

Merger Control

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Overview

The merger control legal regime in Oman is provided under article 11 of Oman Sultani Decree No. 67/2014 on the Issuance of the Competition and Anti-Trust Law and Oman Ministerial Decision No. 18/2021 on the Issuance of the Implementing Regulation of the Competition Protection and Monopoly Prevention Law issued by the MOCIIP. In accordance with article 11 of Oman Sultani Decree No. 67/2014, any person intending to take any action resulting in an “economic concentration” is required to submit an application to the CPMP Centre, which is a part of the MOCIIP, for its prior review and approval. Economic concentration is any act, agreement, arrangement, merger, or consortium that renders the parties to such act or arrangement in a dominant position (i.e., control or influence in the relevant market by acquisition of more than 35% of the market share of the relevant market).

No notifiable transaction can be completed or implemented unless an application has been submitted to the CPMP Centre for its review and approval. The CPMP Centre is required to decide on an application within 90 days from receipt failing which the application is deemed to be approved.

Definitions

- *CPMP Centre*: The Competition Protection and Monopoly Prevention Centre established pursuant to Oman Sultani Decree No. 2/2018 on the Establishment of the Centre for Competition Protection and Monopoly Prevention and the Issuance of its Regulation.
- *MOCIIP*: The Ministry of Commerce, Industry and Investment Promotion of Oman.

Practical Guidance

Overview of merger control legal framework

Oman Sultani Decree No. 67/2014 (in particular article 11 of Oman Sultani Decree No. 67/2014) sets out the legal framework for merger control in Oman. Oman Sultani Decree No. 67/2014 applies to all natural and legal persons engaged in economic or commercial activity in Oman and also to economic or commercial activity that occurs outside Oman but has the ability to affect competition in Oman. Accordingly even transaction(s) executed outside of Oman that have the potential to impact competition in Oman can fall within the ambit of Oman Sultani Decree No. 67/2014 and be subject to Oman's merger control regime.

In accordance with article 11 of Oman Sultani Decree No. 67/2014, any person intending to take any action resulting in an “economic concentration” is required to submit an application to the CPMP Centre for its review and approval of the said action. The term “economic concentration” is defined in article 1 of Oman Sultani Decree No. 67/2014 as any act resulting in partial or whole transfer of assets, shares, dividends, interests, rights or obligations assumed by one person to another or the establishment of consortiums, mergers, consolidation of two or more managements within one joint management in such manner that directly or indirectly renders such person or groups of people in a dominant position. The definition of economic concentration is wide enough to include joint ventures including non-operational, co-operative joint ventures.

The term “dominant position” is defined in article 1 of Oman Sultani Decree No. 67/2014 as the ability of any person or group of persons directly or indirectly to control or influence a relevant market as by acquiring more than 35% of the market share of a relevant market.

Article 4 of Oman Ministerial Decision No. 18/2021 provides that control and influence in a relevant market exist in the following instances:

- if a person's market share in a relevant market exceeds 35% of the relevant market - this market share is calculated taking into account the relevant product factor and the geographical area factor over a period of time; and
- the person's ability to affect or influence the prices or the size of products supplied in a relevant market without competitors being able to limit the influence on prices or the size of products supplied in a relevant market over a period of time.

Article 5 of Oman Ministerial Decision No. 18/2021 provides further factors that will be considered for determining a person's control and influence, which include the person's ability to influence prices or quantity of products/services in the relevant market independently of its competitors, overall size of the person including assets, revenues and employees, level of actual or potential competition in the relevant market, and availability of substitute products in the market.

A “relevant market” in terms of article 1 of Oman Sultani Decree No. 67/2014 is based on the relevant product and geographic market where the relevant product consists of all products that are regarded as interchangeable or substituted by the end-user and includes products offered by competitors in other markets near the consumer and a geographic market comprises the area in which conditions of competition are homogenous and where both sellers and consumers of products interact to limit prices.

Article 2 of Oman Ministerial Decision No. 18/2021 sets out factors that will be considered to determine the relevant products for a relevant market, which include similarity between products in respect of their characteristics and usage, possibility of purchasers shifting from one seller's product to another due to change in prices, and costs related to switching demand to potential substitute products.

Article 3 of Oman Ministerial Decision No. 18/2021 sets out factors that will be considered to determine the geographical dimensions of the relevant market, which include the ease of access of new competitors and consumers, cost of transport between geographical areas, and the level of relevant-product purchasers' mobility between geographical areas due to changes in prices.

Transactions resulting in the acquisition of a 50% or more market share are prohibited, as per article 11 of Oman Sultani Decree No. 67/2014. Oman Sultani Decree No. 67/2014 does not distinguish between transaction structures and industries.

Merger control procedure

In accordance with article 11 of Oman Sultani Decree No. 67/2014, to obtain the approval of the CPMP Centre for any notifiable transaction, the interested party is required to submit a written application to the CPMP Centre. The CPMP Centre is bound to examine and issue a decision on the application within a maximum period of 90 days of receipt of the application. The application is deemed approved in the event that the 90 day period lapses without a decision being made.

Although there is no express time-frame for submitting an application stipulated in Oman Sultani Decree No. 67/2014, a notifiable transaction cannot be completed and/or implemented until either the CPMP Centre has issued a decision or the above referred 90 day period has elapsed without a decision being made by the CPMP Centre. Therefore, whilst it may be possible for parties to enter into an agreement for undertaking a notifiable transaction, submission of an application to the CPMP Centre and the approval of the transaction (whether deemed or express) would have to be a condition precedent to completion of the transaction in accordance with article 11 of Oman Sultani Decree No. 67/2014.

A person may submit a grievance to the Chairman of the CPMP Centre within 60 days of the date of the rejection decision, and the grievance is required to be resolved within 30 days of its submission. The lapse of such period without a reply will be deemed acceptance of the grievance.

In accordance with article 11 of Oman Sultani Decree No. 67/2014, the CPMP Centre has the power to cancel any approval for a notifiable transaction if it is subsequently revealed that the applicants provided misleading, fraudulent or untrue information in the application.

Failure to comply

Failure to notify a notifiable transaction to the CPMP Centre in accordance with article 11 of Oman Sultani Decree No. 67/2014 is punishable, under article 20 of Oman Sultani Decree No. 67/2014, by imprisonment of one month to three years, and/or a fine of OMR 10,000 (approx. EUR 23,040 / USD 25,970) to OMR 100,000 (approx. EUR 230,400 / USD 259,720). Oman Sultani Decree No. 67/2014 does not specify whether the liability will rest on the acquirer only or whether the seller/target could also potentially be liable. The CPMP Centre's track record of enforcement of notification requirement is not available in the public domain.

Conclusion

Whilst transactions and mergers taking place outside of Oman can fall within the scope of Oman's merger control regime set out in article 11 of Oman Sultani Decree No. 67/2014, parties to such a foreign transaction or merger should carefully consider whether their transaction impacts competition inside Oman by resulting in an "economic concentration", based on the relevant facts and circumstances.

Related Content

- Oman Sultani Decree No. 67/2014 on the Issuance of the Competition and Anti-Trust Law
- Oman Ministerial Decision No. 18/2021 on the Issuance of the Implementing Regulation of the Competition Protection and Monopoly Prevention Law
- Oman Sultani Decree No. 2/2018 on the Establishment of the Centre for Competition Protection and Monopoly Prevention and the Issuance of its Regulation

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- Associate member of the 3VB Chambers

Biography

- Mansoor Malik is founder and managing partner of Al Busaidy Mansoor Jamal & Co where he heads the firm's top tier, award-winning Corporate Commercial department and the litigation department. He has more than 35 years' experience of law and practice in Oman in both the contentious and non-contentious fields. He has been involved in Oman's most significant transactions over the past four decades, and is ranked as a star performer and leading lawyer by the major global legal directories.
- In the non-contentious field, Mansoor's expertise spans all aspects of banking and finance law including Islamic, corporate, project, acquisition, asset and structured finance, securitisation, corporate restructurings, mergers and acquisitions, capital markets, private equity and investment funds. He advises clients on complex projects, banking and regulatory matters.
- In the dispute resolution arena, Mansoor has expertise in prosecuting and defending high-value domestic and international arbitration of both public and private law disputes under ICSID and UNCITRAL rules before the International Court of Arbitration and the London Court of International Arbitration. In Oman, he is a Court of Appeal panel arbitrator. Mansoor also handles complex commercial litigation claims across a wide span of industry sectors including banking, power, water, agencies, insurance, employment and oil and gas and enjoys rights of audience before Oman's Supreme Court. His roster of clients includes major national and international corporates, financing institutions, credit agencies, government entities as well as some of the world's leading law firms.



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Zarrar is an associate in the Commercial Team and has broad legal experience with a focus on corporate and commercial work, Islamic Finance, real estate and projects. Within his areas of focus, Zarrar has advised multiple clients on mergers & acquisitions, commercial transactions and various real estate development projects.