



Merger Control in Kuwait Five Years in

Since the Kuwaiti legislator overhauled the Emirate's competition law with Law 72/2020 on the Protection of Competition (Competition Law) effective late 2021, the Kuwaiti Competition Protection Authority (CPA) has substantially increased its enforcement of the merger control and antitrust regimes. Still, guidelines are outstanding. Also, in their decisions on merger clearance and behavioral antitrust matters the CPA continues to provide no or rudimentary details on their findings and reasoning. Hence, key principles and concepts of the Kuwaiti merger control and antitrust regimes remain unclear and questions on scope of application and interpretation remain unresolved. Furthermore, the Kuwaiti Constitutional Court issued two rulings in 2025 that limited the CPS' ability to impose sanctions for behavioral antitrust violations. These have pulled into question whether the CPA can under the current law still impose fines for gun jumping and failure to notify. This client briefs provides an overview of the current state of the Kuwaiti merger control regime and attempts to shed light on key principles.

Change of control, notification thresholds, and local nexus

Under the Kuwaiti merger control regime, merger filing is required where a transaction (1) results in a change of control over an undertaking, and (2) one of the notification thresholds are met. The Competition Law includes language that suggest a local nexus test should apply along the notification thresholds. However, in practice the CPA considers any local nexus requirement to be met where one of the thresholds is met (see below).

Change of control occurs where a transaction results in one or more parties acquiring decisive influence over an undertaking. This may occur

due to the parties—directly or indirectly—acquirers (1) a majority stake or majority of voting rights in the undertaking, or (2) a minority stake in the undertaking plus additional rights that allow them to excrete decisive influence over strategic business decisions of the undertaking. Such decisive influence may be established by rights to appoint and remove members of the undertaking's board of directors, appoint or veto appointment to senior management roles of the undertaking, as well as veto rights over business plans, budgets, and material investment decisions of the undertaking. In their assessment of decisive influence, the CPA's position is largely similar to that of the European Commission. However, in nuances the CPA diverges. For instance, the CPA has—in individual decisions—considered the right to appoint individual directors to suffice to establish decisive influence over an undertaking, even where the directors could not determine the outcome of votes of the board.

Amended thresholds

On 5 April 2026 Decision 32/2026 of the CPA's Board was published (Decision). The Decision amended the notification thresholds of the Kuwaiti merger control regime effective that day.

The Decision maintained the prior status whereby the thresholds apply individually. Hence, where one of the thresholds is met, a filing is required. The amendments to the single party and the asset value thresholds are straightforward. The Decision continues the position that the single party threshold can be met by “any party” to the transaction but raises it to KWD 1.5 million (approx. USD 4.84 million). The asset value threshold continues to apply to the combined value of the parties' Kuwaiti assets but has been increased to KWD 7.5 million (approx. USD 24.2 million). In addition, the Decision clarifies that assets will be considered Kuwaiti, if they are located or registered in or operationally deployed to Kuwait.

The changes to the combined party threshold are more substantial. The threshold was raised to KWD 3 million (approx. USD 9.68 million). Furthermore, the Decision clarifies that the threshold applies to Kuwaiti turnover of the parties only. This was unclear under the old regulations. However, in practice the CPA only considered the parties' Kuwaiti turnover when assessing whether the combined party threshold was met. Hence, while welcome, the change only constitutes a formalization of existing practice. Finally, the Decision clarifies that the combined party threshold cannot be met by acquirers alone. The threshold is only met, if the target has at least KWD 1.5 million Kuwaiti turnover.

Questions raised by the target turnover requirement

It appears that the CPA meant to implement a local effects test with the minimum target turnover requirement for the combined party threshold. Still, no such measure was introduced for the single party threshold.

If the intention of the CPA was to by requiring the target to have at least KWD 1.5 million Kuwaiti turnover introduce a local effects test, the question remains why they did not introduce a similar condition for the single party threshold. If the single party threshold can be met by the acquirer alone, the local effects element introduced to the combined party threshold would be redundant. Anytime the parties would meet the combined party threshold of KWD 3 million—but the target has less than KWD 1.5 million Kuwaiti turnover—the single party threshold would be met. Thus, a filing would still be mandatory and the requirement of the target having to have Kuwaiti turnover would have no practical effect. The requirement for the target to have Kuwaiti turnover for the combined party threshold to be met would only have a limiting effect, if the single party threshold could only be met by the target.

Still, the interpretation that the single party threshold can only be met by the target, poses issues. First of all, it is not supported by the wording of the Decision. The Decision explicitly refers to "any party" in the single party threshold and "the target" in the combined party threshold. Hence, if the CPA sought to have the single party threshold be linked to the target's Kuwaiti turnover only, why would they have not explicitly stated so—in particular, since they explicitly refer to the target in the combined party threshold. Secondly, the combined party threshold would be entirely redundant, if the single party threshold could only be met by Kuwaiti turnover of the target. If the single target threshold could only be met by target turnover in Kuwait, there would be no conceivable scenario where the combined party threshold would be met, but the single party threshold would not be met. In every case in which the combined party threshold would be met, the target would have at least KWD 1.5 million Kuwaiti turnover, and thus the single party threshold would also be met. Hence, there are also persuasive logical and textual arguments for the single party threshold applying to any party; thus, potentially being met by the acquirer alone.

This inconsistency requires formal clarification or supplementary guidance from the authorities. Pending such clarification, a conservative approach would be to treat a filing as required whenever any party—including the acquirer—meets the single party threshold.

Notification deadline

Pursuant to the Competition Law a transaction must be notified to the CPA prior to implementation, but in any case, within 60 days of signing of the transaction agreement or any other relevant contract. However, in practice, the CPA does not strictly enforce this 60-days' deadline. To date the CPA has not taken any enforcement action where a transaction was notified to them later than 60 days after signing, provided the parties respected the standstill obligation.

Review process

The statutory review period established by the Competition Law is 90 days from the date on which the CPA declares the filing to be complete. The review period may be extended by an additional 90 days. The CPA has subsequently clarified that the review period and its extension should be considered as 90 business days each. In practice, the CPA typically actively clears transactions before the review period lapses.

Key timing items in preparing the filing will be formalities. While the Kuwaiti filing form is comparatively extensive, information required can typically be compiled in reasonable time. Especially where the parties have well kept record. Also, the CPA has proven to be pragmatic and does except that Kuwait specific information in certain markets may not be available. In these cases, they have accepted best estimates or other alternatives.

Still, they do strictly require all documents—filing form and supporting documents—to be submitted in Arabic. Where the original documents are not in Arabic, they must be translated to Arabic and translations must be certified by a legal translator licensed in Kuwait. Furthermore, Kuwait is not party to the Hague Document Convention. Hence, apostille cannot be used. Instead, documents must be legalized following the procedure agreed bilaterally between Kuwait and the country from which the documents originate. This process can be lengthy depending on where documents need to be legalized. As a positive point—while the CPA can request all supporting documents to be legalized—they typically only require the powers of attorney to be legalized.

Following submission, the CPA will appoint the case team. The case team will then conduct a preliminary review to assess whether the filing is complete. Once the case team confirms that filing is complete, they will confirm when the statutory

review period started. Once the review period started, the case team will publish a brief announcement of the notification received.

This announcement will include reference to the parties as well as a very brief description of the transaction without providing details on structure, value, or reasoning for the transaction. With the announcement, which must be published in the Kuwaiti Official Gazette and two local newspapers, a 15 business days' waiting period starts during which affected third parties may raise concerns. In our experience, public engagement in Kuwait is limited. To date, third-party objections have only been raised in a few isolated cases. All cases in which concerns were raised had considerable implications for the Kuwaiti market.

The case team will typically start their material review during the waiting period. Once the waiting period lapsed and the case team concluded their review, they will submit their report to the board of the CPA for approval. The board will discuss all reports received at their next board meeting. Board meetings do not follow a pre-set schedule. They are held approximately once a month. If the board endorses the report they submit the final decision to the Chairman of the CPA for execution.

Filing fee

There has been some confusion regarding how the filing fee for Kuwaiti merger filings is calculation. The CPA does not issue filing fee invoices or payment instructions confirming the filing fee amount. Instead, it is the parties' responsibility to calculate the filing fees and submit their calculations to the CPA for confirmation. Hence, the parties must understand how they calculate the fee or rely on counsel to provide them with accurate advice.

The filing fee is calculated as 0.1 percent of either the parties' combined (1) paid-up capital, or (2) Kuwaiti assets, whichever is lower. The filing fee cannot be zero. Hence, where one

method of calculation would lead to zero, the other method must be chosen. Where parties calculate the filing fee based on Kuwaiti assets, an evaluation by an auditor accepted by the CPA must be submitted with the filing. The filing fee is capped at KWD 100,000 (approx. USD 320,000).

Some confusion exists as to which entities are relevant when calculating the filing fee. This issue is not addressed in the Competition Law. The CPA has consistently accepted the filing fee to be calculated based on the paid-up capital or Kuwaiti assets of the parties directly involved in the transaction—i.e. the parties signing the transaction agreement.

Fines

Failure to notify or suspend transactions that require notification under the Kuwaiti merger control regime may be subject to fines or additional sanctions. Fines are capped at 10 percent of the violating parties' annual revenue. In case of repeat offenses, the cap is doubled. The Competition Law does specify whether such fines are to be calculated based on Kuwaiti or worldwide revenue, or which parties are exposed to fines.

The CPA has also not clarified the question of whether fines are calculated on Kuwaiti or worldwide revenue. The CPA has not issued any guidelines that would have addressed the matter. To date the CPA only took enforcement action in one gun jumping case. This case concerned a fully domestic transaction. The CPA imposed fines of 5 percent of their annual revenue on the acquirer and the target each. Neither party generated foreign revenues. Hence, the CPA did not address whether fines should be calculated based on worldwide or Kuwaiti revenue. The full decision was not published. The case was only briefly discussed in the CPA's activity report for fiscal year 2022/2023. The parties challenged the decision before the courts, which upheld the

CPA's findings and confirmed the fines (see our [client brief of May 2025](#) for further details).

On the second question—which parties are exposed to fine—there is more clarity. This matter is also not addressed in the Competition Law. However, the reference to violating parties, suggest that penalties can only be imposed against parties that violated the Competition Law; thus, parties that were obligated to make the filing. In practice, the CPA considers both acquirer and target to be responsible for making the filing. Hence, the seller should not be exposed to penalties. This view is also supported by the aforementioned gun jumping case, in which the CPA find both the acquirer and the target but not the seller.

Theoretically, the CPA can also order a transaction to be wound up and request the public prosecution to seek criminal sanctions against relevant individuals to address violations of the Kuwaiti merger control regime. We, however, expect these severe sanctions to be measures of last resort to address severe offenses. Furthermore, it remains questionable whether the CPA could enforce an order to unwind a transaction in a foreign-to-foreign deal. Still, they could of course seek recourse against Kuwaiti subsidiaries or assets.

Constitutional Court decisions and enforcement uncertainty

In 2025 Kuwait's Constitutional Court issued two decisions with significant consequences for CPA's enforcement powers. In February 2025, Constitutional Court struck down a fine imposed by the CPA under Art. 34(1) Competition Law, to address a behavioral antitrust violations. The Constitutional Court found Art. 34(1) to be unconstitutional on multiple grounds. Fines under the provision were not required to be proportionate to the actual harm caused by the violation or the profit gained from the anti-competitive conduct. Furthermore, the provision applied uniformly to minor and severe violations

without differentiation. Finally, fines were calculated based on the violating party's entire annual revenue, including revenues unrelated to the violation. The Constitutional Court held that this constituted an unjust and disproportionate interference with constitutionally protected property rights. Consequently, the Constitutional Court further found that Article 34(1) failed to provide clear and transparent standards for enforcement, undermining the principle of fair legal procedure.

In June 2025, the Constitutional Court issued a second decision, striking down Art. 34(5) Competition Law. Art. 34(5) empowered the CPA to impose fines on an undertaking of up to 1 percent of its annual revenues for failure to comply with the CPA orders in respect to their regulatory oversight over behavioral antitrust matters. The CPA had used its power under Art. 34(5) to penalize a company for failure to follow an order of the CPA to provide information in the context of an investigation. The Constitutional Court applied reasoning similar to its February 2025 decision, holding that the provision of Art. 34(5) was disproportionate and constituted an unconstitutional interference with property rights and was thus unconstitutional (for more details on the two decisions, see our [client brief from June 2025](#)).

Together, these two decisions have effectively dismantled CPA's authority to impose fines for behavioral antitrust violations and for non-compliance with investigative orders relating to behavioral antitrust violations. Both decisions raise questions about the constitutionality of the provision empowering the CPA to impose fines for gun-jumping and failure to notify. These provisions have not been reviewed by Constitutional Court. Still, the lower courts upheld the only gun-jumping fine issued by the CPA to date in a verdict of May 2025; hence after the first decision of the Constitutional Court on the constitutionality of the CPA's authority to fine

violations of the Kuwaiti antitrust regime under Art. 34(1) Competition Law. This suggests that the sanctions regime of the Kuwaiti merger control regime will remain unaffected by the Constitutional Court's orders on enforcement of the antitrust regime. Still, this assessment relies entirely on the lower court's interpretation of the decision of the Constitutional Court. The Constitutional Court itself has not had the opportunity to weigh in on the issue. The parties did not appeal the matter further after the lower court's decision.

Merger control in Kuwait today

As outlined above several matters of the Kuwaiti merger control regime that remained ambiguous or unanswered by the Competition Law initially, have since been clarified by the CPA in practice. The CPA established that they apply the concept of decisive influence when determining change of control. Moreover, initial questions concerning the calculation of the filing fee have been resolved. Still in respect to sanctions relevant questions remain unanswered. Finally, the CPA had established a clear position on the local nexus test contemplated in the Competition Law, which they saw integrated in the thresholds. Hence, the local effects test was met, wherever one of the notification thresholds was met. Still, the Decision published on 5 April 2026 raises some questions in this regard. With the introduction of a requirement for the target to have Kuwaiti turnover for the combined party threshold, the CPA appears to have picked up on the local effects test contemplated in the Competition Law. Still, since a similar element was not introduced for the single party threshold, it is unclear how local effect would be addressed in respect to that threshold. Further clarification by the CPA is needed.

On the other hand, while there appears to be clarity on which parties are exposed to penalties, how fines are calculated remains uncertain. Neither the Competition Law nor the CPA have determined whether fines are calculated based on worldwide or domestic revenue. Furthermore,

while the sanctions provisions of the Kuwaiti merger control regime have been affirmed by lower court decisions, the Cognitional Court striking down the sanctions provisions of the antitrust regime raise some questions for enforcement of the merger control regime.



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