

inBrief



UAE Competition Law - All bark and no bite?

By James Bowden and Abdus Samad | January 2015

Federal Law No. 4 of 2012 on the regulation of competition (the “**Competition Law**”) introduced a regime for the regulation of anti-competitive behavior in the UAE which previously did not exist. If implemented strictly its effects would be very significant on UAE business. The Competition Law came into force on 23 February 2013 and introduces merger/acquisition clearance requirements, prohibitions against anti-competitive agreements and activities which constitute abuse of a dominant position, as well as some anti-competitive trade practices. The six month transition period allowing entities to become compliant with the Competition Law expired on 23 August 2013.

To date, the Competition Law has not been enforced in practice even moderately. One reason for this is that the Competition Law left key details to be set out in regulations that were to follow. The anticipated regulations have recently been issued but, disappointingly, they do not provide the clarity that was needed. Nonetheless, compliance with the Competition Law is (ostensibly) mandatory as it is a current, valid UAE law. With the recent issuance of the regulations it is foreseeable that this law could start to enjoy some level of enforcement. It is worth noting that, while the newly issued regulations do not provide a great deal of clarity on some key points under the Competition Law, they do set out a mechanism for making complaints against parties allegedly in breach of the Competition Law and the Ministry of Economy’s duty to investigate once a complaint is accepted.

Scope of Application

The Competition Law applies to all entities undertaking commercial activities in the UAE and to entities operating outside the UAE but whose activities affect competition inside the UAE.

Certain types of entities and industry sectors are expressly exempted. These include:

- federal and local government entities and entities owned or controlled by federal or emirate governments;
- small and medium size entities (not defined in the Competition Law or the regulations); and
- entities operating in telecoms; financial services; pharmaceutical production and distribution; cultural activities; oil and gas; postal services including express delivery; electricity and water production and distribution; sewage and waste disposal; transportation and railway.

The Authors



James Bowden
Partner
jbowden@afриди-angell.com
Tel: +971 4 330 3900

James advises on a broad range of corporate, commercial, compliance and regulatory, technology outsourcing and employment matters. He assists clients with the development of effective compliance programs. James joined Afridi & Angell in 2006. He is a member of the Ontario Bar.



Abdus Samad
Associate
asamad@afриди-angell.com
Tel: +971 4 330 3900

Abdus Samad advises foreign and local clients on general corporate, commercial and other matters related to the conduct of business in the region including corporate investments, restructuring, setting up companies and joint ventures in the UAE, and the acquisition and sale of business. Abdus Samad has also been involved in banking and finance transactions, and advises clients on banking related products and services.

Prohibitions

The Competition Law requires that entities seek merger clearance from the UAE Ministry of Economy if they are contemplating a transaction that:

- will result in the acquisition of a direct or indirect, total or partial interest or benefit in assets, equity, and/or obligations of another entity to which the Competition Law applies;
- will create or promote a dominant position; and/or
- may affect the level of competition in the relevant market.

In addition, the Competition Law prohibits entities from entering into agreements or arrangements (these terms should be construed very broadly) the aim, object or effect of which is to restrict competition. This includes, amongst other things, agreements or arrangements which directly or indirectly fix purchase or selling prices, grant exclusivity with respect to products or geography or other market division (other than through registered commercial agencies), and agreements or arrangements which involve collusion in bids and tenders. These restrictions would impact many distribution agreements in the UAE.

The Competition Law provides for potentially far-reaching penalties in the event of violation. These penalties include:

- fines of between AED 500,000 and AED 5 million for entering into restrictive agreements or abusing market dominance; and
- fines of between 2% to 5% of the infringing entity's annual revenue derived from the sale of the relevant goods and services in the UAE for a failure to notify a transaction which is required to be notified pursuant to the Competition Law.

In addition, an entity violating the provisions of the Competition Law exposes itself to possible criminal sanctions.

Exemptions

The Competition Law allows for entities to seek an exemption to the Competition Law from the UAE Ministry of Economy. The procedure for seeking such an exemption is set out in the regulations to the Competition Law. It involves a written application seeking an exemption for a transaction. The entity seeking the exemption must provide copies of its constitutive documents and financial statements (for the last two financial years). In addition, it must submit an economic rationale for the transaction and its reasons for requesting the exemption. All documents submitted must be in Arabic, but may be accompanied by an English translation. The Ministry of Economy must respond to such a request within 90 days, but may extend this period by a further 45 days. In the event that no response is received within this time frame, approval is deemed to have been given.

Implications

Compliance with the Competition Law is now mandatory. Accordingly, businesses must consider the effect of the Competition law on their business. It remains to be seen how the UAE Ministry of Economy will interpret or enforce the Competition Law or the implementing regulations. As a minimum, the Competition Law and its potential effects need to be considered by any business operating commercially in the UAE or which intend to acquire a UAE business. ■

Afridi & Angell

Founded in 1975, Afridi & Angell is one of the leading and most established full-service law firms in the UAE. We provide comprehensive legal advice and innovative business solutions in banking and finance; corporate and commercial law; dispute resolution; projects; construction and real estate; employment; energy; project finance; transport; as well as doing business in the UAE and in the DIFC. We advise local and regional clients ranging in size and sophistication from start-ups to some of the region's largest public and private companies, governments and quasi-government institutions. We work extensively with entrepreneurs and investors from the region and beyond, and have attracted numerous international clients looking for the right counsel to protect and expand their interests in the UAE.

Afridi & Angell is the exclusive UAE member of top legal networks and associations, most notably Lex Mundi, the world's leading network of independent law firms.

www.afridi-angell.com

Afridi & Angell's inBrief provides a brief overview and commentary on recent legal announcements and developments. Comments and opinions contained herein are general information only. They should not be regarded or relied upon as legal advice.

© 2014, Afridi & Angell