

2004

Law No. 33

Of the Year 2004

The Competition Law

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Article 1

This Law is called (The Competition Law of the year 2004) and shall take effect upon its publication in the Official Gazette.

Definitions

Article 2

The following terms and phrases appearing herein shall have the meanings assigned thereto hereunder unless the context denotes otherwise:

The Ministry: The Ministry of Industry and Trade.

The Minister: The Minister of Industry and Trade.

The Directorate: The Competition Directorate at the Ministry.

The Director: The director of the Competition Directorate.

The Court: The court with competence to hear competition cases in accordance with the provisions of this Law.

The Enterprise: Any person, natural or juristic, carries out economic activities, or any grouping of such persons.

Market: The product or service or all products or services which are, in view of their price, characteristics and uses, interchangeable and mutually replaceable to meet a particular need of the consumer in a particular geographical location wherein compatible competition conditions exist.

Dominant Position: The condition in which an Enterprise is able to control and affect the activity of the market.

The Law's Scope of Application

Article 3

B- The provisions of this Law shall apply to all production, commerce, and service provision activities in the Kingdom, as well as to any economic activities occurring outside the Kingdom and having an effect inside the Kingdom.

Prices of Products and Services

Article 4

Prices of products and services shall be set in accordance with the conditions of market rules and the principles of free competition, with the exception of the following:

A- The prices of basic materials specified in accordance with the Industry and Trade Law or any other Law.

B- Prices set by a resolution of the Council of Ministers through temporary measures to deal with exceptional circumstances or an emergency or a natural disaster, provided that such measures be reviewed within a period not exceeding six months after the beginning of the application thereof.

Anti-Competitive Practices

Article 5

A- Practices, alliances and agreements, explicit or implicit, that prejudice, contravene, limit, or prevent competition, shall be prohibited, especially those whose subject or aim is to:

- 1- Fix the prices of products, services, or conditions of sale, and the like.
- 2- Fix quantities of production or service provision.
- 3- Share the market on the basis of geographical regions or quantities of sales or purchases or customers or any other basis that negatively affects competition.
- 4- Set barriers to entry of Enterprises into the market or eliminate them therefore.
- 5- Collusion in tenders or bids, whether in overbidding or underbidding, but it shall not be considered collusive to submit joint offers in which the parties announce such joint offer ab initio, and without the goal of such joint bidding being to prevent competition in any way.

B- The provisions of paragraph (A) above shall not apply to agreements with weak effect wherein the total share of the Enterprises party thereto shall not exceed a rate to be set by instructions issued by the Minister, and which shall not exceed 10% of total transactions in the market, and provided that such agreements do not include procedures that fix price levels and market sharing.

Article 6

An Enterprise with a Dominant Position in the local market or a significant part thereof is prohibited from abusing this Dominant Position in order to prevent, limit or weaken competition including the following:

- A- Fixing or setting prices or conditions of resale of products or services.
- B- An activity or action which leads to setting barriers of entry of other Enterprises to the market, or their elimination there from, or their exposure to gross losses including loss selling.
- C- Discrimination between customers in similar contracts with regard to price of products or services or conditions of sale or purchase.
- D- Forcing any of its customers to refrain from dealing with a competing Enterprise.
- E- Attempting to monopolize certain resources necessary for a competing Enterprise to carry out its activities or to purchase a particular product or service to an extent that leads to increasing the price thereof on the market or preventing its decrease.
- F- Refusing, without objective grounds, to deal with a particular customer under the usual commercial conditions.
- G- Tying the sale of a product or the provision of a service to the purchase of another or others or the purchase of a limited amount or a request for the provision of another service.

Article 7

A- Practices arising out of the application of a Law and practices falling within the ambit of temporary measures instituted by the Council of Ministers to deal with exceptional circumstances, emergency situations or natural disasters shall not be considered anti-competitive in the sense intended in Articles 5 and 6 of this Law, provided that such measures be reviewed within a period not exceeding six months after the beginning of the application thereof.

B- Practices and arrangements exempted by the Minister from the application of Articles 5 and 6 of this Law by a reasoned decision on the basis of a recommendation of the Director shall not be considered anticompetitive if they lead to positive results, with a common benefit that cannot be achieved without this exemption, including the improvement of the competitive ability of Enterprises, or production or distribution systems, or providing certain benefits to the consumer.

C- The Minister may apply the exemptions referred to in paragraph (B) above to a class of practices or conditions of contract or to practices or arrangements or conditions of contract of particular Enterprises, provided that such Enterprises shall request to be granted this exemption in accordance with a form adopted by the Minister for that purpose.

D- The applicant for the exemption referred to in paragraph (C) of this Article shall be provided with a notice evidencing the completion of the application, and the Minister shall review and dispose of the application within a period not exceeding ninety days after the date of the notice. The exemption decision or a summary thereof shall be published in the Official Gazette is appealable before the Supreme Court of Justice.

E- The Minister may limit the authorization of such practices to a fixed period of time or subject them to a periodic review. He may also withdraw such authorization if the Enterprise contravenes the conditions for its granting. Practices Detrimental to the Fairness of Commercial Transactions.

Article 8

A- A producer, importer, wholesaler or service provider may not:

1- Set a minimum resale price for a product or service whether directly or indirectly.

2- Subject another party to or receive therefrom preferential and unjustified prices or conditions of sale or purchase in such a manner as to impart upon such party a benefit as regards competition or cause harm thereto.

B- 1- The resale of a product as is at a price below its actual purchase price plus the taxes and charges and transport costs applicable thereto, if any, is prohibited if the purpose of such a sale is to limit competition.

2- For the purpose of this paragraph, the actual purchase price shall mean the price set in the invoice after deduction of the discounts specified in the same invoice. The aforementioned restriction shall not apply to perishable goods and allowed reductions on sales for the purpose of liquidation of a business, or to restock at lower prices.

Economic Concentration

Article 9

A- For purposes of this Law, any activity resulting in the full or partial transfer of ownership of or interest in property or rights or shares or obligations of an Enterprise to another, and which may enable an Enterprise or a group of Enterprises to control, directly or indirectly, another Enterprise or group of Enterprises is considered an economic concentration operation.

B- The accomplishment of economic concentration operations impacting the level of competition in the market by causing or enforcing a Dominant Position shall depend upon receiving the approval of the Minister in writing, if the total share of the Enterprise or Enterprises concerned in the economic concentration operation exceeds 40% of the total transactions in the market.

C- Notwithstanding anything contained in any other legislation, authorities responsible for licensing economic concentration operations in any sector shall, prior to issuing their final decision, seek the opinion of the Minister in writing regarding the extent of the effect of such operations on the level of competition.

D- A party or authority shall inform the Ministry of any information it obtains regarding economic concentration operations that are subject to the provisions of paragraph (B) of this Article.

Article 10

A- Enterprises wishing to carry out economic concentration operations which fall within the ambit of paragraph

(B) of Article 9 of this Law shall submit a petition in this regard to the Directorate, on the form adopted by the Ministry, within thirty days after having reached a draft agreement or an agreement on the economic concentration activity. Attached to the petition shall be:

1- A copy of the articles and memoranda of the Enterprises concerned.

2- A copy of the draft contract or agreement on the concentration.

3- A list of the most important products and services in which the concerned Enterprises are involved and their shares thereof.

4- A report on the consequences of the operation, especially its positive effects on the market.

5- Financial statements for the two most recent fiscal years of the Enterprises concerned with economic concentration operation and their branches.

6- A list of the shareholders or partners of the concerned Enterprises and the share of each therein.

7- A list of their officers, members of their management boards, or members of their boards of directors.

8- A list of the branches of each Enterprise.

B- The Enterprises may also include with the petition any matters they deem necessary relating to obligations or suggestions aiming to minimize the possible negative impact of the economic concentration operation on the market.

C- 1. Subject to the provisions of paragraph

(C) of Article 11 of this Law, the Directorate may request, in writing and for one time, additional information or documents relating to the economic concentration agreement and the parties thereto, and upon receiving the requested shall issue a notice evidencing the completion of the information and documents, provided that the issuance of such a notice shall not affect the right of the Directorate to request further information or exercise regulatory powers.

2. The time frames, procedures, and all relevant matters for issuing the notice mentioned in clause (1) of this paragraph shall be set by instructions issued by the Minister for this purpose and shall be published in the Official Gazette.

D- The Directorate shall publish, in two daily newspapers at the expense of the applicant, an announcement regarding the petition for economic concentration submitted in accordance with paragraph

(A) hereof. The announcement shall include a summary of the subject of the petition and an invitation to any interested party to present its opinion in regard of the petition within fifteen days after the date of the announcement.

E- The Minister may, after consultation with the parties concerned, take any provisional procedures until such time as the request submitted in accordance with paragraph (A) above is disposed of.

Article 11

A- The Minister may, upon recommendation of the Director, issue a reasoned decision regarding petitions submitted by virtue of the provisions of Article 10 hereof as follows:

1- Approve the economic concentration operation if it does not negatively impact competition, or has positive economic benefits that outweigh any negative impact on competition, such as leading to a lowering of the price of services or products, or providing employment

opportunities, or encouraging exports or attracting investment, or supporting the ability of national Enterprises to compete internationally.

2- Approve the economic concentration operation provided that the Enterprises concerned undertake to meet conditions specified by the Minister for that purpose.

3- Deny the economic concentration operation and order the cancellation thereof and the return to the status quo ante.

B- In all cases appearing in paragraph (A) of this Article, the decision of the Minister shall include a summary of the economic concentration operation and its effect on competition in the market, including its economic impact, and the conditions and obligations required from the Enterprises, if any. The decision or a summary thereof shall be published in at least two local daily newspapers.

C- The Minister shall issue his reasoned decision regarding the economic concentration operation within a period not exceeding one hundred days starting on the date of issuing the notice evidencing the completion of the application.

Enterprises involved in the economic concentration operation shall not commit any actions or practices that may lead to rendering the economic concentration operation irreversible, or may alter the market structure, otherwise these actions and practices shall be annulled through a court decision.

D- The Minister may withdraw his previous approval in any of the following cases:

1- If the concerned Enterprises violate any of the obligations or conditions upon which the approval was granted.

2- If it becomes apparent that the basic information upon which the approval was based was false.

E- The Minister may take any action deemed reasonable to counter any economic concentration case which no application with its regards has been submitted, or if it was in violation of this Law.

F- Decisions issued by the Minister by

virtue of the provisions of this Article shall be notified to the concerned parties and they may appeal such a decision to the Supreme Court of Justice.

Article 12

A- The Directorate shall, in coordination