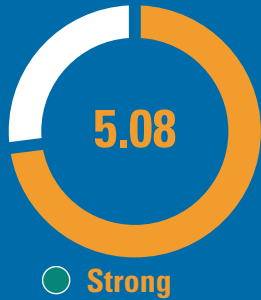




ARAB BUSINESS LEGISLATIVE FRAMEWORKS



COMPETITION

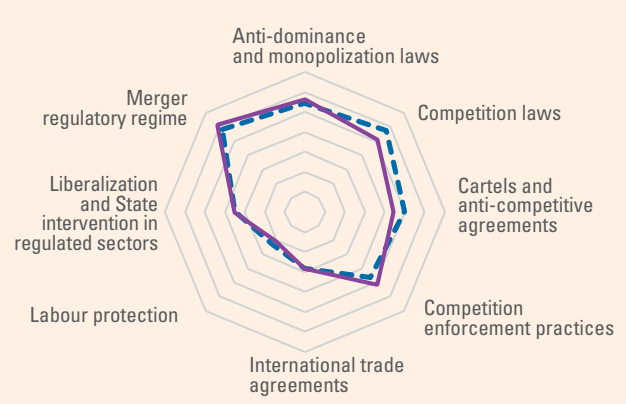


● Very strong ● Strong ● Developed ● Moderate ● Basic ● Weak ● Very weak

COMPONENTS	2020	2023
Anti-dominance and monopolization laws	5.44	4.90 ▼
Competition laws	4.45	4.45 ►
Cartels and anti-competitive agreements	5.00	4.38 ▼
Competition enforcement practices	5.44	5.73 ▲
International trade agreements	4.20	5.60 ▲
Labour protection	3.50	4.00 ▲
Liberalization and State intervention in regulated sectors	3.50	3.50 ►
Merger regulatory regimes	4.67	7.00 ▲

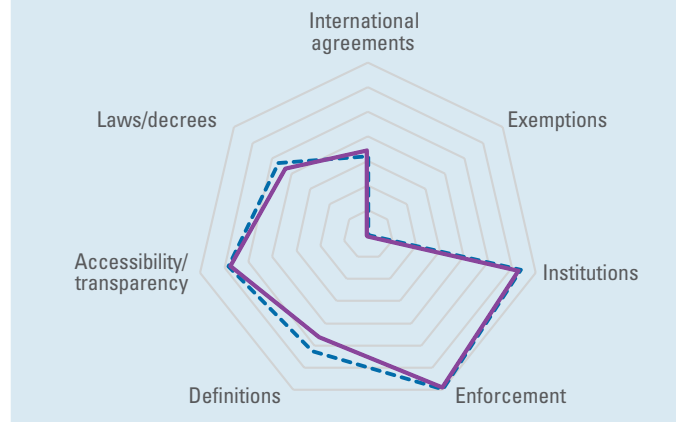
COMPONENTS

2020 2023



ELEMENTS

2020 2023



The competition regime in Bahrain is managed by Law No. 31/2018 and Regulation No. 72/2019 (regulatory controls on economic concentrations). No amendments occurred in the past two years.



Competition laws

Article 1 of the Competition Law in Bahrain includes clear definitions of several competition concepts, but it does not cover other concepts such as collusion, cartel and crowding. Moreover, it can be inferred from article 3 that the aim of policymakers is to guarantee fair competition practices between all business players in the market by prohibiting dividing markets, limiting production and collusion practices. However, articles 4 and 5 allow for exceptions for companies and small and medium-sized

enterprises (SMEs) based on specific conditions and for a specific period. For instance, exceptions are allowed to agreements that will assist technological development and consumer welfare among other things. It is worth noting that the Competition Authority can retract the exception if enterprises didn't comply with the imposed conditions/restrictions. Also, articles 7 and 10 allow the minister of commerce to grant exceptions, based on specific conditions, and for the general interest.



Anti-dominance and monopolization laws

While dominance is defined in Article 1 of the Law, monopoly is not defined by any article. Monopolies and abuse of dominance are prohibited in Articles 8 and 9 of the Competition Law, which enumerate other prohibited practices, such as market barriers, controlling production, fixing prices, distinguishing between agreements/contracts based on prices and/or quality, and halting deals which will lead to the exclusion of

competing firms from the market, or their exposure to losses. Also, the Law specified that a firm is considered in a dominant position when its shares in the market exceed 40 per cent (for two firms to be considered dominant, they must have 60 per cent of the shares). Finally, articles 49, 53 and 54 list the sanctions in case of breaching the provisions targeting anti-dominance and monopolies.



Cartels and anti-competitive agreements

According to article 3 of the Competition Law, anti-competitive agreements, such as concentrations, conventions, understandings and collusions are prohibited. Moreover, some anti-competitive practices are enumerated, such as barriers to market entry, fixing prices and limiting and controlling production.

It is worth noting that Article 4 opens the door for exception regarding Anti-Competitive agreements. Also, cartels are neither defined nor mentioned in the Competition Law (even though practices that constitute cartels are listed).



Competition enforcement practices

In reference to the provisions of article 17 of the Competition Law, a financial and administrative independent competition authority is established, and it operates under the supervision of the minister of commerce. Also, article 2 stipulates that the provisions are

enforced on business activities inside Bahrain and outside it if they impact the internal market. Moreover, article 31 allows every stakeholder to submit a complaint to the authority if he/she has reason to believe that any violation of the provisions of the law has occurred.

Article 20 states the prerogatives of the council, such as investigating competition cases, advising on competition matters, assessing concentration practices, taking interim measures to suspend presumed restrictive practices under investigation, advising on reglementary draft provisions in relation to competition, and gathering and developing an integrated database and information for the assessments. Also, the Competition Authority investigates whether the referred practices constitute violations of the provisions of articles 8 and 9 of this law (anti-competitive agreement/abuse of dominance) or may be justified by the application of article 9 of this law (exceptions). Moreover, pursuant to article 50, the board of directors refer the application to the public

prosecutor if the investigation found that the activities constitute a criminal offense. Articles 49, 53 and 54 refer to a categorized sanction regime in case of infringements (fines and/or imprisonment).

Pursuant to articles 30 and 41 of the Competition Law, all information and data shared must be kept confidential and the council can investigate on its own (ex officio). These two articles will ensure cooperation between private businesses and the council, while guaranteeing that their data won't be shared publicly and that there is strong enforcement and control of the market. Also, to further guarantee transparency of officers, the Law, through article 27, prohibits any conflict of interest.



International trade agreements

This assessment was based on the trade agreement between the Gulf Cooperation Council and Singapore. The following highlights the important points of this agreement.

Chapter 9 regulates the settlement of disputes arising from the provisions of the agreement, which is to take place through arbitration. The next item of assessment was identifying if there are conflicts between internal subsidization policies and provisions of the trade agreement. According to article 5.2 of the trade agreement,

provisions are not applied to subsidies or grants provided by a party. Therefore, there is no conflict between provisions.

Finally, the indicator related to exemptions in trade deals is still negative due to article 6.3. It's worth noting that in trade agreements, such exemptions are understandable since they are strongly related to the sovereignty of the State (debt and government bonds) and/or to internal economic policies that the Government can consider as top priorities.



Merger regulatory regimes

Chapter 4 of the Competition Law of Bahrain addresses the economic concentration regime. In reference to the provisions of article 11, economic concentration has been defined and several practices that lead to a change in control in companies have been mentioned (such as mergers, direct or indirect control and joint ventures).

According to articles 13 and 14 of the Law and Regulation No. 72/2019 (regulatory controls on economic concentrations), a merger notification regime is established. Moreover, companies must notify within 30 days before signing the memorandum of understanding (article 2 of Regulation 72/2019). Also, according to article

14, in order to approve, conditionally approve or reject, the Competition Authority has 90 days to study and assess the effect of the transaction on competition. It is worth noting that several other criteria for the assessment must be included.

Article 14 mentions that the authority may cancel its approval if it finds that the information provided are incorrect, misleading and fraudulent. However, article 15 opens the door for exemptions by allowing the minister to grant approval (based on conditions) for the general interest. This exemption also allows and strengthens the State intervention practice in the market.



Labour protection

Despite the protection ensured through article 7 of the labour law for employee contracts in mergers and acquisitions transactions, there are still several shortcomings regarding labour protection. Policymakers failed to include any labour protection

provisions, such as the non-compete clause, even though it would have provided protection for employees, especially since articles 38, 191 and 193 of the commercial code prohibit board members from undertaking competitive activities with competitors.

RECOMMENDATIONS

- The Competition Law should include definitions for several basic anti-competition practices, such as monopoly, cartel, transparency and veto power (in mergers and acquisitions).
- The Competition Authority should be independent of ministers and/or political figures.
- Further cooperation is needed, including the development of a memorandum of understanding with other competition authorities (regional and international).
- Markets should be liberalized for some vital sectors, (especially where State-owned enterprises operate), and State interventions should be based on specific conditions/circumstances.
- Stricter conditions for allowing exemptions should be introduced, with sanctions for non-compliance.
- A clear economic concentration regime must be established. Studies on the market (the impact of economic concentration) should include clear criteria and conditions (effect on prices, investments, veto power, etc.). Also, a clear definition for vertical and horizontal agreements should be included.
- Labour protection provisions should be added, such as the non-compete clause.
- A robust sanction regime, with a deterring effect, should be established.
- Publishing studies and/or decisions by the Competition Authority is important to ensure transparency.

