Oman's new Competition Protection and Monopoly Prevention Law

DENTONS

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Oman's new Competition Protection and Monopoly Prevention Law (the Law) published in December 2014 (Sultani Decree 67/2014) raises important compliance issues for companies doing business in Oman. The Law introduces a new merger control regime as well as prohibiting restrictive agreements and abuse of market dominance. It also bans agreements or arrangements that are aimed at the monopolisation of markets.

Distinct penalties have been outlined for non-compliance. For example, non-compliance with the bans on monopolisation, restrictive agreements and abuse of dominance discussed below can result in imprisonment of three months to three years and a fine equal to the profit obtained from selling the products that are the subject of the violation. Alternatively, it can result in any one of those penalties in addition to a fine of 5 to 10 per cent of total annual sales of the relevant products made by the infringing party in the previous fiscal year. Failure to comply with the obligations relating to merger notification can result in imprisonment of one month to three years and a fine of OMR 10,000 to 100,000. For any of these violations the court may also require the offender to rectify the violation, dispose of assets, shares or equity, or require payment of a daily fine of OMR 100 to 10,000 until the violation has been rectified.

It is clear that the penalties under the Law apply not only to businesses but also to individuals who manage the offending companies or legal entities, including the chairman, members of the board of directors, the chief executive officer, authorised managers or officers of the offending legal entity, where it can be shown they were aware of the violation and their failure to fulfil their duties contributed to the perpetration of the crime.

The Public Authority for Consumer Protection (PACP) has been tasked with enforcing the Law and breaches of the Law are to be referred to the Public Prosecution.

The Law provides for implementing provisions to be adopted by the PACP, which have not yet been issued, but there is a risk that the Law's provisions may nevertheless be considered to be active since it entered into effect on 8 December 2014.

The scope of the Law

The Law applies to all activities of production, trade, services and other economic activities as well as the use of intellectual property rights which could have a damaging effect on competition. It applies to all sectors of the economy but not to public utilities wholly owned and managed by the State, or research and development activities.

Restrictive agreements

In relation to restrictive agreements, the Law prohibits a wide range of activities, including:

- fixing prices, discounts, conditions of sale or purchase or provision of services;
- limiting output or supply to the market;
- flooding the market with large quantities of products leading to unrealistic prices;
- market sharing on the basis of geography, customers or time;
- preventing others from exercising their economic or trade activity;
- agreeing not to deal with third parties, or to deal with particular third parties;
- making contracts conditional on unrelated obligations; and
- colluding in bids or tenders, or stipulating the requirements under a tender as to trademarks or product descriptions.

This could potentially capture a wide range of activities and agreements. Not only does it mean that companies must on no account engage in obviously infringing activities, such as cartel arrangements or bid-rigging, but it also means that commercial agreements will have to be carefully reviewed for compliance.

Abuse of market dominance

Businesses with a position of dominance in the market must not engage in any practices that would undermine, curtail or prevent competition. Dominance is defined as the ability of a person, or group of persons together, to directly or indirectly control or influence the market, and includes the acquisition of more than 35 per cent of the market volume (particularly relevant in relation to merger control as noted below).

The prohibited practices include:

- predatory pricing – selling a product below cost to prevent market entry by competitors, excluding them from the market or exposing them to losses that make it difficult for them to perform their activities;
- constraining supply to increase prices of a product;
- imposing restrictions on the sale or purchase process, or on dealing with others, which weaken their competitive provision compared to competitors;
- refusing to deal without justification in order to restrict entry to the market or exclude others from the market;
- making the supply of a product or provision of a service conditional on the purchase of another product or service;
- fixing prices or conditions for the resale of products;
- imposing an obligation not to manufacture, produce or distribute a product for a specific period or periods;
- purchasing, storing or destroying commodities with the intention of causing price increases;
- reducing or increasing available quantities of a product to cause artificial shortages or availability;
- unjustified discrimination between customers related to prices or conditions of sale or purchase;
- restricting customers from making facilities or services available to competitors;
- obliging producers or suppliers not to deal with a competitor; and
- making the conclusion of agreements conditional on obligations which by their nature or commercial use are not

related to the subject matter of the agreement.

Exemptions

There is a provision in the Law for the PACP to apply a time-limited exemption for any agreements, actions or works that benefit consumers, and a number of examples are given of the types of benefits that may give rise to an exemption. These include:

- rationalisation of the commercial structure or commercial scope, or improving efficiency, of a project;
- encouraging technical or technological progress, or improvement in quality;
- increasing the competitiveness of Omani small and medium-sized businesses;
- promoting the adoption of quality standards;
- standardisation of terms and conditions of trade, delivery or payment; and
- matters of public interest (e.g. in relation to energy conservation, environmental protection and emergency relief).

Merger clearance

The merger control provisions mean that the PACP must be notified of a broad range of transactions, including share or asset transfers, the creation of consortia, mergers or the consolidation of two managements into one that would place a person, or group of persons, directly or indirectly in a position of dominance (as defined above). The transaction cannot then proceed until approval is received, or until the expiration of a 90-day period.

Monopolisation

The Law also provides that no agreement or contract may be concluded, nor any action or arrangements made, with the aim of monopolising importation, production, distribution, sale, purchase or trading of any commodity nor may any monopolistic transactions or actions be undertaken that have an effect on the market.

Further to changes in the Commercial Agencies Law, the Law provides that any person may conclude an agreement to import any authorised product from outside the Sultanate regardless of whether the imported product has been exclusively imported, sold, distributed, marketed or promoted by a single agent. This could also potentially give rise to arguments as to whether exclusivity provisions in existing agreements are still valid between the parties.

Conclusion

In view of the potential risks, businesses should take a cautious approach and look carefully at how the Law could apply to their agreements and business practices. Apart from reviewing existing and new commercial arrangements and agreements, it may well be appropriate for businesses to conduct a full compliance review, which can include producing a compliance manual and setting up a training programme for key employees.

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