

## **APPENDIX B: IMPLEMENTING REGULATION OF COMPETITION LAW**

## Implementing Regulation of Competition Law

Based on Article twenty of the competition law which was issued by the Royal Decree No. (M/25) dated 4/5/1425, the council of Competition Protection issued the Implementing Regulations of the law by its Resolution No. (13/2006) dated 25/11/1427 AH Equivalent to 16/12/2006 AD; and it has been amended by Resolution No. (25/2008) dated 9/9/1429 AH Equivalent to 9/9/2008 AD.\*

The following articles are the Regulations of the system:-

### Article (1)

Wherever they occur in these Regulations, the following terms shall have the meanings expressed next to them unless the context requires otherwise:

**Law:** Competition Law.

**Entity:** Factory, establishment or company owned by a natural or corporate person(s), all groupings practising commercial, agricultural, industrial or any service activities, or selling and purchasing goods or services .

**Market:** Place or means where a group of current and prospective vendors and buyers meet during a specific period of time.

**Domination:** A situation when a firm or a group of firms in the market owned 40% at least from the cost of total sales during 12 months and/or a firm or a group of firms are able to influence the market prevailing price.

**Merger:** Merging an entity with one or more entities, or the merger of two or more entities into a new one.

**Council:** Competition Protection Council.

**Ministry:** Ministry of Commerce and Industry.

**Minister / Chairman of the Council:** Minister of Commerce and Industry / Chairman of Competition Protection Council.

**Regulations:** Provisions of these Implementing Regulations.

**Committee:** Committee for Settlement of Violations of Competition Law.

**Commodity / Commodities:** any commodity or service or a combination thereof which may, in terms of price, characteristics and uses, substitute each other to meet a specific consumer need in a given geographical area of homogenous competition conditions.

**Economic Concentration :** any act resulting in full or partial transfer of ownership rights or usufruct of an "entity's" properties, rights, stocks, shares or obligations to another "entity" that puts an "entity" or a group of "entities" in a position of "domination" of an entity or a group of "entities", by way of merger, takeover, acquisition, or combining two or more managements into one joint management or any other means which leads to a state of "Economic Concentration".

### Article (2)

The "Law" and "Regulations" aim at:

1. Protecting and promoting fair competition through reasserting market principles and goods traded therein, as well as free and transparent pricing.
2. Combating monopoly or practices affecting fair competition by commission, omission causing an act violating fair competition.

### **Article (3)**

- a. The provisions of "the Law" and "the Regulations" shall apply to all entities operating in the Saudi markets and various activities thereof. They shall also apply to any activity taking place abroad that leads to consequences contrary to fair competition within the Kingdom.
- b. The following shall be exempted from the provisions of Paragraph (a) above
  1. Any company or establishment fully owned by the state.
  2. Any "commodity" whose price is fixed pursuant to a resolution by the Council of Ministers or a provisional decision by "the Minister" in response to extraordinary circumstances, an emergency or a natural disaster.

### **Article (4)**

Any practices, alliances or agreements, explicit or implicit, between competing or potentially competing entities which violate, restrict or prevent competition shall be prohibited, particularly those whose subject matter or purpose is as follows:

1. Fixing prices, service charges or terms of sale, and the like.
2. Setting a limit for production of goods or the rendering of services.
3. Dividing markets on the basis of geographical areas, sale or purchase quantities, customers or any other basis adversely affecting competition.
4. Discriminating among clients in prices, facilities and services.
5. Taking measures to hinder the entry of an "entity" into "the market" or forcing it out of the market.
6. Complicity in tenders. Submission of declared joint bids shall not be considered complicity, provided that the purpose thereof is not to violate competition in any way.
7. Setting different prices on a certain commodity according to where it is sold.
8. Selling at less than the cost price in order to force competitors out of "the market".

### **Article (5)**

1. "The Council" may exempt from the application of the provisions of Article(4) above to practices and agreements violating competition which lead to improvement in performance of "entities" and benefit customers to an extent greater than the effects of restriction of free competition, if the relevant "entity" or entities submit the request for exemption in writing along with supporting justifications.

2. "The Council" shall review the request and issue a decision of approval or refusal, giving the reasons thereof.
3. "The Council" may specify in its decision both the exemption term and conditions. It may thereafter shorten or extend such term.
4. "The Council" may, pursuant to a reasoned decision, cancel the exemption at any time.
5. "The Council" shall issue its decisions with respect to exemption request approval, refusal, determining its term or cancellation thereof in accordance with "rules governing exemptions" referred to in Article (23) hereunder.

#### **Article (6)**

1. "Any entity" of a dominant position in the market is prohibited from exploiting such a position to violate, limit or prevent competition, including the following:
  - a. Fixing or imposing prices or terms on resale of goods.
  - b. Committing any act that leads to hindering "the entry" of another "entity" into "the market", forcing it out or exposing it to losses, including selling at a loss.
  - c. Imposing unrealistic price for a "commodity" through the dominant entity's hindering, limiting or refusing the sale or purchase of a "commodity" in any other manner.
  - d. Contriving a false shortage or abundance of a "commodity".
  - e. Importing add-ons to a "commodity" at prices that force other competitors out of "the market".
  - f. Discriminating among clients in similar contracts with respect to "commodity" prices, service charges or terms of sale and purchase thereof.
  - g. Compelling a client or agreeing therewith to refrain from dealing with a competing "entity".
  - h. Seeking to monopolize certain materials necessary for another competing "entity" to practice its activity.
  - i. Refusing to deal, without valid reason, with a specific client under normal commercial terms.
  - j. Making the sale of a "commodity" or offer of a service contingent on the purchase of another "commodity" or a specific quantity thereof or the request of another service.
2. An "entity", dominant or not, may not perform the following:
  - a. Any deliberate act or practice carried out by a non-competing "entity" leading to violation of fair competition.
  - b. Imposing minimum prices for the resale of a "commodity" whether directly or indirectly.
  - c. Imposing on another party or obtaining therefrom unjustified special prices or terms of sale or purchase in a manner that gives it a competitive advantage or inflicts damage thereon.

- d. An "entity" shall be prohibited from reselling a "commodity" in its purchase condition at a price lower than its real purchase price plus actual expenses, if any, if the intention is to violate fair competition. Said prohibition shall not include highly perishable goods and licensed discounts.

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

- a. Any "entity" intending to realize "Economic Concentration" in order to dominate 40% (forty percent) of "a commodity's" total supply in the market shall submit a written application with the following attachments:
  1. Memorandum of Association or Articles of Association of related entities.
  2. A draft contract or agreement of "Economic Concentration".
  3. A list of the main goods dealt in by "entities" involved in the process of "Economic Concentration", branches of such "entities", quantity and sales of a commodity as well as a statement of its share in the domestic "market".
  4. A report on the consequences of the process of Economic Concentration, particularly its positive effects on the "market".
  5. Financial statements for the last two fiscal years of the "entities" involved in the process of "Economic Concentration" as well as their branches.
  6. A list of partners in each "entity" and the percentage of their share or interest therein.
  7. Any "entity" intending to realize "Economic Concentration" shall enclose with its application a statement of any obligations or suggestions it deems necessary to minimize the potential negative effects of the process of "Economic Concentration" on the "market".
  8. If a representative submits the application, he shall provide his full particulars. A copy of his power-of-attorney shall be enclosed and verified against the original
  9. Payment of one thousand riyals for review of the application.
  10. Signing and sealing the application by the principal or the representative.
  11. Submitting the application to the "Council" sixty days prior to the specified effectiveness date of the "Economic Concentration".
  12. The "Council" may require any additional information or documents.
  13. The "Council" shall announce through one or more media channels, at the expense of the applicant, an abstract of the "Economic Concentration" application, and invite all persons with interest to give their opinions thereon within a period not exceeding fifteen days from the announcement date.
- b. The "entity" applying for "Economic Concentration" may complete the concentration procedures, if notified of the "Council's" approval in writing, or if

not notified of refusal in writing after the elapse of sixty days from the application date, or that the application is under review. In all cases, the elapse of ninety days from the application submission date without the "Council" notifying the "entity" in writing of approval or refusal shall be considered an implicit approval thereto.

**Article (8)**

"The Council" shall be located at the Ministry of Commerce and Industry.

**Article (9)**

a. The Council shall consist of a Chairman and eight members as follows:

The Minister of Commerce and Industry	Chairman
A representative of the Ministry of Commerce and Industry	Member
A representative of the Ministry of Finance	Member
A representative of the Ministry of Economy & Planning	Member
A representative of the General Investment Authority	Member
Four members of expertise and competence selected for their merits and nominated by the "Minister".	

b. Four experienced and competent members to be nominated by the "Minister".

**Article (10)**

The "Council" shall periodically convene at least once every three months or when necessary.

**Article (11)**

1. "The Council" shall have a secretariat chaired by a secretary general of Grade Fifteen. The Secretary General shall prepare the Council's agenda, notify "the Council" members of the meetings dates and implement the Council's decisions.
2. "The Council" shall independently determine the powers and authorities of the Secretary General.
3. The Secretariat shall include legal and economic experts, specialists and secretaries to perform the tasks assigned to them.

**Article (12)**

The Chairman of "the Council" shall chair the meetings. In his absence, the meetings shall be chaired by the deputy chairman.

**Article (13)**

- a. The officers referred to in Article (11) of the Law shall jointly or severally record all breaches of the provisions of the Law and its Implementing Regulations.
- b. A suspected entity may not, under the pretext of confidentiality, withhold any information for any reason whenever the judicial investigation officers require such information. The judicial investigation officers and others who obtain such information shall maintain the confidentiality thereof and protect the same against unlawful use.

#### **Article (14)**

Any of the officers referred to in the previous Article may perform the following in order to carry out the task assigned to him:

- a. Access entities suspected of violating the provisions of this Law and review all documents.
- b. Immediately investigate the violator, if deems appropriate, after confronting the violator with the violation attributed to him. In all cases, the violator shall be allowed to present his remarks in writing and sign them. The same shall be attached with the investigation report, after recording the violator's name, nationality, capacity, home and business addresses. All documents shall be referred to the "Committee".

#### **Article (15)**

The judicial investigation officers shall carry identification documents, and produce them to the person in charge of "the entity" under investigation, prior to initiating the investigation.

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

A violator shall rectify his status and end the violation immediately upon notification thereof. Ending the violation shall not exempt the violator of the punishments for such violation under the provisions of the Law.

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

1. The "Council" shall form a committee called the "Committee for Settlement of Violations of Competition Law". Said committee shall consist of a Chairman and four members, including at least one legal counselor. The Minister shall issue a decision naming the Committee Chairman and the other four members. The Committee may be dissolved and reformed as per the same procedures followed in formation thereof.
2. One or more prosecutors shall be appointed, pursuant to a decision by the "Minister", to plead before the "Committee", and litigate before the Board of Grievances.

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

1. The "Committee's" Chairman or his deputy shall administer the "Committee's" work and divide it between him and the members
2. A "Committee" meeting shall not be valid unless attended by four committee members, including the Chairman or his deputy. The Committee decisions shall be issued by majority votes of members present. In case of a tie, the Chairman shall have the deciding vote.
3. The parties concerned shall be notified of the date of the session specified to decide upon the violation at least fifteen days in advance. The notification shall include a statement of the violation, a summons for the violator to present his statements and relevant information.

**Article (19)**

"The Committee" may complete investigations it deems necessary and conduct required inspections of the place of the violation. In such a case, "the Committee" may, as a whole, perform the inspection or delegate one or more of its members for such a task, provided that they submit to "the Committee" a report on the findings of the inspection.

**Article (20)**

1. The "Committee" shall promptly decide on violations referred thereto. However, if more than one session is required to review the violation, the parties concerned who fail to attend a session shall be notified of the date of the next session.
2. If the "Committee" deems that the violation is punishable by imprisonment, it shall refrain from reviewing it and shall return the same to the "Minister", with a reasoned recommendation. The violation shall be brought before the Board of Grievances by the prosecutors for review.

**Article (21)**

The parties concerned shall be served with a copy of the decision issued against them. The decision shall state their rights to file a grievance against "the Committee's" decisions with the Board of Grievances, within a period not exceeding sixty days from the date of notifying the convicted party of the punishment decision in accordance with Article (15) of the Law.

**Article (22)**

"The Chairman of the Council" shall approve the decision passed by "the Committee". However, the decision issued by "the Committee" on the violation and approved by "the Minister" shall not be considered final until the period for filing a grievance with the Board of Grievances expires without filing a grievance, or after a final decision has been rendered to this effect by the Board of Grievances, if submitted.

**Article (23)**



"The Council" shall issue the governing rules necessary for the implementation of the provisions of these "Regulations", including:

1. Rules Governing Exceptions and Exemptions.
2. Rules Governing Dominant status.
3. Rules Governing Economic Concentration.
4. Rules Governing the Work of the Judicial Investigation Officers.
5. Rules Governing the Committee for Settlement of Violations of Competition Law.

**Article (24)**

"The Council" may construe and amend, by deletion or addition, the Articles of "the Regulations".

**Article (25)**

These "Regulations" shall become effective once "the Law" is effective.

\* The amendment covers Article (One, Four, Six, and Twenty Three).