

New Federal Competition Law in the UAE



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The new UAE Federal Competition Law (Federal Law No. (4) of 2012) has been published in the Official Gazette and will come into force on February 23rd, 2013.

Although existing laws have sought to deal with aspects of competition, the new Competition Law represents the first comprehensive regulation of anti-competitive behaviour in the UAE.

In this legal update we provide a high level overview of the Competition Law and its potential impact for companies operating in the UAE.

Purpose and application

The Competition Law aims to provide an encouraging environment for companies to enhance effective competition, and to maintain a competitive market consistent with economic freedom by prohibiting anti-competitive practices.

It is important to note that a number of companies have been excluded from the Competition Law's application, such as the Federal and Local Government, state-owned enterprises, small and medium enterprises and also particular industries, such as the financial, pharmaceutical and utility sectors.

Anti-competitive practices

The Competition Law prohibits 'restrictive agreements', such as those which specify prices or conditions for the buying or selling of commodities and services, or are tantamount to collusion in respect of tendering and bids, or which have the effect of limiting the flow of commodities and services to the market, or conversely flooding the market with such items.

It is also prohibited for dominant companies in a relevant market to take advantage of their position to breach, minimise or prohibit competition, by undertaking practices such as price fixing.

For the purposes of these provisions, a dominant position accrues if the market share of the company (as determined by the Cabinet) exceeds the total transactions in the relevant market. The Cabinet can also increase or decrease the rate of this 'economic concentration' depending on economic need.

It is possible for companies to apply to the Ministry of Economy for an exemption from the application of these prohibitions, by

adducing evidence to demonstrate that the practice will, in fact, enhance economic development and improve competition.

Competition Regulation Committee

The new Competition Law also provides for the establishment of a Competition Regulation Committee, tasked with proposing policy and legislation for the protection of competition, considering issues, making recommendations on exempting restrictive agreements or dominant market practices and preparing annual reports.

The Ministry of Economy will also play an active role in executing and monitoring the Competition Law, investigating potential breaches in cooperation with the competent authorities and conducting studies on competition in the market.

Penalties

Although affected companies have six months from the date the Competition Law comes into force to ensure that their practices are compliant, the penalties that are applicable for breach after this grace period can be quite severe.

The penalties available to the authorities include fines of between AED 10,000 and AED 5 million depending on the seriousness of the breach, and also the ability to fine companies between 2 percent and 5 percent of their total annual sales from commodities or revenue from services, as appropriate, for breach of economic concentration requirements.

It is also important to note that the penalties can be doubled in the event of repeat offenders, and the competent court also has the power to close down the offending establishment for between three and six months, and can also order the suspension or prevention of any violating actions.

Impact

Although the Competition Law goes much further than existing legislation and adds much-needed detail onto what will constitute anti-competitive practices, it remains to be seen how many companies will be caught out once enforcement of the law begins later next year after the Executive Regulations are issued.

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