UAE: Cartels

This country-specific Q&A provides an overview to cartels laws and regulations that may occur in UAE.

For a full list of jurisdictional Q&As visit here
1. What is the relevant legislative framework?

The laws and regulations governing antitrust and competition (cartel) in the United Arab Emirates are as follows:

(a) The Federal Law No. 4 of 2012 on the Regulation of Competition (“UAE Competition Law”), which has been in force since 23 February 2013 and which aims – according to Article (2) of the Law - to protect and promote competition and anti-monopoly practices through 1). Providing a stimulating environment for organizations to enhance efficiency, competitiveness and consumer interest and achieve sustainable development in the UAE and 2). Maintaining a competitive market governed by market mechanisms, in accordance with the principle of economic freedom, by prohibiting restrictive agreements, the acts and practices that lead to the abuse of the dominant position, controlling economic concentration operations as well as avoiding anything that would endanger, limit or prevent competition.

The UAE Competition Law is set into several chapters, which include the following:

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(b) As the implementing regulations in UAE are mandatory to enforce Federal laws, the UAE Council of Ministers issued Resolution No. 37 of 2014 concerning the Implementing Regulation of the Federal Law No. 4 of 2012 on the Regulation of Competition (“Implementing Regulations”), which has been in force since October 2014. The Implementing Regulations sets out the procedures relating to applying for exemptions to the Competition Regulation Committee, approvals and examination of complaints.

The Implementing Regulations are arranged into several chapters, which include the definitions as well as the following:

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Chapter I  Procedures Regulating Exclusions
- Notification Controls
- Consideration of Notification
- The Decisions of the Ministry of Economy on the Exclusion
- Approval of Exclusion Amendment
- Evaluation of Competition

Chapter 2  Procedures Organizing Economic Concentration
- Application for approval of economic concentration
- Consideration of the Application for economic concentration
- The Minister’s Decisions on the Applications for Approval of the economic concentration process

Chapter 3  Complaint Investigation Procedures
- Automatic Investigation
- Complaint Investigation
- The Ministers of Economy Decisions on the Complaints
- Applications for Reconsideration
- Reconciliation

(c) Cabinet Resolution No. 13/2016 (“The Ratio Decision”) in respect of the market share threshold and Cabinet Resolution No. 22/2016 (“SME Decision”) in respect of small and medium establishments, which have been in force since August 2016 and which provided sufficient and key information to enable the compliance and enforcement of the provisions of the UAE Competition Law and the Implementing Regulation. This should provide proper guidelines on Ratio inquiries for competition laws and when major commercial transactions, such as large M&As, take place.

2. **To establish an infringement, does there need to have been an effect on the market?**

The Competition Law & Regulation penalized the competition practices which affect the competition level in the relevant market, noting that the Competition Law in UAE defined the “Relevant Market” as products or services or a combination of products or services which – based on their price, characteristics and methods of use – may be replaced with any other goods or services or the alternatives of which may be chosen, to meet a specific requirement of consumers in a certain geographical area.

Accordingly, and in order to establish the infringement, the infringing acts (“anti-competition practices) shall have effect on the relevant market as follows:

1. Restrictive Agreements: The UAE Competition Law and Regulation prohibits the restrictive agreements that restrict and prevent competition in the relevant market (such as for example and not limited, the agreements that specify the purchase or sale prices of goods or services; the agreements that freeze or limit production, development, distribution, marketing and other investment aspects; agreements that restrict the freedom of supply of goods or services
in the relevant market, etc). However, the prohibition excludes the “low impact restrictive agreements” in which the total share of the parties to the agreements do not exceed 10% of the total transactions in the relevant market.

2. Abuse of Dominant Position: The UAE Competition Law and Regulation prohibits the companies of a dominant position in the relevant market, or in a substantial or influential part thereof, from carrying out any acts or actions that lead to the abuse of the position in order to prejudice, restrict or prevent competition. The Dominant position is established when the market share of the company exceeds 40% of the total transactions in the relevant market.

Besides the above, the UAE Competition Law and Regulation imposed on companies which intends to carry out the Economic Concentration operations that may affect the competition in the relevant market, to enhance or create a dominant position, to apply for an approval from the Ministry of Economy before the completion of such operations, noting that the Economic Concentration affect the competition in the relevant market when the market share of the parties exceeds 40% of the total transactions undertaken in the relevant market.

3. Does the law apply to conduct that occurs outside the jurisdiction?

In line of international practice for Competition and Anti-trust regulations, the provisions of the Law and Regulation related to Competition in UAE shall apply to the activities carried out by entities in the UAE in addition to the exploitation of intellectual property rights inside and outside UAE. Furthermore, the provisions of the Law and Regulation related to Competition in UAE shall apply to the economic activities which are practiced outside the UAE and directly or indirectly affect the competition in the UAE.

Accordingly, we confirm that the UAE Competition Law and its Regulation shall apply to conducts that occurs outside the jurisdiction if such conducts would affect the competition in the UAE or if such conducts are related to the exploitation of the intellectual property rights. In practice however, the enforcement of UAE Competition Law against entities incorporated in foreign jurisdiction may face some practical obstacles.

4. Which authorities can investigate cartels?

The Competition Department at the Ministry of Economy is the governmental administrative authorities, (“The Competent Authority”), has the task of handling applications, investigations and the implementation of the Competition Law in UAE, while the Competition Regulation Committee (“The Competition Committee”) – which is chaired by the undersecretary of the Ministry of Economy – has the role of overseeing the work of the Competition Department.

5. What are the key steps in a cartel investigation?

Any concerned person may file a complaint with the Competent Authority regarding any violation of the UAE Competition Law. The complaint shall include the following information:
1). The name of the Complainants; 2). The parties against whom the complaint is filed; 3). The provisions of the Competition Law claimed to have been violated; 4). the facts related to the violation of the provisions of the Competition Law; 5). The practices claimed to have been violated and 6). The documentary evidences that support the complaint.

Once the complaint is filed, the Competent Authority shall follow certain statutory procedures and strict formalities. It starts by examining the complaint, along with the supporting evidences and may request the complainant to provide the Authority with any information or documents as it deems necessary for the examination of the complaint. The complainant shall provide the Competent Authority with the requested information or documents within (15) fifteen days from the date of sending the request for information by the Authority.

Upon the completion of the examination of the compliant, the Competent Authority shall issue a notification to the complainant either 1). Accepting the complaint due to adequate information that permits commencing an investigation into the complaint or 2). Rejecting the complaint due to insufficient information that permits commencing an investigation into the complaint.

Upon the acceptance of the complaint, the Competent Authority shall notify the parties against whom the complaint is filed ("The Defendants") regarding the subject of the complaint within (10) ten days in order to give the Defendants the opportunity to defend themselves. The notification of complaint shall include sufficient information about the allegations; the practices which are claimed to violate the UAE Competition Law, the provisions of the UAE Competent Law which are violated by the Defendants and a deadline for the Defendants to submit their response to the complaint.

The Competent Authority shall investigate the complaint, along with the supporting evidences and may request the parties to provide the Authority with any information or documents it deems necessary for the consideration of the complaint. The parties shall provide the Competent Authority with the requested information or documents within (30) thirty days from the date of sending the request for information by the Authority. The said mentioned period could be extended for another (30) thirty days provided that such extension does not affect the investigation procedures of the complaint.

The Competent Authority may take any action it deems necessary to investigate and consider the complaint, including holding meetings with the parties of the complaint and any parties related thereto. Thereafter, the Competent Authority shall prepare a detailed report to the Minister of Economy which shall include information about the facts and procedures taken by the Competent Authority in relation to the compliant, evaluation of the information, evidences and pleas submitted by the parties as well as proposed decision in relation to the complaint. The Competent Authority shall submit the detailed report to the Minister of Economy within (10) ten days as of the date of completion the preparation of the report.
The Minister of Economy shall issue a reasoned decision in respect of the complaint within (30) thirty days from the date of submitting the report by the Competent Authority. Thereafter, the Minister of Economy shall inform the parties of the complaint about the decision no later than (10) ten days from the date the decision is made.

6. What are the key investigative powers that are available to the relevant authorities?

The Ministry of Economy, including the Competent Authority, has wide powers in relation to the investigations related to the violations of the UAE Competition Law & its Regulation. The Competent Authority has the power, on its own initiative, to commence an investigation into possible violations of the provisions of the Competition Law (“Automatic Investigation”) if it has reasons and information regarding the existence of practices that may violate, restrict or prevent competition. Further, the Competent Authority commences an investigation upon the request of any interested party who files a complaint with the Authority alleging violation or breach of the Competition Law in UAE (“Investigation based on Compliant”).

Upon the investigation, the Competent Authority has the power to request the parties of the complaint and all concerned parties to provide any data or information which the Authority deems necessary to decide on the complaint in addition to request the parties to provide evidences or documents that are related to the complaint.

During the investigation, the Competent Authority always has the power to request and/or communicate with other governmental authorities, such as Tax authorities, Customs or any other federal or local authorities, to reveal any information about parties commercial activities, revenues or any other elements that are required for the purpose of investigation. Information about parties’ activities and revenues, which can assist Competent Authority to conclude its investigation, are usually made available if official written requests are made and communicated.

The Competent Authority has the power and right to request holding meetings with the parties of the complaint, their representatives and all concerned parties to investigate with them and review their opinion and statements before considering and issuing a decision in relation to the complaint.

The UAE Competition Law requires from the Competent Authority to take steps to maintain as confidential, information or evidences which are considered sensitive for the parties of the complaint. To claim confidentiality, parties shall indicate the same on information submitted as part of their submissions and also submit non-confidential summaries of the same.

The Competition Law and Regulations stated that the parties shall submit copies of the complaints and/or responses and pleas in Arabic language along with a certified translation with the same into English. Further, the Law and Regulations stated that the evidences and documents of the parties must be submitted in the original language in which such
documents or evidences are drafted or issued, along with a certified translation into Arabic, if the original language is not the Arabic language.

The Competition Law and Regulations did not explicitly state that the parties shall submit the original copies of evidences or documents, however, the Competent Authority has the right to request the parties to submit the original documents for the purpose of verification, and thereafter, the Authority may return the original documents to the parties unless retaining the same would be necessary for issuance of the decision in relation to the complaint.

7. **On what grounds can legal privilege be invoked to withhold the production of certain documents in the context of a request by the relevant authorities?**

**The Concept of “Legal Privilege” and its applicability before the UAE Courts (Mainland Courts) as well as (DIFC Courts):**

The UAE is a civil law country, and therefore, the concept of “legal privilege” is not explicitly recognized under the UAE Laws and Regulations as the case in most common law jurisdictions. However, the communications between an attorney/in house attorney from one side and the client from the other side are considered confidential and could be protected. The grounds for such protection and legal privilege doctrine arguably exists under different federal laws and regulations in the mainland of UAE which substantiate for i) protection, ii) eligibility to protect confidential information, and iii) claim damages for breach of confidentiality or publish undisclosed information protected via Non-disclosure agreement and/or undertaking. The laws as follows:

- The Code of Ethics (Minister of Justice Decree No. 666 of 2015).
- The Evidence Law (UAE Law No. 10 of 1992).
- The Civil Transactions Law (Federal Law No. 5 of 1985).
- The Penal Code (Federal Law No. 3 of 1987).

Article 42 of the Advocacy Law states that attorneys are obliged to keep confidential the communications made in maintenance of their professional representation of a client, unless such disclosure is required to prevent the perpetration of a crime. Further, the Code of Ethics states that confidential information shall be kept confidential regardless the nature of the representation. However, the confidential information can be disclosed in the following limited circumstances:

1. Written consent by the client or the rightful owner of the confidential information to its disclosure.
2. An express court order compelling the disclosure of the confidential information (only to the extent required by such court).
3. The attorney is accused of a crime or civil claim arising out of negligence or professional
Therefore, the communications between an attorney and client are considered a confidential communication and shall not be disclosed except in the circumstances set out above. However, any party of any legal proceeding, according to Article 18 (1)(b) of the Evidence Law, has the right to file a petition with the Court to require the other party to disclose specific evidences which are related to the case. If the party from whom disclosure is sought does not deny the existence of the requested evidences but refuses to submit the same to the Competent Court or Authority, then the Court or Competent Authority may consider the requesting party’s allegations as true concerning such documentation and would issue its decision based on this consideration according to Article 19(3) of the Evidence Law.

It is worth mentioning that although UAE is governed by a civil law system, it has established the Dubai International Financial Centre ("DIFC") which operates according to a common-law system with its own laws, regulations, independent judicial authority and courts. DIFC is a special free zone established within the Emirate of Dubai territory and considered one of significant financial hubs globally. It follows common law system and has a specialized court that examines, rules and upholds judgments on disputes that fall within its jurisdiction. Therefore, the concept of Legal Privilege is upheld and relied on by the parties in the DIFC Courts, in accordance with provisions of the Rules of the DIFC Court, which defined "Privilege" as “the right of a party to refuse to disclose a document or to produce a document or to refuse to answer questions on the ground of some special interest recognized by law”.

Furthermore, Article 28.28 of the Rules of the DIFC Court stated that the Court may, at the request of a party or on its own initiative, exclude from production any document for any of the following reasons: (1) Lack of sufficient relevance or materiality; (2) Legal impediment or privilege under the legal or ethical rules determined by the Court to be applicable; (3) Unreasonable burden to produce the requested evidence; (4) Loss or destruction of the document that has been reasonably shown to have occurred; (5) Grounds of commercial or technical confidentiality that the Court determines to be compelling; (6) Grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Court determines to be compelling; or (7) Considerations of procedural economy, proportionality, fairness or equality of the parties that the Court determines to be compelling.

The party who wishes to claim that he has the right or duty to withhold the production of a document or any part of documents must state such claim in writing and must indicate the grounds on which he claims that right or duty, according to Article (28.29) of the Rules of the DIFC Court. However, it is noteworthy to observe that there is no statutory provision in the DIFC to define a clear scope and limitation of legal privilege. Therefore, the DIFC Court judges have the discretion to make findings of legal privilege under the legal or ethical rules determined by the Court to be applicable.

In order for regime of the DIFC Court to be applied in relation to a case, corporate entities
and individuals need to be based within the DIFC itself or to do business with entities located in the DIFC. Moreover, it is possible for UAE-domiciled entities to elect DIFC Court and Laws in respect of both their local and international contractual relationships.

**The Applicability of the Concept “Legal Privilege” in respect of Competition Cases:**

In light of the above, the applicability of the Concept “Legal Privilege” in relation to Competition Cases would depend on whether the cases related to competition would be reviewed by the Local Courts of Mainland of UAE or the DIFC Court, taking into account the following:

**The provisions of UAE Competition Law provide for public and private enforcement.**

**Public enforcement** is enforced by the Ministry of Economy and Minister of Economy who are vested with wide powers and use special procedures to investigate the anti-competition practices and complaints. Decisions of the Minister of Economy are subject to appeal before the Competent Courts in UAE, namely the First instance Federal Court, (**The Competent Local Courts of Mainland of UAE**). On another hand, the criminal cases for the anti-competition practices may commence solely by a written request pursued by the Minister or his authorized deputy and the same is filed before the competent public prosecution office (Article 26 of Competition Law). The Law also authorizes the Minister of Economy to reconcile any contravention of the Law before a criminal case is transferred to the Competent Court in return for a settlement amount equivalent to no less than double the minimum fine.

**Private enforcement** is available under Article 23/2 of the UAE Competition Law, which grants any party or entity who has suffered any damages due to a violation of any provision of the UAE Competition Law to claim for compensation from the Courts in UAE by stating **“The penalties set out in this law shall not prejudice the right of the harmed party to have recourse to the Court to claim compensation for the damages arising from violating any provision of this law”**. The wording of Article 23/2 of the UAE Competition Law is considered wide to include a reference to the Courts of the Mainland of UAE as well as the DIFC Courts as the said mentioned Article did not contain any mandatory wording to the effect of attributing exclusive jurisdiction to claim compensation to the UAE Competent Local Courts of Mainland of UAE, and consequently, there is nothing that prevent the aggrieved third party from bringing a legal action for claiming damages before DIFC Courts in case the regime of the DIFC Court is applicable on the subject case.

8. **What are the conditions for a granting of full immunity? What evidence does the applicant need to provide? Is a formal admission required?**

There is no special Leniency programme available in relation to the violations of the UAE Competition Law expect the usual settlement formalities, and consequently, there is no mechanism for corporates or individuals to disclose violations to the Competent Authority in
the Ministry of Economy in exchange for lesser penalties or in exchange of immunity from imposing fines on them.

However, the UAE Competition Regulation has granted the parties against which the decision of the Minister of Economy is issued to submit a request or petition with the Minister of Economy for reconsideration of the Minister’s decision within (14) days as of the date of being notified with the same. The petition for reconsideration shall indicate the reasons that justify the petition and shall be supported with sufficient evidences.

Thereafter, the Competition Committee shall consider the petition and make its recommendation to the Minister on whether to accept it or not within (10) ten days from the date of referring the petition to the Competition Committee.

The Minister of Economy shall either accept or reject the petition within (30) thirty days from the date of submitting the petition. If no decision is made by the Minister within the said mentioned period, the application shall be deemed to have been rejected implicitly.

Further, The UAE Competition Law and its Regulation granted the entities the right to apply with the Ministry of Economy for obtaining an exemption from the provisions on restrictive agreements or practices related to dominant position or economic concentration in accordance with the procedures outlined at the Competition Regulation.

The general rules of criminal procedures and penal codes in UAE allow for convicted parties in criminal cases, such as those sanctioned based on Competition Law, to file for a pardon and consider leniency circumstances to reverse the penalties. Whilst this does not necessarily reflect the direct definition of Leniency, it can be considered as one of models to overcome implications resulting from conviction.

9. **What level of leniency, if any, is available to subsequent applicants and what are the eligibility conditions?**

As outlined in 4.1 above, there is no special Leniency programme available in relation to the violations of the UAE Competition Law.

10. **Are markers available and, if so, in what circumstances?**

As outlined in 4.1 above, there is no special Leniency programme available in relation to the violations of the UAE Competition Law.

11. **What is required of immunity/leniency applicants in terms of ongoing cooperation with the relevant authorities?**

As outlined in 4.1 above, there is no special Leniency programme available in relation to the
violations of the UAE Competition Law.

12. **Does the grant of immunity/leniency extend to immunity from criminal prosecution (if any) for current/former employees and directors?**

As outlined in 4.1 above, there is no special Leniency programme available in relation to the violations of the UAE Competition Law.

13. **Is there an ‘amnesty plus’ programme?**

There is no special amnesty programme available in relation to the violations of the UAE Competition Law. However, the penalties and sanctions imposed by the Competent Local Courts in the UAE, in relation to anti-competition practices, would be subject to General Amnesty or Special Pardon in accordance with the provisions of the UAE Penal Code. This is normally issued by the UAE President and it requires a special formality and pardon procedures to be filed after final/binding decision is issued in relation to complaints.

**General Amnesty** for crimes or specific crimes, according to the UAE Penal Code, shall be granted by an ordinance/law, and shall involve the lapse of criminal action or quash of the conviction, considering all such crimes or crime as non-existent, and abatement of all principal and accessory penalties and criminal measures, without having any effect on penalties and criminal measures that have previously been executed.

**Special Pardon** refers to a General Amnesty ordinance/law that has been enacted for part of the penalties. The Special Pardon shall be granted by a decree and shall involve abatement of the penalty awarded by a federal judicial authority in whole or in part, or it shall be commuted for a lighter penalty prescribed by the law. The Special Pardon shall not involve abatement of secondary penalties or other criminal effects or criminal measures, unless the decree provides otherwise. Further, the Special Pardon shall have no effect on penalties previously executed.

In light of the above, the penalties and sanctions imposed by the Competent Local Courts in the UAE, in relation to anti-competition practices, would be subject to General Amnesty or Special Pardon ONLY in case the anti-competition practices are covered and included under the General Pardon Ordinance and/or Special Pardon Decree in the UAE.

14. **Does the investigating authority have the ability to enter into a settlement agreement or plea bargain and, if so, what is the process for doing so?**

The Minister of Economy, or his authorized deputy, has the right and power to effect settlement or reconciliation in relation to the anti-competition acts provided that the settlement or reconciliation is reached before referring the criminal case to public prosecution office for further proceeding. This can be done in consideration for payment of an amount that is not less than double the minimum penalty. The settlement shall be affected in
writing and shall be signed by the parties which are proved to have violated the provisions of
the UAE Competition Law and Regulation.

The Settlement shall be binding on all parties signing the same. Furthermore, the settlement
shall be effective only once the parties, who proved to have violated the provisions of the Law
and Regulation, provide evidence of payment of the requested amount of fine and there is no
need to approve the settlement by the Competent Court. However, in case either party
refuses to implement the agreed upon settlement, the Competent Authority at the Ministry of
Economy shall refer the violations to the Competent Court in the UAE.

The Settlement shall not be applied on the acts that violate the provisions of Article 5 of the
UAE Competition Law (namely, the Article that deals with the confidential information and
that prohibits the illegal disclosure of the same).

15. What are the key pros and cons for a party that is considering entering into
settlement?

Advantages of Settlement include the following for example and not limited:

Increase procedural efficiencies as the settlement is considered as an alternative ad
expeditious way to conduct and conclude proceedings if parties reach an agreement in
relation to the settlement.

The reduction of sanctions, i.e. imposed penalties/fines, under the UAE Competition Law as
the parties which have been proved to have violated the provisions of the Competition Law
would be obliged to pay only an amount no less than double the minimum limit of the penalty
in case a settlement is reached and signed.

Saving legal fees and lengthy litigation proceedings.

Maintain entities’ criminal and/or administrative records from any precedents, convictions,
sanctions or history of affirmed violations. This should help entities from facing risk of
doubling the imposed fines in case of repeating the misconduct or breach of Competition
Law. Article 21 of Competition Law establishes to impose double of fines scale against
violators of Competition law in case or repetition of crime.

Settlement is always helpful for companies to maintain confidential information, sales figures
and facing further investigation by public prosecution or court at later stage and expose such
classified data to third parties.

Publication in local newspaper and/or temporary closure of business upto 6 months sanctions.
The Competition Law allows for competent court to impose such sanctions, and therefore,
settlement will always save entities from facing such risk.

**Disadvantages of Settlement include the following for example and not limited:**

Written admission and acknowledgment of the parties’ liabilities for the infringement.

Affecting the infringing parties’ chances of success in litigation proceedings due to the admission of the infringement or violation of Competition Law (in case the settlement has not been implemented in accordance with the settlement terms and conditions and such matter has been referred to the Competent Court).

The admission of infringement may have implications on parallel or similar ongoing/future proceedings being examined or investigated before other jurisdictions.

16. **What is the nature and extent of any cooperation with other investigating authorities, including from other jurisdictions?**

The UAE Competition Law stated in Article 14 that the Ministry of Economy shall implement the competition policy in cooperation with the official authorities in the UAE as well as coordinating with the official authorities in the UAE to address any form of activities or practices that violates the provisions of the UAE Competition Law in addition to run investigations in relation to competition practices in cooperation with the official authorities.

Further, the Ministry of Economy shall coordinate the implementation of the provisions of the Law with the Competent Local Authorities and Sectoral Organizational Bodies (Federal or Local Bodies empowered by virtue of their respective regulations to regulate, control or supervise a certain economic sector in the UAE). Accordingly, the Ministry of the Economy has wide powers to request the cooperation of any official authorities in the UAE in relation to running the investigations or any procedures related to activities or practices that violate the provisions of the Competition Law in the UAE. This can include customs authorities, ministries, local economic departments, tax authority.....etc.

Moreover, the UAE Competition Regulation stated in Article 12 that the Competent Authority at the Ministry of Economy may take any action it deems necessary to investigate the competition complaints. The wording of Article 12 could be interpreted to include cooperation with official authorities in the UAE or in other jurisdictions.

It is worth mentioning that during the year 2018 the Competition Committee organized its first meeting at the Ministry of Economy’s Headquarters in Dubai. The meeting was led by His Excellency (H.E.) Eng. Mohammed bin Abdul Aziz Al Shehhi, Undersecretary of Economic Affairs, Ministry of Economy and Chairman of the Committee, in the presence of other committee members. During the meeting, H.E. Al Shehhi mentioned that the Ministry of Economy is working in close cooperation with various economic entities, including the
different chambers of commerce, to ensure compliance with the laws and legislation governing competition.

The above implies that the Competition Committee at the Ministry of Economy coordinate with various agencies in other jurisdictions and takes into consideration the information and documents related to competitions practices and actions in other jurisdictions. However, the settlements or decisions issued in other jurisdictions would not be binding on the Ministry of Economy in the UAE.

17. **What are the potential civil and criminal sanctions if cartel activity is established?**

The Sanctions which are stipulated under the UAE Competition Law are as follows:

1. **Penalties/Fines:**

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<tr>
<td>Restrictive Agreements, in contravention to the provisions of Article 5 of the Competition Law.</td>
<td>Fine of a minimum of AED 500,000 and a maximum of AED 5,000,000.</td>
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<tr>
<td>Abuse of Dominant Position, in contravention to the provisions of Article 6 of the Competition Law.</td>
<td>Fine of a minimum of AED 500,000 and a maximum of AED 5,000,000.</td>
</tr>
<tr>
<td>Merger Control or Economic Concentration, in contravention to the provisions of Article 9 of the Competition Law.</td>
<td>Fine of a minimum of two per cent (2%) and a maximum of five per cent (5%) of the overall annual sales of products or service revenues the subject of violation as accrued by the violating entity within the UAE in the last financial year, or a minimum of AED 500,000 and a maximum of AED 5,000,000, if the estimation of the overall annual sales or revenues subject of violation is impossible.</td>
</tr>
<tr>
<td>Implementing deals involving any economic concentration activity when the same deals are waiting a resolution by the Mister of Economy, in contravention to Article (10/2) of the Competition Law.</td>
<td>Fine of a minimum of AED 50,000 and a maximum of AED 500,000.</td>
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<tr>
<td>Failure to observe the obligations related to the Confidential Information, in contravention to Article 15 of the Competition Law.</td>
<td>Fine of a minimum of AED 50,000 and a maximum of AED 200,000.</td>
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The violations of the remaining provisions of the Competition Law.

| Fine of a minimum of AED 10,000 and a maximum of AED 100,000. |

2. The closure of the violating entities for no less than three months and for no more than six months, in case of conviction.

3. The publication of the Court’s decision at least in two daily newspapers at the expense of the violating entities, in case of conviction.

4. Monetary compensation in case any aggrieved party filed a court case for claiming for compensation for the damages that have arisen from violating the provisions of the Competition Law.

18. **What factors are taken into account when the fine is set? In practice, what is the maximum level of fines that has been imposed in the case of recent domestic and international cartels?**

   The Competition Law indicates that the financial penalties stipulated in the Law shall be aggravated in the event of recurrence. Therefore, one of the factors that is taken into account when the fine is set whether the violating entity has committed the violation for the first time or not as well as the impact of the violation on the competition in the relevant market.

   The maximum level of penalties/fines imposed, in accordance with the UAE Competition Law, are mentioned in the table in 7.1 above.

19. **Are parent companies presumed to be jointly and severally liable with an infringing subsidiary?**

   In accordance with the UAE Corporate System, a branch office is legally regarded as part of its parent company and does not have a separate corporate or legal identity from that of its parent company, while the Subsidiary is regarded as an actual separate legal entity from the parent company. Consequently, the parent company of the branch office is fully responsible for any liability of the branch while the parent company will not be liable for the actions of the subsidiary.

   With respect to Competition Law in the UAE, please note that the same has explicitly stated that the provisions of the Law shall be applied on any natural or legal person practicing an economic activity or any persons associated therewith or any combination of these persons regardless of its legal form. Therefore, the provisions of the Competition Law in UAE granted powers to the Minister and the Competition Committee to investigate and involve any individuals or entities associated with the individuals or entities which violated the provisions of the Competition Law.
20. **Are private actions and/or class actions available for infringement of the cartel rules?**

Private enforcement is made available in accordance with the UAE Competition Law articles, which grants any party or entity who has suffered any damages due to a violation of any provision of the UAE Competition Law to claim for compensation from the Courts in UAE by stating "The penalties set out in this law shall not prejudice the right of the harmed party to have recourse to the Court to claim compensation for the damages arising from violating any provision of this law". The standing to file such civil case exists.

21. **What type of damages can be recovered by claimants and how are they quantified?**

The UAE Competition Law does not mention any details regarding the type and level of compensation and the Law does not state on whether the claimant is required to obtain any evidences from the Ministry of Economy before claiming for compensation before the Competent Courts in UAE.

In accordance with the UAE’s legal system, legal actions for claiming compensation by individuals are brought before the Civil Courts while legal actions for claiming compensation by companies are brought before the Commercial Court. Further, the types of damages that could be claimed in such legal actions include direct financial damages, loss of profit and moral damages, however, the UAE Court’s estimation of the amount of compensation will aim to keep it relatively proportional to the direct damages caused and profit lost (provided that the same are evidenced). In other words, the compensation awarded by UAE Courts are usually not significantly higher than the amount of the direct damages taking into account that some Judges or Courts may estimate the compensation amount differently than the others.

22. **On what grounds can a decision of the relevant authority be appealed?**

The decisions issued by the Minister of Economy under the provisions of the UAE Competition Law may be appealed before the Competent Court, namely UAE Federal Court, within (60) sixty days from the date of notifying the concerned parties of such decisions. The UAE Federal Court has a default jurisdiction to review administrative decisions issue by Ministries and federal governmental agencies in UAE.

The UAE Competition Law and its Regulation does not limit or state the grounds on which the decision of the Minister of Economy can be appealed. However, and in accordance with the applicable procedural laws and regulations in UAE, any aggrieved party has the right to appeal the decision of the Minister of Economy if such decision was unreasonable or could not be supported by evidences or if the Minister made an error of law or if the Minister failed to take any of required procedures or proper legal evaluation of the evidences before the issuance of the appealed decision, etc.
23. **What is the process for filing an appeal?**

The process of the appeal starts by filing an opening appeal statement, along with the supporting documentary evidences and the Arabic translation of the same, with the Competent Court in UAE. The statement must include the details of the decision to be appealed, reasons for appeal and claims to be decided. The notice of appeal can include both factual and legal errors that appellant decides to challenge and address to court.

The Ministry of Economy will be notified with the statement and evidences and will be requested to submit a counterstatement in response to the same in addition to submit their supporting evidences. The Ministry of Economy is being represented by the Ministry of Justice/governmental cases division. Thereafter, several hearing sessions will be held by the Court and the parties would be allowed to submit their written memorandums and pleadings before the issuance of a decision by the Federal Competent Court. The process may require appointment of expertise to review claims, appeal grounds, audit and account the figures and revenues among other technical points. The decision of Federal Court is subject to appeal before Federal Appeal Court and the later judgment is also subject to further appeal before UAE Federal Supreme Court.

24. **What are some recent notable cartel cases (limited to one or two key examples, with a very short summary of the facts, decision and sanctions/level of fine)?**

The Competition laws are relatively new and the same became enforced in the last few years in UAE. According to our knowledge, there is no court case or referrals made by the Ministry of Economy to prosecution office for criminal proceeding in a violation of Competition Laws. All cases are being filed administratively before the Ministry of Economy and the same get referred to Competition Committee for examination, investigation, deliberation and further meetings with parties. The Competition Committee functions under the umbrella of Consumers Protection Department within the Ministry of Economy. According to our knowledge, all Competition related complaints/cases are being resolved amicably and settlement are signed with defendants. As mentioned earlier, the settlement terms in Competition law obliges defendant to pay equivalent to no less than double the minimum statutory fines.

As confidentiality is a core statutory requirement, public should not have access to details of competition cases unless final resolution is published in local newspapers according to the law. Therefore, all administrative cases are being held with acceptable level of confidentiality and no information should be revealed to public.

In term of number of cases, we do except that a range of 10-15 cases have been filed and examined by the Ministry of Economy/ Competition Committee thus far. There is no official accessible records to confirm a precise number or there is an announcement by Competition Committee to confirm number of cases.
25. **What are the key recent trends (e.g. in terms of fines, sectors under investigation, applications for leniency, approach to settlement, number of appeals, etc.)?**

   The trend of Competition Committee is to educate traders with all violations. The focus is on Economic Concentration violations/rules and how to avoid any violation. The experts at Competition Committee investigates transactions, claims and complaints filed before the Ministry of Economy and always keen to resolve the issue amicably by way of applying settlement rules.

   The Competition Committee developed a guideline booklet that allows traders, entities and all interested parties to receive and get familiarized with applicable competition laws, decrees, orders and ratios measures. The Competition Committee also developed templates for complaints to be filled and lodged by interested parties, namely in relation to restrictive agreements, the acts and practices that lead to the abuse of the dominant position and also Economic Concentration issues.

26. **What are the key expected developments over the next 12 months (e.g. imminent statutory changes, procedural changes, upcoming decisions, etc.)?**

   The Competition laws are relatively new and the said law became enforced in the last few years in UAE. We believe the Competition Committee will continue with its role to receive complaints, understand the rationales of violation, assist defendants to correct their position and settle any dispute without referring or addressing criminal charges through public prosecution office. i) exposure to statutory sanctions, and ii) publicity surrounding violation of Competition Law and the extraterritoriality implications will remain key factors to be considered by merchants/entities to conclude settlement in accordance with Competition Law provisions.

   Having said this, we still believe that the Ministry of Economy will opt to refer a case or two for criminal proceedings in the coming years and only if defendant(s) insist to refuse settlement measures.