



Enforcement of antitrust and merger control regulations in Kuwait

Since the Kuwaiti legislator revised the country's competition law in 2021, the Competition Protection Authority (CPA) issued several fines for behavioral antitrust violations. Furthermore, the CPA continued to develop its enforcement practice and expanded its investigative capacities. This led to the CPA, in late 2023, for the first time imposing a fine for violations of the country's merger control regime. Still, in early 2025, the Kuwaiti Constitutional Court challenged the constitutionality of provisions of the Kuwaiti Competition Law authorizing the CPA to impose fines for behavioral antitrust violations. This client brief explores the impacts recent enforcement practiced of the CPA, and the impact of the Constitutional Court's ruling, along with anticipated legislative changes.

Gun jumping and failure to notify

Failure to notify or suspend transactions that require notification under the Kuwaiti merger control regime may be subject to fines and additional sanctions. Fines are capped at 10% of the annual turnover of the violating parties. In case of repeat offenses, the cap is doubled. The Competition Law does not address whether fines will be calculated based on domestic or worldwide turnover. The CPA so far has declined to clarify the matter.

In late 2023, the CPA for the first time imposed fines for failing to notify the CPA prior to closing a notifiable transaction. The CPA fined both the acquirer and the target with 5% of their annual turnover. Both acquirer and target were Kuwaiti entities without foreign income. Thus the CPA did not must decide the question of whether fines are to be calculated based on Kuwaiti or worldwide turnover. The CPA did not publish its full decision. Instead, the case and the fines imposed

were only briefly referenced in the report on the CPA's activities in their fiscal year 2022/2023. The parties challenged the decision in court. The court sided with the CPA and upheld the fines.

Behavioral antitrust enforcement

Enforcement against behavioral antitrust violations has been much more frequent than gun-jumping enforcement in Kuwait. In late 2022, the CPA for the first time sanctioned a business for violations of the Kuwaiti Competition Law. They fined a Kuwaiti steel manufacturer in the amount of 1% of their annual turnover for failing to comply with a request of the CPA related to their investigation into the reinforced steel sector in Kuwait. Subsequently, in May 2023, the CPA imposed fines of between 1 and 5% of annual turnover against several Kuwaiti supermarkets for abuse of dominance (for further information on the CPA's prior enforcement practices, please see our client [brief Kuwaiti Competition Protection Agency Issues First Penalties](#)).

Since then, the CPA consistently investigated and fined behavioral antitrust violations. None of their decisions were published in full length. They were only cataloged in the CPA's activities reports for 2022-2023 and 2023-2024, both of which were published in early 2025. In their 2022-2023 report, the CPA disclosed that they took enforcement action in 19 cases to address behavioral antitrust violations. However, they did not provide meaningful details on the cases. They limited information to the sectors concerned. In their 2023-2024 report, the CPA omitted even these limited details and only stated that they imposed fines in 21 cases for behavioral antitrust violations.

Intervention of the Constitutional Court

In early 2025, the Kuwaiti Constitutional Court ruled on a case challenging the constitutionality of Art. 34(1) Kuwaiti Competition Law, which establishes the CPA's authority to impose financial penalties on undertakings found to be in

violation of provisions of the Competition Law that regulated behavioral antitrust matters. The Constitutional Court found art. 34(1) to be unconstitutional due to the lack of proportionality between the penalty, the violation, and the associated gain. Specifically, the Constitutional Court found that:

- Art. 34(1) does not require the CPA to assess the actual harm caused by the violation or the profit gained from the anti-competitive conduct when determining the amount of fines imposed. Thus, the provision in the courts view violates the principle of proportionality;
- Art. 34(1) applies uniformly to minor and severe violations, which again violates the principle of proportionality;
- penalties are calculated based on the violating party's turnover achieved from all its activities, even those unrelated to the violation, making it a disproportionate financial burden in the courts view;
- the penalties pursuant to Art. 34(1) constitutes an unjust confiscation of property and fails to adequately protect private rights in violations of the constitutional protections of private ownership; and
- by failing to provide clear and transparent standards for enforcement, Art. 34(1) hampers an undertaking's ability to assess or predict the legal consequences of their conduct, undermining the principle of fair legal procedure.

Consequently, the Constitutional Court declared Art. 34(1) to be unconstitutional in its current form. The Constitutional Court's decision essentially deprives the CPA of their ability to take enforcement action against behavioral antitrust violations. This also affects earlier penalties issued under Art. 34(1). Pursuant to Art. 6 Kuwaiti Constitutional Law, judgments of

the Constitutional Court apply retroactively. Hence, fines imposed by the CPA for behavior antitrust violations pursuant to Art. 34(1) Competition Law since the implementation of the new Competition Law in 2021 should be considered as null and void following the Constitutional Court's decision.

Furthermore, the judgment raises doubt about the constitutionality of other provisions of the Competition Law empowering the CPA to sanction violations; specifically, Art. 34(2) Competition Law, which authorizes the CPA to impose a penalty of up to 10% of annual turnover for gun-jumping and failure to notify. The Constitutional Court's reasoning in striking down Art. 34(1) could (in part) be applied to Art. 34(2). Still, the CPA's authority to penalize gun-jumping has to date not been reviewed by the Constitutional Court and lower courts have upheld the only gun-jumping fine issued by the CPA to date.

Furthermore, in the wake of the Constitutional Court's decisions, the Kuwaiti legislator indicated that they may address the issues posed by the Competition Court's decision by amending the Competition Law. They suggested that they may vest the authority to impose fines for violation of the law with the competent courts rather than the CPA. Whether this would suffice to remedy the concerns raised by the Constitutional Court remains to be seen. Furthermore, it is unclear how this shift in authorities would affect the CPA's investigative abilities. Companies with activities in Kuwait should monitor these developments to adequately assess their risks related to antitrust and merger control compliance.



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