SQUIRE PATTON BOGGS

New Developments in the United Arab Emirates (UAE) Competition Law

Turnover Thresholds Introduced for Merger Control Filings

March 2025

On 20 January 2025, the UAE Cabinet issued Cabinet Decision No. (3) of 2025 (the "Cabinet Decision"), setting out the long-awaited thresholds for merger control filings under Federal Decree-Law No. 36 of 2023 on Regulating Competition (the "Competition Law"). Notably, this marks the first time a turnover-based threshold is introduced in the UAE competition law landscape, which will take effect from 31 March 2025.

However, it is important to note that the implementing regulations accompanying the new Competition Law (the "Implementing Regulations") are yet to be issued. These regulations are expected to provide crucial details on the application of the new regime, specifically regarding the application of the thresholds. In addition, the Competition Law envisages the issuance of further cabinet and local government decisions to determine such establishments, owned by the federal government and the Emirates' governments, to which the Competition Law will not apply.

Updated Merger Control Thresholds

Under the Cabinet Decision read in conjunction with the Competition Law, transactions qualifying as (i) economic concentrations[1] resulting in "direct or indirect control" for one establishment over another establishment, and (ii) impacting the level of competition within the relevant market (unclear whether this impact is meant to be within or beyond the relevant market in the UAE), are subject to merger control filing if they meet one of the following thresholds:

1. **Turnover threshold** – The combined annual sales of the entities involved in the relevant market within the UAE exceed AED300 million (~US$81 million). It is not entirely clear whether this threshold applies to turnover related only to the products or services involved in the transaction, but the reference to the relevant market indicates that is the case (i.e. the market in the UAE relevant to the transaction-related products or services). Additionally, it appears that the threshold could be met by one party alone, and given the recent introduction of the turnover threshold, there is no clarification offered yet from application precedents in the UAE.
2. **Market share threshold** – The combined market share of the parties involved in the economic concentration exceeds 40% in the relevant market within the UAE. This threshold aligns with the previous regime's approach, and has well-documented precedence in terms of application.

There has been some debate regarding whether the turnover threshold under the Cabinet Decision applies to one or both parties involved in a transaction. However, the text of the decision clearly states that if the AED300 million turnover threshold is met in the relevant market within the UAE, a filing obligation arises, regardless of whether this threshold is met by one party alone or collectively by multiple parties. The threshold is distinctly tied to domestic market activity, ensuring that transactions involving entities with substantial UAE operations are captured.

International Comparison and Commentary

The UAE's merger notification turnover threshold is set at AED300 million (~US$81 million) in total annual sales within the UAE. This relatively high threshold means that only transactions involving companies that generate substantial revenues within the UAE will trigger notification requirements but also means that such companies will be liable for the notification requirements on potentially any transaction they do. This approach could lead to over-inclusive notifications for international transactions with minimal relevance to the UAE market. Additionally, the absence of a second-party or target thresholds, where both parties and the target must meet specific thresholds for a merger or acquisition to require filing, differs from the common international and regional approach, potentially burdening global transactions with unnecessary filings.

To provide a comparison from the region, in Saudi Arabia (KSA), the threshold is lower but it consists of three elements (i) worldwide turnover of the parties (total combined annual global turnover of the parties to the transaction to exceed SAR 200 million (~US$53.3 million); (ii) worldwide turnover of the target (annual turnover of the target entity to exceed SAR 40 million (~US$ 10.6 million); and (iii) domestic turnover of the parties in KSA (total annual turnover of all parties involved in the transaction within KSA to exceed SAR 40 million (~US$10.6 million).

1 Defined as "any action that leads to the full or partial transfer (merger or acquisition) of ownership or usufruct rights in properties, rights, stocks, shares or obligations of an establishment to another which grants an establishment (or a group of establishments) direct or indirect control over another establishment (or a group of establishments)".

This multi-pronged approach provides further requirements on the target entity, the parties and an element of domestic and international sales, which ultimately provides a safeguard against overly burdensome notifications. Similarly in Turkey the notification threshold system combines a national turnover threshold with a global turnover requirement, providing a more nuanced approach compared to the UAE's high, purely national threshold. This multi-faceted approach ensures a more nuanced determination of when filings are required and safeguards against unnecessary notifications, while still ensuring that relevant transactions are reviewed.

A key difference between the thresholds in UAE and KSA on the one hand and Turkey on the other hand is that the latter requires a minimum target turnover in Turkey. This is similar to many European thresholds and avoids the situation that a transaction is notifiable even though target sales in the country are de minimis.

Impact on M&A Transactions and Future Outlook

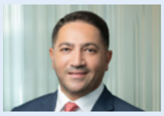
With the new thresholds taking effect on 31 March 2025, parties meeting the criteria must notify the UAE Ministry of Economy at least 90 days before finalising a transaction. This extended timeline, compared to the previous 30 days, will necessitate early strategic planning for M&A transactions involving economic activities in the UAE.

Penalties for non-compliance have also been made stricter under the new Competition Law, with fines ranging from 2% to 10% of annual revenues from the relevant product or service within the UAE, or up to AED5 million if revenues cannot be calculated.

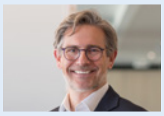
Although the UAE's competition framework is now more robust legislatively, its practical application remains in an early stage. The anticipated Implementing Regulations are expected to bring clarity on several critical aspects, including but not limited to the turnover thresholds' application.

Businesses should closely monitor developments, as the UAE continues to refine its competition law regime, balancing competition protection with economic growth and M&A market dynamics.

Contacts



Omar Momany
Partner, Dubai, UAE
T +971 4 447 8761
E omar.momany@squirepb.com



Oliver Geiss
Partner, Brussels, Belgium
T +32 2 627 1112
E oliver.geiss@squirepb.com

Thamer Shomar
Associate, Dubai, UAE
T +971 4 447 8751
M +971 50 457 9412
E thamer.shomar@squirepb.com