CLEARY GOTTLIEB

ALERT MEMORANDUM

UAE Competition Law Progresses: New AED 300 million turnover test introduced

February 20, 2025

On January 20, 2025, the United Arab Emirates ("**UAE**") Cabinet issued Decision No. (3) of 2025 (the "**January 2025 Cabinet Decision**"), which was published in the Official Gazette on January 30, 2025. The Decision sets out a new turnover-based notification threshold for economic concentration transactions and completes one of the gaps that remained in the UAE competition law regime after Federal Decree-Law No. 36/2023 on Competition (the "**2023 Competition Law**"). Together, the changes to the 2023 Competition Law (which came into effect on December 29, 2023) and the January 2025 Cabinet Decision (which takes effect on March 31, 2025) mark a significant evolution in the UAE's competition law framework, aligning it more closely with international standards. They introduce stricter merger control thresholds, expand enforcement powers and enhance regulatory oversight.

The new UAE merger control thresholds include both the existing 40% market share threshold and a new AED 300 million (*c.* USD 81.7 million) UAE turnover threshold for the parties involved. These criteria provide greater predictability in assessing filing obligations, but questions remain regarding threshold calculations, the treatment of joint ventures ("**JVs**"), minority acquisitions and the definition of control, with further clarification expected in the forthcoming Implementing Regulations of the 2023 Competition Law. Additionally, uncertainty persists regarding sectoral exemptions—under the previous framework, certain industries, such as telecommunications, oil and gas, and financial services, benefited from exemptions, but it remains unclear to what extent these exemptions will be retained under the new regime.

If you have any questions concerning this memorandum, please speak to your regular firm contact or the following:

ABU DHABI

Chris Macbeth
+971 2 412 1730
cmacbeth@cgsh.com

Mike Taylor
+971 2 412 1706
miketaylor@cgsh.com

Daniela Weerasinghe
+971 2 412 1702
dweerasinghe@cgsh.com

Omar Almansoori
+971 2 412 1748
oalmansoori@cgsh.com

BRUSSELS

Isabel Rooms
+32 2 287 2336
irooms@cgsh.com

This alert memorandum provides:

a) An **overview of the key changes** introduced to the UAE competition and merger control regime by the 2023 Competition Law and the January 2025 Cabinet Decision (*e.g.*, new exemption framework, stricter merger control, expanded abuse of dominance rules and higher fines),

b) A **brief regional comparison** of the UAE's updated competition law framework, in relation to other Middle Eastern jurisdictions and

c) **Practical insights** for businesses operating in the UAE (and the broader region).

For inquiries regarding (i) the new UAE competition and merger control rules and/or (ii) on how the UAE regime compares to regional standards, please contact one of the authors.[1]

Revised Merger Control Thresholds – Immediate Impact on Transactions

The 2023 Competition Law provided that a transaction becomes notifiable when it (i) involves the transfer of full or partial ownership, (ii) results in one organization or group gaining direct or indirect control over another organization or group and (iii) meets the specified thresholds.

The January 2025 Cabinet Decision introduces a dual test for when a transaction, qualifying as an economic concentration, requires approval from the Competition Department of the Ministry of Economy ("**MoE**"). A transaction is notifiable if *either* one of the following thresholds is met:

a) *Turnover Threshold*: The total annual sales revenue of the concerned establishments in the relevant market in the UAE exceeds AED 300 million (*c.* USD 81.7 million) in the last fiscal year; OR

b) *Market Share Threshold*: The combined market share of the concerned establishments in the relevant UAE market exceeds 40% in the last fiscal year (which aligns with the UAE merger control regime pre-2023).

Notably, the 2023 Competition Law applies both to activities within the UAE and to foreign transactions that have a competitive impact in the UAE. However, based on the January 2025 Cabinet Decision's explicit wording, the filing thresholds apply only to UAE-market-specific turnover and market share. It remains unclear whether the explicit reference to "relevant market" in the thresholds means only transaction-specific UAE turnover is to be assessed (*i.e.*, the sales affected by the transaction's product and service scope) or if the entire UAE revenue of the parties is to be considered. Additionally, the wording suggests that one party alone may meet this threshold, but we await further regulatory clarification on this.

Key Takeaways for Businesses

— The new turnover threshold will capture a broader range of transactions than the prior market share-only approach.

— The UAE continues to follow a mandatory and suspensory pre-closing merger control regime—transactions meeting either one of these thresholds must not close until clearance is obtained.

Impact on M&A Transactions and Deal Timetable

The new turnover threshold will come into force on March 31, 2025. Parties meeting either the new turnover threshold or the existing market share threshold must notify the Competition Department using its designated form (which is not yet available), at least 90 calendar days prior to closing the transaction in accordance with the 2023 Competition Law (as opposed to 30 calendar days under the previous law). A literal reading of the January 2025 Cabinet Decision (Article 6) and the 2023 Competition Law (Article 12) suggests that transactions closing on or after March 31, 2025—even if signed earlier—must comply with the new merger control thresholds and pre-closing filing requirement. With a mandatory review period of 90 calendar days (extendable by 45 calendar days) and no filing form

[1] For more information, please also consult our recent Kluwer Competition Law Blog on the evolution of competition laws and enforcement in the Middle East (linked on our Cleary Antitrust Watch here).

available yet, transactions that do not close before March 31, 2025, may face delays until the MoE clarifies the filing process. Businesses should assess transaction timelines now, as the 2023 Competition Law signals a stricter approach to merger control (*e.g.*, higher maximum fines for non-compliance as discussed below) and the need for early regulatory engagement in the absence of the Implementing Regulations.

This development has significant implications for M&A timelines, making early-stage regulatory assessment and engagement with the MoE essential.

Stricter Enforcement and Revised Review Timelines

— Deemed Rejection Rule: Unlike many jurisdictions where silence from the regulator results in automatic clearance, the 2023 Competition Law's approach automatically rejects transactions if no decision is issued within the 90-calendar-day review period (extendable by 45 calendar days).

— Higher Fines for Non-Compliance: Failure to notify a notifiable transaction can lead to penalties between 2% to 10% of the total sales of goods or services revenues that are the subject of the violation, which the violating group entity has achieved in the UAE during the last fiscal year. This follows the wording of the 2023 Competition Law, which—similar to the merger control thresholds—suggests (though not conclusively) that only transaction-specific UAE revenues should be considered for fine calculation purposes. This is significantly higher than the previous cap of up to 5%. If the violating group entity's UAE revenues cannot be determined, fines range from AED 500,000 (*c.* USD 136,000) to AED 5 million (*c.* USD 1.36 million).

What remains unclear?

Despite the introduction of clearer merger control thresholds, several key uncertainties remain.

The 2023 UAE Competition Law removed the automatic sector-wide exemptions,[2] instead making regulators specific to those sectors responsible to decide on competition rules and potential exemptions. So while exemptions remain possible, they will now be granted on a case-by-case basis, including for government-owned entities (subject to ministerial or Emirate-level approval) and businesses that can justify their practices under economic development, efficiency or consumer benefit criteria.

Until the Implementing Regulations are ironed out and sector-specific regulators take further action, it remains unclear whether the sectors exempted pre-2023 will now be subject to merger control.

Regarding JVs, the law broadly defines "economic concentration", making it likely that many JVs will fall within its scope. However, the treatment of greenfield JVs and non-full-function JVs remains uncertain, raising questions about whether they require notification. The lack of a defined "control" test also creates ambiguity around whether minority share acquisitions will trigger a filing obligation (and if so, at what percentage).

Additionally, uncertainty remains as to how the merger control thresholds will be assessed in practice, particularly regarding the definition of the relevant market for UAE turnover calculations and whether a single party alone can meet the UAE turnover threshold.

Another factor that may create issues is that the merger control filing form has not yet been released, potentially creating practical difficulties in preparing notifications and meeting the mandatory 90-calendar-day pre-closing filing requirement. We expect regulatory guidance on this in the forthcoming Implementing Regulations.

[2] The Annex to the UAE's previous competition law (Federal Law No. 4/2012 in 2012) provided a non-exhaustive list of sectors, activities and services that were excluded from the scope of the previous competition law, namely telecommunications, financial services, cultural activities, oil and gas, production and distribution of pharmaceuticals, postal services, production, distribution and transportation of electricity and water, sanitation and waste disposal services, and land, sea and air transport.

Comparative Insights: UAE vs. Regional Merger Control Regimes

The UAE's new competition law regime stands out in comparison to some of its regional peers.[3]

Key insights

— *Higher Local Turnover Thresholds in the UAE*: The UAE's AED 300 million (*c.* USD 81.7 million) turnover threshold is notably higher than the Kuwaiti (*c.* USD 2.5 million), Jordanian (*c.* USD 9.8 million) and Saudi Arabian (*c.* USD 53.3 million) local thresholds.

— *Similar Market Share Thresholds Across the Region*: The UAE maintains a 40% market share threshold, which aligns with most other regimes in the region, ranging from 30%–60%.

— *Lack of Public Enforcement Record*: The UAE's potential fines for non-compliance, ranging from 2% to 10%—with the important caveat that this applies only to the annual UAE revenues related to the violation—are generally in line with most other jurisdictions in the region, including Saudi Arabia. However, Saudi Arabia's General Authority for Competition ("**GAC**") has been far more active in enforcement than UAE authorities. The GAC has blocked deals, conducted dawn raids, and imposed hefty gun-jumping fines, whereas the UAE Competition Department has to date not published information on its enforcement activities.

What now?

With these substantial changes, businesses must adopt a more proactive compliance approach. We recommend:

— *Conducting M&A Reviews Early*: If you are considering a transaction with an economic concentration in the UAE, assess whether the new merger control thresholds apply and engage with the Competition Department of the MoE early pending the Implementing Regulations. (Unlike in the European Union, there is no established pre-notification framework in the UAE.)

— *Engaging with the MoE*: Companies in regulated sectors should contact the Competition Department of the MoE to seek clarification on their competition law obligations as *automatic* sectoral exemptions have been removed by the 2023 Competition Law.

— *Training & Policy Updates*: Businesses should update their internal policies and conduct training sessions for commercial teams to mitigate competition law risks.

— *M&A Document Drafting*: Share purchase agreements must include a condition precedent requiring UAE merger control clearance (if triggered) before closing, considering the mandatory 90-calendar-day review period, with a potential 45-calendar-day extension risk.

— *Internal Compliance Audits*: For completeness, we include here the importance of *antitrust* compliance under the 2023 Competition Law (which are unaffected by the 2025 January Cabinet Decision). Namely, review pricing strategies, supplier agreements and commercial practices to ensure they align with the expanded 2023 Competition Law scope of prohibited abusive practices and the introduction of the concepts of "abuse of the position of economic dependency" and predatory pricing.

What's next?

The new economic concentration thresholds under the January 2025 Cabinet Decision, combined with stricter enforcement and broader prohibitions on anti-competitive behavior under the 2023 Competition Law, make compliance more critical than ever. We expect the forthcoming Implementing Regulations (the timing of which is unclear) to shed more light, particularly on:

[3] Our recently published Kluwer Competition Law Blog (see here) provides an in-depth look at antitrust *and* merger control developments across 14 Middle Eastern countries (since their very first introduction of specific legislation), including a more detailed analysis of the UAE and Saudi regimes. Given rising enforcement and legislative shifts, our analysis is particularly valuable for clients operating or investing in multiple countries across the region.

- Merger control procedural guidelines and timelines;
- Sector-specific competition law applications and any exemptions; and
- Interpretation and enforcement measures of the 2023 Competition Law (*e.g.*, dawn raids, penalties).

Companies engaged in M&A activity or operating in highly concentrated markets should take continued action to update their compliance obligations under the 2023 Competition Law and January 2025 Cabinet Decision. **We are here to help** businesses operating in the UAE stay ahead of changes and adapt their compliance frameworks accordingly.

***

CLEARY GOTTLIEB

For the second year in a row, Cleary Gottlieb's antitrust practice has been ranked No. 1 among the "Global Elite" by Global Competition Review in the 2025 edition of the GCR 100.

The firm was also ranked No. 1 for litigation (calling Cleary "home to the world's best private antitrust litigation group"), No. 1 for mergers ("a merger control powerhouse"), No. 1 for non-cartel, and No. 3 for cartels.