



Kuwait Constitutional Court's strikes down Fine for Procedural Competition Law Violation

Kuwait's Constitutional Court has once again stepped into the domain of competition law reform, delivering a ruling on 25 June 2025 (published 20 July 2025) that will have lasting implications for businesses and lawmakers alike. In this latest decision the judges declared struck down the provision empowering the Competition Protection Agency (CPA) to sanction persons or entities for failing to comply with their orders. This decision—together with a decision of the court issued earlier this year—dismantled the CPA's authority to fine parties for behavioral antitrust violations and pull into question the CPA's authority to penalize gun-jumping and failure to notify economic concentrations.

The case concerned Royal Medical International Group Company, which was fined in the amount of 1% of their annual revenues for failing to comply with the CPA's order to provide certain business information and reports in the context of an investigation (Art. 22(6) Kuwaiti Competition Law). Royal Medical contested the fine, arguing that the penalty provisions in 34(5) Kuwaiti Competition Law—along with related provisions in the Executive Regulations—were unconstitutional. Art. 34(5) gave the CPA's Disciplinary Board authority to impose fines of up to 1% of the violating party's annual revenue for non-compliance with orders of the CPA.

After going through the appeals process the case was heard by the Kuwaiti Constitutional Court. The court ultimately struck down the fine and declared Art. 34(5) Kuwaiti Competition Law to be unconstitutional.

The court held that failure to provide information in defiance of an order issued pursuant to Art 22(6) Kuwaiti Competition Law is a procedural violation that in itself does not cause harm to competition. Therefore, imposing

penalties as if it were a substantive violation would be disproportionate. Furthermore, the court held that the calculation of the fine by the CPA was disproportionate. The CPA calculated the fine based on Royal Medical's entire annual revenue, which included revenue unrelated to the violation. Therefore, the court found the fine amount to be arbitrary. The court went on to state that any fine must be proportionate to the harm or public interest involved. A fixed percentage of revenue, regardless of context, failed this test in the opinion of the court. Finally, the court held that the fine violated the protection of private property under the Kuwaiti Constitution. The court held that penalties that confiscate part of a company's revenue without linking it to actual harm amounted to an unconstitutional interference with property rights.

In an earlier decision in February 2025, the court struck down a fine imposed by the CPA pursuant to Art. 34(1) Kuwaiti Competition Law, behavioral antitrust violations. In that case the court applied similar arguments as in their June 2025 decision. In particular, the court held that fines must be proportionate to the violation and the harm caused and the CPA had failed to apply such considerations by simply imposing a fine as a percentage of the violating party's whole annual revenue (for more details on this decision, see our [client brief from May 2025](#)).

The two decision of the Kuwaiti Constitutional Court raise questions about the constitutionality of Art. 34(2) Kuwaiti Competition Law, which empowers the CPA impose fines of up to 10% of their annual revenues on parties to an economic concentration for failure to notify the CPA or gun jumping. Since Art. 34(2) Kuwaiti Competition Law also does not explicitly limit fines to the revenue related to the violation, the decisions of the court could be considered applicable to Art. 34(2) Kuwaiti Competition Law as well. Still, unlike the violation to comply with an order to provide information sanctioned by Art. 34(5) Kuwaiti Competition Law, failure to notify an economic concentration or gun jumping is not a

mere procedural violation. Merger control review serves to protect healthy competition as well as a functioning economy for the benefit of competitors and customers. Still, the courts findings that fines must be proportionate could possibly be held against fines imposed pursuant to Art. 34(2) Kuwaiti Competition Law. However, the CPA could preempt challenges by calculating fines for failure to notify or gun jumping considering the possible harm caused by those acts.

Still, to avoid further erosions of the CPA's powers to enforce the Kuwaiti competition and merger control regime, it would be prudent for the Kuwaiti legislator to revise the sanction authorities provided in Art. 34 Kuwaiti Competition Law. Replacing the general revenue-based fines with penalties explicitly tied to actual harm or illicit benefit, and differentiating between procedural oversight violations and deliberate anti-competitive conduct could serve to establish a more robust penalty regimes.

Parties to economic concentrations must be aware that, while the recent decisions of the Kuwaiti Constitutional Court could be considered relevant for the provisions concerning fines for failure to notify and gun jumping, the court never tested the application of Art. 34(2) Kuwaiti Competition Law. Hence, while until the court decides on the permissibility of fines under Art. 34(2) Kuwaiti Competition Law there are good arguments to challenge fines for gun jumping or failure to notify, there remains uncertainty. Also, the CPA may limit risk of their fines pursuant to Art. 34(2) Kuwaiti Competition Law being overturned by by calculating fines for failure to notify or gun jumping considering the possible harm caused.



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