



# ARAB BUSINESS LEGISLATIVE FRAMEWORKS

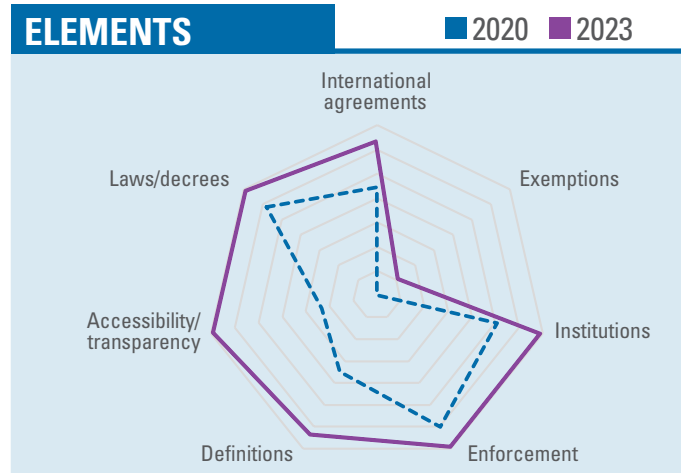
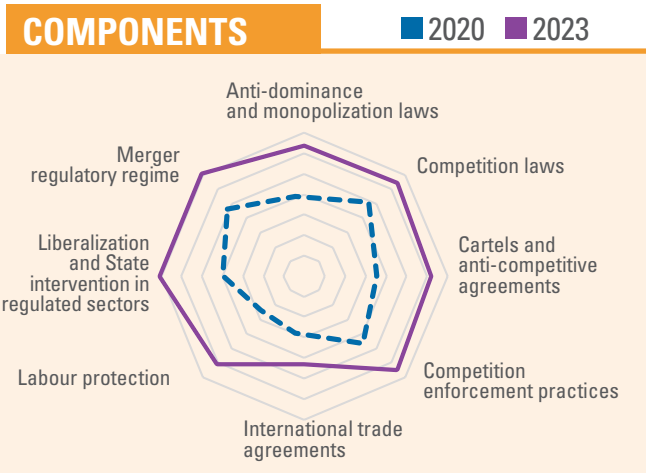


## COMPETITION



● Very strong ● Strong ● Developed ● Moderate ● Basic ● Weak ● Very weak

COMPONENTS	2020	2023
Anti-dominance and monopolization laws	3.89	6.30 ▲
Competition laws	5.09	6.36 ▲
Cartels and anti-competitive agreements	4.00	6.13 ▲
Competition enforcement practices	4.67	6.36 ▲
International trade agreements	2.80	4.40 ▲
Labour protection	2.33	6.00 ▲
Liberalization and State intervention in regulated sectors	3.35	5.20 ▲
Merger regulatory regime	4.67	7.00 ▲



The overall score of Saudi Arabia has increased by one point over the past two years. This is due to the adoption of several amendments that targeted different components of competition. The amendments were adopted through the following:

- The Competition Law (2019).
- The regulation for organizing the General Authority for Competition.
- The implementing regulations for the Competition Law (2020).
- The mergers and collusion guidelines (2021-2022).
- The Arabic dictionary of competition (2022).

Since 2020, there has been an increase in taking decisions and publications of market studies (targeting several fields such as car spare parts and insurance sectors),<sup>1</sup> and the General Authority for Competition (GAC) has been active in enforcing these laws/regulations/policies.



## Competition laws

Article 2(1) of the regulation for organizing GAC expressly states that it has a separate legal personality and is financially and administratively independent. The concept of independence was not limited to the institution, but chapter 9 of the implementing regulations expands the independence principle to cover GAC's officers. These officers have now to follow strict rules of impartiality during the fulfilment of their responsibilities and to avoid any risk of conflict of interest.

Pursuant to article 35 of the implementing regulations, the scope of enforcement has been expanded so as to cover companies working outside Saudi Arabia if their activities impact the internal market. Sections 8 to 11 of the merger guidelines present a detailed and thorough explanation of the assessment made by GAC officers while inspecting a merger transaction.

Moreover, the indicator for defining anti-competitive behaviour scored some improvement as anti-competitive practices have been well clarified in sections 4 and 5 of the merger guidelines.



## Anti-dominance and monopolization laws

Pursuant to article 74 of the new implementing regulations, the Public Prosecutor is permitted to submit a claim against violators. In article 1 of the Competition Law and in most sections of the merger and collusion guidelines, a meticulous definition is provided for several anti-competitive agreements. Moreover, the merger guideline presents practical examples of how the change in control occurs, such as "when decisive influence is exercised on strategic operations as approval of budgets, business plan, etc."

Chapter 7 (articles 45 to 53) of the implementing regulations presents a categorized sanction regime (penalties and procedural measures), while chapter 8 (articles 54 to 66) covers the rules on leniency and settlements.

According to article 3 of the Competition Law, State-owned enterprises (SOEs) benefit from exceptions only if they are authorized by the Government to provide goods or services in a specific field. Moreover, this authorization is subject to having no competitors in that specific field. It is worth noting that to ensure fairness in prices and to control any potential anti-competitive behaviour when exceptions are accorded, GAC has been monitoring the SOEs operating in the market and has decided on several sanctions for infringements (box 1 highlights the case of Saudi Telecom).

Exemptions have been organized and restricted as per the provisions of chapter 5 (articles 26 to 31) of the implementing regulations. Under these provision, specific

<sup>1</sup> [General Authority for Competition 2021 report](#) (Market Studies – p. 84)

conditions have to be met so as to exempt a company from the Competition Law. Conditions for exemption include demonstrating that it will lead to an improvement in the performance of the market or of the company, or that it will achieve benefits for the consumers that outweigh the impacts of limiting competition. It is worth

noting that GAC grants exemptions for a specific period and monitors the compliance of the exempted company with the conditions and commitments included in the exemption decision. In cases of non-compliance, exemptions may be retracted.



## Cartels and anti-competitive agreements

Article 8 of implementing regulations does not expressly mention vertical and horizontal agreements. However, clear and practical definitions of these agreements are included

in section 10 of the merger guidelines as well as in the Arabic dictionary of competition published by GAC.



## Competition enforcement practices

Through the publication of the merger and collusion guidelines, the GAC has set strategic goals to effectively manage the market using standards and practices followed in the European Union.

Article 13 of the Competition Law requires competition authority officers to maintain the confidentiality of data, documents and records during an investigation. According to article 32(2) of the implementing regulations, the Authority is empowered to investigate on its own (ex officio).

According to the economic concentration statistics report for 2022 (published by GAC),<sup>2</sup> the Authority received 316 applications for completing economic concentration

transactions (mergers, acquisitions, and joint ventures) and the decisions were as follows:

- There was no need for notification for 128 applications.
- There were no objections for 176 applications.
- There were objections for one application.
- 11 applications are still pending for further assessment and study.

Box 1 highlights four important cases, relating to SOEs and private businesses, in which the GAC actively enforced the Competition Law and regulations.

### Box 1 Enforcement practices

#### 1. On 10/4/2023, the Administrative Appeal Court of Riyadh upheld GAC decision to penalize 14 companies trading in cement.

After investigating, researching, collecting evidence and conducting interviews, GAC issued a decision to penalize 14 companies operating in trading in cement for violating article 4 of the Competition Law by agreeing to raise prices simultaneously and allocating markets. The Administrative Appeal Court in Riyadh rejected the lawsuits filed by the companies to challenge GAC's decision against them.

<sup>2</sup> Economic concentration statistics for 2022.

## 2. The Administrative Appeal Court of Riyadh issued a verdict against the SOE Saudi Telecom (STC) for infringing the Competition Law.

After the assessment of the Administrative Appeal Court and based on the findings of GAC, the Court ruled that Saudi Telecom (an SOE) had abused its dominant position while performing an economic activity through:

- Imposing special requirements on the operations of buying or selling when dealing with another company in a manner that sets the latter in a weak competitive position compared to other firms.
- Refusing to deal with another company with no justification, in order to limit its entry into the market.

Hence, after qualifying the above-mentioned infringements as abuse of dominance, the Court fined Saudi Telecom 10,000,000 Saudi Riyals.

## 3. Blocking Delivery Hero's acquisition of 100 per cent of the shares of Chefz.

The Decision was taken in December 2021. After conducting a legal and economic assessment, GAC blocked Delivery Hero's proposed acquisition of the Chefz (a Saudi food delivery application). It was the first acquisition that the Authority blocked.

## 4. Rejecting GASCO's bid to acquire a 55 per cent stake in Best Gas Carrier.

The Decision was taken in June 2022. The assessment of GAC covered the following points:

- GAC had access to coherent data.
- GAC investigated the balance between potential benefits and damages to competition.
- GAC took into consideration the opinion of competitors/customers.
- GAC compared the market to other similar markets.

Based on the assessment, GAC rejected GASCO's bid as it viewed that **the acquisition constitutes a vertical agreement, which will make GASCO dominant at both the wholesale and retail levels**. The dominant position will exclude competitors by means of rising prices and will impose barriers to entry.

## 5. Conditional approval for the acquisition of Careem by Uber (commitments were imposed).

The decision was taken in February 2021. Although the legal and economic studies conducted by GAC indicated a potential harm to competition in the market as it will put the acquiring company in a position to increase prices and impose market barriers, the Authority nevertheless approved the acquisition transaction provided Uber complies with certain conditions and commitments for a period of three years. According to GAC, the commitments aim to protect consumers from the increase in prices, changes in the quality of services, and will guarantee the openness of the market to new and/or existing competitors.

The imposed commitments on Uber were as follow:

- Setting a fixed and maximum price that cannot be exceeded for regular “essential” travels (organic fares).
- Setting a maximum price for peak times that cannot be exceeded (surge fares).
- Making a number of improvements and innovations related to the quality of service.
- Drivers may not be obliged to work exclusively for Uber and should be free to work with other companies, including the competitors of Uber in the market.
- Permitting ride-sharing providers with access to data from Careem maps at the market price.
- Allowing travellers, upon their request, to access their data, and enabling them to transfer the data to other competing ride-sharing providers, including the new ones.
- Uber should not set discriminate prices between its customers.
- Uber has to provide all the information/data needed to allow GAC to monitor the company’s future behaviour after the accomplishment of the economic concentration.



## 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.



## Liberalization State intervention in regulated sectors

There has been some improvement in this heading with the adoption of the privatization regime no. 436/2021. Article 3 of the regime allows private companies to undertake public projects through different formats (build-operate-transfer (BOT), public and private sector partnerships, etc.). The objective of this provision is to increase the efficiency and competitiveness of the national economy. It is stated in the privatization regime that its aim is to stimulate the local and foreign private sectors to invest and actively participate in the national economy through projects that achieve the

development, and to ensure the economic feasibility for the public and private sectors, and to increase the share of the private sector in the domestic product in order to achieve growth in the national economy.

To guarantee that competition principles are upheld, article 30 of the privatization regime stipulates that the National Centre for Privatization should first coordinate with GAC and other concerned authorities and then, develop policies to reduce monopoly in privatization projects.



## Merger regulatory regime

Article 22 of the implementing regulations sets clear criteria for assessment (studying market structure, consumer interests, potential impacts on prices and innovation, and actual or potential impacts on competition and investment). Also, sections 8 to 11 of the merger guidelines present a practical explanation with case studies of how the GAC is to conduct assessments. Steps include determining relevant markets and ways to study the demand/supply sides. The assessment tests are similar to the ones used by the European Union and include studying if the transaction will negatively impact competition in a relevant market, and its consequences on consumer welfare and economic freedom.

Article 1 of implementing regulations elucidates the concept of change by defining economic concentration. Also, in section 5 of the merger guidelines, a meticulous explanation is given on how change in control takes place, and it states, for example: giving **veto power** to a minority shareholder, exercising **decisive influence** on strategic operations such as approval of budgets, business plan, etc.

The merger guidelines and article 12 of the implementing regulations<sup>3</sup> define a pre-merger notification regime for companies. The regime defines several conditions/variables (for example, a threshold of 200 million Saudi Riyals). The aim of this regime is to facilitate procedures and thus attract investors, and to support the development of small and medium-sized enterprises.



## Labour protection

In this heading, there has been change in only one indicator, namely: the presence of any related competition regulation that includes basic protections/rights for the labour market.

Article 18 of the Labour Law guarantees this protection for employees during merger transactions. However, and as employees are, for the most part, the most vulnerable

stakeholder in any transaction between companies in the market, more protection policies are needed, such as defining and including the non-compete clause in the Competition Law. It is worth noting, in this respect, that the GAC required Uber not to oblige drivers to work exclusively for the company in the decision to conditionally approve the company's acquisition of Careem.

## RECOMMENDATIONS

- ▶▶▶ All new definitions mentioned in the merger and collusion guidelines as well as in the Arabic Dictionary of Competition should be expressly adopted in the Competition Law and thus become legally binding.
- ▶▶▶ Paragraph 2 of article 2 of the law regulating GAC still mentions that GAC is linked to the Prime Minister. This article still creates confusion as it implies that the Authority is not fully independent as a structure.
- ▶▶▶ The concepts of monopoly and cartel should be clearly defined in the Competition Law or in its implementing regulations.
- ▶▶▶ More protection policies should be implemented for employees (for example, defining the non-compete clause and the role of trade unions in mergers and acquisitions).
- ▶▶▶ Markets should be liberalized for some vital sectors, (especially where State-owned enterprises operate), and State interventions should be based on specific conditions/circumstances.

<sup>3</sup> Article 12(1) of the implementing regulations: "Firms intending to participate in an economic concentration transaction, or their legal representative, shall report the same to GAC and submit the required information thereto at least ninety (90) days before completion of the economic concentration if the total annual sales value of all firms intending to participate in the exceeds SAR 200,000,000". (...).

