



Ancillary Restrictions in the GCC

The “ancillary restraints” doctrine, originally developed by the European Commission, serves to validate restraints that are objectively necessary to implement a legitimate transaction which has neutral or positive effects on competition. It is therefore relevant to restrictions that are directly related to, and necessary for, the implementation of a concentration. To which extend ancillary restraints are permissible in the context of economic concentrations as well as the detail of regulations varies significantly across jurisdictions in the MENA region. The GCC jurisdictions have not yet adopted specific guidelines for the treatment of ancillary restraints such as the European Commission’s Notice on Ancillary Restraints. This client brief considers the regulation of ancillary restraints in key GCC jurisdictions.

United Arab Emirates

The UAE’s competition law prohibits agreements that restrict competition, including arrangements that allocate markets by geographic area or segment customers between parties. These prohibitions reflect broadly international standards, but the UAE legislation does not currently include an express concept of ancillary restraints. There is no provision that carves out transaction-related restrictions from the scope of competition prohibitions, and there are no guidelines that map out when such restrictions will be treated as permissible. Accordingly, there is no specific recognition of non-compete obligations in the context of a transaction, whether on the seller or the buyer.

Hence, under UAE law, a restriction that accompanies a legitimate transaction cannot automatically be assumed to be lawful on the basis that it is necessary to give effect to that transaction. Instead, it falls to be assessed under

the general competition law prohibitions, with no specific safe harbor or presumption of legality to assist the parties.

For parties to transaction that trigger UAE merger control review, the absence of an ancillary restraints framework introduces uncertainty at the drafting stage. Restrictions that would be straightforwardly permissible in other jurisdictions—such as a seller’s obligation not to compete with the transferred business for a defined period, or a buyer’s obligation not to expand into the seller’s retained markets—may require more careful analysis in the UAE context. The risk is most pronounced where a restriction could be characterized as allocating markets or territories between the parties. Such arrangements are *per se* prohibition under UAE competition law. The fact that the restriction was commercially necessary for the transaction to proceed does not, of itself, provide a defense.

The UAE has only begun actively enforcing its competition law since approx. last twelve months. There has been no enforcement action to date specifically addressing ancillary restraints or transaction-related restrictions. However, the increasingly active enforcement posture of the UAE competition authority means that the risk landscape is likely to evolve, and parties should not assume that the current absence of precedent reflects a permissive approach to such restrictions.

Saudi Arabia

Like UAE law, the Saudi competition law does not include a formal ancillary restraints doctrine, and Saudi Arabia has not adopted specific guidelines on ancillary restraints. The General Authority for Competition’s (GAC) Merger Guidelines, nonetheless, implicitly provide a basis for assessing ancillary restraints.

Under Saudi law, *per se* prohibitions of market segmentation are generally directed at horizontal agreements. A restriction agreed between a buyer and a seller in the context of a transaction,

where the parties are not inherently competing with one another, is therefore less likely to be treated as automatically prohibited. That said, no formal safe harbor exists, and any restriction remains subject to scrutiny.

The relevant test drawn from Saudi competition law principles, is broadly whether the restriction is necessary for the protection of the transferred business and limited in duration and scope. A restriction that meets these criteria is less likely to attract adverse attention, but this is not a bright-line rule, and the GAC retains discretion to subject any arrangement to an effects-based assessment.

Kuwait

Kuwait has not adopted rules for or guidelines on ancillary restraints either. There is currently no provision of Kuwaiti competition law that specifically addresses transaction-related restrictions. The general antitrust framework prohibits agreements that restrict competition, but without any carve-out or guidance on how it interacts with ancillary restrictions agreed in the context of transactions.

Parties entering transactions cannot point to any formal basis on which ancillary restrictions would be treated as falling outside the competition prohibitions. The general prohibition on agreements that restrict competition applies in full, and absence of guidance is a real risk that transaction-related restrictions could be characterized as prohibited arrangements, particularly where they have concern market-allocation.

To date there has been no enforcement action specifically addressing ancillary restraints or transaction-related restrictions. Nevertheless, considering enforcement activity in Kuwait, parties should not discount the risk, particularly as the authority's focus may broaden over time.

Bahrain

While Bahrain has not adopted a formal ancillary restraints doctrine equivalent to those of the European Commission, the Bahraini authority generally takes strong inspiration from European Commission precedent. This suggests that transaction-related restrictions are more likely to be assessed under similar principles as by the European Commission.

Under Bahraini competition law, a restriction agreed in the context of a transaction is not prohibited *per se*. However, it may fall within the scope of prohibited anti-competitive agreements if it has the object or effect of restricting competition, for example, by limiting market access or leading to market foreclosure. Considerations of scope and duration of the restraint do play a role in the Bahraini authority's assessment. This indicates that proportionate and necessary restrictions may survive scrutiny even if they are strictly speaking ant-competitive in effect. Still, due to lack of specific practice, there remains considerable uncertainty as to how the Bahraini authority will treat ancillary restraints in practice.

Take away

Ancillary restraints pose challenges under the merger control regimes of Gulf countries. In principle, such restraints will be evaluated through general competition law principles and effects-based analysis. However, due to lack of precedents and specific guidance, how the GCC competition enforcers will evaluate transaction-related restrictions remains unclear. Parties seeking to include ancillary restraints should explicitly disclose these to the regulators to have them approved with the transaction clearance.



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