

UAE Merger Control Update: Implementing Regulations Now In Force

Implementing Regulations clarify some points, but fall short on others

Introduction

On 27 October 2014 the Implementing Regulations (the Regulations) for the UAE Federal Law No. 4 of 2012 (the Competition Law) came into force. While the Regulations offer some clarification on merger control filing requirements and the review process, they fail to address certain key issues.

Background on the UAE Competition Law

The Competition Law came into force on 23 February 2013. The Competition Law requires that the Ministry of Economy give merger control clearance of certain acquisitions of control which exceed market share thresholds for the “relevant market,” as determined by the UAE Federal Cabinet, and which may affect competition in the relevant market by creating or enhancing a dominant position.

The Competition Law provides that implementing regulations would define the limits of economic concentration and address other matters.

The Minister of Economy has 90 days from the date of receipt of a filing to make a decision (extendable by a further 45 days) and the transactions cannot complete without the Minister of Economy’s approval or deemed approval.

For further information and analysis on the Competition Law please see [How New UAE Competition Law Will Impact Business](#).

What the Implementing Regulations Achieve

The Implementing Regulations:

- Clarify what information is required to be included in a merger control filing
- Clarify what criteria the Ministry of Economy will consider when reviewing a filing for merger control clearance
- Set out a process to appeal the Minister of Economy’s determination on a filing for merger control clearance

Where the Implementing Regulations Fall Short

The Implementing Regulations:

- Do not specify the market share thresholds which trigger a filing – the Implementing Regulations indicate that such thresholds will be determined by the UAE Federal Cabinet. Although on the face of the Competition Law and Implementing Regulations no filing is required until the market share thresholds are determined by the UAE Federal Cabinet and exceeded, we understand that the Ministry of Economy is currently expecting filings on all potentially qualifying transactions, which is unusual.
- Do not address the basis for carrying out a substantive analysis of competition impact at the stage of determining whether a filing is required (an analysis which typically would not be required at the notification stage). For example, no guidance is provided on how narrowly or broadly the “relevant market” should be defined.
- Appear to require an unsigned draft sale and purchase agreement to be submitted with an application at least 30 days prior to the date of executing the sale and purchase agreement, rather than a signed sale and purchase agreement with a merger control clearance condition. We understand that once a filing is made, the Ministry of Economy will issue a certificate of initial submission which entitles the parties to execute the sale and purchase agreement with a merger control clearance condition.
- Do not clarify the interaction between the 30 day period referred to above and the 90 day period which the Minister of Economy has to make a decision (extendable by a further 45 days) on a filing for merger control clearance.

The Way Forward

We hope the Ministry of Economy will provide further clarity on the issues raised in this note in due course.

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