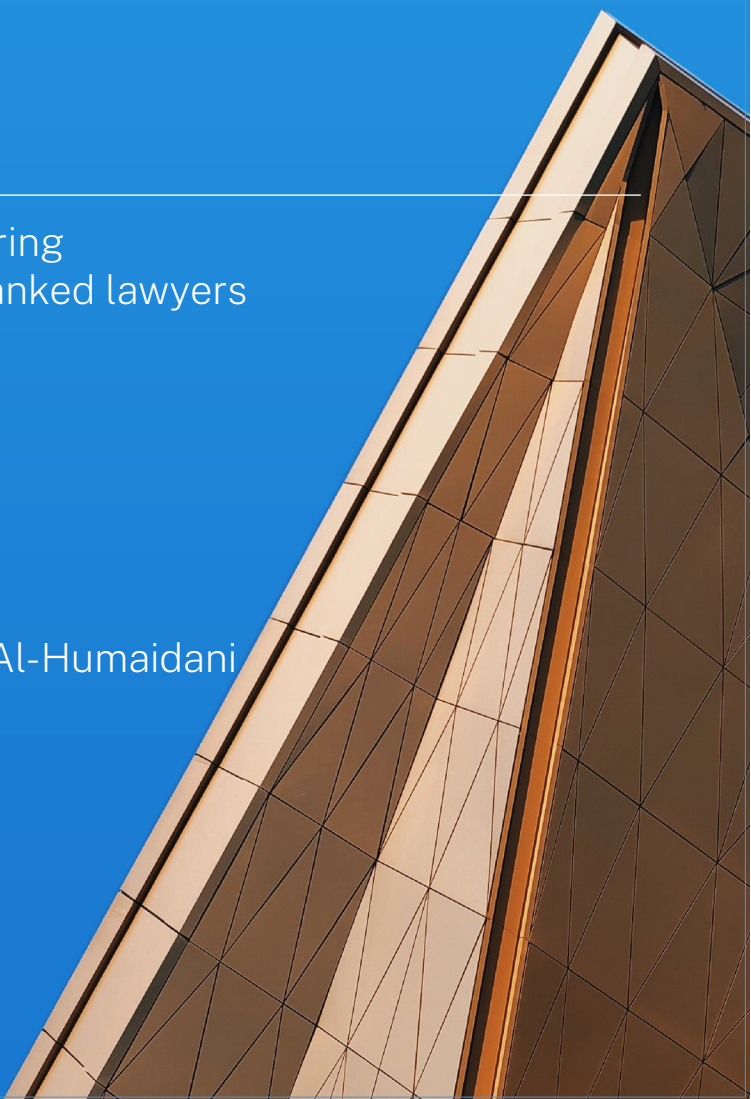

CHAMBERS GLOBAL PRACTICE GUIDES

Merger Control 2025

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Saudi Arabia: Law & Practice

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SAUDI ARABIA

Law and Practice

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GLA & Company provides strategic, cost-effective and forward-thinking legal representation for companies seeking to do business in the Middle East. The firm's practice encompasses all legal issues companies will likely encounter in the global business environment. With extensive experience in advising clients in the Gulf Cooperation Council (GCC) states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE, it provides unique insights to companies seeking to establish or expand business opera-

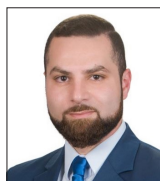
tions in these nations. The firm's emphasis is on getting deals cleared with the local competition authority and it has excellent relationships with regulators in the GCC. It has been successful in securing no objections from these bodies to clear deals. The firm's lawyers are intimately familiar with the governing sources of authority and routinely work with the relevant agencies, departments and committees on behalf of clients.

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1. Legislation and Enforcing Authorities

1.1 Merger Control Legislation

The key merger control legislation in Saudi Arabia consists of the following:

- Cabinet Resolution No 372 of 1440H promulgating the Kingdom of Saudi Arabia Competition Law (Royal Decree No (M75) of 1440H) (the “KSA Competition Law”); and
- the implementing regulations pursuant to Resolution No 337 of 25/1/1441H concerning the Executive Regulations of the KSA Competition Law (the “Executive Regulations”) which complement the KSA Competition Law.

1.2 Legislation Relating to Particular Sectors

In terms of the legislation concerning particular sectors, there are the updated Merger Review Guidelines (the “Guidelines”) which were issued by the Saudi Arabian General Authority For Competition (the “GAC”) in April 2025 (see **1.3 Enforcement Authorities**).

1.3 Enforcement Authorities

The GAC enforces the relevant legislation.

2. Jurisdiction

2.1 Notification

Notification is compulsory with respect to any entity that is covered by the KSA Competition Law.

The only exceptions are:

- transactions that do not result in a change of control (eg, acquisition of minority interests with no veto rights over strategic decisions or

internal restructuring within the same corporate group); and

- public institutions and state-owned companies if they are solely authorised by the government to supply goods or services in a particular field.

2.2 Failure to Notify

The KSA Competition Law provides for the following penalties for breaches.

- In respect of Articles 5, 6, 7, and 11 (anti-competitive practices, abuse of a dominant position and unlawful economic concentrations), a fine not exceeding an amount equal to 10% of the total annual sales of the subject matter of the violation, or, where it is not possible to assess the relevant sales, a fine not exceeding SAR10 million, may be imposed. The Settlement Committee (the GAC committee charged with reviewing alleged breaches of the KSA Competition Law and Executive Regulations (excluding Articles 12 and 24) and imposing penalties appropriately) may, at its discretion, instead decide to impose a fine not exceeding three times the profit generated by the offence. The amount of the fine may be doubled in the case of a repeat offence.
- In respect of Article 16 (impeding investigation), a fine not exceeding an amount equal to 5% of total annual sales, or, where it is not possible to assess the relevant sales, a fine not exceeding SAR5 million, may be imposed. The amount of the fine may be doubled in the case of a repeat offence.
- In respect of other breaches, a fine not exceeding SAR2 million may be imposed.

When the Settlement Committee imposes any of these penalties, the following will be taken into account.

- If the establishment was engaged in several activities where each activity differed from the other, any fine will be assessed according to the nature of the activity of the subject matter of the violation, taking into account:
 - (a) the activities targeted by the violation;
 - (b) the conditions and circumstances of the violation;
 - (c) the gravity of the violation; and
 - (d) the effects of the violation.

With respect to penalties imposed, the GAC publishes the performance review information across all of its sectors. The latest report provided on the GAC's website is for 2023 and details that the GAC, since its inception, received 783 complaints in regard to violations of the KSA Competition Law (including 141 new complaints for 2023). The GAC ultimately proceeded with 11 new cases and decided to initiate investigation, research and evidence gathering. In 2023, an undisclosed number of final judgments were issued in favour of the GAC, similar to the GAC's practice in 2022.

Under Article 19 of the KSA Competition Law, the final judgments implemented against violators will be published at the expense of the violators. To this end, in its 2023 annual report, the GAC published tables of the total amount of fines and the sectors each violator did business in. The top two violating sectors were gypsum and industrial gases. The total amount of fines collected was SAR39,653,222.34 for 2023 compared to SAR90,566,313.70 in 2022.

In terms of economic concentration, the GAC has issued its full year-round statistics of notifications for 2024 and the statistics for the first quarter of 2025. The numbers show the amount of:

- economic concentration notifications filed before the GAC;
- clearances by the GAC;
- no-notification-required decisions; and
- notifications under review, among other relevant information.

On one hand, the first quarter of 2025 saw 108 new economic concentration notifications submitted to the GAC, as opposed to a total of 317 notifications in 2024. The notifications for the first quarter of 2025 ended in 64 clearances, 32 no-notification-required decisions and two conditional clearances. Ten notifications are still being reviewed. On the same track, the GAC's decisions consisted of 202 clearances and 105 no-notification-required decisions. Ten cases are still under review from the first quarter of 2025 compared to only ten notifications still under review by the end of 2024.

The percentage breakdown of the 2024 notifications were 81% acquisitions and 15% joint ventures. This was followed by 2% merger notifications, among others. The first quarter of 2025 has seen a similar pattern with 83% acquisitions and 12% joint ventures. This was followed by 3% merger notifications, among others. Regarding economic concentrations involving foreign parties, 80% of the notifications involved foreign parties in the first quarter of 2025, as opposed to a total of 78.20% of the notifications in 2024 (foreign-to-foreign and a foreign party included).

In terms of economic concentration-related violations, the GAC has imposed its first fine since October 2020. The fine was imposed on an entity for failing to notify an economic concentration in 2024. This is the second time this type of fine has been imposed since the Competition Law was implemented. The fine was issued against Panda Retail Company and Atabat Al-Bab Tel-

ecom and Information Technology Company, according to the GAC.

The GAC, in media circulated by the head of the GAC's M&A Department, Talal Al Hogail stated that it undertook investigative efforts following a decision of the GAC board of directors. They revealed that the parties to the transaction had indeed engaged in a notifiable economic concentration and concluded its implementation without notifying the GAC, in violation of Article 7 of the KSA Competition Law. Upon concluding that the parties were indeed in violation of the KSA Competition Law, the GAC sanctioned each party with a financial fine of SAR400,000. This sanction is in line with the penalties prescribed under Article 19 of the KSA Competition Law for failure to notify an economic concentration.

2.3 Types of Transactions

The KSA Competition Law uses the economic concentration principle to identify merger control issues. Economic concentration is defined as any action that results in a total or partial transfer of ownership of assets, rights, equity, stocks, shares or liabilities of a firm to another by way of merger, acquisition, takeover or the joining of two or more managements in a joint management or in any other form that leads to the control of an entity, including influencing its decision, the organisation of its administrative structure or its voting system. This definition captures asset and share purchases, joint ventures, mergers and takeovers.

In terms of exceptions, the Guidelines:

- confirm that if a transaction does not lead to a change of control over the target entity, no GAC filing will be required; and
- public institutions and state-owned companies, if they are solely authorised by the

government to supply goods or services in a particular field will not have to make a filing.

2.4 Definition of “Control”

While before the issuance of the Guidelines it remained unclear how the GAC would analyse the elements of control, the Guidelines now clarify this by defining control as “the ability to exercise decisive influence over the strategic or operational decisions of the target entity”. This includes the appointment of senior management and approval of budgets, business plans and major investments.

It is now clear that transactions that do not result in a change of control (eg, acquisition of minority interests with no veto rights over strategic decisions or internal restructuring within the same corporate group) are within the scope of the KSA Competition Law and notice to the GAC is not required.

2.5 Jurisdictional Thresholds

Article 7 of the KSA Competition Law states that the entities involved in the economic concentration must notify the concentration to the GAC if the value of the total annual sales of the entities seeking to participate in the economic concentration exceeds the amount determined by the Executive Regulations.

Article 12 (1) of the Executive Regulations specifies that the economic concentration must be notified to the GAC if the total annual sales value of all entities intending to participate in the economic concentration exceeds SAR200 million. This requirement was established in line with the GAC's approved decision dated 23/08/1444H corresponding to 15 March 2023 G, which increased the threshold from SAR100 million to SAR200 million.

In addition, the GAC board of directors, in its meeting No 84 dated 23 October 2023, announced new requirements for an economic concentration's eligibility for notification before the GAC, making Saudi Arabia a minimum threshold jurisdiction.

As well as this financial threshold established by the Executive Regulations, the parties must also meet the following requirements.

- Target entity sales threshold: the annual sales of the target entity (in and outside Saudi Arabia) in an economic concentration must exceed SAR40 million.
- Local sales threshold: the combined total sales realised locally (within the territory of the Kingdom of Saudi Arabia) by the parties to the economic concentration must exceed SAR40 million.

The Guidelines have clarified that the target entity must contribute to the local sales threshold. This is a requirement that was absent from previous versions of the Guidelines. Through discussions with the GAC, it has been deduced that even minimal revenues of SAR1 from the target will be considered a contribution meeting the local sales threshold.

The Guidelines clarify the application of all three financial thresholds to mergers and joint ventures as follows:

- the total worldwide annual sales value of the economic concentration parties exceeds SAR200 million;
- the total worldwide annual sales value at least two of the parties (in a merger or a joint venture) exceeds SAR40 million; and
- the total annual sales value in Saudi Arabia of all parties exceeds SAR40 million.

Article 12 (2) of the Executive Regulations also provides that where it is impossible to estimate the annual sales value of the entities or where the entities' business activities do not extend for a full fiscal year, then the annual sales value for the whole year will be estimated based on the firms' activity, as the case may be.

2.6 Calculations of Jurisdictional Thresholds

Threshold and Calculation

The KSA Competition Law bases the notification threshold on "the total annual sales value of the entities seeking to participate in the economic concentration".

"Total annual sales value"

In most cases, the "total annual sales value" will be the total gross revenues of the relevant entity. These are the amounts obtained by the entity from the sale of products and services falling within the entity's ordinary business and related activities. For most entities that have financial statements prepared under the standards of the Saudi Organisation for Certified Public Accountants (the "SOCPA") or the equivalent prevailing accounting standards in the relevant entity's place of incorporation, the annual sales will be the entity's revenue appearing in the entity's income statement, as reflected in the entity's most recent audited financial statement.

Where the entity is not required to produce audited financial statements, the annual sales will be the entity's revenue appearing in its most recent annual statement of income and expenses regularly prepared in line with the SOCPA standards or the equivalent accounting principles adopted by the entity, as the case may be.

In the event that the relevant undertaking is an individual or a natural person, the GAC will gen-

erally apply the same principles to determine the relevant annual sales of the individual. The individual's annual sales will generally be their annual revenue amounts obtained from their ordinary business activities. The GAC will determine this on a case-by-case basis within the context of these general principles.

However, where the entity's total sales incorporate sales rebates subsequently provided to its customers, the value of the sales rebates may be deducted from the gross sales figures to calculate the entity's total sales for the purposes of the notification threshold.

In addition, where the entity's total sales revenues incorporate the amount of value added taxes and other taxes directly related to sales, the value of the taxes may be deducted from the gross sales figures to calculate the entity's total sales for the purposes of the notification threshold.

Lastly, the KSA Competition Law does not distinguish between sales taking place within Saudi Arabia and those taking place outside the country. The GAC will therefore consider the relevant annual sales figures to be the combined aggregate group wide and worldwide sales figures of all the relevant entities.

Currency

If the entity's financial statements are presented in a non-Saudi Arabian riyals currency, the annual gross revenues should be converted to Saudi Arabian riyals according to the average over the relevant financial year of the foreign exchange rate quoted by the Saudi Arabian Central Bank.

2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds

Please see 2.8 Foreign-to-Foreign Transactions.

The KSA Competition Law specifies "all the entities participating in the concentration" and does not distinguish between acquiring and selling an entity or between mergers and acquisitions. The KSA Competition Law therefore requires that the notification threshold considers the total sales of all entities participating in the concentration without distinction or exclusion.

The GAC considers that the entities "participating" in the concentration are all those that form part of the newly concentrated entity after the economic concentration transaction has been completed.

- Where two or more entities merge, the relevant entities are the merging entities in their entirety.
- Where one entity acquires another entity, the relevant concentrated entities are the entire entity that is acquiring the other entity and the entity being acquired but not the entity that is selling the entity being acquired.
- Where one entity acquires a part of another entity's operations, for example through purchasing a subsidiary or operational division, the relevant entities are:
 - (a) the entire entity which is acquiring the operations or division; and
 - (b) the operations or division it is acquiring but not the entity which is selling the operations or division. This is because the acquiring entity and the target operations or division generally form(s) part of (and are therefore participating in) the economic concentration but the selling

entity does not generally form part of the economic concentration.

- Where two or more entities participate in a full-function joint venture together, the relevant entities for the notification threshold are all the entities acquiring joint control of the joint venture in addition to the joint venture itself. This principle applies to newly formed joint ventures and to the acquisition of joint control of pre-existing entities.

Company Groups

Two or more legal entities will be considered to form part of the same economic entity if they constitute a “single economic entity”. The primary criterion in determining whether different legal entities form part of a single economic entity is control. If one legal entity controls other legal entities (such as subsidiaries), either directly or indirectly, then for the purposes of determining the total annual sales values of the entity, the relevant single economic entity will include the controlling entity and all of the entities it controls.

If a single economic entity consists of two or more legal entities and each of those legal entities prepares accounts, the total sales of the single economic entity for the purposes of calculating the notification thresholds are the total combined gross sales revenues of all of the entities. A group will therefore include all companies that have direct or indirect control-based links with the entity concerned, including its subsidiaries but also including its parent company or companies and any other companies within the parent company's group.

Exception

The single economic entity's revenues will exclude revenues resulting from transactions between the different legal entities within the group. These intra-group transactions are not

considered to be sales of the single economic entity.

2.8 Foreign-to-Foreign Transactions

The KSA Competition Law applies to all undertakings inside Saudi Arabia. It also applies to undertakings outside Saudi Arabia where those undertakings' activities, including any economic concentration, may have an effect on a market in Saudi Arabia. Article 3 of the Executive Regulations also provides that the GAC may assess the actual or potential effect of the conduct outside Saudi Arabia on a market inside the Kingdom.

Nexus Test

The GAC will require economic concentrations taking place outside Saudi Arabia to be notified where there is a sufficient nexus between the economic concentration and a market inside Saudi Arabia. Under the KSA Competition Law and the Executive Regulations, this nexus is established where the foreign conduct (including economic concentrations among foreign undertakings) may have an effect on a market inside Saudi Arabia.

The GAC will consider that there is sufficient influence on a market in Saudi Arabia where the potential result is direct, substantial and reasonably foreseeable.

The economic concentrations among foreign undertakings are subject to Article 7 of the KSA Competition Law and must, therefore, in general be notified if the other relevant criteria for required notification are also fulfilled.

The GAC will not generally consider there to be sufficient impact on the Saudi Arabian market where the foreign conduct (including economic concentrations) does not meet these criteria. For clarity, a direct effect is not limited to direct sales

and may take place by way of indirect sales (eg, sales by way of a distributor).

The GAC will also look at whether the actual or potential effect on competition is substantial. This requires that the effect takes place within a market in Saudi Arabia. The GAC considers that this test will generally mean that jurisdiction is established where the actual or potential effect of the conduct on a market inside Saudi Arabia is more than trivial.

In addition, the GAC will look at whether the potential effects on a market are reasonably foreseeable. In general, this will mean that the effect of the foreign conduct (including an economic concentration) can be reasonably foreseen and is more than merely speculative.

In general, the GAC will consider it to be sufficient to establish a nexus if one or more of the foreign undertakings has sales in Saudi Arabia. However, sales in Saudi Arabia are not necessary to establish a sufficient nexus with a market in Saudi Arabia.

2.9 Market Share Jurisdictional Threshold

The GAC will consider market shares and market concentration in the context of the other relevant factors it may consider in order to conclude if a market concentration will take place. The GAC typically measures market concentration using market shares, market concentration ratios and the Herfindahl-Hirschman Index (HHI). The HHI is calculated by adding the sum of the squares of the post-merger market share of the merged firm and each rival firm in the relevant market, thereby giving greater weight to the market shares of the larger firms. The HHI therefore requires the market shares, or estimates of them, for all the participants in the relevant market.

The GAC will generally use the following HHI thresholds to undertake a preliminary assessment of the potential competition effects of an economic concentration.

- The GAC is unlikely to identify horizontal competition concerns in an economic concentration in a market with a post-concentration HHI below 1,000. This economic concentration does not generally require extensive further analysis.
- The GAC is unlikely to identify horizontal competition concerns in an economic concentration with a post-concentration HHI between 1,000 and 2,000 and an HHI delta below 250 or an economic concentration with a post-concentration HHI above 2,000 and an HHI delta below 150, except where special circumstances that require additional competition analysis are present.

2.10 Joint Ventures

The KSA Competition Law uses the principle of economic concentration to assess merger control issues. A joint venture will constitute an economic concentration when “the joint venture forms an autonomous economic undertaking or performs the economic functions of an autonomous economic undertaking, on a lasting basis”. This will be considered a “full-function joint venture”. The GAC will decide whether a joint venture will be considered a “full-function joint venture” on a case-by-case basis. Attributes of a “full-function joint venture” include the following.

- The joint venture must operate in a market and perform the functions normally carried out by a commercial undertaking operating in that market.
- The joint venture must ordinarily have a management team dedicated to its day-to-day operations and access to sufficient resources,

including finance, staff and tangible and intangible assets, in order to conduct, on a lasting basis, its business activities within the area provided for in the joint venture agreement.

- It must be intended to operate for a sufficiently long period to bring about a lasting change in the structure of the undertakings concerned (the resources of the joint venture will be indicative of this).
- It will ordinarily have sufficient autonomy from its parent undertakings, in terms of its operational decision-making, to be considered a “full-function joint venture”.

A joint venture may begin its life as a non-full-function joint venture and subsequently become a “full-function joint venture”. It will, at that time, be considered as a new economic concentration requiring notification. This change in the nature of the joint venture can include the following.

- The joint venture’s activities are enlarged during its lifetime, such as commencement of commercial sales to third parties in an open market.
- Enlargement of the joint venture, such as through acquisition by the joint venture of the whole or part of another undertaking from the parent undertakings.
- The parent undertakings transfer significant additional assets, contracts, know-how or other rights to the joint venture, where this transfer will constitute or enable an extension of the joint venture’s activities, products or geographical markets that were not the object of the original joint venture.
- A change in the organisational structure of the joint venture.

Additionally, the Guidelines add an important qualification for joint ventures established for

developing new products/markets (particularly those contributing to foreign investment attraction, industry localisation or knowledge transfer) may qualify for an exemption from notification provided that they meet specific criteria relating to the transaction’s nature, including the following.

- The joint venture relates to the manufacture of a product that is not currently produced in Saudi Arabia or when the product is manufactured in Saudi Arabia but can only be distributed to a limited part of Saudi Arabia for technical reasons inherent in the nature of the product.
- The joint venture consists of partners who are not, individually or together, current or potential competitors of a product.

Changes in the nature of the joint venture are considered to have taken place upon the shareholder(s) or the joint venture’s management taking the relevant decision that led to the joint venture becoming a “full-function joint venture” or from when the relevant activity commenced.

2.11 Power of Authorities to Investigate a Transaction

The GAC has no authority to investigate a transaction that does not meet the jurisdictional thresholds expressed under the KSA Competition Law and the Executive Regulations.

2.12 Requirement for Clearance Before Implementation

The KSA Competition Law states that the undertakings participating in the economic concentration or transaction may not complete the transaction unless notified by the GAC of its approval in writing or if 90 days have elapsed since the review period by the GAC commenced and it has not provided an approval or rejection.

The 90-day regulatory review period will begin on the date the GAC notifies the applicant that the notification submission is complete. If the last day of this regulatory review period corresponds to an official holiday, the next subsequent working day will be considered the last day of the regulatory review period.

The regulatory review period may be suspended in specific circumstances.

- When the GAC requests any information or documents from the applicants, it may suspend the regulatory review period from the date when it requests the information or documents to the date the applicant provides the requested information or documents.
- When the GAC finds that the economic concentration parties or their representatives have provided incorrect information or failed to submit available information to the GAC within the prescribed period.

Where the regulatory review period is suspended, the days during which it is suspended are not counted as part of the 90-day regulatory review period.

2.13 Penalties for the Implementation of a Transaction Before Clearance

Where an economic concentration must be notified to the GAC, it is a violation of the KSA Competition Law for the transaction to be completed unless the participating parties have received the GAC's approval in writing (see **2.12 Requirement for Clearance Before Implementation**).

With respect to the penalties implemented and their publication see **2.2 Failure to Notify**. The GAC's 2022 annual [report](#) does not indicate that any of the penalties imposed were with respect

to parties who had implemented the transaction before the GAC's clearance.

2.14 Exceptions to Suspensive Effect Exemption

The GAC's board of directors has the authority under Article 8 of the KSA Competition Law and Chapter 7 of the Executive Regulations to provide a party or parties with an exemption that will exclude the KSA Competition Law from being applied to a specific transaction or economic concentration. The exemption will be granted if it will lead to improved market performance or improve the performance of undertakings in terms of the quality of the product or technological development, creative efficiency or both. The benefit of the exemption to the consumer should outweigh the effects of restricting the freedom of competition.

An application for exemption under this mechanism must be made and will be considered by the GAC if the application:

- is made in the format and on the forms specified under the Executive Regulations;
- provides adequate justification for the application;
- includes sufficient evidence of the positive results envisaged from the economic concentration; and
- provides supporting documents and any other information that the GAC requires to review the application.

The board may, upon the recommendation of the technical committee, approve the application if the exemption will:

- lead to improving the market or undertakings' performance in terms of quality, diversifica-

- tion, technological development or innovative efficiency;
- benefit consumers to a degree that outweighs the negative effects from the restriction of competition; and
- does not enable the undertaking(s) benefiting from the exemptions to exclude competition or competitors from any market.

All three conditions must be met for an exemption application to be approved. In addition to these conditions, the board may also consider any other factor relevant to assessing the degree of restriction of competition, along with the benefits, resulting from the exemption.

Failing Firm

While the GAC does not provide for a waiver or exemption for a failing firm under the KSA Competition Law, it does take this aspect into account in its assessment. Where one of the parties to the economic concentration is a failing firm, the GAC may decide that an economic concentration which would otherwise cause competition problems may nonetheless be approved if the failing firm would be likely to exit the market even if the economic concentration does not take place.

The basic requirement for a “failing firm defence” is that the deterioration of the competitive structure that follows the economic concentration will take place with or without the economic concentration and therefore cannot be said to be caused by the economic concentration.

The GAC will generally only consider a “failing firm defence” to be appropriate if the economic concentration parties can demonstrate all three of the following criteria:

- that it is highly likely or inevitable that the allegedly failing undertaking would, in the near future, be forced to exit the market because of financial difficulties if it is not taken over by another undertaking;
- that the assets of the failing firm would also be highly likely or inevitable to exit the market if they do not participate in an economic concentration; and
- that there is no less anti-competitive alternative purchase or other alternative to the notified economic concentration.

The onus is on the relevant parties to provide the GAC, in due course, with the “failing firm defence”, with all the relevant information necessary to demonstrate this.

2.15 Circumstances Where Implementation Before Clearance Is Permitted

There are no circumstances where the authorities will permit closing before clearance or an exemption. It may be possible to carve out the businesses or assets in Saudi Arabia and implement global closing to the extent the closing does not have a sufficient effect (see 2.8 Foreign-to-Foreign Transactions) on the Saudi Arabian market. However, GAC approval may be required.

3. Procedure: Notification to Clearance

3.1 Deadlines for Notification

With respect to the notification required in the event the KSA Competition Law and the Executive Regulations are applicable to a specific economic concentration, the relevant participants must notify the GAC 90 days before the completion of the economic concentration.

See 2.2 Failure to Notify with respect to penalties and their imposition.

3.2 Type of Agreement Required Prior to Notification

As part of the initial application for notification to the GAC, the applicant must also provide a finalised, duly executed agreement to carry out the economic concentration, stating the nature of the transaction and a description of the shares, equity, assets, rights or obligations to be purchased or transferred or managements to be joined between the relevant entities. The GAC requires these documents for valid notification. If notification is made without all of the requisite documents being provided, the GAC reserves the right to close the notification file.

3.3 Filing Fees

The fee to be paid for examining the economic concentration (the “notification fee”) is 0.02% of the total annual sales value of undertakings intending to participate in the economic concentration, with an upper limit of SAR250,000. The parties must pay the notification fee before submitting the notification and must submit evidence of payment of the notification fee along with the other notification documents and information. The GAC requires evidence of payment before the notification will be considered complete.

3.4 Parties Responsible for Filing

The parties intending to participate in the economic concentration transaction must notify the GAC of the transaction. Notice of the transaction may be provided by the parties’ legal representative. A failure by the concentration parties to submit a notification does not preclude the GAC from initiating a review and assessing the economic concentration either before or after the completion of the transaction.

3.5 Information Included in a Filing

The notification should generally be completed in Arabic. Notifying parties may choose to complete the forms in English but this must be accompanied by a translation into Arabic.

When submitting the notification, the applicant should submit the following information and documents.

- The duly completed notification form, including the declaration as to the validity and accuracy of the information contained in the notification.
- The relevant identification documents of the person submitting the notification.
- The required parties’ documents.
- Evidence of payment of the prescribed fees for the economic concentration to be examined.
- The finalised, duly executed agreement to carry out the economic concentration, stating the nature of the transaction and a description of the shares, equity, assets, rights or obligations to be purchased or transferred or managements to be joined between the relevant entities.
- A report that describes the economic impact of the transaction on the relevant markets (the “Economic Report”). This report should include a detailed description of the:
 - (a) economic concentration transaction and the participating parties;
 - (b) relevant sectors and markets in which the economic concentration may have an effect;
 - (c) key customers of the participating parties in those sectors and markets;
 - (d) key competitors of the participating parties in those sectors and markets; and
 - (e) potential impact of the economic concentration transaction on competition in

those sectors and markets (the GAC can discuss the contents of the Economic Report with the notifying parties and provide a brief template, upon request, plus any other data, information or documents required by the GAC to review the economic concentration.

- A full explanation of these submitted documents.

For the acquiring entity/merging entity/first partner in the joint venture:

- validated power of attorney (POA) by the Ministry of Justice/Saudi Arabian Embassy/Saudi Arabian Consulate/Apostilled;
- articles of association;
- commercial register; and
- financial statements for the last financial year (the “LFY”).

For the target entity/merged entity/second partner in the joint venture:

- validated POA by the Ministry of Justice/Saudi Arabian Embassy/Saudi Arabian Consulate/Apostilled;
- articles of association;
- commercial register; and
- financial statements for the LFY.

For the seller:

- validated POA by the Ministry of Justice/Saudi Arabian Embassy/Saudi Arabian Consulate/Apostilled;
- commercial register; and
- the official contact persons for the economic concentration parties and any relevant third parties specified in the submission.

3.6 Penalties/Consequences of Incomplete Notification

If notification is made without all the requisite documents being provided, the GAC reserves the right to close the notification file. The GAC’s annual reports for 2019 to 2022 reveal that only one application was rejected in 2021 due to an incomplete notification application. This is in contrast to 2020 and 2019, when there were no rejected applications. However, in 2022, one application was rejected due to potential efficiencies from the transaction involved in the concentration parties’ view, which could be realised without the transaction consummating. In addition, it was determined that the potential harms to competition outweighed the benefits anticipated if the transaction were completed.

3.7 Penalties/Consequences of Inaccurate or Misleading Information

Under Article 49 of the Executive Regulations, if the notifying party is found to have withheld information, provided misleading information or concealed or destroyed documents that are useful to the GAC’s investigation, they will be fined up to 5% of the total annual sales turnover or SAR5 million where it is impossible to estimate the annual sales.

3.8 Review Process

The economic concentration must be notified to the GAC at least 90 days before the completion of the economic concentration. The applicant’s notification submission will be considered to be complete when they have satisfied the conditions required for notification, including providing the information required and documents necessary for complete notification. The 90-day regulatory review period will begin on the date on which the GAC informs the applicant that their notification submission is complete.

The regulatory review period may be suspended when:

- the GAC requests any information or documents from the applicants. It may suspend the regulatory review period from the date when it requests the information or documents, to the date when the applicant provides the requested information or documents; or
- the GAC finds that the economic concentration parties or their representatives have provided incorrect information or failed to submit available information to the GAC within the prescribed period.

A case team will be appointed to conduct a review and investigation into the economic concentration, within the 90-day period. Once the case team has completed its review, it will submit a detailed note outlining its opinion to the GAC's board of directors. The board will evaluate the case team's opinion, taking all relevant factors and its objectives under the KSA Competition Law and the Executive Regulations into account. The board will issue a decision in one of the following ways:

- approval of the economic concentration application;
- refusal of the economic concentration application, where the decision will be accompanied by a statement of reasons; or
- approval of the economic concentration, subject to conditions determined by the board, where the decision will be accompanied by a statement of reasons.

3.9 Pre-Notification Discussions With Authorities

The GAC is generally available for discussions with parties or their representatives before the

formal notification of an economic concentration transaction.

Pre-notification discussions are entirely voluntary and at the discretion of the parties. The GAC will not conduct pre-notification discussions on a hypothetical basis or without knowing the identities of the parties and markets. To request a pre-notification discussion, the parties or their representatives should provide the following information to the GAC:

- the names and contact information of the economic concentration parties and their representatives (if any);
- the type of transaction;
- the markets or goods and services affected by the proposed transaction; and
- the possible impact of the transaction on competition in general terms.

It is generally recommended that this information be provided in the form of a brief confidential memorandum to the GAC as this will make the pre-notification process more efficient.

Pre-notification discussions are encouraged by the GAC and treated as strictly confidential.

3.10 Requests for Information During the Review Process

The information requested during the review process includes:

- documents, records, data, files, specific written information and other information that the GAC considers relevant to its review of the transaction;
- the information from other parties, including from competitors, other stakeholders and the general public;

- the GAC may similarly accept information that has been offered voluntarily by other parties; and
- the GAC may require any of the economic concentration parties or other parties to provide it with market information to evaluate the effects of the economic concentration on competition.

Written Requests

A request for information will ordinarily take place by way of a written request for information addressed to the relevant parties or their representatives. The written request for information will state the purpose of the request, specify what information is required and specify the time limit within which the information is to be provided.

A written request for information may cover all types of information helpful to the case team in assessing the transaction, including, but not limited to:

- written responses to specific questions;
- data and statistics;
- economic studies and market surveys;
- the parties' internal documents such as strategic plans, strategic analyses of corporate markets, pricing policies, business plans, marketing plans, long and short-term forecasts, a list of major customers, information about competitors, marketing and sales reports, sales and bidding data, excess capacities data, production costs; and
- any other documents and data that the GAC considers to be necessary for its assessment of the intended economic concentration.

Meetings and Interviews

The GAC may also gather information by holding meetings and direct interviews with the con-

centration parties or third parties. The GAC may communicate by phone with any of the representatives or affiliates of the concentration parties and request any information required for the review of economic concentrations at any stage of the review process, when necessary.

Information that may be sought by way of phone communications or meetings may include the following:

- basic or summary information that is required without delay;
- verification of specific claims submitted by one of the concentration parties or third parties;
- identification of specific individuals who can provide evidence; and
- any other information that may appropriately be sought in this way.

The 90-day regulatory review period may be suspended in specific circumstances:

- when the GAC requests any information or documents from the applicants, it may suspend the regulatory review period from the date it requests the information or documents to the date the applicant provides the requested information or documents; and
- when the GAC finds that the economic concentration parties or their representatives have provided incorrect information or failed to submit any information available to the GAC within the prescribed period.

3.11 Accelerated Procedure

There is no indication that there is an option for an accelerated procedure under the applicable law or GAC regulations.

4. Substance of the Review

4.1 Substantive Test

The substantive test employed by the GAC in line with the KSA Competition Law and the Executive Regulations is whether there is an economic concentration (as defined under the KSA Competition Law) that causes a sufficient impact on the Saudi Arabian market and reduces competition. The GAC also considers change of control to be directly linked to an economic concentration taking place.

4.2 Markets Affected by a Transaction

When assessing whether an economic concentration substantially reduces competition, the GAC will examine the competitive effect of the transaction in the context of the markets the economic concentration is taking place in.

In defining markets in terms of their product and geographical dimensions, the GAC focuses on two key elements of substitution.

- The product dimension: substitution between products is a central concept in defining the product dimension of markets. The GAC notes that product in this context includes goods, services and other equivalent economic outputs.
- The geographical dimension: substitution between different locations of the relevant goods or services is a central concept in defining the geographical dimension of markets. The GAC notes that the geographical dimension in this context may be local, regional, national or wider in scope, including worldwide.

When defining markets, the GAC will follow a general approach in most cases.

- First, the products and geographical regions actually or potentially supplied by the economic concentration parties will be identified. This is the first step in identifying the markets that may be relevant in the analysis of the economic concentration. To help it do this, the GAC starts by considering those areas of activity where competitive harm may occur, by considering the products and geographical regions in each case where there may be an overlap between the activity of the economic concentration parties or some other meaningful economic relationship such as an actual or potential vertical relationship. This is done on a case-by-case basis. In many cases, more than one potential market may be identified.
- The GAC then considers the boundaries of those potential markets in their product and geographical dimensions. A properly defined relevant market includes all those products and geographical regions that are sufficiently close substitutes of the products and geographical regions first considered.

In addition, specific factors are specified in the Executive Regulations. The Executive Regulations stipulate that the GAC may act within its overall objectives of protecting and promoting competition within a market. These are as follows.

- Structures of relevant markets and the level of actual or potential competition between undertakings inside Saudi Arabia or abroad, in cases where it has an impact on local markets.
- Financial positions of the parties to an economic concentration.
- Commodity alternatives that are available to consumers, vendors and clients and how accessible these alternatives are.
- Level of product differentiation.

- Consumer interests and welfare.
- Potential impact of the economic concentration on prices, quality, diversification, innovation or development in a relevant market.
- Actual or potential harm or benefits to competition from the economic concentration transaction.
- Supply and demand growth and trends in the relevant market and commodities.
- Barriers to entry or exit of new undertakings into a relevant market, their continuation therein or expansion, including regulatory barriers.
- The extent to which an economic concentration may create or strengthen a significant market power or a dominant position of an undertaking, or group of undertakings, in any relevant market.
- The level and historical trends of anti-competitive practices in a relevant market, either for the parties to an economic concentration or the undertakings which are influential in the market.
- Views of the public, economic concentration-related parties and sector regulators.

Dominance in a relevant market can be demonstrated if one or both of the following criteria are achieved.

- A market share of 40% or more of the relevant market, whether it is the share of a single firm or a group of firms, whenever that group acts with a common will in committing the violation or causing the effect.
- The ability to influence a relevant market such as controlling prices, production or demand, whether it is the ability of a single firm or a group of firms, whenever that group acts with a common will in committing the violation or causing the effect.

4.3 Reliance on Case Law

There is no indication that the GAC relies on case law with respect to issues such as market definitions from other jurisdictions.

4.4 Competition Concerns

The GAC will generally consider the following categories of economic concentration.

- Horizontal concentrations: these involve concentrations of actual or potential suppliers of substitutable goods or services, typically operating on the same or a comparable functional level of the supply chain and therefore commonly a concentration of competitors in the same market.
- Vertical concentrations: these involve undertakings operating, or potentially operating, at different functional levels of the same vertical supply chain. This is commonly where the output in one market is an input into production in the other market. They are therefore not commonly in direct competition with each other in any market.
- Conglomerate concentrations: these involve undertakings that operate, or potentially operate, in different markets. They are not in the same vertical supply chain but supply goods or services that are in some way related to each other, eg, products that complement consumers or production.

4.5 Economic Efficiencies

The GAC assesses the effect of economic concentrations on competition, competitive constraints and the efficiency of markets, rather than on the efficiency of individual entities.

The consideration of efficiencies is relevant to the competition assessment if, and only if, the efficiencies are likely to result in lower, or not significantly higher, prices, increased output and/or

higher quality goods or services. In this case the conclusion may be that the economic concentration may not substantially reduce competition.

For the GAC to take efficiency claims into account in its assessment of an economic concentration and to be in a position to reach the conclusion that, as a result of efficiencies, the economic concentration is unlikely to substantially reduce competition, the efficiencies have to:

- benefit consumers;
- be specific to the economic concentration; and
- be verifiable.

All of these conditions must be satisfied for the GAC to consider efficiencies in the context of its competitive assessment of economic concentrations.

4.6 Non-Competition Issues

There is no express limitation or permission on what the GAC can take into account to achieve the objectives of the KSA Competition Law and the Executive Regulations.

It is worth noting that Saudi Arabia has a foreign investments law which seems to be separate from the KSA Competition Law.

4.7 Special Consideration for Joint Ventures

See 2.10 Joint Ventures.

5. Decision: Prohibitions and Remedies

5.1 Authorities' Ability to Prohibit or Interfere With Transactions

To the extent the transaction creates an economic concentration that sufficiently impacts the Saudi Arabian market, the board of the GAC has the authority to reject the notification filing and block the transaction from taking place or require the transaction to proceed on specific conditions. The GAC has this authority under the KSA Competition Law and the Executive Regulations.

5.2 Parties' Ability to Negotiate Remedies

The parties may propose structural or behavioural remedies.

In most cases, remedies are proposed by the economic concentration parties, at their discretion, as a means of permitting a transaction to be approved subject to conditions rather than the transaction being blocked altogether. In principle, the structure and content of the remedies offered to the GAC will therefore be a matter for the party offering the remedies.

However, the GAC will only accept remedies as conditions if it is satisfied that they address the GAC's competition concerns to a sufficient degree to allow the GAC to approve the transaction subject to those conditions. The GAC will generally provide detailed feedback on the form and content of remedies proposed by the parties, including regarding whether the GAC would be satisfied that they would alleviate the competition concerns sufficiently, and, if not, what amendments to the proposed remedies would be required for the GAC to accept them.

Economic concentration parties therefore have strong incentives to propose effective and enforceable remedies to the GAC to alleviate the competition concerns identified.

5.3 Legal Standard

There is no specifically expressed legal standard for remedies. An acceptable remedy must adequately address and alleviate the potential harm to competition created by the specific economic concentration.

5.4 Negotiating Remedies With Authorities

Economic concentration parties are free to propose remedies to the GAC at any time throughout the transaction review process, including:

- at the outset of the review;
- at the pre-notification phase;
- at the moment of first notification; and
- after the economic concentration parties have been advised of potential competition concerns during a review.

In general, economic concentration parties are encouraged to begin discussions with the GAC as early in the process as possible.

When an economic concentration raises competition issues at the outset or during a review, the economic concentration parties may decide to offer remedies to the GAC. If the GAC accepts that the remedies are sufficient to address the competition concerns in that case, the GAC may decide to approve the economic concentration so long as the proposed remedies are implemented, rather than blocking the economic concentration.

5.5 Conditions and Timing for Divestitures

A divestiture remedy will normally specify the:

- scope of the divestiture package, such as the assets or businesses (or parts of businesses) to be disposed of;
- process for selecting a purchaser; and
- process for the disposal, including the required timeframe for the disposal.

Parties may not complete a transaction before remedies are complied with.

The GAC maintains a role in relation to remedies and conditions accepted with respect to economic concentrations, including:

- monitoring parties' compliance with commitments; and
- investigating suspected breaches and enforcing remedies and conditions, including by legal action where appropriate.

Non-compliance or breach of an agreed remedy is a violation of the KSA Competition Law.

- Where the economic concentration parties commit a breach of an obligation under the conditions, the GAC may revoke its approval decision. In some cases, such as where a required divestiture is not made within the required timeframe, the GAC's decision to approve the economic concentration subject to the conditions may lapse on the basis that the required condition was not fulfilled. This, and comparable breaches of the conditions, may subject the economic concentration parties to fines under Article 19 of the KSA Competition Law.
- The economic concentration parties may also be subject to fines under Article 20 of

the KSA Competition Law and other measures under Article 21 of the KSA Competition Law, including requiring the economic concentration parties to unwind the economic concentration. The GAC will also take all other relevant provisions of the KSA Competition Law and the Executive Regulations into account in setting fines and other measures, including, but not limited to, Article 22 of the KSA Competition Law and Chapter 7 of the Executive Regulations.

5.6 Issuance of Decisions

A formal decision permitting or prohibiting a transaction may be issued to the party by the GAC. In the event that the 90-day investigation period lapses without the issuance of a decision by the GAC, it will be considered an approval under the KSA Competition Law. All application decisions are made public (as a statistic in the GAC annual report). However, the names of the parties are not included unless they are penalised.

5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions

The firm is not aware of the GAC having required remedies or prohibited foreign-to-foreign transactions.

6. Ancillary Restraints and Related Transactions

6.1 Clearance Decisions and Separate Notifications

Clearance decisions will only cover competition issues.

7. Third-Party Rights, Confidentiality and Cross-Border Co-Operation

7.1 Third-Party Rights

Relevant third parties could be involved in the review process by the applicant. They could be included in the application submission or by the GAC requiring their input. Third parties have a right to request an interview or make a claim as part of a specific economic concentration investigation. The GAC may elicit information from third parties by conducting a survey.

The case team may discuss its interim assessment with third parties in order to identify and to seek to resolve any unresolved issues. The team may present its assessment or a part of it to third parties for their opinions, while taking the need to obtain objective, impartial and substantiated opinions into account.

The third parties' interests in confidentiality will be preserved throughout the assessment and investigation process. No documents of the third parties will be shared with others, except in line with the procedures outlined in the guidelines. Where a GAC document to be released during interim consultations contains information that is confidential to a third party, the GAC will prepare a public version of that document which redacts any of the confidential information. The parties whose confidential information is to be redacted will be given an opportunity to comment on the redaction.

7.2 Contacting Third Parties

See 7.1 Third-Party Rights.

7.3 Confidentiality

The KSA Competition Law states that the members of the board of directors and GAC

employees must maintain the confidentiality of information, records, data, files and documents (collectively “information”) obtained from the economic concentration parties or other entities in the course of collecting evidence or conducting investigations. This information may not be passed to other parties without the approval of the board of directors, where the board’s approval has been recorded in the meeting minutes or the governor has approved it in the following cases.

- With the consent of the party providing the information.
- For submission of the information to judicial and quasi-judicial bodies.
- For the purposes of exchanging views and opinions with international competition authorities concerned with the review process, where the economic concentration parties have been notified of the GAC’s intention to disclose the information and provided that the international competition authority receiving the information will take the necessary legal measures to protect the confidentiality of the information.

7.4 Co-Operation With Other Jurisdictions

Where an economic concentration is also being reviewed by competition authorities in other countries, including in cases where the possibility of remedies has also been raised in those other countries, the GAC will seek, where possible and reasonable, to consult and co-ordinate with the competition authorities in those countries. This consultation and co-ordination are for the purposes of seeking consistency where this is feasible and appropriate, including in relation to remedies.

Where appropriate, the GAC will seek confidentiality waivers from economic concentration parties. These will allow the GAC to exchange confidential information relating to the economic concentration with the relevant foreign competition authorities. The GAC expects economic concentration parties to give it the same notice of economic concentrations and any potential remedies offered as the parties give to the foreign competition authorities and normally requires submissions be lodged with it and the foreign competition authorities simultaneously.

8. Appeals and Judicial Review

8.1 Access to Appeal and Judicial Review

The parties have 30 days of the date of notification or of the date specified for delivering the decision to the parties of the case, even if they failed to appear, to appeal the GAC’s decision to the Riyadh Administrative Court of Appeal. If they do not, it will become final.

If one of the parties appeals the GAC’s decision before the Riyadh Administrative Court of Appeal, that party must notify the GAC within three working days of the date of appeal. Notification must be undertaken by way of a letter containing the GAC’s decision number and date and the number and date of the appeal filed with the Riyadh Administrative Court of Appeal as well as a copy of it.

8.2 Typical Timeline for Appeals

No statistics have been released with respect to successful or unsuccessful appeals of GAC decisions.

8.3 Ability of Third Parties to Appeal Clearance Decisions

The authors are not aware of any third-party appeals of GAC decisions to date.

For clarity, the Saudi Arabian Ministry of Investment should be notified in the event that there is a change in ownership within a company. There is otherwise no specific filing required with respect to foreign direct investment or foreign subsidies.

9. Foreign Direct Investment/ Subsidies Review

9.1 Legislation and Filing Requirements

Any company registered to do business in Saudi Arabia and thereafter entered into the transaction involving the entering or exiting of shareholders, will generally need to file the proper documentation reflecting the change in the company commercial registry.

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