Competition Law in the GCC

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Introduction: Why Adopt Competition Law in the First Place?

- Support for these laws stems mainly from the need
  - Fairness in the marketplace;
  - To prohibit companies from abusing their power;
  - To protect consumers and startups from the exploitation of unfair and predatory practices of big enterprise;
  - To promote economic growth, innovation and efficient use of resources.
- Despite the shortcomings of the the World Trade Organization (WTO), on competitions laws, international trade has not stopped.
- Globalization, trade liberalization and agreements are key catalysts in driving international organizations such as the WTO, the International Competition Network (ICN), OECD, world bank and the IMF in influencing countries to adopt competition laws.
- It is against this backdrop that GCC states enacted and implemented regulatory frameworks and policies to address competition issues and antitrust challenges. Today, implementation remains a challenge.

Competition Law in the GCC

- GCC states, namely KSA, Qatar, Kuwait, UAE and Oman have all adopted competition law during 2004-2014, with Bahrain enacting its Competition Law in 2018
- Countries like the UAE have already established regulatory authorities, in market segments such as the utilities, energy and the telecom sector to allow for enhanced transparency, fair competition and efficiency. In fact, competition law has been introduced as an added component to an already existing legal framework.
- Competition law is still nascent in the GCC with competition authorities in each country focused on applying basic competition rules and principles initially on a limited number of sectors. The public sector remains exempt to a large extent across the GCC.
- It is expected that a "gradual development over a period of at least 20 years may be the norm for competition law enforcement"[1].

Source: 1. Dr Marcia Denny, Assistant Professor - Public International Law - KILAW)

Competition Laws in the GCC

- For many businesses in the GCC, competition laws are not on the agenda of important risks that require mitigation.
- There is no significant history of enforcement; despite the existence of specific laws, the executive infrastructure to police competition law is in its early stages.
- But occasionally, a tale of enforcement emerges which triggers some thought and reminds us that relying on the perception of certain law being dormant is unwise.
- One such tale of enforcement concerns the long running saga of soft drinks in KSA. According to reports, six soft drinks companies in Saudi Arabia had mutually agreed to increase retail by 50%. The companies were found to have breached provisions of the competition law for abuse of dominant position or akin to cartel behaviour
- In Kuwait, in 2019, lawsuits against Talabat and Carriage were filed for violating fair competition rules which requested Talabat and Carriage amend the contracts with restaurants, end their monopolisation of the food delivery business and pay a fine. Talabat and Carriage agreed to comply with the regulations.

Adoption of Competition law in the GCC

- The adoption of competition laws in the region is recent. GCC countries were facing internal and external pressures to adopt rules that regulate the interactions of market players
- Globalization, Liberalization, privatization and free trade: opening their economies to international and private sectors investors require a new legislation and reform to become freer and more competition driven.
- International Trade pressure: All GCC countries were member of GATT and WTO that promote the culture of competition.
- Barcelona process and GAFTA
- International organizations have played a crucial role in influencing GCC adopting these laws.

Challenges to the effective enforcement of competition laws

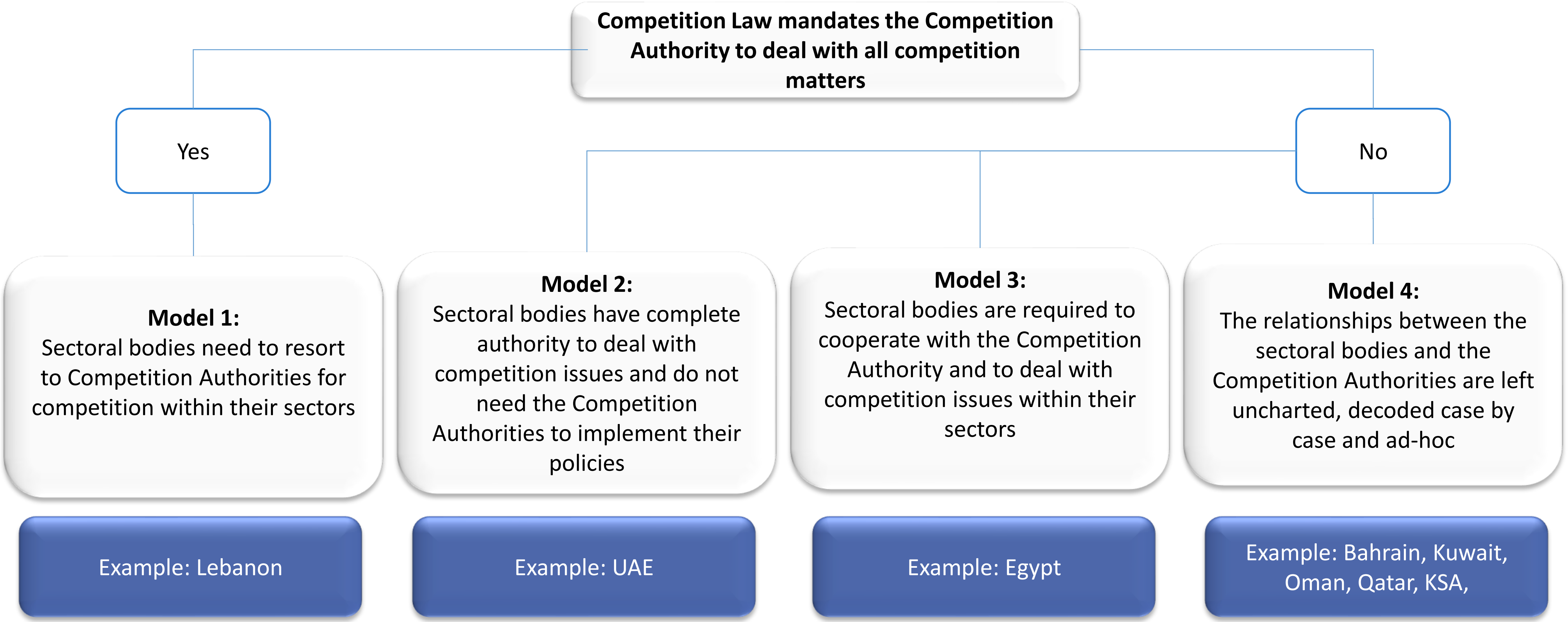
- Enforcement of Competition Law will require authorities to:
  - Identify and prosecute violating firms that engage in cartel like behavior through fixing price, limiting outputs, dividing markets,
  - Identify and prosecute dominant firms that abuse their market positions by engaging in predatory pricing, unilateral refusal to deal,
  - Prohibit firms in engaging in vertical agreements that restrict dealing with rivals, such as exclusive dealings, tying arrangements, loyalty and bundled discount to push out slow-moving item
  - Enforce proper merger regulatory regime where only procompetitive mergers are allowed
- Challenge of effective application of competition laws
  - Lack of competition culture is a major obstacle to implementing competition law
  - High market concentration
  - Nascent industries in need of protection
  - Cronyism, nepotism and corruption
  - Failure to integrate adopted competition law into a broader set of development policies
  - The government unwillingness to implement market economy, unsupportive legal environment
  - Lack of institutional knowledge and experience – expert resources, evidence based process, …
  - The public lack of awareness in regards to competition benefits

These challenges all contribute to delaying the implementation of competition law

Advocacy

- It is totally legitimate to ask whether enforcement is a real concern for countries other than developed ones
- The International Competition Network (ICN) states that competition advocacy is a soft law conducted by a competition authority in order to promote a competitive environment.
- Two types of competition advocacy are necessary in developing countries. The first is advocating the benefits of competition to government institutions directly, and the second is advocating the importance of competition to the general public. The competition authority has the role of aiding government and ministries “to realize and analyze the competitive effects of their decisions
- During the advocacy process, the Competition Authority is the one to assess and agree on the most important steps to be taken as necessary for the enhancement of the whole process.

Relationship between Sectoral Bodies and Competition Authority



Source: ESCWA Compilation

What do Competition Rules Cover?

Promotes or seeks to maintain market competition by regulating anti-competitive conduct by companies

Prohibiting agreements or practices that restrict free trading and competition between business. This includes in particular the repression of free trade caused by cartel

Banning abusive behaviour by a firm dominating a market, or anti-competitive practices that tend to lead to such a dominant position. Practices controlled in this way may include predatory pricing, tying, price gouging, and refusal to deal.

Prohibing M&A transactions that are considered to threaten the competitive process, or approve it subject to "remedies" such as an obligation to divest part of the merged business or to offer licenses or access to facilities to enable other businesses to continue competing.

Saudi Arabia

- Passed the Royal Degree No. M/25 in June 2004, with amendments made in February 2014 by the Royal Decree No, 24/M in addition to Implementing Regulations of the Competition Council No. 126 in July 2014.
- A new Competition Law was issued by Royal Decree on 6 March 2019,1 but did not go into effect until 25 September 2019
- Companies that generate turnover in the Kingdom, whether based in the Kingdom or not, could now be subject to the provisions of this new Law and Implementing Regulations
- Regulated by the Competition Council, which enjoy certain independency, although it operates under the Ministry of Commerce and Industry
- New prohibitions on horizontal and vertical agreements: Article 5 of the new Law prohibits any agreement, whether horizontal or vertical, among any entities "if the purpose or effect of which undermines competition.
- It applies to all entities including electronic platforms operating in KSA but also to practices taking place abroad if such practices produce anticompetitive effect locally
- Possibility of imprisonment for anyone who has benefitted either directly or indirectly from the disclosure of a secret related to the job.
- The law provide exception, for public corporations and wholly-owned state companies that are solely authorized by the government to provide commodities or services in a given specific field or any practice or agreement which realises benefits to the consumer which exceed the impact of restricting competition.
- Regulations allow a system of exemptions for Regulations include procedures for economic concentration applications to the Council, which may be refused, approved, or approved conditionally.
- The new Law tasks the Authority with enforcement and grants it original jurisdiction over any potential "inconsistencies or overlap with the jurisdictions of other governmental bodies that may arise from application of the new Law.
- Failure to comply with the provisions of the new Law exposes individuals to criminal liability and corporations to potentially large fines.
- A broad powers granted to the Authority.

SAUDI ARABIA CASES :

- The General Authority for Competition (GAC) imposed a fine on 21 December 2020 of SR10 million ($2.66 million) on STC Group, on violating Article 5 of the competition law, which stipulates that "any entity with a dominant position shall be prohibited from any practice that could limit competition."
- The telecom operator abused its dominant position, imposing certain conditions on sale and purchase processes with dealing with another entity. Accordingly, STC group was in a weak position, as compared to other competitors.
- GAC said that it received a complaint that STC has violated the competition law, adding that the telecom operator rejected to deal with another entity, to hinder its entrance to the market.
- Moreover, the disputes settlement committee issued its resolution, noting that STC appealed the decision. However, the administrative appeal court upheld the committee's resolution on fining the Saudi-listed telecom operator

SAUDI ARABIA CASES: 4 companies fined 53m riyals for violating competition law

- Four Saudi Arabia-based companies have been slapped with fines amounting to 53 million riyals (Dh51.9 million) for violating the competition law.
- The General Authority for Competition (GAC) will soon defame the four companies following verdicts issued against them by the Board of Grievances, later upheld by the Administrative Court of Appeal in Riyadh.
- Two soft drinks companies will each pay a fine of 20 million riyals.
- A fine of 10 million riyals was imposed on an IT company for using unjustifiable ways to prevent other competitors from entering the market.
- The authority also imposed 3 million riyals against a company operating in the gas sector for its undesirable conduct that led a competitor to exit from the market.
- This brings the number of companies defamed to eight.

Qatar

- Passed the Competition Act No. 19 on the Protection of Competition and the Prevention of Monopolistic Practices in 2006
- Regulates anti-competitive agreements and practices and the control or domination over commercial activities.
- It applies to all activities across all economic sectors collectively or individually.
- Exemptions are granted to sovereign ventures of the State and to all entities subject to State direction and supervision
- If beneficial to the consumer, violations of the law may be granted exemptions
- Mergers are excluded from art. 10 if they contribute to economic progress that compensate for any adverse effect on competition
- For mergers and issues of economic concentration, there is a system of prior notification to the "Committee for the Protection of Competition and Prevention of Monopolistic Practices", which operates within the Ministry of Economy and Commerce.

Kuwait

- Passed the Law No.10 of 2007, which was amended by the Law No.2 of 2012.
- Executive Regulations were issued on February 16, 2009 by Council of Minister Resolution No. 106 and amended on August 2, 2015 by Council of Minister Resolution No. 994
- First public announcement about its investigation was 2017
- The scope of competition law includes violations committed in Kuwait as well as those abroad which have negative effects on the internal market in Kuwait.
- Exceptions to the law include state-owned entities, commercial entities working in research and development and cooperation between corporations which aim to facilitate market activity.
- Activities and agreements where the benefit to the consumer outweigh the limitations of competition are also exempt
- The law established the Competition Protection Authority (CPA), which operates independently.
- Penalties for violating the law include fines of 100.00 KD, or a sum equal to the illegal gains, whichever is higher. The fines can be doubled in the event that the violation is repeated. The CPA has the authority to order suspension of business licenses that do not comply with fair trading for up to 3 years.

Kuwait Case Study: Delivery Hero

- In 2017, Delivery Hero acquired Carriage which was operating in Middle East - Kuwait (main market), UAE and Bahrain. Talabat in the meantime, expanded into Jordan.
- In Jun 2018, several companies filed complaints with the CPA because restaurant had contracts (with Talabat and Carriage) which forced them not to cooperate with competitor delivery companies. Talabat and Carriage amended the contracts so that they could charge them an extra 2% on operations if they signed contracts with competing delivery companies.
- Early 2019, Lawsuits against Talabat was filed for violating fair competition rules in Kuwait with more than KD5 million (GBP 12 million) in fines from the Competition Protection Authority ("CPA").
- On 17 Nov 2019, Talabat made a settlement plea, which was turned down by the CPA, which requested Talabat and Carriage yo amend the contracts, end their monopolisation of the food delivery business and pay the fine.
- On 29 Nov 2019, Talabat and Carriage agreed to comply with the regulations as specified by the CPA.

United Arab Emirates

- Federal law No 4/2012 and enacted on October 23, 2013
- Cabinet resolution No 37 of 2014. Provide steps and procedure for how the competition law is applied.
- Cabinet Resolution No 13 of 2016 set out the percentage and threshold related to the implementation of competition law
- The legislation applies to all economic activities that are carried out in UAE.
- It shall also extend to the abuse of intellectual property rights inside and outside UAE
- Exceptions are granted to the Government and its entities, as well as enterprises operating in telecommunications, financial services, cultural activities, oil and gas, pharmaceutical products, postal services, electricity and water, and transportation.
- The Ministry of Economy is the regulatory authority for competition law in the United Arab Emirates, in addition to a special Committee of Competition.
- Penalties range from the payment of fines to the suspension or closure of the business.
- No leniency programme exists for companies in the UAE.

Oman

- The Royal Decree Bearing No. 67 of 2014 was introduced in December 2014, and Amended by RD No.22/2018
- It regulates production, trade, services and any commercial activities practiced in either in Oman, or abroad but which affects Oman.
- It extends to violations related to intellectual property rights where they have a negative impact on competition.
- It applies to all sectors of the economy but not to public utilities and R&D activities
- A block exemption covers any activities which benefit consumers.
- The Public Authority for the Customer Protection supervises competition rules in Oman and exercises its powers independently from any other governmental body.
- It is noteworthy that the CPA has been given heightened powers allowing it to monitor infringements and enforce the Competition Law in a way that would be expected by a regulator in Western jurisdictions. CPA inspectors, who are treated as officers of the court, have authority to conduct inspection of commercial premises – without notice – and report findings of wrongdoing including the right to bring court claims against the wrongdoers. Obstructing or misleading these inspectors – and destroying information pertinent to the investigation – is a criminal offence which will attract a prison sentence and a fine of up to USD250,000.
- Penalties are a combination of criminal sanctions and fines. Instead of a fixed amount, the sum fined is calculated as a percentage of the annual sales of the company in violation, making the penalties proportionate to the scale of the company breaking competition laws.

Bahrain

- The Bahrain government issued Law No. 31 of 2018 with respect to the Competition Promotion and Protection (the Law). The Law came enter into force on 1 January 2019 and is expected to have broad repercussions on the way businesses carry out their operations in the country
- Bahrain has no competition legislation in force previously, although it has some rules against unfair competition and monopolistic activities in the Commercial Code No. 7 of 1987 and the Law. No 35 of 2012 on consumer protection.
- The law focus on regulating : anti-competitive arrangements; abuse of dominant position; and economic concentration.
- The Consumer Protection Directorate at the Ministry of Industry, Commerce and Tourism (MOICT) has been appointed temporarily as the authority (the Authority) to govern and enforce the Law.

- The Law applies to:
  - all businesses carrying out economic activities inside Bahrain;
  - any conduct or arrangement which is intended to or results in the hindering of competition in Bahrain, even if one or more of the parties involved is not incorporated in Bahrain; and
  - economic activities conducted outside Bahrain, which affect competition inside the country.

- Exceptions are made for agreements which may reduce costs or benefit the consumer.
- Will not apply to arrangement approved by international treaties; Facilities or projects owned or controlled by the state and Intellectual property rights.
- It is important to note that the Law does not prohibit a business being in a dominant position per se. Instead, it prohibits a business from abusing its dominant position
- There is an exception to this general prohibition where the economic concentration is deemed, by the Minister, to be in the public interest.
- This legislation is enforced by the Minister of Commerce, who has the authority to suspend the import, export, or display of products, and to order their withdrawal or destruction.

Independence of competition authority in the GCC countries

- This mainly starts with the establishment of an independent authority. So far, Oman is the only example within GCC of having established an independent Centre for Enforcement of Competition Law separate from the Ministry in charge
- In most GCC countries, competition law neither covers independence of the commission nor its budget.
- Kuwait: The competition commission is attached to the Kuwaiti Ministry of Commerce and Industry.
- UAE: The competition commission is attached to the Emirati Ministry of Economy; it is chaired by the Undersecretary of the Ministry of Economy and key positions are occupied by Ministry officials
- QATAR: The commission is attached to the Qatari Ministry of Economy and Commerce and it reports to the Minister.
- KSA: Competition commission independent status is not formally stated in the law, nor is budgetary independence acknowledged.

The Bertelsmann transformation index BTI

- The Bertelsmann transformation index BTI rates countries on quality of democracies, market economy and political management . Below are scores on economic transformation and overall global rating
- The BTI grants the highest ranking to UAE and the lowest ranking to Oman

	Economic transformation scores	Remarks and Ranking
UAE	8	Very advanced 13/137
QATAR	7.89	Advanced – 16/137
KUWAIT	7.18	Advanced – 22/137
BAHRAIN	6.25	Limited 44/137
KSA	6.21	Limited - 45/137
OMAN	5.4	Limited- 70/137

The Bertelsmann transformation index BTI

- Organisation of the Market and Competition

Countries	Organisation of Market & Competition	Rank over 137
United Arab Emirates	8	13
QATAR	7.8	16
KUWAIT	6.8	22
BAHRAIN	7.3	44
KSA	7	45
OMAN	5.8	70

Global competitivity Index

Countries	
United Arab Emirates	25
Qatar	29
KSA	36
Bahrain	45
Kuwait	46
Oman	53

Thank you