AN EYE ON THE COMPETITION

The UAE Competition Law Implementing Regulations are about to come into force which as, Diana Froyland of Hadef & Partners explains, will mean sharper rules and more scrutiny by the Authorities.

"Cabinet Decision No. 59/2026 contains the Implementing Regulation to Federal Decree-Law No. 36/2023 (the UAE Competition Law) and repeals and replaces the prior 2014 Competition Law Implementing Regulations," states Diana Froyland of Hadef & Partners. "These new regulations update the procedure and materially expand the practical detail on how the UAE competition regime will operate in areas including dominance, predatory pricing, exemptions, economic concentrations, complaints, investigations, settlements, and coordination with local and sectoral regulators."

Diana Froyland
Senior Counsel
Hadef & Partners

DOMINANCE GUIDANCE

"A key change is there is now more guidance on what it means to hold a dominant position which is capable of harming a relevant market," Diana Froyland adds."It should be noted analysis here is no longer confined to market share alone. Other key factors also assessed now include technological leadership, business model advantages, the extent of financial resources, geographic concentration, and the ability to impose conditions on, or otherwise influence, the relevant market in a way that distorts competition."

"Cabinet Decision No. 59/2026 also requires an assessment to be made of whether a business or undertaking can act independently of competitive constraints, the inability of competitors to constrain the undertaking, the absence of effective competitive constraints, the effect of an undertaking's presence in adjacent or related markets, and the extent to which its conduct affects consumer choice, as well as the quality and availability of products or services, and access to them at fair prices," Diana Froyland explains. "This expands the basis on which the UAE Competition Authority can assess market power and conduct. Businesses should no longer assume that remaining below a particular market share threshold will shield them from competition scrutiny. In practice, this change is likely to matter most in concentrated, innovative or specialist markets, where competitive influence can be reflected in factors beyond just market share."

PREDATORY PRICING

"Cabinet Decision No. 59/2026 has also introduced practical guidance on predatory pricing; an anti-competitive strategy where a dominant business intentionally sets its prices below cost to try to drive

competitors out of the market," Diana Froyland states. "Here the key relevant concepts are Average Variable Cost (AVC) and Average Total Cost (ATC). AVC covers the costs that increase as more units are produced or sold, e.g. packaging, shipping, or commissions, but does not include fixed overheads, e.g. rent, equipment costs, or salaried staff. In contrast, ATC includes both variable costs and a share of the business's fixed overheads. Pricing below AVC or marginal cost is presumed predatory unless there is an objective and legitimate commercial justification for this, which is unrelated to eliminating, restricting or distorting competition. This is because when pricing is below AVC, a business is not covering its immediate operational costs or contributing to its fixed costs. Pricing above AVC but below ATC may still be treated as being predatory if there is evidence of anti-competitive strategy or intent. In this scenario, the business may still be covering the direct cost of each unit produced, but not a fair share of its rent, salaries or other overheads. That will not automatically make the pricing unlawful, but it can still raise concerns if the pricing forms part of an exclusionary strategy."

"Cabinet Decision No. 59/2026 also refers to other factors relevant to assessment of predatory pricing, including if the undertaking is dominant, how its prices compare with prices of identical or substitutable products, how its prices compare with production, processing, marketing or distribution costs, whether its conduct has the object or effect of excluding competition, and if losses could later be recouped through higher prices," Diana Froyland explains. "Not all low pricing is problematic, and Cabinet Decision No. 59/2026 recognises this, citing promotional or introductory offers, seasonal offers, clearance of obsolete or perishable stock, lawful price matching and genuine cost efficiencies as legitimate commercial justifications. Businesses now have a much clearer sense of where the real risk lies. Pricing below AVC is the clearest red flag, while pricing between AVC and ATC remains a material

RELEVANT LEGISLATION

Article 3(1)(a) of Cabinet Decision No. 59/2026

For the purposes of Clause (1) of Article (8) of the Decree-Law, the criteria governing the prohibition of predatory pricing to consumers shall be as follows:

(a) Prices below the Average Variable Cost (AVC) or Marginal Cost shall be presumed predatory, unless the Undertaking establishes that such pricing is objectively justified by legitimate economic reasons unrelated to the elimination, restriction, or distortion of competition.

(Source:Lexis Middle East Law)

WHAT BUSINESSES SHOULD DO NOW?

Preparation for merger control
Cabinet Decision No. 59/2026 provides more guidance but also requires more preparation so businesses must consider merger control early in economic concentration discussions.

Pricing and discounting
Review pricing and discounting strategies, particularly where low pricing could be characterised as exclusionary.

Exemption and controls
Revisit whether any existing arrangements merit exemption analysis, reassess merger control readiness and timing assumptions, and update internal procedures for complaints, investigations, document preservation and regulatory engagement.

risk area if there is evidence of an exclusionary strategy. Businesses using aggressive discounting, launch pricing or reactive price cuts must therefore document the commercial rationale for those decisions more carefully than before."

EXEMPTIONS

"Another area which is now much clearer is exemptions," Diana Froyland states. "Federal Decree-Law No. 36/2023 allows agreements or practices to be exempted where this is necessary to promote economic development, improve performance and competitiveness, develop production or distribution systems, or generate consumer benefits, provided they do not go beyond what is necessary or eliminate competition in the relevant market. Cabinet Decision No. 59/2026 now prescribes in much greater detail what an exemption applicant must submit, including the agreement or a written description of the practices, details of relevant products or services, constitutional and licensing documents, audited financial statements, sales data, shareholder and board details, and a written economic assessment explaining why the exemption criteria are met. The exemption route is now clearer, but also more resource-intensive. Businesses considering an exemption will now need to prepare earlier and have stronger evidence."

MERGER CONTROL

"Merger control is one of the most commercially important aspects of the competition regime area," Diana Froyland states. "Although materially unchanged the process is now more fully articulated in Cabinet Decision No. 59/2026. Federal Decree-Law No. 36/2023 requires applications to be submitted at least 90 days before the completion of the transaction if one of the prescribed thresholds is met. Under Cabinet Decision No. 3/2025, a threshold is met if the total annual sales of the concerned undertakings in the relevant market within the UAE exceed 300 million AED during its last fiscal year, or their combined market share exceeds 40% of total transactions in the relevant market within the UAE. Cabinet Decision No. 59/2026 also requires a more detailed filing package, including constitutional and licensing documents, the transaction agreement, audited financial statements, ownership details, proof of fee payment and a report on the economic aspects of the concentration."

"The report must cover the relevant market, competitors and market shares, principal customers, affected markets, pro-competitive effects, commitments or mitigation measures, and the likely effect on prices, quality, availability and consumer choice. The review process is also more elaborate. The Authority may request further information from applicants, hold meetings, publish basic information about the transaction on its website, receive views from interested parties, process objections and conduct on-site verification. The process elaboration however, does not mean greater certainty on timing - Cabinet Decision No. 59/2026 introduces detailed time schedules for some parts of the process, but Federal Decree-Law No. 36/2023 expressly allows the review time limit to be interrupted. This, and the fact that, if no decision is issued within the applicable period, the concentration is deemed rejected not approved, may compel parties to take a more cautious approach to transaction timetables, conditions precedent, and longstop dates."

COMPLAINTS

"Technical opinions are another important feature of the competition framework," states Diana Froyland. "Federal Decree-Law No. 36/2023 allows the Authority to request technical opinions from competent authorities and sectoral regulators on complaints, exemptions and economic concentrations. Cabinet Decision No. 59/2026 now states that those requests must contain the essential facts, the relevant practices and the precise issue on which the opinion is sought. This should improve analytical depth, particularly in regulated sectors, but it is another reason timing may become less predictable. Cabinet Decision No. 59/2026 has also formalised the complaints process. Any interested party, including consumers and public authorities, may submit a complaint on practices that affect their rights or interests. Complaints must contain specified information, including the complainant and respondent's identity, a detailed description of the alleged anti-competitive conduct, legal provisions said to have been infringed, supporting evidence, details of the harm caused or likely to be caused, and the remedy sought. The Authority may request additional information and can reject a complaint if there are insufficient grounds to investigate it or the matter falls outside its jurisdiction. If a complaint is accepted, the respondent must be notified, and a more structured investigation follows, potentially involving information requests, hearings, inspections, a preliminary report and an opportunity for parties to comment before a final decision is issued. It may lead to better prepared complaints, but there is a risk of more tactical complaints. In practice, businesses may face greater procedural exposure if they are investigated, which in itself raises the stakes for internal compliance, record-keeping and regulatory engagement by businesses."