

**Cabinet Decision No. (37) of 2014**

**Regarding the Executive Regulations**

**of Federal Law No. (4) of 2012 on the Regulation of**

**Competition**

**The Cabinet,**

- Having reviewed the Constitution,
- And Federal Law No. (1) of 1972 regarding the Competencies of Ministries and Powers of Ministers, and its amending laws,
- And Federal Law No. (4) of 2012 on the Regulation of Competition,
- And based on the proposal of the Minister of Economy and the approval of the Cabinet,

**Has decided:**

**Article (1)**

**Definitions**

In the application of the provisions of this Decision, the following words and phrases shall have the meanings assigned to each of them, unless the context otherwise requires:

**The State:** The United Arab Emirates.

**The Law:** Federal Law No. (4) of 2012 on the Regulation of Competition.

**The Minister:** The Minister of Economy.

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

**Establishment:** Any natural or legal person engaged in an economic activity, or any person associated with them, or any group of such persons, regardless of its legal form.

**Relevant Market:** A commodity or service, or a group of commodities or services which, based on their price, characteristics, and uses, are interchangeable with others or can be chosen from among alternatives to meet a specific consumer need in a particular geographical area.

**Agreements:** Agreements, contracts, arrangements, alliances, or practices between two or more Establishments, or any cooperation between Establishments, or decisions issued by associations of Establishments, whether written or oral, explicit or implicit, public or secret.

**Dominant Position:** A position that enables any Establishment, by itself or in collaboration with other Establishments, to control or influence the Relevant Market.

**Economic Concentration:** Any action resulting in the total or partial transfer (merger or acquisition) of ownership or usufruct rights in properties, rights, shares, stakes, or obligations of an Establishment to another Establishment, which would enable an Establishment or a group of Establishments to directly or indirectly control another Establishment or group of Establishments.

**The Committee:** The Competition Regulation Committee formed in accordance with the provisions of the Law.

## **Chapter One**

### **Procedures Regulating Exemptions**

#### **Article (2)**

##### **Controls for Notifications**

1. Establishments wishing to obtain an exemption for restrictive agreements or practices related to a dominant position, as stipulated in Articles (5) and (6) of the Law, must notify the Competent Authority in advance, in accordance with the form prepared by the Competent Authority for this purpose, with the following documents attached:
  - a. The memorandum of association or articles of association of the concerned Establishments, duly certified.
  - b. A list of the names of shareholders or partners in each of the concerned Establishments and the percentage of contribution or share of each.
  - c. A report on the economic dimensions of the exemption request, clarifying the positive effects of the exemption request and its role in promoting economic development.

2. The notification and its attached documents shall be submitted to the Competent Authority, signed by the legal representatives of the Establishments wishing to obtain an exemption for restrictive agreements or practices related to a dominant position, under a special power of attorney duly certified, and in exchange for a receipt of acknowledgment.
3. Three copies of the notification must be submitted in Arabic, and a translation into English may be provided.
4. Three copies of the documents referred to in Clause (1) of this Article must be submitted in the original language in which they were prepared, accompanied by a certified translation into Arabic if they are in a foreign language.
5. Establishments that wish for the data contained in the notification and documents to be treated as confidential must mark them with the word (Confidential) and provide non-confidential summaries that are sufficient to understand the content of the confidential data and are marked with the phrase (Non-Confidential).
6. The Competent Authority shall conduct a formal examination of the notification and its supporting documents and may request the concerned Establishments to submit any additional documents. Upon completion of the formal examination, it shall issue a notification to the concerned Establishments stating that the formal requirements for the exemption have been met.
7. The Competent Authority shall maintain a special register in which notifications for exemptions for restrictive agreements or practices related to a dominant position are recorded.

## **Article (3)**

### **Studying the Notification**

1. The Competent Authority shall study the exemption to assess the extent to which the concerned Establishments have fulfilled the following procedures:
  - a. Notifying the Ministry in advance of the restrictive agreements or practices related to a dominant position for which an exemption is requested.

- b. Proving that these agreements or practices will lead to promoting economic development, improving the performance and competitiveness of Establishments, developing production or distribution systems, or achieving specific benefits for the consumer.
2. When studying the exemption, the Competent Authority may request the concerned parties or Establishments to provide any additional data or information it deems necessary to decide on the exemption.
3. The Competent Authority may request parties that it believes may be affected by the exemption to submit their views and supporting data about this exemption within a period not exceeding (15) fifteen days from the date of their notification by the Competent Authority.
4. The Competent Authority shall prepare a detailed report on the exemption, including a statement of all facts and procedures taken regarding this exemption, the data on which the request is based, and a legal and economic assessment of the request, especially concerning its effects on the level of competition in the Relevant Market, in addition to a recommendation on the proposed decision to be taken regarding the request.
5. The Competent Authority shall submit the report referred to in Clause (4) of this Article to the Committee, which shall submit its recommendations regarding the exemption to the Minister within a period not exceeding (14) fourteen days from the date of receiving the report.
6. The Competent Authority may seek the assistance of whomever it deems appropriate or obtain an opinion from other entities in the State to complete the report referred to in Clause (4) of this Article.

## **Article (4)**

### **The Minister's Decisions Regarding the Exemption**

1. The Minister shall issue his decision regarding the exemption, based on the Committee's recommendation, within (90) ninety days from the date of notifying the concerned Establishments of the receipt of the request and its fulfillment of all required conditions. However, the Minister may extend this period for an additional (45) forty-five days.

2. The failure of the Minister to issue a decision within the period mentioned in Clause (1) of this Article shall be considered an implicit approval of the exemption.
3. The Minister may temporarily approve the implementation of restrictive agreements or practices related to a dominant position until his final decision is issued, provided that the period of implementation of these agreements or practices does not exceed (30) thirty days.
4. The Minister shall issue a reasoned decision regarding requests for exemption for restrictive agreements or practices related to a dominant position, as follows:
  - a. Approving the implementation of the restrictive agreements or practices related to a dominant position.
  - b. Rejecting the implementation of the restrictive agreements or practices related to a dominant position.
  - c. Approving the implementation of the restrictive agreements or practices related to a dominant position, provided that the concerned Establishments undertake to implement the conditions and obligations specified by the Minister for the purpose of implementing the exemption.
5. The Minister shall issue a decision to cancel the approval referred to in paragraph (a) of Clause (4) of this Article in any of the following cases:
  - a. If it becomes clear that the circumstances under which the approval was issued no longer exist.
  - b. If the concerned Establishments fail to meet the conditions and requirements on the basis of which the approval was granted.
  - c. If it becomes clear that the information based on which the approval was issued was misleading or incorrect.
6. The Competent Authority must maintain a special register for the decisions issued by the Minister regarding exemption requests.

## **Article (5)**

## **Approval to Amend the Exemption**

1. Establishments that have obtained an exemption for restrictive agreements or practices related to a dominant position must notify the Competent Authority of any proposed amendment to these restrictive agreements or practices related to a dominant position within (30) thirty days from the date of concluding the proposal.
2. When studying the proposed amendments to the exemption, the Competent Authority may request the concerned parties or parties that may be affected by the amendment of the exemption to provide any additional data or information necessary to decide on the proposed amendments to the exemption.
3. The Competent Authority shall prepare a detailed report including a legal and economic assessment of the proposed amendments to the exemption, especially regarding the effects of the amendment on the level of competition in the Relevant Market, and a recommendation on the proposed decision to be taken regarding the required amendments to the exemption.
4. The Competent Authority shall submit the report referred to in Clause (3) of this Article to the Minister within a period not exceeding (14) fourteen days from the date of preparing the report.
5. The Minister shall issue his decision regarding the proposed amendments to the exemption within (90) ninety days from the date of notifying the concerned Establishments of the receipt of the request, having fulfilled all required conditions. However, the Minister may extend this period for an additional (45) forty-five days.

## **Article (6)**

### **Competition Assessment**

The Competent Authority shall consider the practices related to a dominant position referred to in Articles (6) and (7) of the Law, according to the following:

1. The Relevant Market.
2. The market share of the concerned Establishments.
3. The revenues and assets of the concerned Establishments.
4. The level of actual or potential competition with respect to the number of competitors.

5. Price or quantity deviation in goods or services from the expected levels if those practices had not occurred.
6. The volume of production and demand for the relevant goods or services.
7. The level of impact on the total supply or demand for the relevant goods and services.
8. The extent of diversity of the relevant goods and services.
9. The impact of the practices on entering, expanding in, or exiting the market.
10. The level of ease in obtaining financial facilities from capital markets.
11. The time period during which those practices occurred.
12. The history of competition and rivalry among competitors in a specific market.
13. The impact on consumers.

## **Chapter Two**

### **Procedures Regulating Economic Concentration**

#### **Article (7)**

##### **Submitting an Application for Approval of an Economic Concentration Operation**

1. The concerned Establishments must submit a written application to obtain the Minister's approval for completing economic concentration operations where the total share of the Establishments or parties involved exceeds the percentage determined by the Cabinet of the total transactions in the Relevant Market, and which would affect the level of competition and create or strengthen a dominant position in the Relevant Market.
2. The application for approval of the economic concentration operation must be submitted at least (30) thirty days before the date of concluding a draft contract or agreement regarding the economic concentration operation, in accordance with the form prepared by the Competent Authority for this purpose, with the following documents attached:
  - a. The memorandum of association or articles of association of the concerned Establishments, duly certified.

- b. The draft contract or agreement regarding the economic concentration operation.
- c. The financial statements for the last two fiscal years of any of the Establishments concerned with the economic concentration operation and its branches, duly certified.
- d. A statement with the names of shareholders or partners in each of the concerned Establishments and the percentage of contribution or share of each.
- e. A report on the economic dimensions of the economic concentration operation, explaining its positive effects on the Relevant Market and including the commitments and procedures proposed by the concerned Establishments to limit its potential negative effects.

3. The application, with the documents referred to in Clause (2) of this Article attached, shall be submitted to the Competent Authority by the Establishment authorized by the Establishments concerned with the economic concentration operation under a special power of attorney duly certified, in exchange for a receipt of acknowledgment.
4. Three copies of the application must be submitted in Arabic, and a translation into English may be provided.
5. Three copies of the documents referred to in Clause (2) of this Article must be submitted in the original language in which they were prepared, accompanied by a certified translation into Arabic if they are in a foreign language.
6. Approval applications submitted by Establishments shall be treated confidentially if they are marked with the word (Confidential), and non-confidential summaries that are sufficient to understand the content of the confidential data and are marked with the phrase (Non-Confidential) must be provided.
7. The Competent Authority shall conduct a formal examination of the application for approval of the economic concentration operation and its supporting documents. It may request the concerned Establishments to submit any additional documents and, upon completion of the formal examination, shall issue a notification to the concerned Establishments stating that the formal requirements for the application have been met.

8. The Competent Authority shall maintain a special register for applications for approval of economic concentration operations.

## **Article (8)**

### **Studying the Application for Approval of an Economic Concentration Operation**

1. The Competent Authority shall study the application to verify the economic concentration operation based on the following indicators:
  - a. The level of actual and potential competition in the Relevant Market.
  - b. The ease of entry for new Establishments into the Relevant Market.
  - c. The extent of the potential impact on the prices of the relevant goods or services.
  - d. The existence of regulatory barriers affecting the entry of new competitors.
  - e. The likelihood of a dominant position arising in the Relevant Market.
  - f. The extent of the potential impact on innovation, creativity, and technical efficiency.
  - g. The extent of the contribution to encouraging investment or promoting exports, or supporting the ability of national Establishments to compete internationally.
  - h. The extent of the impact on consumer interests.
2. When studying the application for approval of an economic concentration operation, the Competent Authority may request the concerned parties to provide any additional data or information it deems necessary to decide on the application.
3. The Competent Authority may request parties that it believes may be affected by the economic concentration operation to submit their views and supporting data about the exemption request within a period not exceeding (15) fifteen days from the date of their notification.

4. The Competent Authority may hold meetings with the concerned Establishments or interested parties to learn their opinions and statements about the economic concentration operation.
5. The Competent Authority shall prepare a detailed report on the application for approval of the economic concentration operation, including a statement of all facts and procedures taken regarding the operation, the data on which the approval application is based, a legal and economic assessment of the application, especially concerning the positive and negative effects of the concentration on the level of competition in the Relevant Market, and a recommendation on the proposed decision to be taken regarding the application.
6. The Competent Authority may seek the assistance of whomever it deems appropriate, or obtain an opinion from other entities in the State, to complete the report referred to in Clause (5) of this Article.
7. The Competent Authority shall submit the report to the Minister to take the appropriate decision regarding the application for approval of the economic concentration operation.

## **Article (9)**

### **The Minister's Decisions Regarding Applications for Approval of an Economic Concentration Operation**

1. The Minister shall issue his decision regarding applications for approval of an economic concentration operation within (90) ninety days from the date of receiving the complete application that fulfills all required conditions. However, the Minister may extend this period for an additional (45) forty-five days.
2. The failure of the Minister to issue a decision within the period mentioned in Clause (1) of this Article shall be considered an implicit approval of the economic concentration operation.
3. The Minister shall issue a reasoned decision regarding applications for approval of an economic concentration operation, as follows:
  - a. Approving the economic concentration operation if it does not negatively affect competition, or if it has positive economic effects that outweigh the negative effects on competition.

- b. Approving the economic concentration operation, provided that the concerned Establishments undertake to implement the conditions and obligations specified in a decision by the Minister.
- c. Rejecting the economic concentration operation.

4. The Minister shall issue a decision to cancel the approval referred to in Clause (3) of this Article in any of the following cases:

- a. If it becomes clear that the circumstances under which the approval was issued no longer exist.
- b. If the concerned Establishments fail to meet the conditions and requirements on the basis of which the approval was granted.
- c. If it becomes clear that the information based on which the approval was issued was misleading or incorrect, in which case, the Competent Authority shall take appropriate legal action to prosecute and hold the concerned Establishments accountable in accordance with the applicable legislation in this regard.

5. The Competent Authority shall maintain a register of decisions issued by the Minister regarding applications for economic concentration operations, in accordance with the form prepared by the Competent Authority for this purpose.

6. During the period referred to in Clause (1) of this Article, the concerned Establishments are prohibited from taking any actions or procedures related to completing the economic concentration operations.

## **Chapter Three**

### **Procedures for Investigating a Complaint**

#### **Article (10)**

##### **Submitting a Complaint**

1. Any interested party may submit a complaint to the Competent Authority regarding any violation of the provisions of the Law, in accordance with the form prepared by the Competent Authority for this purpose.
2. The Competent Authority shall maintain a register of complaints with sequential numbers according to the order of their receipt, showing

the date of submission, the date of registration, the name of the complainant, and the subject of the complaint.

3. The complaint must include the following data and information:
  - a. The party or parties filing the complaint.
  - b. The party or parties against whom the complaint is filed.
  - c. The provisions of the Law that are alleged to have been violated.
  - d. The facts relevant to the violation of the provisions of the Law.
  - e. The practices alleged to be in violation of the provisions of the Law.
  - f. The evidence and documents supporting the complaint.
4. The complaint, with the data and information referred to in Clause (3) of this Article attached, shall be submitted to the Competent Authority in exchange for a receipt of acknowledgment. The receipt of acknowledgment does not constitute an acceptance of the complaint.
5. The complaint shall be submitted in writing or electronically, in accordance with the controls determined by the Competent Authority for this purpose.
6. The complaint shall be duly signed by the party or parties filing the complaint, or by their legal representative under a duly certified power of attorney.
7. Three copies of the complaint and the evidence and documents referred to in paragraph (f) of Clause (3) of this Article must be submitted in Arabic, and a certified translation into English may be provided.
8. The documents referred to in paragraph (f) of Clause (3) of this Article shall be submitted in their original language of preparation, accompanied by a certified translation into Arabic if they are in a foreign language.
9. Approval applications submitted by Establishments shall be treated confidentially if they are marked with the word (Confidential), and non-confidential summaries that are sufficient to understand the content of the confidential data and are marked with the phrase (Non-Confidential) must be provided.
10. The Competent Authority shall examine the complaint and its supporting documents and may request the complainant to provide

any data it deems necessary for examining the complaint within a period not exceeding (15) fifteen days from the date of sending the data request.

11. Upon completion of the examination of the complaint, the Competent Authority shall issue a notification to the complainant as follows:
  - a. Accepting the complaint as there is sufficient information to justify opening an investigation into the complaint.
  - b. Rejecting the complaint as there is insufficient information to justify opening an investigation into the complaint.

## **Article (11)**

### **Automatic Investigation**

1. The Competent Authority may, on its own initiative, commence an investigation into any violation of the provisions of the Law and this Decision if it has reasonable grounds and sufficient information about the existence of practices that would disrupt, limit, or prevent competition.
2. The Competent Authority shall take the necessary measures regarding the violation referred to in Clause (1) of this Article, in accordance with the procedures stipulated for investigating a complaint.

## **Article (12)**

### **Investigating the Complaint**

1. Upon accepting the complaint, the Competent Authority shall notify the complained-against parties and all interested parties of the subject of the complaint within (10) ten days.
2. The notification referred to in Clause (1) of this Article shall include a summary of the most important aspects related to the complaint, particularly the following:
  - a. The practice alleged to disrupt, prevent, or limit competition and the provisions of the Law it violates.
  - b. The right of the complained-against party to defend itself and respond to the allegations in the complaint.

- c. The time limit given to the complained-against party to submit its written response regarding the practice subject of the complaint.
3. The Competent Authority shall investigate the complaint based on the data, information, and documents submitted by the parties related to the complaint.
4. When investigating the complaint, the Competent Authority shall ensure that all parties related to the complaint are given every opportunity to defend their interests and are enabled to present their defense, views, and comments on the allegations subject of the complaint.
5. When investigating the complaint, the Competent Authority may request any data, documents, or statements from the parties related to the complaint, or from other entities that may assist in studying the complaint.
6. The Competent Authority shall request data within a period not exceeding (30) thirty days from the date of sending the data request, and it may extend this period for a similar duration, provided that this does not affect the complaint investigation procedures.
7. The Competent Authority may take any action it deems necessary to investigate the complaint, including holding meetings with the parties related to the complaint.

## **Article (13)**

### **The Minister's Decisions Regarding the Complaint**

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, a legal assessment of all data, information, and defenses submitted by the parties related to the complaint, and a recommendation on the proposed decision to be taken regarding the complaint.
2. The Competent Authority shall submit the report referred to in Clause (1) of this Article to the Minister within a period not exceeding (10) ten days from the date of its completion.
3. The Minister shall issue a reasoned decision regarding the complaint within (30) thirty days from the date the report is submitted.

4. The Ministry shall notify all parties related to the complaint of the Minister's decision within a period not exceeding (10) ten days from the date of its issuance.

## **Article (14)**

### **Requests for Reconsideration**

1. Any interested party may submit a written request to the Minister for reconsideration of the decisions issued by him under the provisions of the Law within a period not exceeding (14) fourteen days from the date of being notified thereof, provided that the request states the reasons justifying its submission and is accompanied by supporting documents.
2. The Committee shall study the request and submit its recommendation to the Minister within a period not exceeding (10) ten days from the date the request is referred to it.
3. The Minister shall decide on the request by rejection or acceptance within (30) thirty days from the date of its submission. The failure of the Minister to issue a decision by the expiry of this period shall be considered an implicit rejection of the request.

## **Article (15)**

### **Reconciliation**

1. With the exception of acts that violate the provisions of Article (15) of the Law, the Minister or his authorized representative may settle any acts that violate the provisions of the Law, provided that this is done before filing a criminal lawsuit and that the parties proven to have violated the provisions of the Law pay an amount not less than double the minimum fine.
2. The settlement must be in writing and signed by the parties proven to have violated the provisions of the Law, with their commitment to pay the amount referred to in Clause (1) of this Article.
3. The number of copies of the settlement shall be equal to the number of parties to the settlement, and a copy shall be kept by the Competent Authority.
4. The settlement shall be binding on all signing parties and shall not enter into force until the parties proven to have violated the

provisions of the Law provide proof of payment of the amount referred to in Clause (1) of this Article.

5. If any of the parties refuses to implement what was agreed upon in the settlement, the Competent Authority shall refer the violations to the competent court.

## **Chapter Four**

### **Final Provisions**

#### **Article (16)**

##### **Issuance of Decisions**

The Minister shall issue the executive decisions necessary for the implementation of the provisions of this Decision.

#### **Article (17)**

##### **Repeals**

Any provision in any other decision shall be repealed to the extent that it contradicts the provisions of this Decision.

#### **Article (18)**

##### **Publication and Entry into Force**

This Decision shall be effective from the date of its issuance and shall be published in the Official Gazette.

**Mohammed bin Rashid Al Maktoum**

**Prime Minister**

Issued by us:

On: 3 Muharram 1436 H

Corresponding to: 27 October 2014