New GAC Guidelines on Anti-Competitive Agreements: A Compliance Roadmap

Client briefing | Antitrust & Merger Control
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The Saudi General Authority for Competition (GAC) issued new guidelines that provide a detailed framework for assessing anti-competitive agreements under the Competition Law and its Executive Regulations. The Guidelines are intended to give clarity to all economic entities active in Saudi Arabia on how the GAC interprets and enforces the law in relation to horizontal and vertical agreements. Their aim is not only to explain how the GAC applies the statutory prohibitions but also to allow businesses to self-assess the risks of their cooperative arrangements and ensure compliance.

Broad scope of application

The Guidelines treat the prohibition of restrictive agreements in very broad terms. They apply to all arrangements that may affect competition, regardless of whether they are written or oral, explicit or implicit, intentional or merely having the effect of restricting competition. The rules cover all entities, whether natural or legal, regardless of whether they enjoy formal legal personality. This wide scope reflects the general approach in competition law to capture all potential restraints that could undermine fair competition in the market.

Strict prohibitions and case-by-case assessment

A key distinction drawn in the Guidelines is between agreements that are prohibited outright and those that are subject to further assessment. The first category, referred to as 'by object' restrictions, are deemed so inherently harmful to competition that they are prohibited *per se*, without the need to demonstrate actual anticompetitive effects.. Article 8 Executive Regulations sets out the relevant practices in an exhaustive list, including price fixing, market allocation, output restrictions, and bid rigging. These are presumed to have no redeeming efficiencies and are sanctioned automatically.

By contrast, 'by effect' restrictions—set out in Article 5 Competition Law in a non-exhaustive list—are assessed in light of their actual impact. Here, the GAC looks at whether the conduct produces efficiencies that could benefit consumers or the economy, and whether these outweigh the potential harm. Unlike *per se* prohibitions, such arrangements may under certain conditions be permitted, provided their restrictive aspects are strictly necessary and proportionate to the efficiencies they generate.

Evidence of collusion

The Guidelines make clear that direct proof of an anti-competitive agreement is not required. Collusion may be inferred from circumstantial evidence such as simultaneous changes in market behaviour, patterns of parallel pricing, or documented opportunities for coordination. Even a simple expression of common intention or a knowing adoption of market strategies that facilitate alignment between competitors may be sufficient. In practice, a simultaneous increase in prices by market players is a common example of behaviour that attracts scrutiny, especially when accompanied by signs of coordination.

Exceptions and safe harbours

Not all agreements fall within the prohibition. The Guidelines recognise exceptions, including agreements between entities forming part of a single economic entity under common ownership or control, genuine agency agreements that meet specific criteria, and certain vertical arrangements that may qualify for exemption. These carve-outs, however, are interpreted strictly. They do not apply where corporate structures are used to disguise independence, where agency arrangements include restrictive clauses such as post-termination non-competes, or where vertical structures serve to conceal collusion.

Analytical framework applied by the GAC

The GAC follows a structured process when assessing restraints. It first identifies the type of agreement—horizontal between competitors, vertical between suppliers and distributors, or mixed where both relationships coexist. If the restraint falls within the *per se* prohibitions under Article 8 Executive Regulations, it is automatically unlawful. If not, the GAC conducts an 'effects analysis', measuring the impact on price, output, quality, variety, and innovation. The analysis is always made against a counterfactual scenario, which the Guidelines refer to as 'the opposite reality', representing a situation where the restrictive conduct never occurred.

Where the restraint is not *per se* unlawful, the GAC considers whether the agreement may still benefit from an exemption. The guiding principle is that an arrangement may be tolerated if it generates efficiencies that benefit consumers and the economy and if its restrictive elements are kept to the minimum necessary to achieve these efficiencies.

Factors in assessing market impact

When analysing the effects of a restriction, the GAC places particular weight on market power. It considers the market shares of the parties and their competitors, the stability of those shares over time, and whether the arrangement involves market leaders or smaller players. Other factors include barriers to entry, consumer switching behaviour, the financial strength of the parties, the distinctiveness of the products or services, and the regulatory framework governing the sector. The GAC also assesses how the restraint affects consumer welfare, trade freedom, and whether it aligns with normal competitive behaviour under open market conditions. This methodology is closely aligned with the factors examined in merger control reviews.

Exchange of commercially sensitive information

The Guidelines devote significant attention to the exchange of sensitive commercial information, such as pricing, costs, capacities, or strategic plans. Such exchanges are considered a major risk, especially in concentrated markets with high barriers to entry. Not all information sharing is unlawful. Still, combining parallel conduct with evidence of information exchange may indicate coordination. The GAC emphasises that companies must preserve independence in commercial decision-making, as transparency among competitors reduces the incentive to innovate and compete. In merger control transactions, the use of clean teams is recommended to prevent inappropriate exchanges during negotiations.

Illustrative examples

The second half of the Guidelines examines common examples of horizontal and vertical agreements that may involve restraints on competition. For each type of agreement, the guidelines set out how it could restrict competition, the measures parties must adopt to mitigate such risks and limit restraints to what is strictly necessary, and the efficiencies that must be demonstrated for the agreement to qualify for exemption by the GAC.

The Guidelines devote considerable attention to cooperation between direct competitors. They recognise that certain horizontal agreements, while capable of restricting competition, can also generate important efficiencies when carefully structured. Examples include joint research and development (R&D), joint production, joint purchasing, and joint distribution. Joint R&D arrangements, for instance, may eliminate duplication of costs, allow pooling of expertise, and accelerate technological innovation.

The Guidelines note that such cooperation is often considered pro-competitive when undertaken by smaller competitors with limited market shares. As a rule of thumb, R&D cooperation between firms whose combined market share does not exceed 25% in the relevant product or technology market is presumed to benefit competition, as it enhances knowledge, promotes innovation, and ultimately improves consumer choice.

Similar considerations apply to joint purchasing agreements, which can reduce costs and improve efficiency by consolidating demand. However, the competitive effects depend on whether such arrangements give the participants undue buyer power that might harm suppliers or downstream consumers. Joint production and joint distribution can also reduce costs and expand market access, but they must not serve as a cover for coordination in pricing, output, or market allocation. In every case, the GAC's approach is that efficiencies must be real, verifiable, and passed on to consumers, and the restrictive elements must remain strictly necessary to achieve those efficiencies.

The Guidelines also provide extensive guidance on vertical arrangements, which are generally considered less harmful to competition than horizontal ones, but can still raise concerns in certain contexts. Vertical agreements—such as those between suppliers and distributors—are often necessary to ensure that products reach consumers efficiently. However, when market power is significant, such arrangements may be used to foreclose rivals or stifle competition at the distribution level.

Exclusive branding agreements illustrate this tension. When a supplier requires distributors to exclusively stock and sell its brand, the impact depends heavily on the supplier's market position. If the supplier and the distributor is a dominant player, such exclusivity can marginalise competing distributors and restrict inter-brand competition. The guidelines emphasise that exclusivity should never exceed what is necessary to achieve its intended efficiencies, with a recommended maximum duration of five years. The responsibility of powerful suppliers is implicitly greater, as their ability to foreclose rivals is stronger than that of smaller players. However, the general assumption in the guidelines remains that participants in vertical agreements, compared to horizontal agreements, often have an incentive to lower prices and improve the quality of service, this is usually in the consumer's interest.

Exclusive or selective distribution agreements raise similar concerns. While they are common in franchise systems and often justified by the need to protect brand reputation and ensure quality control, they can reduce competition between distributors of the same brand and may exclude rival suppliers from market access. The competitive impact depends on the market share of the brand relative to others. Where the supplier or distributor has a market share below 30%, such agreements are generally presumed not to raise serious competition concerns. However, if market power is stronger, foreclosure effects and reduced consumer choice become significant risks.

The Guidelines also address dual distribution, in which a supplier not only sells to distributors but also competes directly with them by selling to end consumers. This creates a hybrid horizontal and vertical relationship that requires nuanced assessment. The concern here is that the supplier may leverage its dual role to favour its own sales channels, for example by prioritising visibility on an online platform over that of independent distributors.

Resale price maintenance (RPM) is another key focus. RPM may take various forms, including imposing fixed resale prices, establishing minimum profit margins, or setting maximum discount limits. While not automatically prohibited, RPM is considered a common restraint on competition. It can reduce price competition among distributors of the same brand and may amount to a horizontal infringement if distributors collectively align their pricing through the supplier. The Guidelines differentiate between minimum or fixed resale prices, which are more likely to restrict competition, and maximum resale prices, which are less problematic unless imposed by a dominant supplier.

The GAC is particularly concerned with indirect RPM, where pressure is exerted on distributors through mechanisms such as continuous discounts or profit margin requirements that effectively dictate resale prices. In scenarios where suppliers sell directly to consumers as well as through distributors, imposing minimum resale prices on distributors above the supplier's own retail prices would eliminate competition between them. Such practices may constitute both vertical and horizontal restraints, with the latter falling into the category of per se prohibitions.

The Guidelines also warn against 'hub-and-spoke' arrangements, in which a supplier fixes resale prices with multiple distributors, effectively creating a horizontal cartel among those distributors through vertical agreements. These cannot benefit from any exemption, as they are considered inherently harmful to competition.

Overall, while vertical agreements are not presumed to harm competition in the same way as horizontal ones, the guidelines underscore that their legality depends on market conditions. Agreements involving firms with modest market shares may be exempted, but those involving market leaders are subject to stricter scrutiny. In short, the greater the market power of the parties, the higher their responsibility to ensure their arrangements do not foreclose competition or harm consumer welfare.

Practical implications for businesses

The Guidelines provide a roadmap for compliance. Cartel conduct such as price fixing, market allocation, output restrictions, and bid rigging is prohibited without exception. Other agreements may be acceptable but only after a structured effects analysis shows that efficiencies justify the restrictions. For businesses operating in Saudi Arabia, this means reviewing all cooperative arrangements with competitors, suppliers, and distributors to identify potential risks. Clauses that unduly restrict competition should be removed or narrowed, and any claimed efficiencies should be well-documented and demonstrably linked to consumer benefits. In short, the Guidelines signal a strict but structured approach by the GAC. They reinforce the importance of proactive compliance and highlight that the burden lies on businesses to ensure their agreements are competition-law compliant.

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