

December 11, 2012

*Practice Group:*  
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## UAE Legislative Update – The UAE Promulgates a Competition Law

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The United Arab Emirates (“UAE”) federal government has issued the long anticipated Federal Law No. 4 of 2012 on the Regulation of Competition (the “Law”). The Law was published in the Official Gazette in December 2012 and will come into force in February 2013.

The aim of this legislation is to protect and enhance competition, as well as to fight monopolistic and anti-competitive practices in order to promote a free market economy. This Law represents a positive development to the UAE's regulatory environment and is part of a wider GCC anti-trust legislative effort.

Establishments are provided with a six month period from the date the Law comes into force to comply with its provisions, and executive regulations to put the law's provisions into effect are expected to be published within the same time frame.

### Scope of application

The law applies to all establishments in relation to their economic activities and their use of intellectual property rights in the UAE and abroad (to the extent such activities or uses affect competition in the UAE).

Certain activities and sectors (primarily those subject to separate sector-specific regulatory regimes) are exempted from the Law, including telecommunications, finance, cultural activities, oil and gas, pharmaceuticals, postal services, electricity and water, sanitary services (including sewage and garbage disposal) and land, air, marine and rail transport. This list may be amended in the future. In addition, small and medium enterprises (SMEs) will be exempt. Specific regulations to define what establishments are considered SMEs, and thus qualify for this exemption, are expected to be issued in due course.

The Law explicitly excludes activities undertaken by the Federal Government of the UAE and the governments of each of the individual Emirates. Activities by entities which are owned by, controlled by, or incorporated pursuant to decisions of the government of the UAE and each of the individual Emirates also appear to be excluded from the application of the Law. The Law does not however define with sufficient clarity the level of control by the Government that would entitle a company to an exemption from the application of the Law. This is potentially an issue that shall be clarified in the executive regulations to be issued by the Cabinet.

### Practices targeted

The Law prohibits and regulates a number of anti-competitive practices. Chief among these is a prohibition on “restrictive agreements”, broadly defined as agreements that aim at restricting, eliminating or reducing competition. The Law targets a number of specific anti-competitive practices that may be the subject of a restrictive agreement, including price fixing, placing conditions on the sale or purchase of goods or the provision of services, collusion with regards to tenders, bids and other similar processes, collusion aimed at restricting purchases or sales from

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specific establishments to restrict their ability to carry out their business, dividing markets on a geographic or other basis to hinder competition, and measures aimed at excluding establishments from a market or preventing them from entering existing agreements or alliances.

The Law also prohibits establishments in a dominant position within a market from exploiting their position and adversely affecting market competition through means such as price fixing, imposing artificially low prices, distinguishing between contractors without proper justification, imposing terms on customers that restrict them from dealing with competitors, refusing to deal with standard terms and conditions and willfully publishing false information relating to products and prices.

A third focus of regulation for the Law is situations involving mergers and acquisitions, referred to as “**Economic Concentration(s)**”. Where such Economic Concentrations may result in an entity obtaining a share of a specific market that is larger than as of yet unspecified thresholds, the approval of the Ministry of Economy (the “**Ministry**”) will be required. Prior to a decision being issued by the Ministry, an investigatory period of 90 days is provided for, extendable by 45 days at its discretion (the “**Investigatory Period**”). If no decision is issued by the Minister of Economy (the “**Minister**”) within this timeframe, an approval of the Economic Concentration will be deemed.

Merger and acquisition activities that are captured by the Law will therefore have to factor in the time necessary for an Economic Concentration approval prior to their completion.

### Exceptions

Establishments that are either entering into a restrictive agreement or are in a dominant position and considering undertaking any of the above mentioned activities may apply for an exception from the application of certain provisions in the Law.

The granting of such an exception is at the discretion of the Minister, and is subject to a number of conditions. Such conditions include full prior disclosure of activities that may result in a breach of the Law and the establishment(s) making a showing that the proposed activities will lead to economic benefits, improved competitiveness, enhanced performance for the establishment(s) themselves and benefits to consumers. More detailed requirements are to be issued as part of the executive regulations due to be promulgated pursuant to the Law.

### Penalties

A number of significant penalties are imposed on establishments that fall foul of the Law’s provisions. An establishment that enters into a restrictive agreement or abuses its dominant position in a market is liable to pay a fine of between AED 500,000 (USD 136,000) and AED 5,000,000 (USD 1,360,000).

Establishments that improperly enter into an Economic Concentration are liable to pay either the above mentioned fines, or between 2% and 5% of their annual revenue. Should establishments proceed with undertaking any activities relating to an Economic Concentration during the Investigatory Period, they are liable to pay between AED 50,000 (USD 13,600) and AED 500,000 (USD 136,000).

In addition, the courts have the discretion to shut down establishments found to be in breach of the Law for a period of between three to six months. In the event of an establishment committing an offense more than once, any penalty applicable to it is automatically doubled.

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### Regulatory Bodies

The Law provides for the establishment of the UAE’s first Competition Regulation Committee (the “**Committee**”). The Committee is to be tasked with a number of responsibilities, including proposing regulations and policies for protecting market competition, issuing recommendations to the Minister of Economy with regards to the implementation of the Law and evaluating and issuing recommendations relating to the appeal of decisions made pursuant to the Law.

Implementation of the Law’s provisions is within the powers of the Ministry. Pursuant to this, the Ministry’s responsibilities include (but are not limited to) investigating anti-competitive practices, issuing recommendations to the Minister relating to any claims arising under the law and issuing decisions on appeals.

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