budget for 2022 (c. USD 176.8 million) highlights the significant difference in scale and resources.<sup>[121]</sup> Despite the smaller scale, the GAC's budget is substantial relative to its national scope, suggesting a strong commitment to competition regulation within the KSA. To further contextualize this, the current population size of the KSA makes up not even 8% (c. 37 million people) of the EU's (c. 449 million).<sup>[122]</sup>

### *Competition law violations*



The GAC first fined a foreign business in late 2020, penalizing PepsiCo and Al-Jamia Beverages Company Ltd. (each c. USD 2.6 million). The fines were later reduced to c. USD 1.35 million on appeal in 2022.<sup>[123]</sup> Since then, investigations have increased significantly. In 2022, the GAC carried out 299 dawn raids<sup>[124]</sup> (i.e., one dawn raid every business day) and conducted investigations on 126 companies (33 of which were indicted).<sup>[125]</sup> In 2023, the GAC further increased its enforcement activities, with 548 dawn raids conducted, averaging 2.2 raids every business day.<sup>[126]</sup>

Below we give some prominent and recent examples, which demonstrate that the GAC's default approach is to levy the prescribed maximum fine of c. USD 2.6 million if it is not possible to estimate the annual sales:

- In February 2023, the appellate court in Riyadh upheld the enforcer's highest-ever bid-rigging fine of c. USD 2.6 million against Duja Jeddah Contracting, a company that colluded to rig a tender for construction services at a major domestic airport.<sup>[127]</sup>
- In April 2023, the appellate court in Riyadh upheld the GAC's decision to fine 14 local cement makers a total of c. USD 37 million for colluding to raise prices and divide the market in the country.<sup>[128]</sup> The seriousness of the infringement is reflected in the fact that all 14 offenders received the maximum fine. This represents the GAC's largest-ever cartel fine on 14 local cement makers for colluding to raise prices and divide the market.
- In June 2023, the GAC fined First Mills, a former state-owned flour producer c. USD 2.6 million for using exclusivity clauses in distributor contracts, a rare ruling on abuse of dominance. The infringement occurred before the company's privatization in 2019 and thus demonstrates the GAC's openness to also investigate and fine anticompetitive conduct by state bodies.<sup>[129]</sup>
- In July 2023, the GAC fined Saudi Gulf Environmental Protection Company, a Saudi waste management company c. USD 2.6 million for charging predatory prices, which barred rivals from entering the market.<sup>[130]</sup>
- In January 2024, the GAC filed charges against 79 establishments (automobile agents, distributors, and car showrooms) *"for violations such as agreeing to fix prices and dividing markets according to geographic regions among others, which led to reducing competition and affecting the interests of consumers"*.<sup>[131]</sup> The GAC decided to initiate criminal cases against 64 establishments and study settlement requests from the remaining 15 entities.
- On May 6, 2024, the GAC imposed individual fines ranging from c. USD 26,663 to c. USD 266,632 on several water bottling plants and commercial firms for colluding to fix prices and share customers.<sup>[132]</sup> On June 5, 2024, the GAC announced fines totaling nearly c. USD 4 million against six companies in the car and goods transport sector for violating the competition law by agreeing to increase transportation charges.<sup>[133]</sup> Both decisions are final following rulings by the competent court and illustrate the GAC's focus on customer-facing enterprises.
- On June 13, 2024, the GAC granted judicial immunity to two establishments that disclosed partners involved in violations.<sup>[134]</sup> On June 14, 2024, the GAC initiated an investigation into alleged price-fixing among four breast-milk substitute product firms.<sup>[135]</sup>

### *Merger control-related decisions*

The GAC has blocked two transactions since the adoption of the new merger control regime in late



2019, but only one on substantive competition concerns. Both prohibition decisions relate to acquisitions of Saudi consumer-facing companies:

- In December 2021, the GAC rejected German-based Delivery Hero's planned acquisition of Saudi-based food delivery app, The Chefz, based exclusively on procedural grounds. The GAC said that the parties provided insufficient information to allow them to assess the transaction.<sup>[136]</sup>
- In February 2022, the GAC prohibited Saudi-listed National Gas and Industrialization Company ("GASCO") from acquiring a majority stake in Saudi-based Best Gas Carrier Company, on substantive grounds, namely to prevent vertical integration. The GAC wanted to enhance competition, achieve general consumer welfare, and ensure an optimal distribution of resources in the economy. The proposed vertical integration would have enabled GASCO (who already has a monopoly of the gas supply chain) to become a leading player in offering liquid petroleum gas solutions.<sup>[137]</sup>

To put the high number of merger filings and the abovementioned prohibitions into context on average, almost half (40%) of the submitted merger control notifications to the GAC between 2021 and 2023 were deemed non-reportable. In 2023, the GAC approved 172 notifications, deemed 128 unreportable, and did not reject any application.<sup>[138]</sup> The GAC's annual reports do not reveal why so many filings were deemed to fall outside the scope of the competition rules. The GAC's 2021 annual report outlines three main criteria for a notification requirement: (1) turnover thresholds, (2) sufficient nexus with a market in the KSA, giving the GAC jurisdiction, and (3) change of control or control due to ownership transfer in one or more enterprises. We assume most filings were unreportable due to not meeting criterion (2), the jurisdictional nexus to the KSA. This is because, until November 2023, local nexus turnover thresholds were not part of the merger control test. Additionally, criteria (1) and (3) are delineated more clearly, whereas criterion (2) often requires case-by-case assessment by the GAC according to its guidelines.

When factoring in only the examined applications over the past three years, less than 1% of all transactions reviewed are prohibited (0.37%), confirming that rejections remain rare. By way of comparison, at EU level, the EC approved 322 transactions out of 356 in 2023, imposed commitments on 10, and only prohibited one.<sup>[139]</sup> Accordingly, also at EU level, less than 1% of deals are prohibited (0.5%) and c. 3% of deals were cleared conditionally in 2023.

In total, the GAC has conditionally cleared only four transactions: one in 2019 and three in 2023. This confirms the GAC's increased use of remedies. Conditional approvals can include commitments from parties to maintain competitive prices, provide copies of agreements, and appoint monitoring trustees for compliance. The GAC usually imposes these for a period of three years:

- In November 2019, the GAC conditionally approved Uber's c. USD 3.1 billion acquisition of UAE-based Careem's mobility, delivery, and payments businesses. This transaction, initially notified under the pre-September 2019 competition law, was cleared under the current competition law, with Uber agreeing to eight behavioral commitments. These commitments included capping taxi ride prices, limiting surge rates, and allowing drivers to work for competitors. No divestment were required.<sup>[140]</sup>
- In May 2023, the GAC conditionally approved the c. USD 35.5 million acquisition of a majority stake in Direct Financial Network ("**Direct FN**"), a financial technology company, by Tadawul

Advanced Solutions Company (“**Wamid**”), a subsidiary of Saudi Tadawul Group Holding Company (which also owns Saudi Arabia’s stock exchange). The commitments include ensuring fair pricing for goods and services provided by Wamid to Direct FN, non-preferential pricing for Wamid data supplied to Direct FN, and sharing copies of agreements between the parties with the GAC.<sup>[141]</sup>

- In August 2023, the GAC conditionally approved Arabian Contracting Services Company’s (also called Al Arabia)’s c. USD 276 million acquisition of rival Faden Media Agency. The GAC required Wave Media Company, a subsidiary, to be placed in a regulated fund. The remedies aim to keep the market open to new and expanding businesses. Al Arabia, the largest in the sector with over 60% market share, is partly owned by MBC Group. Faden Media is owned by Saudi royal Prince Abdulaziz Al Saud.<sup>[142]</sup>
- In September 2023, the GAC conditionally approved Jahez International Company for Information Systems Technology’s proposed 100% acquisition of The Chefz, but the transaction was never completed.<sup>[143]</sup>

Between September 2019 (when the new regime came into force) and early 2022, the GAC imposed gun jumping fines in four cases. By the end of 2022, this number rose to 15 and the GAC settled over 60 such cases.<sup>[144]</sup> The GAC’s 2022 annual report revealed that the information and communications and transformative industries sectors were the sectors where most unreported transactions were scrutinized.<sup>[145]</sup> Settlement cases rose to 39 in 2023. Indeed, in February 2024, for the first time under the new competition law, the GAC fined two Saudi companies Panda Retail Co. (a Saudi grocery retailing company) and Doorstep for Telecommunications and IT (each c. USD 107,000) for failure to notify their transaction during the pandemic.<sup>[146]</sup>

The GAC’s 2021-2023 annual reports illustrate a notable focus on certain sectors and violations. In 2021, the report noted a growing emphasis on abuse of dominance, particularly in the health insurance and automotive sectors. By 2022, one-third of the GAC’s complaints involved the wholesale and retail trade, along with the repair of motor vehicles and motorcycles.

In 2023, the GAC examined more than three-quarters of the complaints it received (*i.e.*, dismissing only one quarter), with the wholesale and retail sectors making up 27.7% and the manufacturing sector 20.4%. The latest 2023 report highlights a significant focus on price fixing, both among competitors (horizontal) and in resale price maintenance (vertical), which accounts for nearly half of all identified violations. Furthermore, in 2023, the GAC investigated potential violations in the automotive, pharmaceutical, and poultry sectors. It also conducted sector-specific studies in the agriculture, fish, and construction markets.

Interestingly, the GAC’s 2023 annual report revealed a drastic rise in the number of exemption from competition law application requests, from one in 2022 and 2021 respectively, to 16 in 2023. It approved 10 requests. The vast majority of these requests were related to obtaining approval for closing deals prior to securing merger control approval (while the rest appeared to relate to obtaining comfort letters stating that antitrust rules do not apply). Also, these requests mostly pertained to the legal sector (38%), followed by the automotive and military industries (each making up 15%).

The GAC has investigated several foreign-to-foreign transactions for failure to file, with one case

being prosecuted, though unsuccessfully, before the competition tribunal.<sup>[147]</sup> According to the 2022 annual report, the GAC received only 20 applications for joint venture projects, constituting 11% of the economic concentration requests in 2022. Joint ventures also only constituted 12% of the *unreported* deals investigated by the GAC in 2022. This suggests that the GAC's enforcement appetite is first and foremost geared towards mergers and acquisitions and those entities that are active in the KSA.

### *Concluding remarks on the KSA*

While the GAC's efforts to publicize its activities are applaudable and unparalleled in the region, the GAC's reports remain high-level and are not fully transparent on the reasoning behind the GAC's decisions.

We keep monitoring the GAC's practice closely and recommend clients to remain vigilant of the GAC's heightened scrutiny of market practices and transactions when doing business in the KSA.

## **5. Deep-dive into the active UAE competition regime**

### *Competition Committee – ???? ????? ????????*

The UAE introduced its first competition specific legislation Federal Law No. 4/2012 in 2012 to guarantee fair competition and combat monopolistic practices.<sup>[148]</sup> In 2014 and 2016, the UAE issued three implementing regulations that clarify certain substantive and procedural aspects.<sup>[149]</sup> Recently, the UAE revamped its competition law and enacted Federal Decree-Law No. 36/2023. The new law came into effect on December 29, 2023, replacing any conflicting previous rules (Article 39).<sup>[150]</sup> It similarly aims to stimulate the environment to “*enhance effectiveness, competitiveness, consumer interest, and achieve sustainable development*” in the UAE (Article 2).

This revision signifies a fundamental shift in the UAE's approach to regulating its market and align it more closely with both international and regional trends. The latest ABLF Report upgraded the status of the UAE's competition legislation from “Moderate” in 2020 to “Strong” in 2023.<sup>[151]</sup> As a reminder, this report was based on legislation up until August 2023 and therefore does not yet factor in the latest amendment of December 2023 and the additional regulatory changes anticipated in 2024.

Regulations, decisions, and laws established under Federal Law No. 4/2012, including the formation of the Competition Committee, remain effective until replaced in accordance with the provisions of the new competition law (Article 39). The Council of Ministers was meant to issue the implementing regulations by July 31, 2024 (within six months from the date of entry into force of the new competition law, January 31, 2024; per Article 38). However, this did not occur by the date of this article's publication (December 2024) and it is unclear when the implementing regulations will be published.

At present, the primary regulatory authorities overseeing competition matters, including merger control, are the Competition Department and the Competition Committee, both under the Ministry of Economy (Articles 13-14 of the old law):

- The Competition Committee, chaired by the undersecretary of the Ministry of Economy, oversees UAE competition law policy. It advises the Minister of Economy on legislation, proposes competition policies, and reviews appeals of decisions.
- The Competition Department handles day-to-day law implementation, investigating anticompetitive behavior, evaluating exemptions, and coordinating with national and foreign authorities. The Ministry also acts as the Committee's executive secretariat.

According to the new competition law, a “*Competition Regulatory Committee*” will be formed under the Minister's supervision, with its structure and operations to be determined by a Cabinet decision based on the Minister's proposal (Article 16). Similar to the old committee, the powers of this new authority include proposing policies to protect competition, studying implementation issues, recommending legislation, advising on exemptions, preparing annual reports, and addressing other competition-related matters referred by other authorities (Article 17).

The latest ABLF Report recommended that “*the full independence of the Competition Committee should be guaranteed without interference or decision-making powers for the Ministry of Economy*”.<sup>[152]</sup> The new authority however continues to operate under the UAE Ministry of Economy (*i.e.*, only the Ministry of Economy has the competence to initiate investigations or respond to complaints).<sup>[153]</sup>

### *Broader competition law scope*

The UAE's competition law prohibits agreements between firms that restrict competition, such as price-fixing, territorial or customer allocation, limiting production, or collusive tendering, as these practices harm market efficiency and consumer choice (Article 5). It also prohibits dominant firms from using their position to unfairly disadvantage competitors, including through unfair pricing, limiting access to essential resources, tying sales to unrelated products, or obstructing market entry (Article 6). An establishment is considered dominant if it has the power, independently or with others, to control or influence a relevant market, with specific thresholds for dominance to be determined by the Council of Ministers and criteria for determining same forthcoming in the implementing regulations (Article 6(2)).

The new competition law expanded the list of prohibited abusive practices and introduced for the first time the concepts of “*abuse of the position of economic dependency*” (Article 7) and predatory pricing (Article 8). The latter prohibits establishments from setting prices below cost to drive competitors out of the market. The former prohibits exploiting an economic dependency without valid justifications, *e.g.*, through unjust pricing, discrimination, coercion, refusal to deal, unreal prices, linked contracts, and market control. Both concepts appear to operate in addition to and independently of the “*abuse of dominant position*” concept (Article 6). By way of comparison, under EU law, both practices are primarily addressed under (and not separately from) the abuse of dominance concept.<sup>[154]</sup>

The new competition law applies to all entities involved in economic activities within the UAE and those overseas activities impacting the UAE market (Article 3). It broadly defines economic activity, covering “*every activity primarily related to production, distribution, provision of products and goods, or performance of services in the State*” (Article 1). Unlike the old law, there are no longer any exemptions for (i) small and medium establishments, (ii) all federal or local government entities, and (iii) those undertakings controlled or at least 50% owned by federal or

Emirate governments (Article 4).

In line with the old law, any agreements, practices, or actions related to specific goods or services that are regulated by another law are excluded from the application of competition rules, as long as that law includes relevant competition provisions and is overseen by a sectoral regulatory body (federal or local). However, if the sectoral body requests and the Ministry agrees, the Ministry can take over regulation (Article 4).<sup>[155]</sup>

The key differences lie in the details: the new law no longer provides a specific list of automatically excluded sectors.<sup>[156]</sup> Instead, it places greater emphasis on the responsibility of sectoral regulatory bodies to manage “*the rules and procedures for considering anti-competitive practices and cases of their exemption and Economic Concentration operations*” (Article 4). This introduces more uncertainty for businesses that previously relied on clear exemptions. Without a predefined list of excluded sectors and further guidance, companies must now engage more actively with sectoral regulatory bodies and stay informed about the specific competition law provisions that may apply to them. This shift could lead to a greater need for legal consultation and a more proactive approach to compliance, as businesses navigate the potential overlap between sector-specific regulations and the broader competition law.

Also, certain exemptions may still be available on a case-by-case basis. For instance:

- Establishments owned by the federal or Emirate governments can still be exempt if a specific exemption decision is issued by the Council of Ministers or Emirate government respectively (Article 4).<sup>[157]</sup>
- Establishments can apply to the UAE Ministry of Economy to be exempt from certain competition law provisions if their practices “*prove necessary to promote economic development, improve the Establishments’ performance and competitiveness, or develop production or distribution systems, or achieve certain benefits for the consumer*” (“**Exemption Rationales**”), provided they do not excessively restrict competition and do not eliminate competition in the relevant market (Article 9). The implementing regulations will stipulate the required documentation. If the Minister does not decide within 90 days, or within an extended 45-day period, the application is automatically rejected (Article 10).
- The Minister can specifically approve (in collaboration with the relevant authority) the exemption of certain categories of contracts/practices on any of the Exemption Rationales, provided these exemptions do not eliminate competition in the relevant market (Article 11).

Also, as the new competition law remains a federal law (repealing the previous federal competition law), it remains inapplicable to entities operating only in financial free zone areas, namely the Dubai International Financial Centre (“**DIFC**”) and the Abu Dhabi Global Market (“**ADGM**”). This is legally justified by Article 121 of the UAE Constitution, which allows the UAE federation to create financial free zones and exclude certain federal laws from applying there. Additionally, Federal Law No. 8 of 2004 exempts these free zones from all federal civil and commercial laws. However, competition law can still apply to financial free zone activities if they impact competition in the UAE mainland, either directly, indirectly, or through an onshore subsidiary. Since the ADGM and DIFC lack separate antitrust or merger control legislation, no competition law applies to activities of financial free zone entities that operate only within the free zones and whose activities have no impact on the rest of the UAE.



## *Merger control regime*

As the implementing regulations for the new law are yet to be issued, there is currently uncertainty on some of the procedures and thresholds to trigger notification. For now, we know that the UAE thresholds will establish a duality of market share and turnover thresholds, *i.e.*, meeting either of the two will trigger a pre-closing notification obligation (Article 12). A turnover based threshold will likely capture many more transactions than before.

Also, under the new competition law, if the authorities do not revert with a decision on the application during the 90-day-review period (which is extendable by 45 days), the transaction is deemed rejected (Article 13).[158] Typically, merger control regimes provide that, if the authority does not issue a decision within the review period, the transaction is deemed cleared, which was also the case under the old UAE competition law. The UAE's new approach raises the concern that a transaction could face objections simply due to the authority's inability to reach a timely decision. This risk is heightened by the relatively limited experience and capacity of the UAE competition authorities compared to other regulators in the Middle Eastern region, compounded by the government's lack of increasing staff and other resources (at least until now).[159]

Similar to the Saudi merger control regime, the new UAE competition law provides that a transaction becomes notifiable when it (i) involves the transfer of full or partial ownership, (ii) results in one organization or group gaining direct or indirect control over another organization or group, and (iii) meets the yet-to-be determined thresholds.[160] The Saudi regime, as defined in Article 1 of the KSA competition law and its implementing regulations, explicitly includes actions leading to control over decision-making, organizational structures, or voting systems within the scope of economic concentration, broadening its application beyond ownership transfer alone.

The differences between the old and new UAE competition law definition of an economic concentration are minimal and mostly concern nuances in language as opposed to substantive differences in scope or application.[161] Nonetheless, these subtle variations may impact their interpretation and application in practice.

The UAE's merger control test differs from the EU's concept of "*decisive influence*".[162] The UAE's new law does not specify what constitutes control under the merger control regime, and the old implementing regulations provide only basic guidance, leaving uncertainty and resulting in conflicting interpretations.[163] It is evident that acquiring minority interests can trigger a change of control if those interests afford significant influence over the target's day-to-day operations and strategic decisions. However, there are no established guidelines or precedents that set out which minority rights qualify as constituting control under the UAE's competition law. The UAE competition authorities could apply a lower threshold for determining change of control than the EU. Ultimately, in the absence of guidance, given the word "*control*" is in the test of the law, it would be prudent to apply the EU approach.

Pending the issuance of the implementing regulations, the UAE continues to follow a mandatory and suspensory pre-closing, merger control regime based on a conservative market share test. In accordance with the 2016 implementing regulation, "*an economic concentration is notifiable if the market share of the combined establishments exceeds 40% of total transactions in the relevant market of goods or services that are interchangeable based on their price, characteristics and usage, in a particular geographic area*". The same threshold also defines a dominant position.

- No subsequent legislation, regulations or guidance has identified how such threshold is calculated. We interpret “*total transactions*” to be the parties’ combined annual turnover of the products or services pertaining to the market affected by the transaction, whether global or local. Our interpretation is based on the application of the principles of EU competition law, given that the UAE competition law is largely based on the EU.
- As with most merger control systems, internal reorganizations (within the same control group) do not require notification. Similarly, creating a new legal entity as a preparatory measure for a joint venture does not trigger notification requirements. However, clearance may be necessary before transferring assets or personnel by the parent companies.[164]
- The new competition law requires notifiable transactions to impact competition in the relevant market but does not specify the need for multiple active parties in the UAE. In the absence of guidance, we view that transactions potentially affecting the UAE market should be notified if they meet the relevant thresholds (*e.*, for now, the 40% market share test).
- The notification must be submitted using the Ministry of Economy’s designated form, which remains pending.[165] It is recommendable to prepare the report comprehensively, including all relevant filing information and an advocacy section outlining reasons for clearance. Both the filing form and the transaction report must be completed in Arabic. All supporting documents must be submitted in their original language, legalized for use in the UAE, and accompanied by a certified Arabic translation from a licensed legal translator in the UAE. Due to the UAE’s non-membership of the Hague Document Convention, legalization procedures should be initiated early, as they can be time-consuming.
- As in most other Middle eastern countries, there are no filing fees, but the new implementing regulations may change this.[166]

### *Fines and enforcement activity*

The new competition law increased the cap on fines. In particular, failure to notify an economic concentration triggers a penalty of 2% to 10% (instead of up to 5%) of the violating entity’s annual total UAE sales from the last fiscal year (Article 25).[167] If determining these sales is not feasible, the fine ranges from c. USD 136,000 to c. USD 1.36 million. Withholding information or not cooperating with the authority during an investigation can trigger penalties of c. USD 13,600 to c. USD 136,000 (Article 27).

Criminal proceedings can be initiated only by a written request from the UAE’s Minister of Economy or an authorized representative and the Minister or representative can also settle the matter before trial by accepting a payment of at least twice the minimum fine, with specific reconciliation guidelines to be provided in the forthcoming implementing regulation (Article 33). Therefore, the competition law allows for criminal penalties as an enforcement mechanism for serious violation. Such an approach is common in regulatory frameworks, where severe breaches can lead to criminal consequences without altering the law’s fundamentally civil nature.

As was also provided under the old competition law, upon conviction, the court may order the violating entity to temporarily close their business (for three to six months) and require the violator to publish the court’s decision in two local newspapers at its expense (Article 29). The adoption of a sanction against an undertaking is without prejudice to the right of damaged parties to sue for damages (Article 30).

Also, under the new competition law, complaints about anti-competitive practices are subject to a



five-year time limit from their occurrence, except for practices proven to persist and harm competition beyond five years (Article 37).














Cabinet Decision 37 of 2014 mandated the authority to maintain a “*special register*” of exemptions, merger control notifications and related decisions, and received complaints (Articles 2, 7, 9, 10). The new law similarly provides that the Ministry is responsible for “*preparing a register of notices and complaints*” (Article 18) and is silent as to whether this register shall be public.


There is currently no publicly accessible record of the Ministry of Economy, its competition committee, or its department’s actions. However, it is known that the Ministry of Economy monitors market conditions across industries and as such conducts investigations where it sees antitrust concerns or receives complaints. Indeed, on February 19, 2024, the Ministry of Economy directed companies to return to previous building material prices, warning of penalties up to c. USD 272,300 for unjustified increases.<sup>[168]</sup> This follows a recent Cabinet decision aimed at stabilizing prices, particularly in the construction materials sector, to ensure fair market conditions. Companies are now required to seek official approval before adjusting prices, and the Ministry has set up a hotline and email for reporting any unjustified price increases, encouraging whistleblowing.

### *Concluding remarks on the UAE*

We anticipate the implementing regulations to clarify several key aspects. These include potentially broadening the powers of the committee to encompass enforcement activities such as dawn raids and the compulsion of information. There may also be provisions resembling the EU’s Digital Markets Act concerning regulations for digital markets.<sup>[169]</sup> Additionally, the scope of individual liability for engaging in anti-competitive behavior could be extended as well as prohibitions on restrictive agreements and concerted practices. We also expect the regulations to promote increased collaboration with international competition authorities or the Arab Competition Network. In addition, the concept of “*economic concentration*” may be further developed and brought in alignment with international practices, which could help streamline the threshold for merger filings. We do not expect clarifications on the extent of local nexus required for notifiability purposes, as the authority may prefer to retain flexibility to align decisions with broader policy goals and market conditions.

Figure 2: Comparison of key competition law parameters\*\*

													
First competition law	2018	2007	2010	2004	2022	2014	2006	2008	1999	1988	2007	2004	2012
Executive regulations	<i>pending</i>	2018	<i>pending</i>	2006	✗	2021	2008	✗	<i>pending</i>	2008	2021	2019	2014, 2016 / <i>pending</i>
Amendments to competition law	✗	✗	✗	April and August 2023	✗	2018	✗	✗	2007	1994, 2019, 2022, April and June 2023	2020	2019, March and Nov 2023	Dec 2023
Merger control regime and thresholds	Mandatory pre-closing suspensory pending but likely 40-60%	Voluntary non-suspensory 40%	✗	Mandatory pre-closing suspensory 40% or local turnover	Mandatory pre-closing suspensory 30%	Mandatory pre-merger suspensory 35%	Mandatory pre-closing suspensory pending	Mandatory pre-closing suspensory 30%	Mandatory pre-closing suspensory pending but likely 30%	Mandatory pre-closing suspensory 50% or local turnover	Mandatory pre-closing suspensory Local turnover or asset	Mandatory pre-closing suspensory Local turnover or asset	Mandatory suspensory pending but likely 40% or local turnover
Merger control filing fees	✗	✗	✗	discretionary	<i>pending</i>	discretionary	✗	✗	discretionary	✗	Max. c USD 328,000	Max. c. USD 66,000	<i>pending</i>
Exemptions for state bodies	✓	✗	✓	Only if in the public interest	<i>pending</i>	✓	✓	✓	discretionary	Only for foreign policy or national security	✓	(✓)	(✓)
Penalties published	✗	(✓)	✗	✗	✗	✗	✗	✗	✗	✓	✓	✓	✗
Enforcement	Basic	Unpredictable	-	Basic	-	Basic	Basic	-	Basic	Active	Active	Very active	Active
ABLF Report 2023 legislative status	Strong	✗	Moderate	Developed	Moderate	Strong	Developed	Developed	Developed	✗	Strong	Very Strong	Strong
Independent competition authority	<i>authority pending</i>	✓	<i>authority pending</i>	✗	<i>authority pending</i>	✗	✗	<i>authority pending</i>	✗	✓	✓	✓	✗

\*\* Palestine  currently lacks a competition law-specific legislation and therefore is not reflected in this comparison table.

## 6. Conclusion and forecast

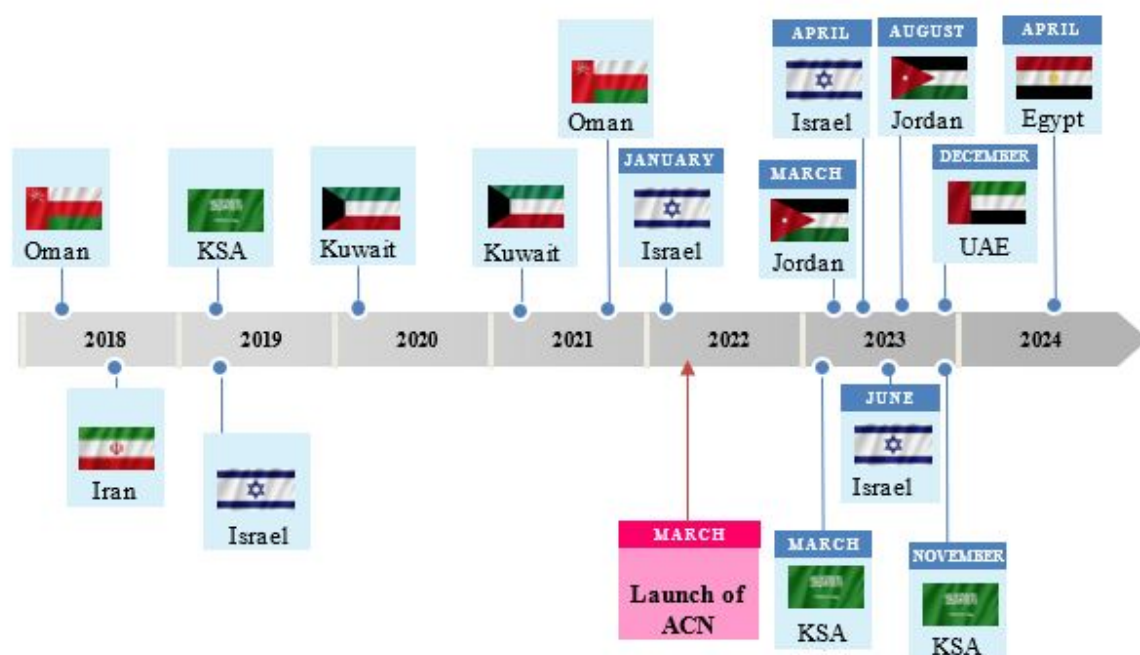
On balance, the evolution of competition regimes in the Middle East reflects a growing alignment with global standards over the past six years. This was driven by increased economic activity and an interest, particularly by the GCC countries, to attract foreign investment. As summarized in **Figure 2**, our eight key findings are as follows:

1. The ABLF Report 2023 indicated varied *legislative statuses* across Arab countries, with ratings ranging from “Strong” and “Very Strong” to “Moderate”. Notably, only two out of 14 countries (Iraq and Lebanon) received a “Moderate” status, underscoring a shared level of regulatory maturity and their significant implications for business and economic regulation.
2. All Middle Eastern countries (with a merger control regime in place), except Iran, follow a mandatory and suspensory pre-closing merger control regime. The majority apply a 30–50% market share-based control threshold, except (i) Jordan, Israel, and the UAE which combine it with local turnover thresholds, and (ii) Kuwait and the KSA which exclusively use local turnover and asset thresholds.
3. Empirically, jurisdictions that (also) apply a turnover-based threshold (either standalone or in combination with a market share test) exhibit a more active merger control regime than those relying solely on a market share test: Israel, Kuwait, the KSA, and the UAE.
4. Transparency in antitrust enforcement varies greatly and is the chief shortcoming of Middle Eastern competition regimes. Only the KSA, Israel, Egypt, and Turkey publish annual reports, but even they rarely report detailed justifications for fines or prohibitions. As regards the other countries, their dearth of public disclosure hinders comprehensive assessment and understanding of their enforcement activities and outcomes.
5. Political or governmental factors continue to play a role in most Middle Eastern jurisdictions given that these authorities largely rely on government support, unlike more established regimes.
6. State entities in the Middle East commonly enjoy exemptions from competition law, albeit to varying degrees.

7. Based on our experience and publicly available information, there are significant variations in *enforcement activity* across the region, ranging from no enforcement (g., Iraq, Lebanon, Palestine, Syria) or only basic enforcement (e.g., Bahrain, Iran, Jordan, Oman, Qatar, Yemen) to increasingly active enforcement (e.g., Israel, Kuwait, the KSA, the UAE).
8. Against the backdrop of the KSA's strengthened enforcement since the 2019 reforms and the UAE's recent overhaul of its competition law in late 2023, we see potential for the Saudi and UAE competition regimes to play a more active role in regulating competition.

The latest ABLF Report 2023 also highlighted the lack of transparency and the prevalence of broad state body exemptions as ongoing issues in Arab countries' competition legislations, undermining efforts to foster fair market conditions. The report flagged the pressing need for reforms to clarify definitions of competition-related terms, such as "monopoly" and "cartel", and include principles of competitive neutrality to ensure fair competition between SOEs and other market players.<sup>[170]</sup> We agree with this recommendation. The Middle East generally has a higher proportion of SOEs and Sovereign Wealth Funds ("SWFs") relative to its population size compared to Europe or the US.<sup>[171]</sup> This is largely due to the region's economic structure, which often includes significant government involvement in key industries and sectors, as well as the management of oil revenues through SWFs. SWFs play substantial roles in the region's economy and investment strategies. Norway's SWF (Government Pension Fund Global) is the largest globally, but Middle Eastern SWFs make up the majority of the largest 15 SWFs ranked by total assets.<sup>[172]</sup> It is thus not surprising that exemptions from competition law for state entities remain common in the Middle East. However, recent amendments to competition laws in Jordan, Israel, the KSA, and the UAE have introduced more nuanced exemptions in this regard. This indicates a shift in recognition that state-related market actors should not and cannot be automatically exempt from playing by the rules, without negatively impacting market dynamics.

**Figure 3: Timeline of when and how often the Middle East has recently amended its competition laws (2018-2024)**



Looking ahead, despite challenges, the region shows promising strides towards further advancements in competition enforcement. The recent, fast pace of legislative developments, as illustrated by the timeline in **Figure 3**,<sup>[173]</sup> together with initiatives such as the recently launched Arab Competition Network (“ACN”)<sup>[174]</sup> exemplify this trend. It shows a heightened interest by governments to (collectively and individually) regulate and monitor competition and transactions. This is significant given that all Middle Eastern countries, except Israel and Iran, are members of the ACN, while about half of them (KSA, Qatar, Kuwait, Israel, Jordan, Oman, Yemen) are affiliated with the International Competition Network and three (Israel, Turkey, Egypt) belong to the OECD’s Competition Committee. As membership in international networks grows, the Middle East signals a commitment to align with global competition standards to harmonize enforcement practices and legislation.

The effectiveness of this accelerated approach to competition rules and international cooperation will become evident over time (when enforcement measures hopefully unfold more transparently). We anticipate that within the next five years, many if not most competition regimes in the Middle East will align closely with international best practices. Routine merger filings and aligning contracts and practices with applicable competition laws will likely become standard practice rather than an exception. Therefore, it is crucial for businesses to navigate these evolving markets with proactive compliance strategies to establish favorable precedents and engage with regulators proactively.

The Cleary team is well-prepared to support your initiatives with our global expertise and local insights, ensuring that your operations adhere to the latest regulatory developments and thrive in this dynamic region.

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[1] The opinions and recommendations expressed in this article do not constitute legal advice. We encourage you to contact the authors for any questions or for specific legal advice on your matter.

[2] The UN Economic and Social Commission for Western Asia (ESCWA) launched the Arab Business Legislative Frameworks (“**ABLF**”) report in 2021 to provide a “*holistic assessment for regulations related to competition, consumer protection, anti-corruption and foreign direct investment ... based on international standards*”. The latest report pertains to 2023 and is based on (competition) legislation of the 22 Arab countries that is available up to August 2023. The higher the score, the better the alignment with ESCWA’s system and international standards. See UN ESCWA, “The Arab Business Legislative Frameworks Series 2023”, available [here](#).

[3] UN ESCWA, “The Arab Business Legislative Frameworks 2023 – Summary”, available [here](#), page 11. Tunisia was the first Arab country that adopted competition specific legislation (Competition and Prices Law, 1991).

[4] The law in its original language Arabic can be found [here](#) and its English translation [here](#).

- [5] Granville merger control report on Bahrain, Al Tamimi & Company law firm, May 26, 2024.
- [6] Granville merger control report on Bahrain, Al Tamimi & Company law firm, May 26, 2024.
- [7] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Bahrain 2023”, available [here](#).
- [8] The latest ABLF Report does not cover Iran.
- [9] LexisNexis in partnership with Asgari & Associates law firm, “Iran Merger Control”, October 25, 2024, available [here](#).
- [10] Anahita Asgari Fard, “Competition Litigation Comparative Guide for Iran”, Mondaq, January 22, 2024, available [here](#). See also LexisNexis in partnership with Asgari & Associates law firm, “Iran Merger Control”, October 25, 2024 available [here](#).
- [11] The law in its original language Farsi can be found [here](#) (but there is no English translation). See also Sabeti and Khatami, “Surprise Decision by Iran’s Competition Council Upsets the M&A Landscape”, Lexology, July 17, 2023, available [here](#).
- [12] Granville merger control report on Iran, T&S Associates law firm, April 29, 2022. See also Ahmad Ehtesham and Keyvan Behzadi, ‘Iran’, Merger Thresholds Monitor, Kluwer 2022, available [here](#).
- [13] The Herfindahl-Hirschman Index is a measure of market concentration, calculated by summing the squares of the market shares of all firms in a given industry, with higher values indicating greater concentration and potential for reduced competition.
- [14] Sabeti and Khatami, “Surprise Decision by Iran’s Competition Council Upsets the M&A Landscape”, Lexology, July 17, 2023, available [here](#).
- [15] The law in its original language Arabic can be found [here](#). An English translation is available [here](#).
- [16] Granville merger control report on Iraq, Amereller law firm, February 12, 2024.
- [17] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Iraq 2023”, available [here](#).
- [18] The law in its original language Arabic can be found [here](#) and its English translation [here](#).
- [19] The law in its original language Arabic can be found [here](#). No English translation is available.
- [20] LexisNexis in partnership with International Business Legal Associates law firm, “Jordan Merger Control”, October 30, 2023, available [here](#).

- [21] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Jordan 2023”, available [here](#).
- [22] Alex Bagley, “Jordan approves new competition regime but questions remain”, Global Competition Review, March 17, 2023, available [here](#).
- [23] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Jordan 2023”, available [here](#).
- [24] LexisNexis in partnership with International Business Legal Associates law firm, “Jordan Merger Control”, October 30, 2023, available [here](#).
- [25] Granville merger control report on Jordan, Al Tamimi & Company law firm, March 17, 2024.
- [26] LexisNexis in partnership with International Business Legal Associates law firm, “Jordan Merger Control”, October 30, 2023, available [here](#).
- [27] LexisNexis in partnership with International Business Legal Associates law firm, “Jordan Merger Control”, October 30, 2023, available [here](#).
- [28] The law in its original language Arabic can be found [here](#) and its English translation [here](#).
- [29] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Lebanon 2023”, available [here](#).
- [30] Granville merger control report on Lebanon, Badri & Salim El Meouchi law firm, March 13, 2024.
- [31] The law is available in its original language Arabic [here](#) with an English translation [here](#).
- [32] This decree is available in its original language Arabic [here](#) with an English translation [here](#).
- [33] This decision is available in its original language Arabic [here](#) with an English translation [here](#).
- [34] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Oman 2023”, available [here](#).
- [35] See Addleshaw Goddard LLP, “Oman: Executive Regulations for Competition Law Issued”. Lexology Pro, May 10, 2021, available [here](#).
- [36] For a comparative table of merger control regimes in the Gulf countries, please see Table 1 of Ankita Dhawan and Raghu Gagneja, “Merger Control in the Gulf Cooperation Council Region: Comparing the Saudi Arabian, UAE, Kuwaiti, Bahraini, Qatari and Omani Regimes Under the Lens of Competition”, Kluwer Competition Law Blog, March 24, 2023, available [here](#).



- [37] Oman News Agency, “CMC Workshop Engages stakeholders on Competition Law and Global Developments”, October 30, 2023, available [here](#).
- [38] The law in its original language Arabic can be found [here](#) and its English translation [here](#).
- [39] The law in its original language Arabic can be found [here](#) and its English translation [here](#).
- [40] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Qatar 2023”, available [here](#).
- [41] Ministry of Commerce and Industry of Qatar website, English translation available [here](#).
- [42] Ministry of Commerce and Industry of Qatar website, English translation available [here](#).
- [43] Granville merger control report on Qatar, Al Tamimi & Company law firm, October 15, 2023.
- [44] LexisNexis in partnership with Sharq law firm, “Qatar Merger Control”, November 30, 2023 (From Article 288 of the Commercial Companies Law No. (11) of 2015 in Qatar).
- [45] LexisNexis in partnership with Bremer law firm, “Qatar Merger Control”, February 27, 2024, available [here](#).
- [46] UN ESCWA, “Supporting Competition and Competition Policy in Palestine”, available [here](#).
- [47] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Palestine 2023”, available [here](#).
- [48] UN ESCWA, “Competition Law & Policy During and in the Aftermath of the Covid-19 Pandemic, Reflections from the Arab Region”, July 16, 2020, available [here](#).
- [49] The law in its original language Arabic can be found [here](#) and its English translation [here](#) as well as an excerpt published in the Syrian Law Journal [here](#).
- [50] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Syria 2023”, available [here](#).
- [51] Law No. 7 of 2008 Competition and Antitrust Law, Article 23.
- [52] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Syria 2023”, available [here](#).
- [53] The law in its original language Arabic can be found [here](#) and its English translation [here](#).

- [54] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Yemen 2023”, available [here](#).
- [55] LexisNexis in partnership with Bremer law firm, “Yemen Merger Control”, February 27, 2024, available [here](#).
- [56] LexisNexis in partnership with Bremer law firm, “Yemen Merger Control”, February 27, 2024, available [here](#).
- [57] LexisNexis in partnership with Bremer law firm, “Yemen Merger Control”, February 27, 2024, available [here](#).
- [58] The latest ABLF Report does not cover Israel.
- [59] The law in its original language Hebrew is available [here](#) and its English translation [here](#).
- [60] The law in its original language Hebrew is available [here](#) and its English translation [here](#).
- [61] Israel Competition Authority website, available [here](#).
- [62] These guidelines can be found in Hebrew [here](#) and in English [here](#).
- [63] Israel Competition Authority website, available [here](#).
- [64] In 2019, the Israeli parliament passed an amendment to the Restrictive Trade Practices Law (Amendment 21), (Strengthening Enforcement and Easing Regulatory Burden), 5779-2019, comprising comprehensive revisions to Israeli competition law (Fisher Behar Chen Well Orion & Co, “Major Reform of the Israeli Competition Law”, available [here](#)). Three years later, in January 2022, the Israeli parliament approved the draft amendment to the Antitrust Regulations (Registry, Publication and Reporting of Transactions), 5764-2004, that the ICA initially also proposed in 2019 (The amendments can be accessed in Hebrew [here](#) and its English translation [here](#). LexisNexis in partnership with Tadmor Levy & Co law firm, “Israel Merger Control”, October 30, 2023, available [here](#)). This amendment introduced considerable reforms, chiefly relating to the extent of disclosure required for merger notifications (including increased turnover thresholds and a new uniform merger control form). More recently, in April 2023, the ICA proposed modifications to the block exemption rules concerning exclusive distribution or franchise agreements (Israel Competition Authority website, available [here](#)).
- [65] The three different tests are as follows:
1. *Individual market share threshold (monopoly in any market)*: one of the parties holds over 50% of any product or service market in Israel, including markets not relevant to the transaction; OR
  2. *Combined market share threshold*: as a result of the transaction, the parties’ combined share on a relevant market in Israel will exceed 50% of a product/service market; OR
  3. *Turnover threshold*: the parties’ combined annual group turnover in Israel in the financial year prior to the transaction exceeded c. USD 109.5 million AND at least two of the parties each had a

turnover in Israel of at least c. USD 5.9 million.

<sup>[66]</sup> Granville merger control report on Israel, S. Horowitz & Co law firm, April 24, 2024.

<sup>[67]</sup> Granville merger control report on Israel, S. Horowitz & Co law firm, April 24, 2024.

<sup>[68]</sup> See *e.g.*, Israel Competition Authority Press Release, “NIS 5.5 Million imposed on the Israeli Importer of the Power Tools brand Makita, for setting a Minimum Resale Price”, July 28, 2022, available [here](#); Israel Competition Authority Press Release, “The Competition Commissioner has Approved under Remedies the International Merger between Çimsa and Cemex, for the Acquisition of a White Cement Factory in Spain”, July 22, 2020, available [here](#).

<sup>[69]</sup> The (now repealed) law in its original language Arabic can be found [here](#) and its English translation [here](#).

<sup>[70]</sup> UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Kuwait 2023”, available [here](#).

<sup>[71]</sup> The law in its original language Arabic can be found [here](#) and its English translation [here](#).

<sup>[72]</sup> The law in its original language Arabic can be found [here](#) and its English translation [here](#).

<sup>[73]</sup> The law in its original language Arabic can be found [here](#). No English translation is available.

<sup>[74]</sup> UN ESCWA, “Arab Business Legislative Frameworks – Country Profile Kuwait 2023”, available [here](#).

<sup>[75]</sup> LexisNexis in Partnership with Bremer law firm, “Kuwait Merger Control”, January 30, 2024, available [here](#).

<sup>[76]</sup> LexisNexis in Partnership with Bremer law firm, “Kuwait Merger Control”, January 30, 2024, available [here](#).

<sup>[77]</sup> LexisNexis in Partnership with Bremer law firm, “Kuwait Merger Control”, January 30, 2024, available [here](#).

<sup>[78]</sup> LexisNexis in Partnership with Bremer law firm, “Kuwait Merger Control”, January 30, 2024, available [here](#).

<sup>[79]</sup> General Authority for Competition in the KSA, “The General Authority for Competition Announces the Reduction of the Fiscal Threshold”, June 7, 2023, available [here](#).

<sup>[80]</sup> Kuwait News Agency website, Media Center – News & Press Releases, available [here](#).

<sup>[81]</sup> Kuwait News Agency, “Agency: 2021 Witnessed a New Start to the Agency’s Work Despite

the Coronavirus Pandemic”, January 10, 2022, available in Arabic [here](#).

[82] Kuwait News Agency, “Kuwait Competition Protection Agency fines steel company for violating law”, November 7, 2022, available [here](#).

[83] Times Kuwait, “CPA finds reinforced steel distributing company guilty, fines 1.75 million dinars”, January 12, 2023, available [here](#).

[84] Kuwait News Agency Press Statement, “Conditional Approval of Kalaam Telecom’s Acquisition of Zajil International Communications Company”, November 24, 2021, available in Arabic [here](#).

[85] LexisNexis in partnership with Bremer law firm, “Saudia Arabia Merger Control”, January 31, 2024, available [here](#).

[86] Francesca McClimont, “Kuwait Issues Record Fine Under New Regime”, Global Competition Review, March 31, 2023, available [here](#). In May 2024, the agency participated in the 5<sup>th</sup> Arab Competition Forum and also cooperated with the KSA’s authority in a training workshop entitled “Identifying the Concerned Market” (among several other competition law related workshops).

[87] Royal Decree No. M/25 of 04/05/1425H in its original language Arabic can be found [here](#) and its English translation [here](#).

[88] The law in its original language Arabic can be found [here](#) and its English translation [here](#).

[89] Decision of the Board of Directors of the General Authority for Competition No. 337 dated 25/1/1441H, corresponding to September 24, 2019 (the “**implementing regulations**”) in its original language Arabic can be found [here](#) and its English translation [here](#).

[90] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile KSA 2023”, available [here](#).

[91] Saudi Gazette, “Dr. Al-Khulaifi Appointed Chair of General Authority for Competition”, August 7, 2021, available [here](#). See also Olivia Rafferty, “Change in Leadership Signals New Era for Saudi Enforcer”, Global Competition Review, August 9, 2021, available [here](#).

[92] “Saudi Arabia’s Vision 2030 is a transformative and ambitious blueprint to unlock the potential of its people and create a diversified, innovative, and world-leading nation” (see [here](#)).

[93] The GAC Merger Review Guidelines (Version 4, November 2023) in its original language Arabic can be found [here](#) and its English translation [here](#) (the “**GAC Guidelines**”).

[94] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile KSA 2023”, available [here](#).

[95] The competition law recognizes exceptions for transactions that do not result in a change of control (*e.g.*, acquisition of minority interests with no veto rights over strategic decisions or internal restructuring within the same corporate group) or which do not have a nexus to the relevant market in the KSA jurisdiction.

[96] Articles 26-31 of the implementing regulations. See also the GAC Guidelines, section 11.

[97] Article 5 of the competition law and Articles 8 and 11 of the implementing regulations.

[98] Articles 5 and 6 of the competition law and Articles 9 and 10 of the implementing regulations.

[99] “Any action that results in a total or partial transfer of ownership of assets, rights, equity, stocks, shares, or liabilities of an undertaking to another by way of merger, acquisition, takeover, or the joining of two or more managements in a joint management, or any other form that leads to the control of an undertaking(s) including influencing its decision, the organization of its administrative structure, or its voting system.” Control is in turn defined as “the ability to exercise decisive influence” over the “strategic or operational decisions” of the target entity, including the appointment of senior management and approval of budgets, business plans and major investments. The GAC Guidelines, page 29.

[100] The GAC Guidelines, page 14.

[101] The GAC Guidelines, page 15.

[102] For transactions that establish a new joint venture, the previous notification threshold remains in effect. A filing is necessary if the combined worldwide turnover of the parties exceeds c. USD 53.3 million (200 million Saudi Riyals) and the joint venture will be jointly controlled, fully operational, and intended to last long-term.

[103] The thresholds refer to (i) the net sales revenue after deducting returns, rebates, and value-added taxes, as reflected in the most recent (consolidated) audited annual financial statement and (ii) the aggregated turnover of all entities controlled by each party to the merger (*i.e.*, the total turnover of the controlling entity and of all the entities it controls; control can be determined based on ownership of voting rights, rights to appoint or remove a majority of board members, or contractual arrangements). This is in accordance with section 6 of the GAC Guidelines.

[104] The GAC Guidelines, pages 29 and 64 among others.

[105] The GAC Guidelines, page 60.

[106] The GAC Guidelines, page 59.

[107] The GAC Guidelines, section 4.

[108] The GAC Guidelines, page 20.

<sup>[109]</sup> The GAC Guidelines, see pages 21 and 22 for hypotheticals.

<sup>[110]</sup> From our experience, preparing filings for transactions involving foreign parties can take as little as two weeks, mainly depending on (a) the time needed to obtain an apostilled or legalized power of attorney and (b) the time required to gather necessary information and documents. Most filings receive clearance within seven to nine weeks from the submission date, though some clearances have been obtained in as little as 10 days or within two to four weeks.

<sup>[111]</sup> Granville merger control report on the KSA, Al Tamimi & Company law firm, April 25, 2024.

<sup>[112]</sup> The GAC's guidelines on the short form filing are available on its website [here](#).

<sup>[113]</sup> Notifications must be made in Arabic. Powers of attorney need to be formalized, with apostillization accepted from Hague Convention countries and legalization required from non-Hague Convention jurisdictions. Since 2021, the Authority has on a discretionary basis accepted supporting documents, including corporate documents, financial statements, and transaction agreements, in English.

<sup>[114]</sup> The 90-day statutory review period does not pause during holidays.

<sup>[115]</sup> General Authority for Competition in the KSA, "The General Authority for Competition Announces the Reduction of the Fiscal Threshold", June 7, 2023, available [here](#).

<sup>[116]</sup> Per Article 19(4 and 5), once final, violations "*shall be published*" in a local newspaper (as decided by the GAC) at the violator's place of residence, with the publication cost borne by the violator.

<sup>[117]</sup> Granville merger control report on the KSA, Al Tamimi & Company law firm, April 25, 2024.

<sup>[118]</sup> LexisNexis in partnership with Bremer law firm, "Saudia Arabia Merger Control", January 31, 2024, available [here](#).

<sup>[119]</sup> The GAC annual reports (2009-2023) can be accessed on its website in Arabic [here](#) and in English (2019-2021) [here](#).

<sup>[120]</sup> The EC does not publish a full overview of its competition law enforcement-related revenues as the GAC does in its annual report. Instead, the EC recently published statistics of its cartel fines, which show drastic year-to-year variations: In 2021, the EC collected c. USD 1.9 billion cartel fines, while in 2022, this figure "shrank" to c. USD 203.5 million (EC website, "Cartel Statistics", December 7, 2023, available [here](#)). A cartel is a group of independent companies that illegally collude to fix prices, limit production, or divide markets to restrict competition and increase profits.

<sup>[121]</sup> OECD, "Annual Report on Competition Policy Developments in the European Union –



2022”, May 5, 2023, available [here](#). The EU’s report for 2023 is not yet available; the GAC’s latest 2023 annual report revealed an increase in its budget to c. USD 31 million.

[122] Eurostat, “Population and population change statistics”, July 6, 2024, available [here](#). Macrotrends, “Saudi Arabia Population 1950-2024”, available [here](#).

[123] GAC website, “The General Authority for Competition Announces The Penalties Imposed On An Organization Engaged In The Bottling And Sale Of Soft Drinks”, October 9, 2020, available [here](#).

[124] A dawn raid is an unannounced inspection or investigation typically conducted by regulatory authorities at business premises to gather evidence of potential wrongdoing.

[125] David Monnier and Marwan Othman (Baker McKenzie), “Saudi Arabia: New financial merger control thresholds issued – What is new?”, Lexology, November 6, 2023, available [here](#).

[126] Abdulrahman Alajlan et al (Baker McKenzie), “Saudi Arabia: An insight into the activities of Saudi Arabia’s General Authority for Competition – highlights of its 2023 annual report”, July 31, 2024, available [here](#).

[127] Olivia Rafferty, “Saudi Arabian Court Upholds Largest-Ever Bid-Rigging Fine”, Global Competition Review, February 20, 2023, available [here](#).

[128] The companies penalized include those who control most of the Saudi Cement market. See Alex Bagley, “Saudi Arabia Upholds €34 million Penalty on Expansive Cement Cartel”, Global Competition Review, April 12, 2023, available [here](#).

[129] Alex Bagley, “Saudi Enforcer Sanctions Former Government Entity Over Exclusivity Clauses”, Global Competition Review, June 19, 2023, available [here](#).

[130] Francesca McClimont, “Saudi Arabia Levies Rare Predatory Pricing Fine”, Global Competition Review, July 24, 2023, available [here](#).

[131] Saudi Gazette, “GAC to File Criminal Lawsuits Against 43 Car Agents And Distributors”, September 17, 2023, available [here](#) and “Criminal Cases Filed Against 64 Automobile Establishments For Competition Law Violations”, January 4, 2024, available [here](#). A recent Saudi Gazette report confirmed the ongoing nature of this penal action (Saudi Gazette, “Penal Action Against 79 Car Agents and Distributors for Violating Competition Law”, June 26, 2024, available [here](#)).

[132] Saudi Gazette, “A Number of Water Bottling Plants Among Firms Penalized For Competition Law Violations”, May 6, 2024, available [here](#).

[133] Saudi Gazette, “SR14.89 Million Fines Imposed on 6 Companies For Competition Law Violation”, June 5, 2024, available [here](#).

[134] Argaam, “GAC Accepts Request for Judicial Immunity For 2 Establishments for Revealing

Partners in Violations”, June 13, 2024, available [here](#).

[135] Saudi Gazette, ‘Criminal Cases Against 4 Firms for Price Manipulation of Breast-Milk Substitutes’, June 14, 2024, available [here](#).

[136] GAC website, “GAC Issues a Rejection Certificate with Respect to the Economic Concentration between Delivery Hero and The Chefz”, December 5, 2021, available [here](#).

[137] GAC website, “The Board of Directors of the General Authority for Competition (GAC) Announces The Rejection Of The Completion Of The Economic Concentration Between Gas Company and Al Ahli Industrialisation”, June 16, 2022, available [here](#).

[138] The GAC’s 2023 annual report showed that acquisitions dominated economic concentration applications, making up 83% of the total (with 143 applications), followed by joint ventures making up 14%, and mergers only 2%. The manufacturing industries sector accounted for 23% of the total applications, followed by information and telecommunications at 17%, and professional, scientific, and technical activities at 8%.

[139] EC website, “DG Competition Merger Case Statistics 2024”, July 1, 2024, available [here](#).

[140] Argaam, “Competition Authority Approves Uber-Careem Merger”, November 20, 2019, available [here](#).

[141] GAC website, “Tadawul Advanced Solutions / DirectFN Commitments made to the General Authority for Competition”, January 18, 2023, available [here](#).

[142] GAC website, “Alarabia Contracting Services/ Faden Advertising Agency Commitments Made to the General Authority for Competition”, January 22, 2023, available [here](#).

[143] GAC website, “The Board of Directors of the General Authority for Competition Holds its 83rd meeting and Issues A Number Of Decisions”, September 17, 2023, available [here](#). See also Argam, “Jahez Says Chefz SPV Buyout Deal ‘Not Closed’”, November 11, 2023, available [here](#).

[144] LexisNexis in partnership with Bremer law firm, “Saudia Arabia Merger Control”, January 31, 2024, available [here](#).

[145] Argaam, “GAC says 15 M&A deals unreported in 2022”, August 13, 2023, available [here](#).

[146] Saudi Gazette, “SR800000 Fine for 2 Saudi Companies for Violation of Competition Law”, February 26, 2024, available [here](#).

[147] Granville merger control report on the KSA, Al Tamimi & Company law firm, April 25, 2024.

[148] The law in its original language Arabic is available [here](#) and in English [here](#).

[149] The Implementing Regulations for Federal Law No. 4/2012, as issued by (i) Cabinet

Decision 37 of 2014 are available in its original language Arabic [here](#) and in English [here](#), (ii) Cabinet Decision 13 of 2016 are available in its original language Arabic available [here](#) and English [here](#) and (iii) Cabinet Decision No. 22 of 2016 are available in its original language Arabic available [here](#) English [here](#).

[150] The law in its original language Arabic is available [here](#) and in English [here](#).

[151] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile UAE 2023”, available [here](#).

[152] UN ESCWA, “Arab Business Legislative Frameworks – Country Profile UAE 2023”, available [here](#).

[153] Article 18 delineates the Ministry’s competencies concerning competition affairs, which include implementing competition policy in collaboration with relevant authorities, coordinating efforts to address violations, maintaining a register of notices and complaints, investigating anti-competitive practices, handling grievances against decisions, conducting market studies, and issuing reports. Additionally, the Ministry undertakes tasks assigned by the Council of Ministers related to competition matters.

[154] Article 102 of the Treaty on the Functioning of the European Union (“TFEU”) prohibits firms with a dominant market position from abusing that position in ways that harm competition and consumers. This includes practices such as imposing unfair prices or trading conditions, discriminating between customers, and hindering market entry by competitors.

[155] Under Article 4 and the Annex to the UAE’s old competition law, “The provisions of this Law shall not apply to any agreement, practice, or business that is related to a particular commodity or service, the regulation of the competition rules of which are granted by another law or regulation to sectoral organizational bodies, unless these sectoral organizational bodies apply to the Ministry in writing to undertake this issue in whole or in part and the Ministry approves this application. These exclusions shall include the following sectors, activities and services [...]”. Under Article 4 of the UAE’s new competition law, “The provisions of this Decree-Law shall not apply to the following: 1- Any Agreement, practice or action related to a specific good or service in whose respect the authority to regulate Competition rules is granted, by virtue of another law that includes provisions related to regulating the rules and procedures for considering anti-competitive practices and cases of their exemption and Economic Concentration operations, to a Sectoral Regulatory Body, unless the Sectoral Regulatory Body requests in writing the Ministry to take over this matter, in whole or in part, and the Ministry agrees to that”.

[156] The Annex to the UAE’s old competition law provided a non-exhaustive list of sectors, activities and services that were excluded from the scope of the old competition law, namely telecommunications, financial services, cultural activities, oil and gas, production and distribution of pharmaceuticals, postal services, production, distribution and transportation of electricity and water, sanitation and waste disposal services, land, sea, and air transport.

[157] Granville merger control report on the UAE, Al Tamimi & Company law firm, April 24, 2024.

[158] The Ministry may solicit views from interested parties on an economic concentration

submission by publishing essential information on its website (Article 13).

[159] LexisNexis in partnership with Bremer law firm, “United Arab Emirates Merger Control”, January 31, 2024, available [here](#).

[160] Article 1 of the new competition law defines an economic concentration as “[a]ny action that leads to the full or partial transfer (merger or acquisition) of ownership or usufruct rights in properties, rights, stocks, shares, or obligations of an Establishment to another. This action grants an Establishment or a group of Establishments direct or indirect control over another Establishment or a group of Establishments.” And an establishment is similarly broadly defined to capture “Any person carrying out an Economic Activity or a person associated therewith, or any group of these persons regardless of its legal form, including the main office of the Establishment or the branches of its representative office”.

[161] Article 1 of the old competition law’s implementing regulation, Cabinet Decision 37 of 2014, states that an economic concentration is “*any act resulting in a total or partial transfer (merger or acquisition) of a property, usufruct rights, rights, stocks, shares or obligations from an establishment to another, empowering the establishment or a group of establishments to directly or indirectly control another establishment or another group of establishments*” and an establishment is “*Any physical or moral person exercising an economic activity or any person related thereto, or any group of such persons regardless its legal form*”.

[162] Under EU competition law, “control” refers to the ability to exercise “*decisive influence*” over an undertaking. This concept is primarily outlined in the EU Merger Regulation (Regulation (EC) No 139/2004). Control can be acquired through rights, contracts, or any other means that confer the possibility of exercising decisive influence on the composition, voting, or decisions of an undertaking’s corporate bodies.

[163] LexisNexis in partnership with Bremer law firm, “United Arab Emirates Merger Control”, January 31, 2024, available [here](#).

[164] Granville merger control report on the UAE, Al Tamimi & Company law firm, April 24, 2024.

[165] The (now outdated) Economic Substance Form can be accessed in English [here](#). Notification must be made in hard copy, with three sets of the application including the completed filing form, transaction report, and supporting documents in legalized form with certified Arabic translations. Alongside this form, corporate documents such as constitutive agreements, commercial register excerpts, and shareholder lists, as well as audited financial statements from the last two fiscal years of the involved parties, transaction agreements, powers of attorney, and a detailed report on the transaction’s potential impact on competition in the UAE are required as supporting documents.

[166] Article 36 states that the Cabinet, upon the Minister of Finance’s proposal, will issue a decision setting the fees required for implementing the new competition law.

[167] Other violations such as restrictive agreements and abuse of a dominant position similarly range from c. USD 27,000 to up to 10% of the violating entity’s annual total UAE sales from the last fiscal year (Article 24).

[168] Emirates News Agency WAM, “Ministry Of Economy Calls On Companies To Immediately Revert To Previous Prices Of Building Materials”, February 19, 2024, available [here](#).

[169] The Digital Markets Act (“DMA”) sets clear criteria to designate “gatekeepers”, which are large digital platforms offering core services like online search engines, app stores, and messenger services. Gatekeepers must adhere to specified obligations and prohibitions outlined in the DMA. The EU’s regulation represents a pioneering effort to address the dominant market position of major digital firms. It operates alongside, rather than altering, existing EU competition rules, which remain fully applicable.

[170] UN ESCWA, “The Arab Business Legislative Frameworks 2023 – Summary”, available [here](#), pages 35 and 42.

[171] See Olugbade, O. A. *et al*, “State-Owned Enterprises in Middle East, North Africa, and Central Asia: Size, Costs, and Challenges”, IMF eLibrary Departmental Papers, 2021, available [here](#).

[172] Sovereign Wealth Fund Institute (SWFI), “Top 100 Largest Sovereign Wealth Fund Rankings by Total Assets”, available [here](#).

[173] This timeline excludes the multiple instances when Israel adopted *additional guidelines* on (as opposed to amendments to) its merger control process and competition laws.

[174] In March 2022, the countries of the Arab League launched the ACN to collaborate and exchange experiences in the field of competition enforcement and legislation. The Arab League was founded in 1945 and today comprises 22 member states: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, the KSA, Somalia, Sudan, Syria, Tunisia, the UAE, Yemen. See Saudi Gazette, “ACN launched to enhance communication, cooperation regarding competition protection”, March 16, 2022, available [here](#). On March 5, 2024, the ACN held its third annual conference in the KSA under the chairmanship of Egypt (who was selected to lead the network for the first two years). Egyptian government website, “ACN 3<sup>rd</sup> conference kicks off in KSA”, available [here](#).

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