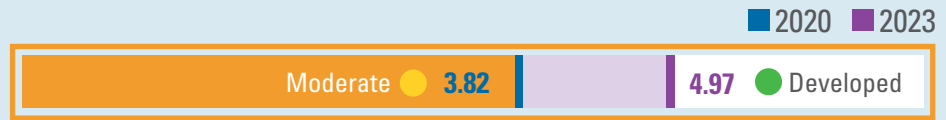




ARAB BUSINESS LEGISLATIVE FRAMEWORKS

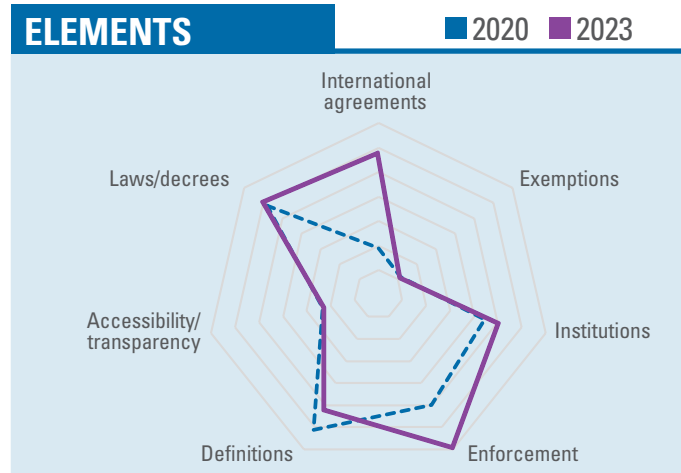
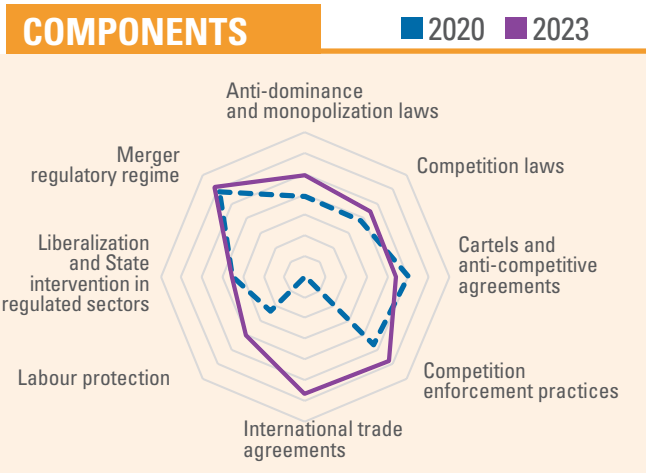


COMPETITION



Very strong Strong Developed Moderate Basic Weak Very weak

COMPONENTS	2020	2023
Anti-dominance and monopolization laws	3.89	4.90 ▲
Competition laws	3.82	4.45 ▲
Cartels and anti-competitive agreements	5.00	4.38 ▼
Competition enforcement practices	4.67	5.73 ▲
International trade agreements	3.50	5.60 ▲
Labour protection	2.33	4.00 ▲
Liberalization and State intervention in regulated sectors	3.50	3.50 ▶
Merger regulatory regime	5.83	6.13 ▲



The competition regime in the United Arab Emirates is managed by Federal Law No. 4/2012 on the regulation of Competition and its implementing regulation No. 37/2014. No amendments occurred in the past two years.



Competition laws

Article 1 of the law clearly defines some competition concepts, such as competition, dominant position and economic concentration, but not others, such as collusion, cartel and crowding out. Article 2 aims to guarantee fair competition practices by prohibiting restrictive agreements, conducts taking advantage of a dominant position, and controlling the economic concentration process to avoid

violations. However, article 4 opens the door for exceptions and exemptions as it empowers the cabinet to exempt public utilities/sectors, businesses, and State-owned enterprises (SOEs) from the provision of the law. Under the same article, small and medium enterprises (SMEs) may be granted exceptions to incentivize them.



Anti-dominance and monopolization laws

A definition for dominance provided in article 1 of the law, however, there is no definition of monopoly. Article 6 of the Competition Law prohibits monopolies and abuse of dominance and lists some practices that constitute them, those include: market barriers, controlling production, fixing prices, distinguishing between agreements/contracts based on prices and/or quality, halting deals which lead to the exclusion of competing firms from the market or their exposure to losses, and discriminating between customers of similar contracts. Also, a firm is considered in a dominant position if its market share surpasses the proportion of the overall transactions in

the market (the proportion is determined by the Cabinet of Ministers). Article 16 states the sanctions in case of breaching provisions that target anti-dominance and monopolies and include a fine of a minimum of 500,000 United Arab Emirates Dirhams (AED) and a maximum of AED 5,000,000.

Article 7 enables the Cabinet to grant exceptions based on specific procedures and conditions such as reinforcing economic development, improving the performance and competitiveness of the establishments and developing the production and distribution systems.



Cartels and anti-competitive agreements

Article 5 prohibits anti-competitive agreements (restrictive agreements), such as concentrations, conventions, understandings and collusions. The article lists some anti-competitive agreements, such as barriers to market entry, fixing prices, limiting and controlling production, colluding in tenders or bids in auctions and other supply offers, and

dividing the markets or allocating customers depending on their geographical area.

It is worth noting that article 7 opens the door for exemptions regarding anti-competitive agreements and that cartels are neither defined nor mentioned in the Competition Law.



Competition enforcement practices

According to the federal law regarding the regulation of competition, there are two institutional structures that supervise competition, the Competition Administration

and the Competition Regulation Committee, both of which operate under the supervision and authority of the Ministry of Economy. Also, article 3 stipulates that the

provisions are to be enforced on business activities inside the country and outside it if they impact the local market. Finally, article 25 states that any interested party has the right to file a claim before the Ministry concerning any violation of the Competition Law.

Article 13 specifies the functions of the committee which include providing guidance on competition issues, assessing concentration practices and giving recommendations on the general policy to protect competition within the State. According to article 14, the Ministry of Economy is responsible for implementing the competition policy in addition to assuming other

tasks such as investigating anti-competitive practices and following up on notifications related to restrictive agreements, dominance, and concentration operations. Chapter 8 presents the sanction regime in case of infringements and article 26 states that criminal lawsuits are to be referred to the court.

Last, pursuant to articles 15 and 14 of the Competition Law, all information and data shared should be kept confidential, and the Ministry may investigate on its own (ex officio). Finally, to guarantee fairness and due process, according to article 27, decisions rendered by the Minister can be appealed before the competent court.



International trade agreements

This assessment was based on the trade agreement between the Gulf Cooperation Council and Singapore. The assessment sought to identify if there are conflicts between internal subsidization policies and the provisions of the trade agreement. According to article 5.2 of the trade agreement, provisions do not apply to subsidies or grants provided by a party. Therefore, it can be inferred that there is no conflict between provisions.

Last, the indicator related to exemptions in trade deals is still negative due to article 6.3. It is worth noting that in trade agreements, such exemptions are understandable since they are strongly related to the sovereignty of the State (debt and government bonds) and/or to internal economic policies that the Government can consider as top priorities.



Merger regulatory regime

First, chapter 5 of the Competition Law addresses the economic concentration regime. Article 9 accounts for the consequences of an economic concentration, especially its impact on competition by creating or promoting a dominant position. Also, there is reference to change in control in article 1 of the implementing regulation in the definition of economic concentration.

Article 9 also establishes a merger notification regime. The application should be presented at least 30 days before the date of the completion of the transaction. Article 10 states that, in order to approve, conditionally approve or reject a transaction, the Competition Administration should conduct an assessment of the transaction's impact on the competition, and that

assessment should be completed within 90 days. Finally, pursuant to article 8 of the implementing regulation, the assessment of mergers takes into consideration the following factors, among others: the potential of competition in the market, market barriers, impact on prices and contributions to promoting investment.

Last, article 11 mentions that the Administration is allowed to cancel its approval if it finds that the information provided to her is incorrect and misleading, or if the circumstances no longer exist. Also, companies are prohibited from fulfilling the transactions and their related activities during the assessment period. Finally, pursuant to article 17, financial penalties are imposed on violators.



Labour protection

Although article 48 of the labour law (33/2021) guarantees protection for employee contracts in the cases of merger and acquisition, the Competition Law has several shortcomings regarding labour protection. Article 12 of the Executive Regulations of the labour law covers the non-compete clause. This clause ensures

protection for employees, especially, for example, that articles 46, 86 and 147 of the commercial code prohibit board members and managers from undertaking competitive activities with competitors without specifying conditions and restrictions regarding the time and geographical location.

RECOMMENDATIONS

- The Competition Law should include definitions for several basic anti-competition practices, such as monopoly, cartel, transparency, veto power (in mergers and acquisitions), etc.
- The full independence of the Competition Committee should be guaranteed without interference or decision-making powers for the Ministry of Economy.
- Further cooperation is needed, including the development of a memorandum of understanding with other competition authorities (regional and international).
- Stricter conditions for allowing exemptions should be introduced, with sanctions for non-compliance.
- A clear economic concentration regime must be established.
- Studies on the market (the impact of economic concentration) should include clear criteria and conditions (effect on prices, investments, veto power, etc.). Also, a clear definition for vertical and horizontal agreements should be included.
- Labour protection provisions should be added, such as the non-compete clause.
- Markets should be liberalized for some vital sectors, (especially where State-owned enterprises operate), and State interventions should be based on specific conditions/ circumstances.
- Studies and/or decisions made by the Competition Administration should be published for greater transparency.

