



Licensing Agreements under the Merger Control Regimes of Egypt, Kuwait and UAE

Licensing agreements occupy a structurally ambiguous position in merger control. They sit between asset acquisitions and ordinary commercial contracts. Licensing agreements differ in structure and intent from M&A and joint venture transactions. Nonetheless, they may lead to change of control over a commercial activity related to the license. Where such transfer is not just provisional, it may raise competition concerns that merit merger control review. No national regulator or other institution in the MENA region issued specific guidelines clarifying how licensing agreements should be treated in a merger control context and precedence is limited. Hence, when dealing with licensing agreement in the MENA region, parties have limited means to assess their obligations. Consulting other merger control regime that have further developed merger review of licensing agreements may provide guidance. Considering competition regulators across the MENA region being open to taking inspiration from the European Commission a review of their treatment of license agreements promises some guidance. This client brief considers how European Commission precedence may educate treatment of license agreements under the merger control regimes of Egypt, Kuwait and UAE.

Licensing agreements as concentrations under EU law

Control under the EU Merger Regulation may be acquired not only through shares or assets, but also through contracts, including license agreements, where they confer the possibility of exercising decisive influence on a lasting basis (Art. 3(2) EUMR; Art. 3.1 Jurisdictional Notice). The key question is whether the transaction gives rise to a lasting structural change in the market, namely through the transfer of the ability to operate a business on an autonomous basis. As clarified in the EC Consolidated Jurisdictional

Notice, this requires that the licensed assets constitute a "business" with a market presence, to which turnover can be clearly attributed. Hence, license agreements only qualify as concentrations where the license is (i) exclusive, at least within a defined territory; (ii) granted for a sufficient duration to bring about a lasting change in market structure, and (iii) confers decisive influence, thus, allowing the licensee to operate the related business independently, including determining its commercial strategy, production, and market conduct.

The relevant license currently producing turnover is not necessarily required. In several decisions concerning licensing agreements in the pharmaceutical sector, the European Commission accepted the capacity to generate turnover in the foreseeable future is sufficiently substantiated (see e.g. Novartis/GlaxoSmithKline, Case M.7872). More broadly, while not directly applicable to merger control, the revised Technology Transfer Block Exemption Regulation (that took effect recently, 1 May 2026) reflects a similar forward-looking logic. It recognises that technologies with no current sales remain competitively relevant (and are treated as having a 0% market share under Art. 101 TFEU). hence, the regulation confirms that the absence of turnover does not preclude competitive significance. Although this does not modify the legal test under the EU merger control regime, it supports a more dynamic understanding of economic activity in certain sectors, like for example in the technology sector. Here licenses may amount to concentrations where they effectively transfer a business but not where they merely grant access to technology or infrastructure without transferring strategic autonomy (see e.g. Microsoft/Yahoo! Search Business, Case COMP/M.5727).

Licensing agreements and the Egyptian merger control regime

Under the Egyptian merger control regime, an economic concentration is defined as any defined as any change of *control* or *material*

influence over one or more undertakings. To determine if a licensing agreement falls within this definition, control is defined as the ability to exercise decisive influence, directly or indirectly, over another undertaking's economic decisions, whether through ownership rights, contractual arrangements, or any other means. The definition expressly includes situations where effective control is exercised through agreements or other arrangements conferring decisive influence over management or decision-making.

The Egyptian Competition Authority's (ECA) Guidelines (2025) further clarify that control may arise through ownership or rights of use over assets, including tangible and intangible assets such as intellectual property, trademarks, and customer databases. The ECA guidelines also clarify that control is assessed on a functional basis and does not require actual exercise of influence, but rather the ability to direct or block strategic decisions. Additionally, the guidelines clarify that material influence constitutes a lower threshold, covering the ability to influence strategic decisions without full control, including through minority shareholdings or contractual rights such as veto rights, board representation, or access to sensitive information.

Accordingly, the definition of control is very broad under the Egyptian regime; hence licensing agreements could fall within this definition. Although neither the law nor the Executive Regulations expressly refer to licensing agreements, the broad definition of control implies that licensing arrangements may constitute economic concentrations where they confer decisive influence over an autonomous economic activity. For instance, in the Uber/Careem case the ECA examined contractual arrangements as part of the overall control analysis.

For more information on the Egyptian material influence test as well as means of control considered by the ECA, see client brief: Control

and material influence under the new Egyptian merger control regime.

However, duration and exclusivity are likely to be relevant considerations in this context, as the law requires that control be exercised on a lasting basis, aligning conceptually with the EU structural change requirement. Short-term licences are therefore unlikely to qualify unless renewable or de facto indefinite. The ECA has not issued specific guidance on licensing duration or exclusivity. In practice, EU standards could be used as persuasive reference points.

Licensing agreements and the Kuwaiti merger control regime

The merger control framework under Kuwaiti law provides that an economic concentration exists where one or more persons acquire direct or indirect control over another undertaking, in whole or in part, through assets, ownership rights, rights of use, shares, or by any other means (Art. 10 Kuwaiti Competition Law). The explicit inclusion of rights of use and "any other means" provides a legal basis for assessing whether licensing agreements may constitute economic concentrations. Hence, the control framework is sufficiently broad to capture contractual arrangements resulting in a lasting change of control.

Control is defined as the legal or contractual relationship which, either separately or in combination, results in the exercise of decisive influence. The Competition Protection Authority (CPA) has not issued guidance specifically addressing licensing agreements, nor does decisional practice provide detailed clarification. However, the statutory framework indicates that the key issue is whether the agreement confers decisive influence on a lasting basis. Accordingly, exclusive and long-term licensing arrangements granting operational control over assets or business functions may fall within the scope of merger control review.

Licensing agreements and the UAE merger control regime

The UAE merger control regime defines economic concentration broadly as any act resulting in the total or partial transfer of ownership or usufruct rights in assets, rights, shares, stocks, obligations, or other interests enabling direct or indirect control over another undertaking (Art. 1 UAE Competition Law). The explicit inclusion of usufruct rights is particularly significant. A usufruct is the right to use and derive benefit from another's property. Accordingly, certain exclusive or long-term licences may be analysed as conferring usufruct-like rights, depending on their scope and the degree of operational control transferred. If a licensing agreement transfers such rights and enables control over strategic business decisions, it may fall within the scope of economic concentration.

Control is not explicitly defined in detail under the UAE regime, unlike Egypt and Kuwait, but is generally interpreted as the ability to exercise decisive influence over strategic commercial decisions, in line with an EU-style functional approach. Neither the Executive Regulations nor the Ministry of Economy have provided specific guidance on licensing agreements. Accordingly, legal certainty remains limited. However, the statutory reference to usufruct rights provides a relatively strong basis for capturing licensing structures that effectively transfer control over an autonomous economic activity.

Key takeaways

None of Egypt, Kuwait, or the UAE expressly address licensing agreements in their merger control regimes. Nevertheless, the broad concepts of control adopted in all three jurisdictions may capture licensing agreements where they effectively transfer control over an autonomous economic activity.

While local guidance remains limited, EU practice provides a useful analytical framework. In particular, exclusivity, duration, and the extent to which the licence transfers an operational business activity are likely to be relevant considerations. A licence will not generally be caught merely because it grants rights to use intellectual property. Rather, the key question is whether the arrangement results in a lasting transfer of decisive influence over a business activity.

Still, the available guidance and decisional practice suggest that their approach would likely be broadly consistent with European Commission practice in this regard. Egypt provides the most developed functional framework, explicitly recognizing control through agreements and contractual arrangements. Kuwait expressly includes rights of use and acquisitions by “any other means”, while the UAE explicitly captures usufruct rights capable of conferring control.

Overall, licence agreements in the context of mergers require careful scrutiny. Adhering to the EU-style analysis—checking exclusivity, duration, and autonomy—will help in Egypt, Kuwait, and the UAE, even as local law emphasizes broader control tests. In each jurisdiction, an exclusive licence that effectively transfers an ongoing business or confers decisive influence is likely to fall within the scope of merger control.



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