



# Exclusivity in Distribution and Agency Arrangements in the UAE

The new UAE Competition Law, Federal-Decree Law 36/2023 includes provisions specifically addressing market segmentation through distribution and agency arrangements. Still, exclusivity in distribution and agency agreements is still permissible under UAE law. In fact, these arrangements are exclusive by law and exclusivity cannot be excluded by agreement.

Pursuant to Art. 7(1) UAE Commercial Agency Law, Federal Law 3/2022 all agents appointed for the UAE are by law exclusive agents for the services and goods they are appointed for in the territory assigned to them. “Agent” within the meaning of the law is not just limited to commercial agents. Instead, it includes both agents—who act as intermediaries securing sales for their principals—and distributors—who purchase from their principals to resell goods or services—(Art. 1 UAE Commercial Agency Law). The territorial scope of an agency or distributorship may be defined as UAE wide or limited to the entire territory of one or several Emirates. Exclusivity can only be restricted in case of a dispute between the principal and the agent or distributor about the termination of the agency or distributor agreement. In this case the UAE Ministry of Economy may approve that goods or services subject to the agreement in dispute be sold through a different agent or distributor. However, the principal must still pay consideration to the old agent or distributor (Art. 9(1) UAE Commercial Agency Law).

The UAE Competition Law, does consider the potential distortionary effect exclusivity in distributor and agency arrangements may have on competition. Allocation of exclusive territory for the supply of goods and services may lead to limitation of supply, increase of prices, or quality of goods and services offered. Furthermore, exclusivity may negatively affect competition

among distributors and agents. Consequently, such arrangements are typically prohibited or restricted by competition legislation. The UAE Competition Law is no different. It restricts territorial or product or customer based segmentation of markets. In doing so, it specifically addresses the issue of market segmentation in distribution and agency agreements.

The UAE Competition Law provides that there shall be provisions prohibiting agreements between undertakings that would distort, lessen, restrict, or prevent competition (Art. 5(2) UAE Competition Law). It goes on to specifically refer to segmentation by geographical area and distribution center (Art. 5(2)(a) UAE Competition Law). However, Art. 5(2) UAE Competition Law is explicitly subordinate to the UAE Commercial Agency Law. Implementing the prohibitions contemplated by Art. 5(2) UAE Competition Law is reserved for the UAE Commercial Agency Law. Hence, the regulation of exclusivity in agency and distribution agreements must be established in the UAE Commercial Agency Law and, thus, is outside of the regulatory scope of the Competition Department at the UAE Ministry of Economy—which serves as the UAE Competition Authority. Limiting potential negative competitive impacts posed by exclusivity in distribution or agency arrangements as contemplated by the UAE Competition Law requires an amendment of and regulation in the UAE Commercial Agency Law. No such amendment has been announced to date. Also, the Competition Department has so far not endorsed such an amendment publicly.

This may be due to the UAE competition regime only having been actively enforced for a brief period. The changes to the UAE Competition Law that caused the Competition Department to actively enforce the country's merger control and antitrust regimes entered into effect in April 2024. Prior to that the Competition Department and the UAE antitrust and merger control regimes were largely dormant. It remains to be seen whether with growing activity of the Competition

Department the matter of exclusivity in distributor and agency agreements will become a point of contention. Until then, exclusivity in distribution and agency agreements is not a concern under UAE law. To the contrary; it remains mandatory.

This is not just an issue from a competition perspective. Mandatory exclusivity also continues to force principles into sticky arrangements with local partners that are difficult and expensive to resolve. This forces companies doing business in the UAE through intermediaries to take procurations. They cannot shield themselves from potentially protracted disputes with their local partners and high separation payments where they want to terminate their engagement. To address the commercial impact this has on their UAE business companies must act. Since they cannot avoid disputes with or payments to their local partners upon termination, they must either accrue reserves during the term of the agency or distributor agreement—by increasing margins which raises prices—or accept lower profitability of or losses in their UAE activities. Hence, ultimately customers and principals foot the bill for UAE law shielding distributors and agents.



## NICOLAS BREMER

### Partner

[nicolas.bremer@bremerlf.com](mailto:nicolas.bremer@bremerlf.com)

Nicolas is a partner and attorney with the regional law firm BREMER where he heads the firm's Antitrust & Merger Control team. He oversees the firm's Riyadh and Cairo representations and has extensive experience in advising international and domestic clients on merger control and antitrust matters as well as broader regulatory M&A matters in Saudi Arabia, the UAE, Egypt and the wider Near and Middle East. He works in English, Arabic and German languages.