

## UAE's Evolving Merger Control

Article

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Over the last 18 months, the UAE overhauled its competition regime through a series of legislative changes. These updates clearly indicate the UAE government's intention for increased Ministry of Economy (the "MOE") involvement in transactions with a UAE nexus. In this article, we summarize the key changes and practical considerations that all M&A teams in the UAE will need to bear in mind moving forward.

### Legislative Changes

The first legislative update was issued on December 29, 2023, when Federal Decree-Law No. 4 (the "Old Law") was replaced by Federal Decree-Law No. 36 of 2023 on the Regulation of Competition (the "New Law"). The impact of the New Law was substantial. The New Law introduced a new merger control regime which will very likely result in an increased number of merger control filings being made.

The second update to the legislative regime was published in the Official Gazette on January 30, 2025, when the UAE Cabinet of Ministers issued Ministerial Decree No. 3 of 2025 (the "Decree"). The Decree introduced much-awaited key criteria which were missing from the New Law.

It is important to be aware that the Implementing Regulations to the New Law are still yet to be published. Article 39 of the New Law provides that the decisions, decrees and regulations issued pursuant to the Old Law shall continue to be in effect until the New Law's Implementing Regulations are in force.

All transactions which are conducted both inside the UAE and outside of the UAE, where such activity may impact competition in the UAE, are caught by the

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New Law. The New Law refers to a 'relevant market,' which is defined in Article 1 as competition that may occur within a 'digital place' and 'where competition conditions are similar or homogeneous' and comprises of two elements:

1. Relevant product market: products and services that, by virtue of their price, characteristics and intended use, are considered interchangeable to meet particular consumer needs; and
2. Relevant geographic market: the physical or digital place where supply and demand for products or services come together and where competition conditions are similar.

Under the Old Law, very few merger control filings were made with the MOE. This was due to the relatively high threshold which needed to be met for a mandatory filing. This threshold was met when the combined market share of the parties to the proposed transaction exceeded 40 percent. Due to this, merger clearance filings have rarely been at the top of UAE M&A teams' minds and have not formed part of standard M&A transaction processes.

Under the New Law, two thresholds were introduced which, if met, would require the parties intending to participate in an economic concentration to notify the MOE to receive clearance before going ahead. The New Law introduced the following thresholds, however did not disclose the relevant percentages for meeting these thresholds. With the issuance of the Decree, we now have a complete picture as the relevant percentages were contained therein and are set out below.

- **Turnover threshold:** Total annual sales of the parties to a proposed transaction in the 'relevant market' in the UAE during the preceding fiscal year exceeds AED300 million (approximately USD81.7 million).
- **Market share threshold:** During the preceding fiscal year, the total market share of the parties to the transaction exceeds 40 percent of the total sales in the 'relevant market' in the UAE.

The Decree also provided the relevant threshold to use to determine whether a company holds a 'dominant position' in the market. It is worth noting that holding a dominant position in the UAE is not prohibited under UAE legislation. However, pursuant to the Decree, where a business holds a market share exceeding 40 percent of total sales in the 'relevant market' (whether acting by itself or with another business), the relevant business will be restricted from carrying out any practices which may result in anticompetitive harm.

The introduction of the two threshold tests is a clear indication that the UAE government intends for more transactions with a UAE nexus to be subject to merger clearance processes. Due to this, M&A teams will need to undergo a thorough analysis of not only their position in the relevant market but the other involved party/parties before going ahead.

## Merger Control Filings

If it is deemed likely that either of the thresholds would be met, merger clearance filings with the MOE should be made at least 90 days prior to completion of the proposed transaction pursuant to Article 12 of the New Law. We recommend confirming the requirements of what should be included in a filing with the MOE at the relevant time of filing. However, from our experience under the Old Law, the process can be very involved, and the MOE will require a significant amount of information from the parties in relation to their business practices in the relevant market. We anticipate that this will still be the case with merger control filings under the New Law.

The Competition Regulatory Committee has 90 days (subject to 45-day extension and any further extensions as may be requested from the MOE) from the date of the merger control filing to conduct its own market research and evaluate the proposed transaction's potential impact on the UAE market.

Once this review is complete, one of the following decisions will be issued:

1. **Unconditional approval:** Where the MOE considers that the proposed transaction does not have an adverse impact on competition or where it would generate positive economic benefits outweighing any adverse impact;
2. **Conditional approval:** Where the MOE recommends that the parties implement remedies to mitigate potential adverse effects which have been identified by the MOE;
3. **Rejection:** The proposed transaction is prohibited from taking place; or
4. **Declining to exercise jurisdiction:** The MOE considers that the proposed transaction does not meet the conditions for filing, and therefore does not issue a decision due to lack of jurisdiction.

An important shift from the Old Law is that, under the New Law, where the MOE fails to issue one of the above decisions within the requisite period, the proposed transaction shall be deemed rejected. Whereas under the Old Law, the proposed transaction would instead be deemed approved.

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## Exemptions

Both UAE Federal and local government owned entities are exempt from the scope of the New Law. Under the Old Law, certain sectors were entirely exempted, however under the New Law any agreement or conduct relating to a specific good or service which is regulated by another law, provided that law governs the antitrust aspects of that particular sector, such agreement or conduct would be exempt from the remit of the New Law. As a result, M&A

teams will need to widen their resources to ensure that a review of related sector laws is undertaken to determine whether those laws include such antitrust provisions to exempt the proposed transaction from the provisions of the New Law.

Another important change made by the New Law was to remove the exemption for small and medium sized enterprises from its purview.

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## Fines

Where a filing is not made in the event where the transaction would have met either of the threshold tests under the New Law, the parties will be subject to a fine of an amount between 2-10 percent of the total annual revenues achieved by the party from the relevant product or service in the UAE during the previous fiscal year. If the relevant revenue cannot be determined, the MOE have set the fine to an amount between AED500,000 and AED5,000,000 (approximately US\$136,000 to US\$1,300,000).

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## Conclusion

Our view is that merger control filings will become commonplace across M&A transactions with a UAE nexus. Up until now, due to the high thresholds under the Old Law that needed to be met, filings are not an ordinary part of M&A teams' transaction structures. However, we recommend that M&A teams dedicate time at the very outset of a deal to determine the metrics which are required to deduce whether either of the thresholds would be met under the New Law. Not only will this mean that, in the event a filing is required, most of the information that will be required for the filing will be more readily available but also the timeframes associated with the filing and the MOE's decision can be factored into the overall deal timetable.

We look forward to seeing how these legislative changes shape the future of UAE M&A transactions and look forward to working with our clients to both successfully file merger clearance requests and complete M&A transactions in the Emirates.

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