NAVIGATING THE NEW UAE COMPETITION LAW: MOVING TOWARDS EU PRINCIPLES? PART 1—OVERVIEW

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UAE Competition Alert

By: Farah Al-Nabulsi, Francesco Carloni, Pakinam El Badrawi, Dr. Michael Hofmann, LL.M., Nikolaos Peristerakis, Mohammad Rwashdeh

The United Arab Emirates (UAE) has embarked on a substantial transformation of its competition law regime, ushering in a new era of regulatory oversight. The enactment of Federal Decree-Law No. 36 of 2023 on the Regulation of Competition (New Competition Law) marks a significant shift from the previous regulatory framework set by Federal Decree-Law No. 4 of 2012 (Old Law).

In our UAE competition law series, we will examine the key provisions of the New Competition Law in relation to: (i) mergers; (ii) anti-competitive agreements; and (iii) abuse of dominance.

In each of these chapters, we examine the implications of the New Competition Law for businesses operating or competing in the UAE market and draw comparisons with European Union (EU) competition law.

Overall, these changes have made the UAE regime even more predictable and more consistent with established competition law regimes such as the EU competition law regime.

Although the New Competition Law came into effect on 29 December 2023, the accompanying implementing regulations (Executive Regulations) are pending publication by the UAE cabinet. In the meantime, regulations and resolutions issued pursuant to the Old Law will remain in effect, until they are replaced in accordance with the New Competition Law.

EXPANDED SCOPE

The New Competition Law applies to all undertakings (i.e., a business, regardless of legal form, including any person or associated persons, head offices, branches, representative offices, etc.) in respect of their:

1. Economic activities practiced inside the UAE;
2. Exploitation of intellectual property rights inside or outside the UAE; and
3. Economic activities practiced outside the UAE but that affect competition within the UAE.

At the outset, the New Competition Law defines “Economic Activities” as “every activity related to the production, distribution, or supply of products or goods or the provision of services in the UAE.” Just like in the EU, the type of corporate vehicle carrying out an offensive activity under the New Competition Law is irrelevant. The New Competition Law captures any undertaking of whatever form if the latter carries out any activity that causes harm

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to trade, development, or consumer interest. The New Competition Law also expressly confirmed that its scope includes digital marketplaces.

The only undertakings excluded from the application of the New Competition Law are: (i) those owned by the UAE's federal or local governments (as determined under a resolution by the cabinet or local government); or (ii) undertakings that are otherwise overseen by a sector-specific regulator that is expressly empowered by law to oversee competition in that sector.

The above-referenced exclusion under the New Competition Law is not aligned with the EU regime, where state-owned companies that carry out economic activities or companies that are subject to sector-specific regulation continue to be covered by the general EU competition rules. Lastly, the New Competition Law removed the exclusions of small and medium enterprises (SMEs) and blanket sectoral exclusions that were provided under the Old Law.

As discussed in these UAE competition law series, the overhaul competition law regime in the UAE marks a significant regulatory milestone, reflecting the country's commitment to create a predictable legal framework fostering fair competition and economic growth.

Although the New Competition Law brings technical changes and compliance challenges, it also offers opportunities for businesses to adapt and succeed in a dynamic marketplace. Businesses must adapt to these changes, ensuring compliance and proactive engagement with regulators, to mitigate the risk of penalties. In particular, businesses involved in horizontal or vertical arrangements that relate to the UAE or transactions falling under the realm of economic concentration acts must adapt to the new merger review timeline and proactively plan transactions to ensure timely clearance. Similarly, companies having a significant market share in UAE should also make sure they comply with the new abuse of dominance rules. Thorough due diligence is imperative to navigate the New Competition Law effectively. These topics will be explained in more detail under parts 2, 3, and 4 of this series.

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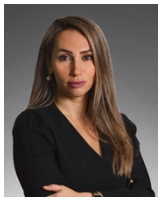
KEY CONTACTS



FARAH AL-NABULSI
PARTNER

DUBAI
+971.4.427.2703
FARAH.AL-NABULSI@KLGATES.COM



PAKINAM EL BADRAWI
ASSOCIATE

DUBAI
+971.4.424.2726
PAKINAM.ELBADRAWI@KLGATES.COM



NIKOLAOS PERISTERAKIS
PARTNER

BRUSSELS
+32.2.336.1934
NIKOLAOS.PERISTERAKIS@KLGATES.COM



FRANCESCO CARLONI
OFFICE MANAGING PARTNER, BRUSSELS

BRUSSELS, MILAN
+32.2.336.1908
FRANCESCO.CARLONI@KLGATES.COM



DR. MICHAEL HOFMANN, LL.M.
COUNSEL

BRUSSELS
+32.2.336.1921
MICHAEL.HOFMANN@KLGATES.COM



MOHAMMAD RWASHDEH
SPECIAL COUNSEL

DUBAI
+971.4.427.2742
MOHAMMAD.RWASHDEH@KLGATES.COM

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