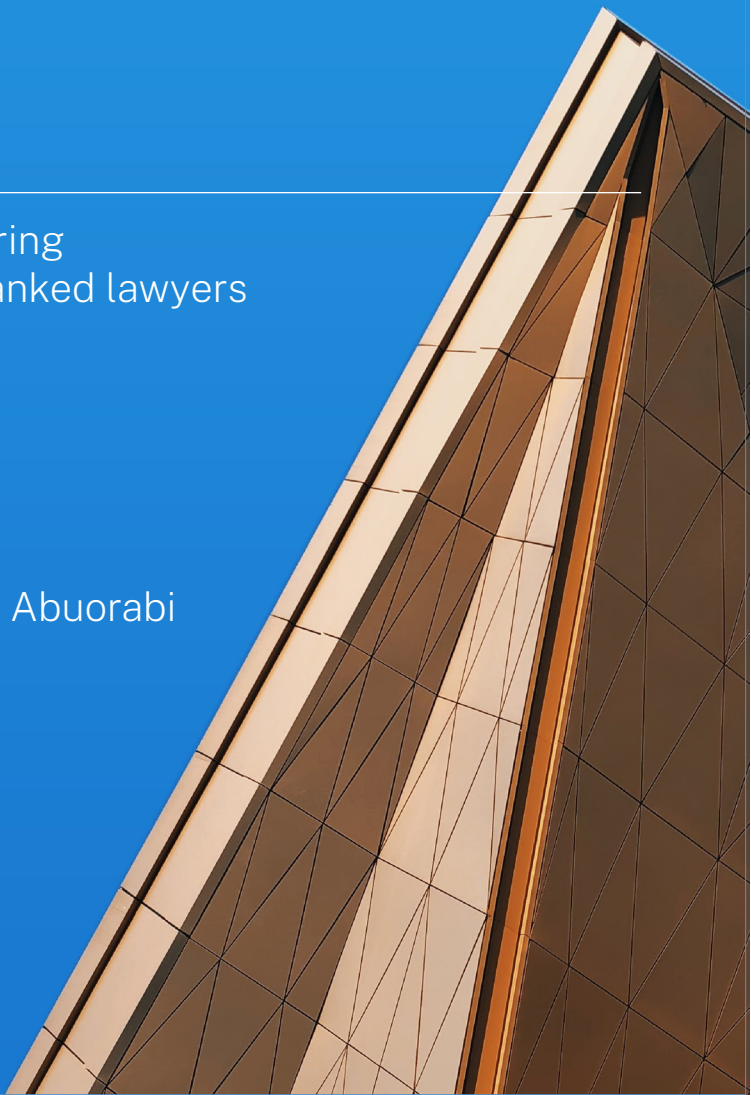

CHAMBERS GLOBAL PRACTICE GUIDES

Merger Control 2025

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

UAE: Law & Practice

Alex Saleh, Asad Ahmad, Khaled Abuorabi
and Habiba Wahdan
GLA & Company



Law and Practice

Contributed by:

Alex Saleh, Asad Ahmad, Khaled Abuorabi and Habiba Wahdan
GLA & Company



Contents

1. Legislation and Enforcing Authorities p.6

- 1.1 Merger Control Legislation p.6
- 1.2 Legislation Relating to Particular Sectors p.7
- 1.3 Enforcement Authorities p.8

2. Jurisdiction p.8

- 2.1 Notification p.8
- 2.2 Failure to Notify p.9
- 2.3 Types of Transactions p.9
- 2.4 Definition of "Control" p.11
- 2.5 Jurisdictional Thresholds p.11
- 2.6 Calculations of Jurisdictional Thresholds p.12
- 2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds p.12
- 2.8 Foreign-to-Foreign Transactions p.13
- 2.9 Market Share Jurisdictional Threshold p.13
- 2.10 Joint Ventures p.13
- 2.11 Power of Authorities to Investigate a Transaction p.13
- 2.12 Requirement for Clearance Before Implementation p.14
- 2.13 Penalties for the Implementation of a Transaction Before Clearance p.14
- 2.14 Exceptions to Suspensive Effect p.14
- 2.15 Circumstances Where Implementation Before Clearance Is Permitted p.14

3. Procedure: Notification to Clearance p.14

- 3.1 Deadlines for Notification p.14
- 3.2 Type of Agreement Required Prior to Notification p.15
- 3.3 Filing Fees p.15
- 3.4 Parties Responsible for Filing p.15
- 3.5 Information Included in a Filing p.15
- 3.6 Penalties/Consequences of Incomplete Notification p.16
- 3.7 Penalties/Consequences of Inaccurate or Misleading Information p.16
- 3.8 Review Process p.16
- 3.9 Pre-Notification Discussions With Authorities p.17
- 3.10 Requests for Information During the Review Process p.17
- 3.11 Accelerated Procedure p.18

4. Substance of the Review p.18

- 4.1 Substantive Test p.18
- 4.2 Markets Affected by a Transaction p.18
- 4.3 Reliance on Case Law p.18
- 4.4 Competition Concerns p.18
- 4.5 Economic Efficiencies p.18
- 4.6 Non-Competition Issues p.18
- 4.7 Special Consideration for Joint Ventures p.19

5. Decision: Prohibitions and Remedies p.19

- 5.1 Authorities' Ability to Prohibit or Interfere With Transactions p.19
- 5.2 Parties' Ability to Negotiate Remedies p.20
- 5.3 Legal Standard p.20
- 5.4 Negotiating Remedies With Authorities p.20
- 5.5 Conditions and Timing for Divestitures p.20
- 5.6 Issuance of Decisions p.21
- 5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions p.21

6. Ancillary Restraints and Related Transactions p.21

- 6.1 Clearance Decisions and Separate Notifications p.21

7. Third-Party Rights, Confidentiality and Cross-Border Co-Operation p.21

- 7.1 Third-Party Rights p.21
- 7.2 Contacting Third Parties p.22
- 7.3 Confidentiality p.22
- 7.4 Co-Operation With Other Jurisdictions p.22

8. Appeals and Judicial Review p.22

- 8.1 Access to Appeal and Judicial Review p.22
- 8.2 Typical Timeline for Appeals p.23
- 8.3 Ability of Third Parties to Appeal Clearance Decisions p.23

9. Foreign Direct Investment/Subsidies Review p.23

- 9.1 Legislation and Filing Requirements p.23

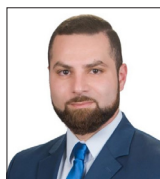
GLA & Company provides strategic, cost-effective and forward-thinking legal representation for companies seeking to do business in the Middle East. The firm's practice encompasses all legal issues companies will likely encounter in the global business environment. With extensive experience in advising 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 operations 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.

Authors



Alex Saleh is the managing partner of GLA & Company and takes a leading regional role in the firm in terms of its M&A and private equity practice. With over 25 years of experience in both the GCC and the US, he has accumulated sizeable expertise in the areas of banking and finance, M&A, capital market deals and infrastructure projects. His experience garners praise from the leading legal directories and his transactions regularly win Deals of the Year from the same institutions and organisations.



Asad Ahmad is the head of the antitrust and competition practice at GLA & Company. He has been involved in a number of transactional and advisory works in various industries, including logistics, construction, finance, healthcare and education. His practice has involved comprehensive representation with regards to M&A, conducting extensive due diligence exercises in relation to complex transactions as well as distribution and agency arrangements. He has an extensive background in advising on the marketing of securities, corporate governance issues, policies and regulatory compliance and he has expanded his expertise to include advising on data protection and regulation.



Khaled Abuorabi is a senior associate at GLA & Company. He specialises in M&A, corporate, commercial and antitrust matters. He has significant experience in advising on complex transactions, including cross-border mergers, acquisitions and joint ventures. His practice also covers antitrust compliance, merger control filings and strategic structuring, with a focus on delivering practical solutions to corporate clients.



Habiba Wahdan is an associate at GLA & Company. She specialises in M&A, corporate advisory, antitrust, data protection, finance and banking. She has successfully advised top clients across the Middle East region in different industries, including in the media, oil and gas, banking, automotive, pharmaceuticals, education, industrial and finance sectors.

GLA & Company

24th Floor
Al Sila Tower
Abu Dhabi Global Market Square
Al Maryah Island
Abu Dhabi
UAE

Tel: Kuwait +965 669 55516
UAE +971 54 997 4040
Email: alex.saleh@glaco.com
Web: www.glaco.com/attorneys/alex-saleh/



1. Legislation and Enforcing Authorities

1.1 Merger Control Legislation

Four pieces of legislation should be read together to understand the antitrust and merger control framework in the UAE. This legislation significantly interlinks and so it is necessary to read all four pieces together to understand the bigger picture and how to comply with the relevant antitrust and merger control regulatory requirements. The four pieces of legislation are as follows (and can be collectively referred to as the “UAE Competition Legislation”):

- Federal Law No 36 of 2023 Concerning the Regulation of Competition (the “Competition Law”);
- Cabinet Resolution No 37 of 2014: the Implementing Regulations of the Competition Law (the “Competition Regulations”);
- Cabinet Resolution No. 3 of 2025 Concerning the Percentages Related to the Implementation of the Competition Law (the “Competition Threshold Rules”); and
- Cabinet Resolution No 22 of 2016 on Unified Definition of Small and Medium Enterprises (the “SME Definition Decision”).

Updated Competition Regulations have not yet been issued. Consequently, according to Article 39 of the Competition Law, the existing Competition Regulations and any other resolutions related to the previous Competition Law will remain in effect until their replacements are issued. The new Competition Regulations are expected to be issued shortly, as the Ministry must issue the regulations within six months of the date the Competition Law took effect.

The Competition Law and the Competition Regulations regulate merger control, prohibitions

on antitrust arrangements and abuses of dominant positions. Abuses of a dominant position include: predatory pricing; discriminating among customers without objective justification; refusal to supply; limiting production; failure to satisfy demand; and tying arrangements.

The Competition Law also states that its aim is to protect and enhance competition in the UAE and to combat monopolistic practices through:

- providing a stimulating environment for businesses to enhance efficiency, competitiveness and the interest of consumers and to achieve sustainable development in the UAE; and
- sustaining a competitive market governed by the market’s mechanisms through the principle of economic freedom by way of banning restrictive agreements, banning businesses and actions that lead to the abuse of a dominant position, controlling the operations of economic concentrations and avoiding everything that may create prejudice within, limit or prevent competition.

The Competition Threshold Rules define “dominance” and set out the relevant antitrust and merger control filing thresholds.

The SME Definition Decision, on the other hand, is limited to defining small and medium enterprises exempt from the application of the Competition Law.

Both the Competition Law and the Competition Regulations are, theoretically speaking, largely based on EU Competition Law and reflect many elements of international best practice norms (including in the US). However, it could also be said that the Competition Law will only apply if the thresholds under the Competition Threshold

Rules are met, which are higher than most (if not all) of the jurisdictions in the Gulf and Middle East region.

Antitrust and merger control rules and restrictions under the UAE Competition Legislation do not apply to undertakings in the Abu Dhabi Global Market (the “ADGM”) or the Dubai International Financial Centre (the “DIFC”). This is despite Article 3 of the Competition Law stating that the Competition Law will apply to all undertakings with regards to their economic activities in the UAE and exploitation of intellectual property rights inside or outside the UAE, thereby affecting competition in the UAE.

The reason why the UAE Competition Legislation does not apply to undertakings in the financial free zone areas, can be legally justified by Article 121 of the UAE Constitution, which enabled the UAE federation to create financial free zones in the UAE, and most importantly, to exclude the application of certain Federal Laws in these zones.

Federal Law No 8 of 2004 on Financial Free Zones in the UAE also states that financial free zones are exempt from all Federal civil and commercial laws.

Neither the ADGM nor the DIFC have separate legislation to regulate antitrust or merger control. It is therefore safe to assume that the UAE Competition Legislation only applies to onshore UAE undertakings and excludes financial free zone undertakings unless the activities or transactions taking place via an undertaking based in either of the two financial free zones (ie, the ADGM or the DIFC) affect competition in the UAE mainland, whether directly, indirectly or through an onshore-based subsidiary.

1.2 Legislation Relating to Particular Sectors

Sectors and Exemptions

The UAE Competition Legislation applies to all undertakings operating in the UAE as well as to activities that take place abroad and have an effect on competition in the UAE and the commercial activities and transactions of both local and international undertakings.

The following are exempt from the UAE Competition Legislation.

- Any agreement, practice or action related to a specific good or service where 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 instances for their exemption and economic concentration operations, to a sectoral regulatory body, unless the sectoral regulatory body requests the ministry take over this matter, in whole or in part, in writing and the ministry agrees to this.
- Establishments owned by the Federal government and which are specified in a Cabinet Decision which has been approved by a minister together with the relevant authority.
- Establishments owned by the local government of one of the seven emirates, operating within the emirate and which are determined by a decision issued by the government of the emirate.

The Competition Law does not provide any other exemptions. With that being said, a restructuring exemption is implied based on the definition of economic concentration under the Competition Law (see **2.3 Types of Transactions**) and the requirement for a change of control. In the event a transaction does not fall within the definition

of economic concentration, a mandatory merger control filing is therefore not triggered.

Small and Medium Enterprises (SMEs)

The Competition Law repealed the exemption for SMEs which was contained in Law No 4 of 2012.

1.3 Enforcement Authorities

The UAE Competition Legislation specifies that the responsibility for enforcement lies with the Competition Department at the UAE Ministry of Economy (the “Competition Department”). The Competition Department is supervised by the Competition Regulation Committee and is chaired by the Undersecretary of the Ministry of Economy (the “Competition Committee”).

Both the Competition Committee and the Competition Department report to the UAE Federal Minister of Economy (the “Minister”) who heads the UAE Federal Ministry of Economy (the “Ministry”).

2. Jurisdiction

2.1 Notification

Under the Competition Law, an economic concentration is realised if the total:

- annual sales value of the parties in the relevant market during the last fiscal year exceed the amount determined by the UAE Council of Ministers; and
- share of the parties exceeds the percentage of the total transactions in the relevant market during the last fiscal year determined by the UAE Council of Ministers.

The new Implementing Regulations to the Competition Law will establish the:

- guidelines for submitting economic concentration applications;
- required documents that will be attached to these guidelines; and
- mechanisms for examining the application.

As these Implementing Regulations have not yet been issued, the Competition Threshold Rules must be adhered to. These rules specify that, economic concentration, such as total or partial alienation, merger or acquisition is realised if the total:

- annual sales value of these establishments in the relevant market in the country during the last fiscal year exceeds AED300,000,000; or
- share of these establishments exceeds 40% of the total transactions in the relevant market in the country during the last fiscal year.

For activities or transactions meeting this threshold, filing the notification becomes compulsory. There is no requirement for a voluntary notification if the threshold is not met otherwise.

For the purposes of filing the notification, the filing is made to the Competition Department and attached to it, amongst other things, is an economic report explaining the positive effect of the exemption required. The Competition Department will then assess the exemption request and submit a report to the Competition Committee. The Minister of Economy will then decide on the exemption requested within 90 days of notification of the exemption request. This deadline may be extended by an additional 45 days. If the Minister does not issue their decision by the specified deadline, the notified activity or transaction will be considered by law to be exempt.

On the other hand, no notification is required if the activity or transaction is related to specific

sectors and exemptions (see **1.2 Legislation Relating to Particular Sectors**).

2.2 Failure to Notify

Failure to notify a reportable economic concentration transaction may result in a fine of between 2% and 10% of the turnover generated in the UAE by the relevant undertaking during the last financial year being imposed or, if this data is not available, a fine of between AED500,000 and AED5 million being imposed.

Nevertheless, the Ministry has as far as we are aware, never disclosed any penalties that have been imposed for violating an economic concentration transaction. Penalties imposed by the Ministry are usually made public when disclosed via the Ministry's official channels (ie, websites and social media pages) in addition to the local newspapers, which are likely to immediately pick up on this news.

2.3 Types of Transactions

Competition Law

The Competition Law has three defined terms which are key to understanding the regulatory framework of merger control in the UAE.

The first definition is "relevant market", which means, "The market that is based on two elements:

- concerned products: the product or service or all products or services which are, in view of their prices, characteristics and uses, interchangeable to meet a particular need of the consumer; and
- specific geographical location: it means the physical or digital place where supply and demand converge for a product or service and where competition conditions are similar or homogeneous."

The second is the definition of "economic concentration", which 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 undertaking to another, empowering the undertaking or a group of undertakings to directly or indirectly control another undertaking or another group of undertakings".

In line with the Competition Threshold Rules, "economic concentration" exists if the relevant person(s) or undertaking(s) meet the thresholds mentioned in **2.1 Notification**. The definition of "economic concentration" is wide and includes several types of transactions, such as internal restructuring or reorganisation. The Competition Law does not consider control as a determining factor for triggering the regulatory requirement for notification. The determining factor will always be whether or not these transactions create "dominance" or "economic concentration".

Transactions which do not involve the transfer of shares or assets (such as shareholders' agreements and changes to articles of association) can still be caught under the auspices of the UAE Competition Legislation if they are considered a "restrictive agreement" or if they lead to an abuse of a dominant position.

This brings us to the third significant term which is the definition of "agreements". These are defined as "agreements, arrangements, coalitions, or practices between two undertakings or more or any co-operation among establishments or resolutions issued by undertakings' consortiums whether they are written or oral, explicit or implicit, or public or confidential".

The Competition Law considers "agreements" between undertakings which aim to create

prejudice within, limit, or prevent competition in the UAE as "restrictive agreements", especially those:

- specifying the prices for buying or selling commodities or services, directly or indirectly, by creating the increase, decrease or stabilisation that may negatively affect the competition;
 - specifying the conditions of buying, selling or performing of services and/or any other similar obligation;
 - colluding in bids, tenders, practices or any other supplying offers;
 - phasing out or limiting the operations of production, development, distribution or marketing or any other aspects of investment;
 - colluding to refuse to buy from or to sell or supply to certain undertaking(s) and to halt or impede the undertaking(s) from carrying out their activities or transactions;
 - limiting the freedom of commodities or services flow to the "relevant market(s)" or withdrawing them from the market, including the concealment or storage of these commodities or services unlawfully, abstaining from dealing with these commodities or services or suddenly creating their abundance which may lead to trading these commodities or services with unreal prices;
 - dividing markets or assigning clients based on geographical areas, distribution centres, quality of clients, seasons and time or any other basis that may negatively affect competition; and/or
 - taking procedures to hinder the entrance of undertakings to the market, exclude these undertakings from the market or hinder joining existing "agreements" or coalitions.
- When determining whether any undertaking is abusing its dominant position in the "relevant market(s)", the Competition Department will consider if the undertaking is:
- imposing the prices or conditions of reselling commodities or services directly or indirectly;
 - selling a commodity or performing a service with a price less than the actual cost with the aim of hindering competitive undertakings from entering the "relevant markets", excluding them from these markets or causing them losses, preventing them from continuing their activities in these markets;
 - discriminating without justification amongst clients with identical contracts with regards to the prices of these commodities or services or the terms and conditions of buying or selling contracts;
 - obliging a client not to deal with a competitive undertaking;
 - the total or partial rejection to deal according to the usual commercial conditions;
 - unjustifiably abstaining from dealing in commodities or services through buying or selling or limiting or hindering the dealing that may lead to imposing an unreal price of the commodities or services;
 - suspending the buying or selling of commodities or services unless other commodities or services are received in return which, by nature or commercial use, the latter commodities or services to be received in consideration are irrelevant to the original transaction in the normal course of its business;
 - intentionally publishing incorrect information about commodities or prices;
 - decreasing or increasing the available supply of the commodity to create a false scarcity or abundance of the commodity;
 - controlling or limiting production, markets or technological development; or
 - unjustifiably preventing or obstructing other undertakings from accessing its own net-

works, facilities or any physical or digital infrastructure it owns or exploits if this is the only basic and economically feasible solution for practicing economic activity or entering the “relevant market”.

The triggering factors to consider whether transactions involve the transfer of shares or assets or not through a “restrictive agreement” or an abuse of a dominant position would be:

- whether the relevant undertakings meet the threshold identified in the Competition Threshold Rules, which is always the first step; and
- if yes, determine whether the activity or transaction falls within any of these prohibitions.

2.4 Definition of “Control”

“Control” is not a defined term under the UAE Competition Legislation. “Control” in the context of UAE merger control will only be relevant in two instances.

The first instance is the percentage of “control” required by Federal UAE or local governments over undertakings to consider whether or not these undertakings are exempted from the application of the UAE Competition Legislation. If the direct or indirect “control”, by the Federal or local government over an undertaking is 50% or more, then the undertaking is exempted from the UAE Competition Legislation. If the “control” is less than 50%, then it will need to meet the threshold under the Competition Threshold Rules before being captured by the requirements or prohibitions contained in the Competition Law.

The second instance is to identify the controlling undertaking in the event of “economic concentration” as determined under the Competition Law. The purpose of identifying the controlling

undertaking is to name it as being responsible for complying with the regulatory requirements under the UAE Competition Legislation.

2.5 Jurisdictional Thresholds

The Competition Law includes turnover and market share thresholds, the amounts and percentages of which will be defined in the new Implementing Regulations. In the interim, the three jurisdictional thresholds under the Competition Threshold Rules will be adhered to, which, if met, then require the regulatory notification requesting exemption in addition to the other obligations and restrictions under the UAE Competition Legislation. These jurisdictional thresholds are as follows.

- “Restrictive agreements”: if these “agreements” represent 10% or more of the total transactions of the undertaking in the “relevant market” with regards to a specific product and/or service.
- “Dominant position”: this is assumed if the market share of an undertaking exceeds 40% of its transactions in the “relevant market” with regards to a specific product and/or service.
- “Economic concentration”: the “economic concentration” transaction will lead the undertaking if:
 - (a) the total annual sales value of these establishments in the “relevant market” in the country during the last fiscal year exceeds AED300,000,000 in the last fiscal year; or
 - (b) the total share of these establishments exceeds 40% of the total transactions in the “relevant market” in the country during the last fiscal year. It is worth mentioning that total transactions are defined under the general principles of EU competition laws (on which the Competi-

tion Law is significantly based) as the total value of sales of goods or services in the "relevant market". On the other hand, no special jurisdictional thresholds will apply to particular sectors and this applies across all sectors and regions in the UAE. It is important to reiterate that the jurisdictional thresholds do not apply to exempted activities or enterprises.

2.6 Calculations of Jurisdictional Thresholds

None of the UAE Competition Legislation has identified how jurisdictional thresholds are calculated (including how sales or assets booked in a foreign currency are converted or if the threshold is based on the book or fair market value). There is also no sufficient data to understand how the Competition Department will carry out these calculations, due to the absence of case law.

The absence of case law could be justified by:

- the high jurisdictional thresholds not usually met by the undertakings based or doing business in the UAE and do not therefore require any filings or notifications requesting exemptions;
- the huge volume of "economic concentration" transactions and activities taking place in financial free zones, such as the ADGM or the DIFC, exempted from the UAE Competition Legislation;
- many of the undertakings are carrying out activities that are categorised as exempted activities and enterprises; and
- the multiple incentives provided by the UAE government to promote the UAE as a regional hub leading to some of the regulatory restrictions usually found in developed markets being relaxed, which, at the same time, will

not apply to the UAE, which is considered one of the most competitive emerging markets in the Gulf and Middle East region.

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

It is important to clarify that an "undertaking" is defined under the Competition Law as "any natural or legal person conducting an economic activity or any person in connection with such persons or any grouping of these persons regardless of their legal form". No other definitions are contained in the UAE Competition Legislation with regards to corporate entities or individuals or group wide.

This means that an "undertaking" meeting the threshold could be the "undertaking" directly involved in the "economic concentration" transaction or activity or it could be a parent or holding company based outside the UAE.

Strictly speaking, the "undertaking" that is directly carrying out an "economic concentration" transaction or activity in a "relevant market", whether based inside or outside the UAE, which meets the jurisdictional threshold as an entity and not as a group will have to notify the Competition Department that is requesting an exemption.

However, if we apply the same principles used in the EU, the calculation of the jurisdictional thresholds should be carried out after consolidating the turnover of the transactions of the group as a whole and not just the "undertaking" that is a party to the transaction.

Unfortunately, due to the absence of case law and regulatory guidance on the calculation methodology, it is unclear if the Competition

Department will strictly follow the wording of the Competition Law or apply the same interpretation followed under the general principles of EU competition laws. This includes the method of reflecting changes in the business during a reference period (such as other acquisitions, divestments or business closures).

The safest approach is therefore to consult the Competition Department before concluding an “economic concentration” transaction where there are grounds to believe that the jurisdictional thresholds are met at the group level but not at the “undertaking” level.

2.8 Foreign-to-Foreign Transactions

Foreign-to-foreign transactions by way of sale, acquisition or merger (whether shares or assets) are captured under the auspices of the UAE Competition Legislation once the jurisdictional thresholds under the Competition Threshold Rules are met, regardless of the location or nationality of the parties and subject to the local effects test (ie, the parties carrying out their activity or transaction in a “relevant market” or engaging in activities or carrying out transactions that have harmful effects on competition in the UAE).

100% foreign ownership of UAE onshore companies is generally allowed, subject to restrictions or prohibitions on foreign investment for companies engaging in activities which have a strategic impact.

The Economic Departments of Dubai and Abu Dhabi have published lists of more than 1,000 commercial and industrial activities which do not have a strategic impact. Companies incorporated in these emirates that are engaged in non-strategic activities are able to be 100% foreign owned.

2.9 Market Share Jurisdictional Threshold

Under the Competition Law there will be a market share threshold which will be determined in the new Implementing Regulations. If the threshold is met, notification becomes compulsory in line with the Competition Law and the Competition Regulations.

2.10 Joint Ventures

Joint ventures are subject to the same restrictions and prohibitions as any other activity or transaction. As long as the joint venture does not contain any condition making the arrangement a “restrictive agreement” or an “economic concentration”, the joint venture will not trigger any of the regulatory requirements under the UAE Competition Legislation and will not have to request an exemption from the Competition Department.

If the joint venture is labelled as a “restrictive agreement” or an “economic concentration”, the filing of the notification becomes a regulatory requirement.

It is clear that filing the regulatory notification is subject to meeting the jurisdictional threshold under the Competition Threshold Rules first. This requirement has to be met even before checking whether the joint venture is defined as a “restrictive agreement” or an “economic concentration” takes place.

2.11 Power of Authorities to Investigate a Transaction

According to the Competition Regulations, the Competition Department has full power and authority to investigate, on its own initiative or following complaints submitted by third parties, complaints of a possible violation of competition

practices and competition-related activities and transactions.

There is no limitation on the Competition Department's ability to investigate an activity or a transaction. During the investigation, the Competition Department can either hold interviews or request information from the enforcement or competent authorities in the UAE. Following the investigation, the Competition Department prepares a report and submits it to the Minister for a decision to be issued.

2.12 Requirement for Clearance Before Implementation

Following receipt of the regulatory notification, the Competition Department will assess it and ensure that it meets the formal requirements under the Competition Regulations. After assessing the notification, the Competition Department will notify the Minister a final decision can be issued.

Legally speaking, a transaction (if it meets the regulatory thresholds and is considered an "economic concentration" transaction in law) should not be completed without obtaining clearance from the Minister. From a procedural point of view, a transaction could still be completed without clearance as the Federal and local authorities will not require it as part of the documents needed to effect a transaction in the public records and relevant constitutional documents such as commercial licences, commercial registries, notarised share transfer agreements, etc.

There is a clear provision in the Competition Law prohibiting the relevant "undertakings" from concluding any transactions during the merger control review period. Obtaining clearance from the Minister is therefore usually included as a condition precedent in the "agreements" of an

"economic concentration" transaction, making obtaining clearance a condition for closing the transaction.

2.13 Penalties for the Implementation of a Transaction Before Clearance

Failing to comply with the regulatory requirement to suspend the implementation of a transaction during the merger control review, until:

- a clearance is obtained; or
- the specified deadline expires, will lead to a fine of between AED50,000 and AED500,000 being imposed.

2.14 Exceptions to Suspensive Effect

There are no exceptions under the UAE Competition Legislation to the suspensive effect of the regulatory notification.

2.15 Circumstances Where Implementation Before Clearance Is Permitted

Implementation before clearance is not permitted under the Competition Law.

3. Procedure: Notification to Clearance

3.1 Deadlines for Notification

There is uncertainty over precisely when the transaction must be notified to the Competition Department. The Competition Law states that "economic concentration" transactions have to be notified at least 90 days before completion of the transaction.

Practically speaking, notifications should be made shortly after entering into the transaction documents as it is usually a condition precedent to obtain the regulatory approval prior to clos-

ing. In this case, the applicant will comply with both the Competition Law and the Competition Regulations.

Failing to notify a reportable “economic concentration” may result in a fine of between 2% and 10% of the turnover generated in the UAE by the relevant “undertaking” during the last financial year being imposed or, if this data is not available, a fine of between AED500,000 and AED5 million being imposed.

3.2 Type of Agreement Required Prior to Notification

The new Implementing Regulations to the Competition Law will determine the documents and the procedures required. However, for the time being, the existing Competition Regulations must be adhered to. The Competition Regulations indirectly require a binding “agreement” before the notification for an “economic concentration” transaction to be approved. As part of the notification to the Competition Department, a term sheet or an “agreement”, whether in an executed or draft form, must be attached.

A less formal agreement such as a letter of intent or memorandum of understanding can be attached to the notification. In all events and for the purposes of the notification, a written document should be provided explaining the transaction, whether in a signed or a draft form. Without it, the Competition Department will most likely put the application on hold until the term sheet or agreement is submitted as part of the notification filing.

3.3 Filing Fees

There are no filing fees for the regulatory notification.

3.4 Parties Responsible for Filing

According to the Competition Regulations, the regulatory filing for an “economic concentration” is made by the relevant “undertaking”. There is no clear definition of what is meant by relevant “undertaking(s)”. It could be interpreted from the text that a relevant “undertaking” will be:

- the “undertaking” directly involved in the transaction; and
- meeting the jurisdictional threshold following the conclusion of the “economic concentration” transaction.

If more than one “undertaking” meets these requirements, filing should be made jointly (see **2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds**).

3.5 Information Included in a Filing

The new Implementing Regulations will include all the filing documents and procedures. However, in the meantime the authors will adhere to the UAE Competition Legislation, which includes the following.

- The notification form (although this is still to be released by the Competition Department and, therefore, as of the date of this guide, notifications could be submitted in the form that the relevant “undertaking” considers appropriate as long as it complies with the regulatory requirements).
- The term sheet or agreement, whether executed or in draft form.

The relevant “undertaking(s)” must also submit the following as part of the notification filing.

- The constitutional documents of the relevant “undertaking(s)”, including their memorandum and articles, which have to be duly attested.

- The audited consolidated financial statements of the relevant “undertaking(s)” for the last two years.
- The shareholders’ register of the relevant “undertaking(s)”.
- An economic report analysing the positive impact of the transaction.

The notification form, term sheet or agreement (whether executed or in draft form) and the attachments mentioned above should be submitted in Arabic. An English translation of the notification form can also be filed, but practically speaking, the Competition Department will only refer to the Arabic documents and will disregard the English copy.

The Competition Regulations require three hard copies of the notification with the attachments to be submitted. However, in practical terms, the Competition Department now accepts the notification and attachments to be sent in an electronic form and it is no longer necessary to submit hard copies. If some of the documents or information in the notification or its attachments are confidential, the relevant “undertaking(s)” may refer the Competition Department to the confidential information and may also submit a non-confidential summary of the confidential information to maintain it. Additional documents and information can be requested by the Competition Department during the merger control review process.

3.6 Penalties/Consequences of Incomplete Notification

There is no penalty for an incomplete notification if it was an honest mistake or was done in good faith. The only consequence is that the Competition Department will not assess or analyse it until all documents are submitted, whether required

by law or further requested by the Competition Department.

The 90-day timeframe, during which a decision should be issued (and which could be extended for an additional 45 days for this purpose), will not start until the Competition Department considers the notification complete. This can only happen when all documents and information requested by the Competition Department are submitted.

3.7 Penalties/Consequences of Inaccurate or Misleading Information

A provision in the UAE Federal Crimes and Penalties Law No 21 of 2021 states that imprisonment and/or a fine will be imposed on anyone who, in bad faith, makes a false statement to a judicial or administrative authority. Nonetheless, none of these penalties will apply if the inaccurate information was provided because of an honest mistake or on the basis of good faith where the applicant honestly believed that the information was true and accurate. Inaccurate information should be promptly rectified and updated once the relevant “undertaking” knows that inaccurate information was provided.

3.8 Review Process

The review process will be defined in the new Implementing Regulations to the Competition Law. Until the Implementing Regulations are issued, the procedures will be carried out in two phases. The first phase is carried out by the Competition Department, who ensure first of all that the notification is complete and includes all the relevant information and documents. To ensure the notification is complete, the Competition Department may require the relevant “undertaking(s)” and any other concerned party, as the Competition Department will consider appropriate, to provide the necessary informa-

tion or documents or to attend interviews with the Competition Department. Consultations with other authorities in the UAE may also be made for the assessment.

Once all required documents and information are provided, the Competition Department will prepare a detailed report on the “economic concentration” transaction notified. The report will include:

- a statement of all procedures and actions taken;
- the underlying data;
- the results of the assessment from both legal and economic perspectives, especially with regard to the positive and negative effects of the transaction on competition in the “relevant market”; and
- the recommendation(s) of the Competition Department and proposed decision to be made by the Minister.

The second phase will involve submitting the detailed report to the Minister for their review and final decision.

In any event, the process should not last more than 90 days or 135 days if the option to extend for an additional 45 days is exercised. Approval should be assumed to be granted if no decision is made within this timeframe. The timeframe starts once all necessary documents and information are provided and no further engagement is required for the Competition Department to be able to prepare the detailed report.

3.9 Pre-Notification Discussions With Authorities

Discussions and engagement with the Competition Department are carried out with:

- the relevant “undertaking(s)” directly concerned with the transaction;
- other “undertakings” or third parties believed by the Competition Department to be directly or indirectly affected by the transaction; and
- other UAE authorities, consultants or third parties as the Competition Department considers appropriate.

These discussions could be notified to the relevant “undertaking(s)” or remain confidential. The Competition Department has full discretion to engage in the way it believes to be in the best interests of all of the concerned parties.

3.10 Requests for Information During the Review Process

There is no regulatory limitation or threshold on the number of requests that the Competition Department could make during its review of the documents and information required for reviewing the notification.

The Competition Department is legally entitled to request any number of interviews or any volume of documents or information from any of the concerned parties that it considers appropriate to enable it to complete its review.

Once the Competition Department declares that it has all the information it needs to prepare its detailed report, the 90-day period starts running, even though it could be extended by another 45 days.

There is no clarity on how common or burdensome some of these requests could be. However, practically speaking, it is highly likely to be reasonable and essential to adequately and accurately assess the notification.

3.11 Accelerated Procedure

There is no short-form, fast-track or other type of accelerated procedure for reviewing the notification. The process applies to any and all “economic concentration” transactions.

4. Substance of the Review

4.1 Substantive Test

When determining whether the notification should or should not be approved, the Competition Department will consider the following when employing the substantive test.

- Actual and potential competition in the “relevant market”.
- New “undertakings” ease of access to the “relevant market”.
- The extent of the potential impact on prices of relevant commodities or services.
- Whether there are systemic barriers affecting the entry of new competitors.
- How likely the emergence of a “dominant position” in the “relevant market” is.
- The extent of the potential impact on innovation, creativity and technical competence.
- The extent of the contribution required to promote investment or export or support UAE “undertakings” ability to compete in the international marketplace.
- The extent of the impact on consumers’ interests.

These criteria might be amended once the new Implementing Regulations are issued.

4.2 Markets Affected by a Transaction

Under the UAE Competition Law, the market share is the total share of the parties’ transactions as compared to the percentage of the total transactions in the “relevant market” during the

last fiscal year determined by the UAE Council of Ministers in line with the Competition Threshold Rules. An “economic concentration” is created if the market share of the “undertaking(s)” exceeds 40% of the total transactions in a “relevant market” of goods or services that are interchangeable based on their price, characteristics and usage in the “relevant market”.

The Competition Department will therefore usually identify the “relevant market” first and then measure the market share in terms of the aggregate turnover of the relevant “undertaking(s)” and divide it by the total value of sales of the products or services pertaining to the “relevant market”.

Total transactions is not defined under the UAE Competition Legislation but could be interpreted as meaning the combined annual turnover of the “undertaking(s)” from the total sales of the products or services pertaining to the “relevant market”.

4.3 Reliance on Case Law

Unfortunately, UAE merger control case law is rare and is not publicly available because of the high thresholds which causes the application of the Competition Law to be limited. Reliance is therefore heavily weighted on the interpretation of the UAE Competition Legislation up to the date of this guide.

4.4 Competition Concerns

Please see 4.1 Substantive Test.

4.5 Economic Efficiencies

Please see 4.1 Substantive Test.

4.6 Non-Competition Issues

Foreign investment is restricted or prohibited in seven strategic sectors, according to Cabinet

Decision No 55 of 2021 on the Determination of the List of Strategic Impact Activities. The restricted or prohibited sectors include: security and defence; banks and insurance; and telecommunications. If the regulatory authority for the relevant sector approves an application by a foreign investor who wishes to invest in a company engaged in one of these sectors, it must determine the minimum percentage of share capital that must be held by UAE shareholders and the maximum percentage that may be held by the foreign shareholder.

However, sectoral regulators and other government authorities in the UAE retain a certain amount of discretion to approve or reject proposed transactions affecting competition in the UAE. For example, while the regulated sectors have been excluded from the scope of application of the Competition Law, investment in these sectors (including in relation to a foreign company operating through a branch in the UAE) will generally require a separate approval procedure to be undertaken with the relevant regulator (in particular, to update the “undertaking’s” UAE licences and registration).

Considerations in this context will not necessarily or exclusively be competition-related and sectoral regulators and other government authorities retain considerable discretionary powers to reject a transaction where they have concerns, including national security or public policy.

4.7 Special Consideration for Joint Ventures

Joint ventures are not separately dealt with under the UAE Competition Legislation. They are considered like any other transaction in terms of whether the “undertaking” is meeting the jurisdictional threshold and if there are any considerations as to whether it should be a “restrictive

agreement” or if there is an abuse of a “dominant position”.

Other than evaluating the “economic concentration” aspects, the Competition Department will also consider if the joint venture should be considered a “restrictive agreement” or if it abuses a “dominant position”.

5. Decision: Prohibitions and Remedies

5.1 Authorities’ Ability to Prohibit or Interfere With Transactions

Once the Minister has made their decision, the relevant competent authorities (including the Ministry) have the power and authority to enforce it. The authorities have the ability to prohibit or otherwise interfere with a transaction.

The clearance or rejection decision is made by the Minister, so it is worth highlighting the powers of the Minister that extend, amongst other things, to the:

- commercial transactions;
- commercial agency;
- consumer protection;
- commercial companies, including publicly listed companies;
- financial and capital markets; and
- intellectual property.

The Minister can therefore significantly affect the provision of a product or a service in the UAE and can request the UAE enforcement bodies intervene to support any decision made in this regard.

On a related note, the Competition Law also states that the Ministry will co-ordinate with the

competent authorities and the sectoral regulatory bodies on the execution of the provisions of the Competition Law. Employees of the Competition Department will be specified by a resolution of the UAE Minister of Justice in agreement with the Minister and the relevant competent authority will have the capacity of judicial officers to prove violations of the UAE Competition Legislation.

5.2 Parties' Ability to Negotiate Remedies

When the Competition Department has concerns about a transaction, the parties may propose remedies. For example they may propose divestitures or structural or behavioural remedies. The Competition Department then has sole discretion to accept or reject these remedies and include them in the recommendations it submits to the Minister. The Minister will then consider the remedies and make a final decision.

5.3 Legal Standard

There is no specific legal standard that remedies must meet to be considered acceptable. It is therefore up to the parties to agree on the most suitable remedies with the Competition Department. The remedies should then be accepted by the Minister.

5.4 Negotiating Remedies With Authorities

Remedies can be proposed at any point until the Minister makes a final decision. It can be proposed by the relevant "undertaking(s)" making the notification, the Competition Department or even the Minister, who can issue clearance of the "economic concentration" transaction subject to certain remedies being satisfied. Proposals for remedies are usually communicated in writing but can also be initially discussed verbally for the

purpose of submitting the final remedy proposal in writing.

5.5 Conditions and Timing for Divestitures

Divestiture (ie, the commitment to sell a business unit) may take the form of a:

- horizontal division where the same shareholders own the shares of the new companies; or
- vertical division where part of the existing company is carved out and transferred to a newly established subsidiary owned by the parent company.

The Competition Department is most likely to entrust the relevant "undertaking(s)" with preparing the divestiture plan (if acceptable to the Competition Department) and overseeing the implementation of the divestiture plan after the clearance has been issued. However, there is no general preference for any type of divestiture. It is assessed on a case-by-case basis.

There is therefore no standard approach regarding conditions and timing for divestitures or other remedies. It will be left to the remedy arrangement agreed with the Competition Department or stipulated in the clearance issued by the Minister, including completing a transaction before remedies are complied with.

Failing to comply with the remedies may lead to the clearance being withdrawn and/or a fine imposed. The amount of the fine imposed will be at the discretion of the Competition Department. However, it will have to be approved by the Minister and will be limited to the fine thresholds specified by the Competition Law.

5.6 Issuance of Decisions

Decisions permitting or prohibiting a transaction are issued formally and are notified to all of the concerned parties. A decision will be implied if it is not made during the 90-day period provided in the Competition Law even though this 90-day period may be extended for an additional 45 days.

Decisions are not available publicly and cannot therefore be revisited by the public to check. There is a privity to the parties who are made aware of the decisions. This could be limited to the “undertaking(s)” or include third parties such as concerned UAE authorities and regulatory bodies or parties directly or indirectly affected by the decision.

5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions

The authors are not aware of the Competition Department requiring remedies or prohibiting foreign-to-foreign transactions as this is not publicly available information.

6. Ancillary Restraints and Related Transactions

6.1 Clearance Decisions and Separate Notifications

According to the Competition Regulations, the Minister issues a reasoned decision as a:

- clearance decision to approve the transaction if it does not negatively affect competition or if it has positive economic impacts on competition that outweigh the negative impacts;
- clearance decision to approve the transaction, provided that the relevant “undertakings” comply with the conditions and obligations specified by the Minister; or

- decision to reject the transaction.

The decision should cover the transaction as a whole including any related arrangement (ancillary restraints) if it was part of the notification made to the Competition Department. No separate notifications will be required in addition to the decision.

The Minister may revoke the clearance if it appears that the:

- circumstances under which the approval has been granted no longer exist;
- relevant “undertaking(s)” has/have breached any conditions or obligations on which the approval has been granted; or
- approval has been granted on the basis of misleading or incorrect information. In that case, the competent authority will take the appropriate legal actions to sue and prosecute the relevant “undertaking(s)” in breach.

The Competition Department maintains a special record for recording decisions issued by the Minister regarding the notifications for approval of “economic concentration” transactions. This record is not publicly available.

These procedures might be amended in the new Implementing Regulations.

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

7.1 Third-Party Rights

See 3.9 Pre-Notification Discussions With Authorities.

7.2 Contacting Third Parties

The Competition Department may contact third parties in any way it considers appropriate. This can include by phone calls, emails, written letters (which can be sent by mail or electronically) or by interviewing the third parties (interviews are most likely to take place at the offices of the Competition Department).

The Competition Department may also request third parties submit their comments in this regard within 15 days of the Competition Department's request (the so-called market test) if they may be affected by the transaction being cleared.

7.3 Confidentiality

The Competition Law requires the Ministry's employees to take steps to keep sensitive information (which could cause serious damage if disclosed) confidential. In this regard, the Ministry's employees are not permitted to disclose any information reviewed as part of the notification application unless the disclosure is to the concerned parties or at the request of the relevant authorities.

Violating the confidentiality duties could, under the Competition Law, lead to a fine of between AED50,000 and AED200,000 being imposed.

Confidential documents submitted as part of the notification application should be labelled as "confidential" and non-confidential summaries of the confidential information should be provided.

7.4 Co-Operation With Other Jurisdictions

There is no obligation for, or prohibition of, the Ministry to co-operate with other regulators in other jurisdictions.

8. Appeals and Judicial Review

8.1 Access to Appeal and Judicial Review

Any concerned party can request the Minister review a competition decision adopted by themselves within 14 days of the date the applicant became aware of the decision. The request should be in writing and explain the grounds the request is being made on and attach all of the necessary supporting documents.

The Competition Committee will, in return, review the request and submit its recommendations to the Minister within ten days of the date on which the application was referred.

The Minister should adopt a final decision within 30 days of the request being filed. If a decision is not adopted within this timeframe, the request will be considered to be rejected.

Decisions issued by the Minister can be appealed before the competent court within 60 days of the concerned parties being notified of the Minister's decision.

However, the Minister may enter into a settlement with "undertakings" considered to have breached the Competition Law, except for breaches of unauthorised disclosure of the confidential information protected under the Competition Law.

Settlement with breaching "undertakings" is subject to the following.

- "Undertakings" pay a fine amounting to no less than two times the minimum stated in the Competition Law.
- The settlement is entered into before a criminal case is filed.

The settlement is effective immediately after the relevant “undertaking” has paid the fine.

The durations and procedures might be amended after the new Implementing Regulations are issued.

8.2 Typical Timeline for Appeals

See 8.1 Access to Appeal and Judicial Review for the timeframes.

Appeals are not public records and so far as the firm is aware there have been no successful appeals.

8.3 Ability of Third Parties to Appeal Clearance Decisions

See 8.1 Access to Appeal and Judicial Review.

The public records of the courts, up to the date of this guide, do not show any clearance decision appeals.

9. Foreign Direct Investment/ Subsidies Review

9.1 Legislation and Filing Requirements

There is no applicable information in this jurisdiction regarding legislation and filing requirements.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Rob.Thomson@chambers.com