

# Resolution of the Council of Ministers No. (37) of 2014 Concerning the Executive Regulation of the Federal Law No. (4) of 2012 on the Regulation of Competition

Preamble  
The Council of Ministers,

Having perused the Constitution;

Federal Law No. (1) of 1972 On the Jurisdiction of Ministries and Powers of Ministers, as amended;

Federal Law No. (4) of 2012 On the Regulation of Competition; and

Based upon the proposal of the Minister of Economy and the approval of the Council of Ministers;

Resolves as follows:

## Article (1) Definitions

In this Law, the following words and expressions shall have the meanings assigned next to them unless the context otherwise requires:

**UAE:** United Arab Emirates;

**Law:** Federal Law No. (4) of 2012 On the Regulation of Competition;

**Minister:** Minister of Economy;

**Competent Authority:** The Ministry department concerned with competition.

**Organization:** Any natural or legal person practicing an economic activity, any associated person, or any combination of these persons, regardless of its legal form.

**Relevant Market:** Commodity or service, or a combination of commodities 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.

**Agreements:** Agreements, contracts, arrangements, joint ventures, or practices between two or more organizations, or any cooperation among organizations, or the decisions made

by the syndicate of organizations, whether orally or in writing, expressly or implicitly, secretly or in public.

**Economic Concentration:** Any act that results in a whole or partial transfer (merger or acquisition) of title or usufruct of property, rights, shares, stocks, or obligations of an organization to another organization which would enable an organization or a group of organizations to have direct or indirect control over an organization or a group of other organizations.

**Committee:** Competition Regulation Committee formed under the provisions of the Law.

## Chapter I. Procedures Regulating Exclusions

### Article (2) Notification Controls

1. Any organizations that wish to obtain exclusion for restrictive Agreements or practices relevant to a dominant position, set out in Articles (5) and (6) of the Law, shall notify the Competent Authority in advance according to the form prepared by the Competent Authority for this purpose, which shall be attached with the following documents:

- a) Duly certified memorandum of association or articles of associations of the relevant Organizations.
- b) Statement of the names of shareholders or partners in the relevant Organizations and their respective shareholdings.
- c) Report on the economic dimensions of the exclusion application that indicates the positive impacts of the exclusion application and its role in promoting economic development.

2. The notification and the documents attached thereto shall be submitted to the Competent Authority signed by the legal representatives of the Organizations that seek an exclusion for restrictive Agreements or practices relevant to a dominant position by virtue of a duly certified special power of attorney, with acknowledgement of receipt.

3. Three copies of the notification shall be submitted in Arabic and a translation into English may be submitted.

4. Three copies of the documents referred to in Clause 1 of this Article shall be submitted in the original language in which these documents are drafted, attached with a certified translation into Arabic if the original language is English.

5. The Organizations that desire to have the information stated in the notification and the documents treated as confidential shall mark the same as “confidential” and shall submit non-confidential summaries of these documents. The summaries shall be sufficient to understand the import of the confidential information and shall be marked as “non-confidential”.

6. The Competent Authority shall undertake a formal examination of the notification and its supporting documents and may request the concerned Organizations to provide any additional documents. Upon completion of the formal examination, the Competent Authority shall issue a notification to the concerned Organizations indicating the completion of the formal requirements of the exclusion.

7. The Competent Authority shall maintain a special register to keep the notifications of exclusion for restrictive Agreements or practices relevant to a dominant position.

### Article (3) Consideration of Notifications

1. The Competent Authority shall consider the exclusion to evaluate the completion of the following procedures by the concerned Organizations:

a) Notifying the Ministry in advance of the restrictive Agreements or practices relevant to a dominant position which are requested to be excluded.

b) Proving that these Agreements or practices will enhance economic development, improve the performance of the Organizations or their competitive ability, develop production systems or distribution, or achieve certain benefits to consumers.

2. Upon consideration of the exclusion, the Competent Authority may request the relevant parties or Organizations to submit any additional data or information it deems necessary to decide on this exclusion.

3. The Competent Authority may request the parties, which it deems to be likely to be affected by the exclusion, to provide its views and supporting documents on this exclusion, within no more than fifteen (15) days from the date of its notification by the Competent Authority.

4. The Competent Authority shall prepare a detailed report on the exclusion and the documents on which the application is based, and shall evaluate the application from legal and economic aspects, particularly in respect of its impact on the competition level in the Relevant Market, and recommend the proposed decision concerning the application.

5. The Competent Authority shall submit its report referred to in Clause 4 of this Article to the Committee, which shall make its recommendations on the exclusion to the Minister within no more than fourteen (14) days from the date of receiving the report.

6. The Competent Authority may seek the service of any party it deems fit or seek the opinion of any other entities in the UAE to prepare the report referred to in Clause 4 of this Article.

#### Article (4) The Minister's Decisions on the Exclusion

1. The Minister shall issue his decision as to the exclusion based on the recommendation of the Committee within ninety (90) days from the date of notifying the relevant Organizations that the application is received and that it satisfies the required conditions. The Minister may extend this period to additional forty-five (45) days.

2. If no decision is issued by the Minister within the period referred to in Clause 1 of this Article, this shall be considered as implicit acceptance of the exclusion.

3. The Minister may temporarily approve the enforcement of the restrictive Agreements or the practices relevant to a dominant position until his final decision thereon is issued, provided that these agreements or practices are not enforced for more than thirty days.

4. The Minister may make a reasoned decision on the exclusion for restrictive Agreements or practices relevant to a dominant position as follows:

a) approve the enforcement of the restrictive Agreements or the practices relevant to a dominant position.

b) reject the enforcement of the restrictive Agreements or practices relevant to a dominant position.

c) approve the enforcement of the restrictive Agreements or the practices relevant to a dominant position, provided that the relevant Organizations comply with the conditions and obligations established by the Minister for the purpose of implementing the Exclusion.

5. The Minister shall make a decision to cancel the approval referred to in Sub-Clause (a) of Clause 4 of this Article in any of the following events:

a) If it transpires that the circumstances under which the approval was granted no longer exist.

b) If the relevant Organizations fail to satisfy the conditions and requirements based on which the approval was granted.

c) If it transpires that the information based on which the approval was granted was misleading or false.

6. The Competent Authority shall keep a special register for the decisions made by the Minister on the applications for exclusion.

#### Article (5) Approval of Exclusion Amendment

1. The Organizations that obtained an exclusion concerning restrictive Agreements or practices relevant to a dominant position shall notify the Competent Authority of any draft amendment to these restrictive Agreements or practices relevant to a dominant position within thirty days from concluding the draft.
2. The Competent Authority upon consideration of the proposed amendments to the exclusion may request the relevant parties or the parties which may be affected by the exclusion amendment to provide any additional necessary data or information to decide on the proposed amendments to the exclusion.
3. The Competent Authority shall prepare a detailed report that includes an evaluation of legal and economic aspects of the proposed amendments to the exclusion, particularly in respect of the impact of the exclusion amendment on the competition level in the Relevant Market, and recommends the proposed decision concerning the requested amendments to the exclusion.
4. The Competent Authority shall submit the report referred to in Clause 3 of this Article to the Minister, no later than 14 (fourteen) days from the date of preparing this report.
5. The Minister shall make his decision on the proposed amendments to the exclusion within 90 (ninety) days from the date of notifying the relevant Organizations of receiving the application that satisfies all required conditions. The Minister may extend this period to additional 45 (forty-five) days.

#### Article (6) Evaluation of Competition

The Competent Authority shall consider the practices relevant to a dominant position referred to in Articles (6) and (7) of the Law as follows:

- 1) The Relevant Market.
- 2) Market share of the relevant Organizations.
- 3) Revenues and assets of the relevant Organizations.
- 4) The actual or potential level of competition for a number of competitors.
- 5) Price or quantitative deviation in goods or services from projected levels in the case of the occurrence of such practices.
- 6) The volume of production and demand for the relevant goods or services.
- 7) The level of influence on the aggregate supply or demand for the relevant goods and services.
- 8) The diversity of the relevant goods and services concerned.

- 9) Effect of the practices on access to, expansion in, or exit from the market.
- 10) Ease of access to financial facilities from the capital markets.
- 11) The length of time during which such practices occurred.
- 12) Date of competition and rivalry between competitors in a given market.
- 13) Effect on consumers.

## Chapter II. Procedures Organizing Economic Concentration

### Article (7) Application for Approval of Economic Concentration

1. The relevant Organizations shall file a written application to obtain the Minister approval on the completion of Economic Concentration operations in which the total share of Organizations or the parties to these operations exceed the percentage determined by the Council of Ministers of the total transactions in the Relevant Market, which may affect the competition level and create or promote a dominant position in the Relevant Market.

2. The application for approval of the Economic Concentration operation shall be filed at least thirty (30) days in advance of the date of concluding the draft contract or agreement on the Economic Concentration according to the form prepared by the Competent Authority for this purpose, to be supported by the following documents:

- a) Duly certified memorandum of association or articles of associations of the relevant Organizations.
- b) The draft contract or agreement related to the Economic Concentration operation.
- c) Duly certified financial statements for the last two years for any of the Organizations concerned with the Economic Concentration operation and the branches of these Organizations.
- d) Statement of the names of shareholders or partners in the relevant Organizations and their respective shareholdings.
- e) Report on the economic dimensions of the Economic Concentration. The report shall indicate its positive impacts on the Relevant Market and shall set out the obligations and proposed procedures by the relevant Organizations to mitigate any possible negative effects of this operation.

3. The application attached with the documents referred to in Clause 2 of this Article shall be submitted to the Competent Authority signed by the Organization authorized by the Organizations concerned with the Economic Concentration by virtue of a duly certified special power of attorney, with acknowledgement of receipt of the application.
4. Three copies of the application shall be submitted in Arabic and a translation into English may be submitted.
5. Three copies of the documents referred to in Clause 2 of this Article shall be submitted in the original language in which these documents are drafted, attached with a certified translation into Arabic if the original language is English.
6. The Organizations that desire to have the information stated in the notification and the documents treated as confidential shall mark the same as “confidential” and shall submit non-confidential summaries of these documents, which are sufficient to understand the import of the confidential information and which shall be marked as “non-confidential”.
7. The Competent Authority shall undertake a formal examination of the application for approval of Economic Concentration and its supporting documents. For this purpose, the Competent Authority may request the relevant Organizations to submit any additional documents. Upon completion of the formal examination of the application for approval of the Economic Concentration, the Competent Authority shall notify the relevant Organizations of the completion of the formal requirements of the application.
8. The Competent Authority shall maintain a special register for the applications for approval of Economic Concentration operation.

#### Article (8) Consideration of the Application for Economic Concentration

1. The Competent Authority shall consider the application to verify the Economic Concentration process based on the following indicators:
  - a) Actual and potential competition level in the Relevant Market.
  - b) Easy access of new Organizations to the Relevant Market.
  - c) The potential impact on the prices of the relevant goods or services.
  - d) Whether there are regulatory obstacles affecting the entry of new competitors.
  - e) The probability of the emergence of a dominant position in the Relevant Market.
  - f) The potential impact on innovation, creativity and technical competence.

g) The extent of contribution to the promotion of investment or export, or supporting the ability of national Organizations to compete internationally.

h) The impact on the interests of consumers.

2. Upon consideration of the application for approval of the Economic Concentration process, the Competent Authority may request the relevant parties to provide additional data or information which it deems necessary to decide on the application for approval of the Economic Concentration process.

3. The Competent Authority may request the parties, which it deems to be likely to be affected by the Economic Concentration process, to provide its views and supporting documents on the exclusion application, within no more than fifteen (15) days from the date of its notification.

4. The Competent Authority may request holding meetings with the relevant Organizations or stakeholders to review their opinions and statements on the Economic Concentration process.

5. The Competent Authority shall prepare a detailed report on the application for approval of the Economic Concentration process. The report shall include a statement of all facts and procedures taken concerning the Economic Concentration, the documents on which the approval application is based, and an evaluation of the application from legal and economic aspects, particularly in respect of the positive and negative impact of Economic Concentration on the competition level in the Relevant Market, and shall recommend the proposed decision concerning the application.

6. The Competent Authority may seek the service of any party it deems fit or seek the opinion of any other entities in the UAE to prepare the report referred to in Clause 5 of this Article.

7. The Competent Authority shall present the report to the Minister in order to make the appropriate decision on the application for approval of the Economic Concentration process.

#### Article (9) The Minister's Decisions on the Applications for Approval of the Economic Concentration Process

1. The Minister shall make his decision as to the application for approval of the Economic Concentration process within ninety (90) days from the date of receiving the completed application that satisfies all the required conditions. The Minister may extend this period to additional forty-five (45) days.

2. If no decision is issued by the Minister within the period referred to in Clause 1 of this Article, this shall be considered as implicit acceptance of the Economic Concentration process.

3. The Minister shall make a reasoned decision on the applications for approval of the Economic Concentration process as follows:



- a) approve the Economic Concentration process if it has no adverse impact on competition, or if it has positive effects that exceed the negative effects on competition; or
- b) approve the Economic Concentration process, provided that the relevant Organizations undertake to comply with the conditions and obligations established by a decision by the Minister.
- c) reject the Economic Concentration process.

4. The Minister shall make a decision to cancel the approval referred to in Clause 3 of this Article in any of the following events:

- a) If it transpires that the circumstances under which the approval was granted no longer exist.
- b) If the relevant Organizations fail to satisfy the conditions and requirements based on which the approval was granted.
- c) If it transpires that the information based on which the approval was granted was misleading or false. In this case, the authority shall take the appropriate legal procedures to pursue and hold the relevant Organizations accountable according to the applicable regulations in this regard.

5. The Competent Authority shall maintain a record of the decisions made by the Minister concerning the applications for Economic Concentration process according to the form prepared by the Competent Authority for this purpose.

6. The relevant Organizations shall be prohibited, within the period set out in Clause 1 of this Article, to conduct any acts or procedures related to the completion of the Economic Concentration process.

### Chapter III. Complaint Investigation Procedures

#### Article (10)

1. Any concerned party may file a complaint with the Competent Authority concerning any violation of the provisions of the Law according to the form prepared by the Competent Authority for this purpose.
2. The Competent Authority shall maintain a register for complaints with serial numbers on a first-come- first-entered basis. The register shall indicate the date of filing the complaint, the date of the complaint entry in the register, name of the complainant, and the subject of the complaint.

3. The complaint shall include the following information:

- a) The complainant or complainants.
- b) The party or parties against whom the complaint is filed.
- c) The law provisions claimed to have been violated.
- d) The facts related to the violation of the law provisions.
- e) The practices claimed to have been violated.
- f) The documents and evidence supporting the complaint.

4. The complaint shall be filed accompanied by the information and documents referred to in Clause 3 of this Article with the Competent Authority, with acknowledgement of receipt of the complaint. The receipt of the complaint shall not be considered as approval of the complaint.

5. The complaint may be filed in writing or online according to the controls set out by the Competent Authority for this purpose.

6. The filed complaint shall be signed by the complainant or complainants, or their legal representatives, by virtue of a duly certified special power of attorney.

7. Three copies of the complaint and the documents referred to in Sub-Clause (f) of Clause 3 of this Article shall be submitted in Arabic and a certified translation into English of the complaint and the documents may be submitted.

8. Three copies of the documents referred to in Sub-Clause (f) of Clause 3 of this Article shall be submitted in the original language in which these documents are drafted, attached with a certified translation into Arabic if the original language is English.

9. The approval applications filed by the Organizations shall be treated confidentially if they are marked as “confidential”. In this case, summaries of the application which are adequate to understand the content of the confidential information shall be submitted and shall be marked as “non-confidential”.

10. The Competent Authority shall examine the complaint and its supporting documents and may request the complainant to provide it with any information it deems necessary for the examination of the complaint no later than fifteen (15) days from the date of sending the request for information.

11. The Competent Authority, upon completion of the examination of the complaint, shall issue a notification to the complainant as follows:

a) Accepting the complaint due to adequate information that permits commencing investigation into the complaint.

b) Rejecting the complaint due to inadequate information that permits commencing investigation into the complaint.

#### Article (11) Automatic Investigation

1. The Competent Authority may, on its own motion, commence investigation into any violation of the provisions of the Law and this Resolution, if it has plausible reasons and adequate information on the existence of any practices that may violate, restrict, or prevent competition, in order to commence

investigation about any violation of the provisions of the Law, and its Executive Regulation.

2. The Competent Authority shall take any necessary actions regarding the violations referred to in Clause 1 of this Article in line with the established procedures for the investigation into complaints.

#### Article (12) Complaint Investigation

1. The Competent Authority, upon accepting the complaint, shall notify the parties against whom the complaint is filed, and all concerned parties, of the subject of the complaint within ten (10) days.

2. The notification referred to in Clause 1 of this Article shall include a summary of the most important items of the complaint, in particular:

a) The practice which is claimed to violate, prevent, or restrict competition and the violated provisions of the law.

b) The defendant's right to defend itself and reply to the allegations stated in the complaint.

c) The period of time given to the defendant to submit its reply in writing concerning the practice complained against.

3. The Competent Authority, upon investigating the complaint, shall ensure that the parties relevant to the complaint have adequate opportunities to defend their interests and are enabled to present their defense, points of view, and comments on the allegations, the subject of the complaint.

4. Upon investigating the complaint, the authority may request any information, documents, or statements by the parties relevant to the complaint, or any other parties, which it deems useful for the consideration of the complaint.

5. The Competent Authority shall request obtaining the information no later than thirty days from the date of sending the request for information and may extend this period to a similar period, provided that this does not affect the complaint investigation procedures.

6. The Competent Authority may take any action it deems necessary to investigate the complaint, including holding meetings with the parties relevant to the complaint.

#### Article (13) The Minister's Decisions on the Complaints

1. The Competent Authority shall prepare a detailed report on the complaint including a statement of all facts and procedures taken by the Competent Authority and a legal evaluation of all information and pleas advanced by the parties relevant to the complaint, and shall recommend the proposed decision concerning the complaint.

2. The Competent Authority shall submit the report referred to in Clause 1 of this Article to the Minister no later than ten days from the date of preparing the report.

3. The Minister shall make a reasoned decision on the complaint within 30 (thirty) days from the date of submitting the report.

4. The Ministry shall inform all parties relevant to the complaint of the Minister's decision no later than ten (10) days from the date the decision is made.

#### Article (14) Applications for Reconsideration

1. Any concerned party may file a written application with the Minister in order to reconsider the Minister's decisions under the provisions of the Law no later than 14 (fourteen) days from the date of being notified of these decisions. The application shall indicate the reasons justifying the application and shall be attached with supporting documents.

2. The Committee shall consider the application and make its recommendations to the Minister no later than ten (10) days from the date of referring the application to the Committee.

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

#### Article (15) Reconciliation

1. Except for the acts that violate the provisions of Article (15) of the Law, the Minister, or its authorized deputy, may effect reconciliation for any acts violating the provisions of the law, provided that the reconciliation is made before commencing the criminal case and payment is made by the parties which have been proved to have violated the provisions of the law of an amount no less than double the minimum limit of the penalty.
2. The reconciliation shall be evidenced in writing and shall be signed by the parties which are proved to have violated the provisions of the Law. The violating parties shall be obliged to pay the amount referred to in Clause 1 of this Article.
3. The reconciliation document copies shall be equal to the reconciliation parties and one copy shall be retained by the Competent Authority.
4. The reconciliation shall be binding on all parties signing the reconciliation. The reconciliation shall be effective only once the parties, which are proved to have violated the law, provide evidence proving their payment of the amount referred to in Clause 1 of this Article.
5. In the event either party refuses to implement the agreed upon reconciliation, the Competent Authority shall refer the violations to the competent court.

#### Chapter IV. Closing Provisions

##### Article (16) Issuance of Decisions

The Minister shall make the necessary executive decisions to enforce the provisions of this Resolution.

##### Article (17) Repeals

Any provision in any other resolution that is contrary to the provisions of this Resolution shall be repealed.

##### Article (18) Publication and Enforcement

This Resolution shall come into force from the date of its issuance and shall be published in the Official Gazette.

Mohammad bin Rashid Al Maktoum

Prime Minister

Issued on 27 October 2014

Corresponding to 3 Muharam 1436 H