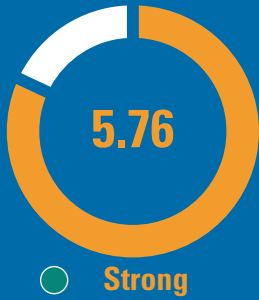
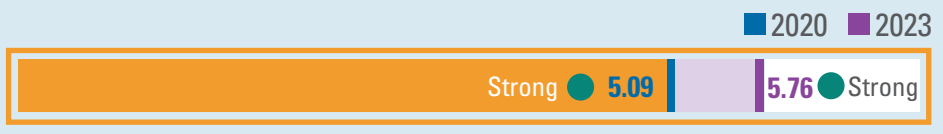




ARAB BUSINESS LEGISLATIVE FRAMEWORKS

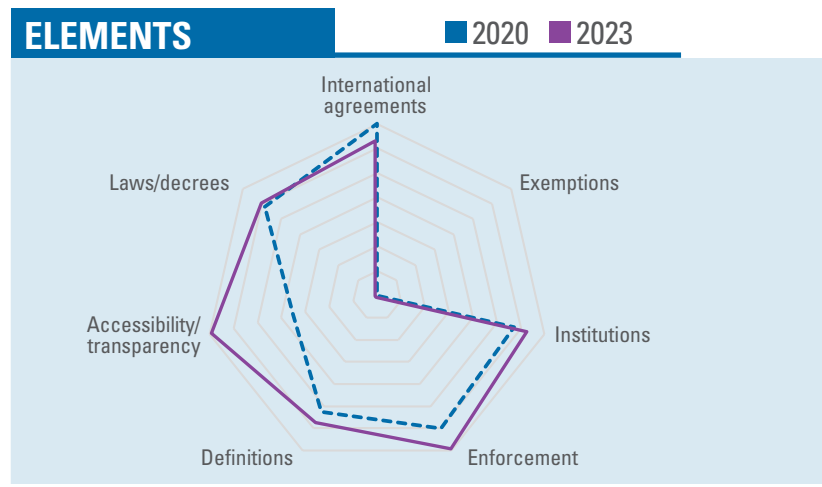
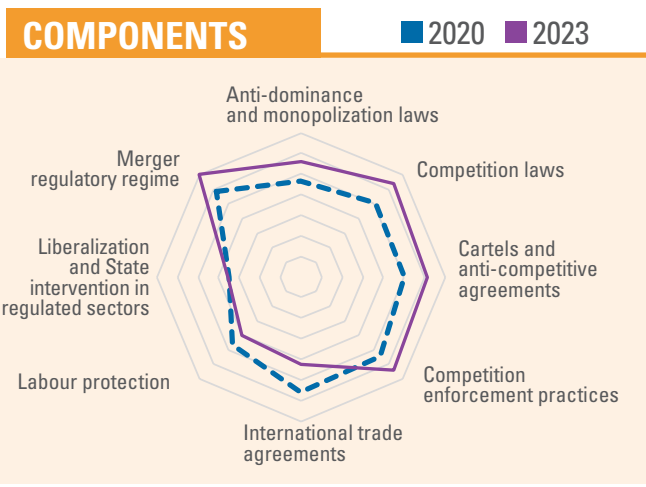


COMPETITION



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

COMPONENTS	2020	2023
Anti-dominance and monopolization laws	● 4.67	● 5.60 ▲
Competition laws	● 5.09	● 6.36 ▲
Cartels and anti-competitive agreements	● 5.00	● 6.13 ▲
Competition enforcement practices	● 5.44	● 6.36 ▲
International trade agreements	● 5.60	● 4.20 ▼
Labour protection	● 4.67	● 4.00 ▼
Liberalization and State intervention in regulated sectors	● 3.50	● 3.50 ▶
Merger regulatory regime	● 5.83	● 7.00 ▲



The implementation of the new Competition Law of Kuwait and its implementing regulations is a major development in the country's competition policies. It made those policies clearer and more in line with the evolving trends in internal and regional markets. Moreover, the Competition Protection Agency has been active, since 2021, in enforcing the law and its regulations.

The country's higher score reflects the adoption of the Competition Law No. (72/2020), its implementing regulations adopted in July 2021 by Decision No. 14/2021 and Resolution No. 25/2022.



Competition laws

Articles 1 and 2 of the new Competition Law reiterate the legal and economic principles in Kuwait by guaranteeing the freedom to engage in economic activity unless that activity negatively impacts competition. The law provided several definitions of competition policies and practices are mentioned, such as horizontal and vertical agreements, price fixing and bid rigging.

Articles 4 to 6 of the implementing regulations clarify that the Competition Agency is empowered to ensure fair competition in Kuwait, and that it is financially and administratively independent.

Both the law (articles 26 to 38) and its implementation regulations (chapter 3) introduce new mechanisms for enforcement (For example: investigations and market studies). Overall, it seems that policymakers in Kuwait are

adopting similar mechanisms and criteria to those in the European Union.

However, article 4 of the law still provides exceptions for state-owned enterprises (SOEs) and public utilities, and articles 53 to 68 of the implementing regulation clarify the process of assessing a company's request for exceptions (several conditions must be fulfilled, such as consumer benefits, maintenance of the free flow of products into the market or out of it, and that the agreement should not constitute the creation of a cartel). Article 64 states that the Competition Agency monitors the commitments of parties who benefit from exceptions (especially companies performing economic activities), and in case of failure to fulfil commitments, the Competition Agency can retract the exception it had approved.



Anti-dominance and monopolization laws

The law and regulations list and prohibit monopolistic practices. Article 8 of the law and articles 51 and 52 of the implementing regulation clearly define the concept of dominance. Policymakers have differentiated between the concepts of dominant position and abuse of dominance, considering the latter a prohibited practice.

Article 33 of the law enables the Public Prosecutor's office to investigate and prosecute crimes and malpractices (such as the abuse of dominance). Article 34 of the law states clear sanctions for breaching the law. A disciplinary council has been established to further ensure the diligent enforcement of the law and protection against unfair competition.



Cartels and anti-competitive agreements

Articles 1 and 5 of the law define and list vertical and horizontal agreements as well as economic concentration. The law prohibits these agreements as they have the

potential to be anti-competitive and/or can lead to the establishment of cartels.



Competition enforcement practices

Articles 26 to 38 of the law and articles 28 to 118 of the implementing regulation explain, in detail, the mechanisms for competition enforcement (sanctions, investigations, market studies, reconciliation practice, the establishment of the disciplinary council, procedures and conditions for amicable settlements).

Amendments have given the Competition Agency the power to conduct an ex officio investigation. Officers are required to maintain the confidentiality of information, data and documents during an investigation. Box 1 highlights three decisions taken by the Competition Agency in Kuwait.

Box 1 Enforcement practices

On 30 May 2023, the disciplinary board of the Competition Protection Agency decided to penalize a company that operates in booking applications for courts or pitches at a rate of 5 per cent of the total revenues. The company violated the law as it completed an economic concentration process before applying to the agency.

On 3 July 2022, following a market study, the Competition Agency granted a conditional approval for the completion of an economic concentration between Kuwait Finance House and Ahli United Bank. The agency's decision emphasized that the concentration should not entail any barriers to market entry, the creation of a monopoly, or any other unfair practice. Moreover, the agency required the parties to respect the principle of fair and equal treatment of competitors. Finally, the decision stressed that parties of the economic concentration shall be monitored and assessed for a period of one year post-closing, especially in terms of prices and quality of services delivered.

In November 2021, the agency announced its conditional approval of the acquisition of Kuwait-based Zajil Telecom by Kalaam Telecom, a Bahraini company. The approval was subject to monitoring the prices and quality of services for a period of one year post-closing. The agency asked the companies to provide documents, such as copies of their customer contracts.



International trade agreements

This assessment was based on the trade agreement between the Gulf Cooperation Council and Singapore. The assessment sought to identify if there are conflicts between internal subsidization policies and the provisions of the trade agreement. According to article 5.2 of the trade agreement, provisions do not apply to subsidies or grants provided by a party. Therefore, it can be inferred that there is no conflict between provisions.

Last, the indicator related to exemptions in trade deals is still negative due to article 6.3. It is 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 regime

Given the importance of merger and acquisition business transactions for competition, articles 10 to 14 of the Competition Law (72/2020) and articles 69 to 86 of the implementing regulation (2021) sought to address loopholes relating to these transactions. Assessments now take into account the change in the control concept while clear criteria and procedures have been established for the assessments, such as documents that should be included in the application, the formal examination and third-party objections.

Article 84 of the implementing regulations clarifies the criteria for assessing economic concentration, especially at the market study phase. The criteria include, for example, studies on the market share of each party, customs barriers, impact on prices, barriers for competitors, and impact on consumer interests.

Last, a pre-merger notification regime has been established through articles 76, 77 and 78 of the implementing regulations. The purpose of the pre-merger notification is to prevent the achievement of merger and acquisition transactions that could, immediately or potentially, threaten consumer interests, fair competition and market stability. To further clarify the concentration notification provision, resolution No. 26/2021 has been issued, and referred to the following three thresholds that require merger parties to apply for approval:

1. If one of the parties had achieved annual sales in Kuwait that exceed 500,000 Kuwaiti Dinars (KD).
2. If the parties in the concentration had achieved accumulated annual sales of more than KD 750,000.
3. If the value of the registered assets of the parties in the concentration in Kuwait exceeds KD 2,500,000.



Labour protection

Article 50 of the Labour Law (6/2010) ensures basic protection for employees during merger transactions. However, as employees are usually the more vulnerable party in any

transaction between companies in the market, more protection policies are needed. The policies should include a non-compete clause in the Competition Law, or in any other relevant Law.

RECOMMENDATIONS

- There should be a reference to the structural independence of the Competition Agency in either the Competition Law or the implementing regulations.
- The concepts of monopoly and cartel should be clearly defined in the Competition Law or implementing regulations.
- Exemptions for State-owned enterprises should be re-considered, especially that these exemptions also apply to economic concentrations.
- Articles 53 to 68 allow exceptions based on requests. There should be clear and strict conditions on exemptions. For example, sanctions should be added for non-compliance, and the right to object should be granted for third parties.
- More protection policies are needed for employees, including, for example, defining the non-compete clause and the role of trade unions in merger and acquisition transactions.
- Markets should be liberalized for some vital sectors, (especially where State-owned enterprises operate), and State interventions should be based on specific conditions/circumstances.

