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Kuwait International Law School



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## **New Publication Rules for the Kilaw Journal**

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- The Journal invites researchers to focus their research submitted for publication on studying practical and applied legal issues and problems that directly or indirectly concern the administrative, economic, social, and other related sectors, including the study of specific cases.
- The Journal encourages the adoption of scientific approaches that help in studying this type of issue, including the analytical approach, the critical approach, and the comparative approach. It also encourages authors to choose mechanisms and methods that contribute to the clarity and accuracy of analysis, discussion, and interpretation, including databases, statistics, indicators, and others.
- The Journal invites researchers to submit innovative, grounded, and practical recommendations based on comparative systems. This includes proposals for laws, regulations, guidelines, and other relevant information.
- The Journal gives priority to publication of research of an applied and practical nature, whether from within or outside KILAW.
- Applied and practical research shall be included in the list of research nominated for the annual “Kilaw Journal Award” for the best applied and practical research.

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### **“From the Economy of Occupation to the Economy of Genocide” Full-fledged Crimes of Complicity and Collusion<sup>(\*)</sup>**

**Prof Dr Badriya Abdullah Al-Awadhi**

**Editor-in-Chief**

A new report issued by the United Nations on July 3, 2025, sheds light on the role of partnership and support provided by hundreds of international companies and economic institutions in bolstering the economy of the occupying state. This support has witnessed an escalating trend in recent years and months, without any hesitation or fear of international or regional sanctions, constituting full-fledged crimes of complicity and collusion.

The report reveals that these practices were carried out in various forms; some overt and direct, others indirect, relying on deception and falsification, in an attempt to circumvent the rules and regulations of international legal responsibility for those complicit in war crimes, crimes against humanity, and genocide committed by the Israeli occupation forces in the occupied Palestinian territories.

This report is significant because it concerns a party formally accused by the Prosecutor of the International Criminal Court of committing war crimes and crimes against humanity, and simultaneously being tried before the International Court of Justice for violating the United Nations Convention on the Prevention and Punishment of the Crime of Genocide in the case brought by South Africa. Its importance also stems from its professional and objective nature, prepared by United Nations experts, and containing data, information, and statistics. It is based on sound testimonies and analyses, and arrives at reasonable and logical conclusions and recommendations.

From the perspective of the provisions and rules of public international law and international humanitarian law, the report is an important document that can serve as a solid legal basis for initiating legal action against these multinational corporations and institutions. It is well-established that international judicial institutions and national courts with jurisdictions

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(\*) Emeritus Professor and Former chair of Public International Law Department, Kuwait International Law school, and former Dean of Law College, Kuwait University.

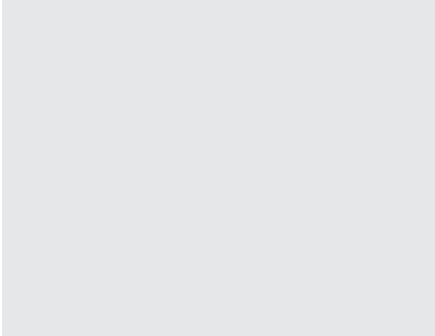
worldwide, particularly in Europe, Latin America, Asia, and elsewhere, accept cases related to violations of international conventions, war crimes, and crimes against humanity.

The report unequivocally highlights the key sectors that have become integral to the Israeli settler-colonial project, including arms manufacturers, surveillance technology companies, financial institutions, construction firms, and academic bodies. These entities actively participate in entrenching a system that facilitates land annexation, oppresses and erases Palestinian identity, and militarizes the details of daily life in the occupied territory. Many of these companies operate transnationally and have ties to countries and markets that provide them with a shield against accountability.

The report points to Israeli and international companies that develop and market weapons systems that have been tested on the Palestinian population, particularly in the Gaza Strip. Artificial intelligence and drones have been used directly to target civilians, while predictive policing tools and biometric databases contribute to strengthening mechanisms of systematic control and repression. The report emphasizes that these practices are not isolated incidents but rather part of a comprehensive strategy for demographic and geographic domination.

The report also focuses on the pivotal role of the financial sector in expanding illegal settlements and confiscating Palestinian land. Banks, pension funds, and asset management companies continue to invest in companies involved in and supporting settlement activities. At the same time, academic institutions provide ideological and technical support to the occupation through research used to develop military tools and surveillance technologies.

These aspects revealed in the report are part of the international economic and financial crimes committed against the Palestinian people and the Palestinian cause, contributing to their suppression and erasure. They warrant investigation and follow-up by specialized legal teams. They also deserve to be vigorously raised in international legal and diplomatic forums, and support must be mobilized to stop and confront them. Attempts to suppress the impact of these reports, initiatives, and international reports will undoubtedly fail, just as previous sanctions imposed on judges of the International Criminal Court, the state of South Africa, and UN human rights rapporteurs have failed.



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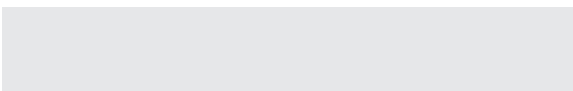
# **English Abstracts of Arabic Research**

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# **The Extent to Which the Principle of Confrontation is Realized in the Traditional and Electronic Judicial Notification of Legal Documents to Prisoners in Kuwaiti Law: An Inductive and Critical Study<sup>(\*)</sup>**

**Dr Mohammad Abdullah Al Hudaib**

Assistant Professor of Civil Procedure

Assistant Dean of Student Affairs

Kuwait International Law School

## **Abstract**

This research addresses the roots of a specific procedural problem: serving prisoners with the summons filed against them according to the methods stipulated in the Kuwaiti Civil Procedure Law No. 38 of 1980 and its subsequent amendments. This is particularly relevant to the electronic service methods stipulated in Law No. 9 of 2020 and Ministerial Resolution No. 26 of 2021, which outline the conditions and regulations for electronic service in implementation of the aforementioned law.

The research then moves to the fundamental principle upon which service is based: the realization of the principle of confrontation, which is embodied in the actual or constructive knowledge of the lawsuits filed against the defendant. The importance of this research lies in its focus on the target group of the notification: inmates of correctional facilities. These inmates are inherently a weak party in legal proceedings, which necessitates, therefore, a heightened emphasis on ensuring the principle of notification is upheld, especially given their accessibility and vulnerability to state institutions.

This research aims to determine the extent to which prisoners are truly or constructively informed of the charges against them, thus fulfilling the principle of confrontation and enabling them to defend themselves. This is achieved through a comparative, critical, inductive approach that delves into the root causes of the problem, starting with established principles and fundamental

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& date of acceptance: 5 February 2025

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rules. The first section examines traditional notification to prisoners and its adherence to the principle of confrontation, addressing two aspects: actual and constructive knowledge. The second section focuses on electronic notification to prisoners and its compliance with the principle of confrontation, again addressing both actual and constructive knowledge.

The research concluded with several findings, most notably the inadequacy of these methods in ensuring the prisoner's right to actual or constructive knowledge of the proceedings against him, regardless of whether the notification is made through traditional or modern electronic means. Therefore, the researcher recommends amending certain articles in the Civil and Commercial Procedure Code concerning the notification of prisoners to achieve the principle of confrontation.

**Keywords:** principle of confrontation, prisons, right to defense, guarantees for the defendant, correctional institutions, and notification.

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# Proxy War According to the Rules of International Law

## The Case of Sudan Since 2023<sup>(\*)</sup>

**Dr Nada Yusuf Al Duaij**

Associate Professor of Public International Law

College of Law, Kuwait University

### Abstract

Recent internal crises around have revealed hidden hands managing these conflicts, or what called «proxy wars.” The conflict in Sudan is no different. These interventions constitute a violation of the most fundamental principles of international law: state sovereignty and non-interference in internal affairs. Principally, the intervention is impermissible, with exceptions in cases of self-defense, collective defense, and intervention for humanitarian intervention. The ongoing intervention in Sudan by international and regional actors constitutes a violation of the principle of non-interference in the affairs of states. However, the intervening states always try to legitimize their interventions. Examining this, it becomes clear that the interests of these states are the primary factor of these interventions. Evidence suggests that none of them have succeeded in ameliorating the situation in Sudan since 2023, but in contrast, worsen it.

This paper highlights the outlines of legitimate interventions, according to the United Nations system and effective regional organizations, while reviewing the most important resolutions issued by the UN Security Council and the UN General Assembly, as well as case law in similar matters. The study concluded that states’ claims of nobility and humanitarian intervention always reveal illicit trade and the exploitation of innocent peoples for the private interests of the intervening states, unrelated to humanity.

**Keywords:** Sudan, humanitarian intervention, Security Council, human rights, conflict, and war.

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& date of acceptance: 25 March 2025

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## The Right of Prescription for State Funds in Islamic Jurisprudence and Kuwaiti Law<sup>(\*)</sup>

**Dr Mohammad Dhawi Al Osaimi**

Associate Professor, Department of Jurisprudence  
and Principle of Jurisprudence

College of Sharia and Islamic Studies, Kuwait University

### Abstract

This research aims to clarify the nature of prescription, its conditions, and the resulting legal ruling in Islamic jurisprudence, comparing it with Kuwaiti law. The research includes a discussion of prescription, the conditions for the admissibility of a claim, impediments to its application, the dismissal of a claim due to the passage of time, who has the right to waive it, and the prescription of the state's right to sums paid to an employee unjustly.

The study employs both inductive and deductive methods to reduce jurisprudential and legal issues, analyzing them comparatively. It is divided into an introduction and five sections. The first section defines the research terminology, while the second section addresses the conditions for the application of prescription, the defense of dismissal, and the impediments to its application. The third section addressed the issue of the statute of limitations, while the fourth section discussed who has the right to waive a claim, either by mutual agreement or through a court ruling.

The fifth section focused on the statute of limitations for the state's right to recover amounts paid to an employee unjustly. The study concluded that the ruler has the authority to establish a specific timeframe within which claims based on the statute of limitations may be accepted or rejected, that the statute of limitations varies depending on the nature of the claim, that a ruler's or judge's ruling does not alter the nature of the claim - the unlawful remains unlawful - and that Article (21) of the Civil Service Law is potentially unconstitutional.

**Keywords:** statute of limitations, inadmissibility of a claim, waiver, state right, amounts paid unjustly.

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& date of acceptance: 5 February 2025

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## Subscription to Shamal Az-Zour Company - Complications and Solutions: A legal jurisprudential approach<sup>(\*)</sup>

**Dr Sarah Metlea Al Qahtani**

Associate Professor, Department of Jurisprudence  
and Principle of Jurisprudence

College of Sharia and Islamic Studies, Kuwait University

### Abstract

This study aims to investigate the jurisprudential complications that caused divergent jurisprudential opinions on subscription to Shamal Az-Zour Company by providing fundamental jurisprudential analysis in dispute reasons in light of Kuwaiti law regulating partnership contracts between public and private sectors. It identifies the disagreement reasons and examines its legitimacy, according to jurisprudential controls and relevant fundamentalist rules.

The Study followed inductive and comparative approach on Sharia side by collecting opinions and evidence, and on legal side by collecting relevant laws and using them to determine Sharia and legal complications to decide the legitimacy of the dispute. It also followed descriptive and analytical approach to reach the basis of those complications and the dispute reasons and reduce them according to Kuwaiti law.

The Study found the jurists' ruling on subscription to Shamal Az-Zour Company wasn't result from knowledge of contracts regulating it, but was from describing relationship between State and project company – by accounting considerations. It also found the legitimacy of the jurists' disagreement in ruling on subscription, considering it is due to independent reasoning subject to amendment according to Sharia and law.

The Study concluded to some recommendations, the need to enact legislation enabling jurists to consider relevant contracts to determine the appropriate jurisprudential adaptation to decide on the ruling on subscription to company, and activate certain laws that support the discipline of these companies from Sharia and legal perspective.

**Keywords:** Subscription, Az-Zour Company, Complications, Solutions, and Kuwaiti Law.

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## The Domicile of a Natural Person and its Role in Determining their Electoral Domicile in Kuwaiti Law<sup>(\*)</sup>

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### Abstract

This research addresses the domicile of a natural person and its role in determining their electoral domicile. The study sheds light on the nature of this domicile and its provisions, and clarifies the role of a natural person's domicile in determining their electoral domicile. In this study, we followed both descriptive and analytical methodologies.

The research concludes with several key findings, most notably that the terms "residence" and "address" are synonymous with "domicile," that the legally recognized domicile of a natural person is that recorded in the Civil Information System records, although this is subject to rebuttal, and that changing one's domicile is contingent upon notifying the Public Authority for Civil Information of the change within the specified timeframe.

It has also become clear to us that the legislator has defined the electoral domicile as the actual and permanent place of residence recorded on the civil identification card, and that registration in the electoral rolls, its amendment, and the review of the electoral domicile fall under the jurisdiction of the General Elections Commission, in coordination with the Public Authority for Civil Information.

Furthermore, the study concluded with several recommendations, including the legislator's standardization of the terminology used to express domicile, the necessity for the legislator to address the problem of fictitious electoral domicile through effective means, and the adoption of the concept of a reserve electoral domicile.

**Keywords:** Domicile, Residence, Housing, Address, Electoral Domicile, and Election.

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# **Recognizing Virtual Assets: Challenges, Solutions, and Experiences<sup>(\*)</sup>**

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## **Abstract**

The use of digital technology has led to the creation of new services and goods circulating in our virtual world. The virtual environment has become a significant and ever-expanding space. Given this increase in the forms of services and goods in our virtual world, their development, and the growing use of them, it became essential for national and international legislators to address the challenges arising from legislative gaps or deficiencies in addressing these new developments. This prompted a number of countries and international and regional organizations to establish legal rules governing the virtual environment. However, some countries remain passive, waiting to see how the virtual environment will develop before proceeding to recognize and regulate it legally.

This study addresses the challenges posed by the lack of legal regulation for this new environment. It presents the experience of the United Arab Emirates in regulating virtual assets and their service providers at both the federal and local levels. The aim is to develop the legislative framework for the virtual asset sector in the UAE, including related activities and service providers, thereby defining and guaranteeing the rights and obligations of all stakeholders. The study also examines the status of several laws that have yet to regulate these assets, highlighting the ongoing challenges they face due to the absence of legal regulation for virtual assets and their service providers.

The researcher employed a comparative analytical approach to analyze legal texts and assess their adequacy in meeting the requirements for legally regulating virtual assets. The study also presents the experiences and practices of several countries regarding the regulation of virtual assets. The study is

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divided into three sections: an introductory section addressing the concept, importance, and characteristics of virtual assets; a second section examining the legal challenges posed by virtual assets; and a final section discussing the legal regulation of virtual assets. The study concluded with several findings and recommendations, summarized as follows: given the inadequacy of existing legal texts—which predated the advent of digital technology and its applications and are difficult to apply to these applications—states must establish legal regulations for virtual assets.

Keywords: virtual assets, organized crime, blockchain, cryptography, money laundering, and smart contracts.

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# Legal Aspects of Fictitious Discounts in Consumer Contracts: A Study in the UAE and Kuwait Legislation<sup>(\*)</sup>

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## Abstract

Fake discounts in consumer contracts are among the most common problems affecting consumers' rights, as they are misled by advertisements, price manipulation, and other suspicious and unfair commercial practices that violate the principle of transparency and required trust, which poses a threat to consumers' rights and violates consumer protection laws. This research aims to shed light on the legal aspects of fake discounts within the framework of the UAE and Kuwaiti legislation and address various challenges, such as infringing on the principle of informed consumer satisfaction and violating their right to choose, in addition to the difficulties of monitoring and implementation processes in the open electronic market, where retailers can easily change prices via digital platforms.

In addition to the difficulty of setting and proving a standard for determining the "reasonable" price before the discount, it remains subject to manipulation in the absence of guarantees and mechanisms capable of controlling it. The study concluded that fake discounts must be addressed by monitoring legal and regulatory loopholes and evaluating the suitability and effectiveness of laws and procedures entrusted with consumer protection. And work on framing the operations of offers and discounts, by imposing strict standards regarding the announcement of discounts and prices, to better protect consumers and enhance transparency and trust in commercial transactions.

**Keywords:** Fake discounts, consumer, prices, advertising, protection, control, responsibility.

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## Procedural Fraud in the Litigation Stage in Emirati Law and Judiciary<sup>(\*)</sup>

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### Abstract

This research on procedural fraud sheds light on one of the most prominent phenomena that is almost always present in courtrooms. Every litigant in a case strives, by any means necessary, to ensure the court rules in their favor. This does not imply that all people lack honor and integrity. Rather, some litigants resort to devious methods and material behaviors, whether positive or negative, filled with bad faith towards the opposing party, to guarantee a favorable ruling. Sometimes, this behavior is perpetrated by the court itself, by the judge or one of their assistants, whether with the intention of harming the litigant or achieving a personal gain. Therefore, the UAE legislator has imposed a number of restrictions and obstacles that make it difficult for litigants or their representatives to commit fraud. These restrictions are manifested either in the liabilities imposed on the perpetrator of fraud or in the preventive and remedial procedural measures aimed at reducing the practice of procedural fraud in litigation.

**Keywords:** fraud, procedural, law, procedures, civil, judicial fraud, and litigants' fraud.

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## **Criminal settlement in felonies: An Analytical Study of the UAE Penal Procedure Law<sup>(\*)</sup>**

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### **Abstract**

This legal study examines the issue of criminal settlement in medium-serious offenses, namely felonies punishable by temporary imprisonment, as one of the alternatives to the consensual or consensual criminal proceedings adopted by the UAE legislator in Law No. 38 of 2022 on Criminal Procedures to address the issue of the continuous increase in the number of cases brought before the police, public prosecution, and criminal courts, the slow trial procedures, and the burden of litigants with many procedural formalities.

The study aimed to shed light on the procedural rules that regulate the conduct of criminal settlement in UAE law, and to demonstrate its role in simplifying and shortening trial procedures and achieving prompt justice; it was divided into four sections, the first dedicated to the concept and scope of criminal settlement in felonies, the second to its legal nature and its distinction from similar systems, the third to the procedures of criminal settlement in felonies, and the fourth to the effects of criminal settlement in felonies; the study adopted a descriptive and analytical approach, by reviewing the legal texts regulating criminal settlement in crimes in UAE law and by reviewing the procedures of criminal settlement in felonies in UAE law.

The most important findings are that the UAE legislature is unique in regulating criminal settlement in medium-serious crimes compared to other legislation that limited it to minor offenses, and that resorting to it is subject to the discretionary authority of the public prosecution in light of the power of convenience that governs its actions in the criminal case. Its approval leads to a guilty verdict and a lighter penalty than the original penalty prescribed for the crime if the defendant agrees to the prosecution's proposal to conduct it

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and the competent court supports this procedure: Recommending to the UAE legislator to stipulate that the decision to settle a criminal settlement in felonies by the Court of Appeals is final and not subject to appeal and that it is also considered a criminal precedent, which leads to depriving the returnee from making another settlement in the future.

**Keywords:** criminal mediation, penal conciliation, consensual justice, alternatives to criminal proceedings, and criminal settlement.

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# **The Identity Crisis of Public Service Law: A Foundational Study in Light of Judicial and Legal Interpretations<sup>(\*)</sup>**

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## **Abstract**

This study aims to examine the identity crisis of public service law, starting with a central question: Is this identity crisis real, and what is its impact on the existence and future of public servants? To unpack the elements of this problem, the study examines the foundations upon which the identity of civil service law rests and then analyzes and discusses the main manifestations of this identity crisis.

The foundations of the identity of civil service law, according to the French model, have been established over decades within the framework of the formation of the identity of administrative law. This identity is embodied both formally and substantively. The concept of public service forms the basis of this law's formal identity, alongside the concept of its statutes. The specific legal framework governing public servants, however, embodies its substantive identity, encompassing two elements: the first pertains to the specific legal status of the public servant, and the second to their specific rights and freedoms.

The identity of public service law is embodied in its uniqueness and distinction from private law, particularly labor law. However, this identity has been severely shaken by a series of transformations in France, its country of origin, at the legislative, judicial, and jurisprudential levels, which have undermined its foundations. Therefore, questioning the identity of this law, and consequently its future, has become a legitimate and urgent matter.

The study reached a number of conclusions, the most important of which is that public service law is indeed experiencing an identity crisis stemming from a series of legislative, judicial, and jurisprudential shifts in France. This crisis, objectively manifested in the declining relationship between civil ser-

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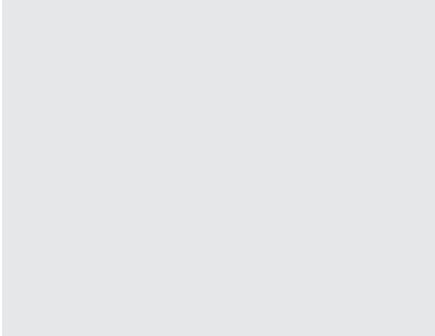
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vice law and public services, and in the erosion of the legal framework governing this law, fundamentally reflects the evolving relationship between public service law and labor law. This evolving relationship appears to be moving towards the generalization of the latter's principles and rules to dominate the realm of public service.

In light of all the above, the question of the future of civil service law is being raised forcefully. We may see, in the coming decades, a unified and comprehensive labor law applicable to both public servants and private sector employees alike - what some legal scholars refer to as public labor law.

**Keywords:** Public Service Law, Identity, Privacy, Public Service, Statute, and Labor Law.



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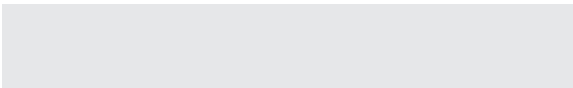
# **Comment on Judicial Rulings**

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# **Commentary on the Judgment of the Bahraini Court of Cassation in Cassation No. 284 of 2023 Issued on March 11, 2024, in the Context of the Right to Privacy<sup>(\*)</sup>**

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## **Abstract**

This research addresses and analyzes a judgment issued by the Bahraini Court of Cassation concerning a case of adultery, highlighting the legal and human rights issues it raises. The discussion evaluates the judgment against established legal principles, constitutional provisions, and human rights norms. The commentary delves into the facts and reasoning of the judgment, exploring the legal challenges posed by its approach to reconciling settled legal and human rights principles with the explicit text of the constitution and applicable laws.

The research scrutinizes the methodology adopted by the judiciary in dealing with the case's facts, offering solutions and alternative judicial approaches to avoid potential negative consequences. The study concludes that the decision under commentary was unsound in affirming the principle that allows spouses to spy on each other. This principle constitutes a clear violation of international agreements, the constitution, the Penal Code, and Islamic Sharia law. Accordingly, the research recommends that the Court of Cassation reconsider and reject this principle, advising lower courts not to adhere to it.

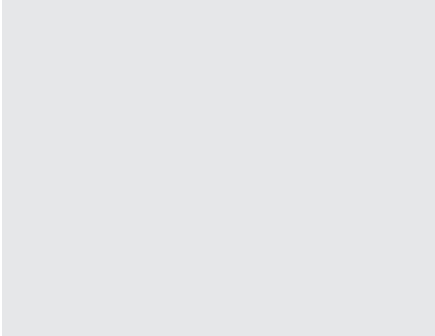
**Keywords:** Judicial Commentary, Bahraini Court of Cassation, and Right to Privacy.

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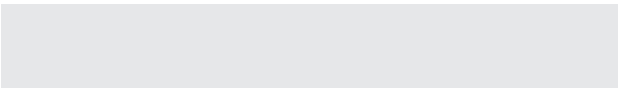
# **English Studies and Research**

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# Multi-Sided Markets in Kuwait: An Incentive Toward Digital Transformation<sup>(\*)</sup>

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Kuwait International Law School



## Abstract

Similar to global trends, multi-sided digital platforms are significantly transforming Kuwait's economy by connecting consumers, merchants, fintech innovators, and public agencies within mutually reinforcing ecosystems. This paper examines the law and economics of cross-side network effects and asymmetric pricing, and adapts concepts of market definition, dominance, and foreclosure to multi-sided contexts. Drawing on original data from KNET payments, Talabat food delivery, the Sahel e-government portal, among others, this study demonstrates how platform scale accelerates financial inclusion, e-commerce adoption, and public service efficiency, while simultaneously heightening data and bargaining asymmetries. Benchmarking Kuwait against the experiences of the EU, US, and GCC reveals that legal toolkits matter: ex-post US litigation, the EU's ex-ante Digital Markets Act, and Gulf hybrid approaches yield markedly different outcomes. The study suggests a Kuwait-specific "gatekeeper" test, open banking and data-access mandates, and sandbox-driven interoperability to nurture a healthy market without stifling innovation. It concludes that mastering multi-sided dynamics is pivotal to realizing Vision 2035's digital transformation agenda for inclusive, innovation-led, and sustainable growth.

**Keywords:** Multi-Sided Markets; Digital Economy; fintech; e-commerce; public platforms.

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## 1. Introduction

Digital platforms that serve multiple user groups, such as consumers, businesses, advertisers, and developers, have become crucial drivers of the modern digital economy<sup>(1)</sup>. These multi-sided markets are characterized by the interdependence of demand across various user groups: the value each group gains from the platform grows with participation by other groups<sup>(2)</sup>. A platform is multi-sided if it can profitably alter the *price structure* (who pays how much to whom) without changing the overall price level<sup>(3)</sup>.

Classic examples include payment card networks, which link cardholders and merchants, and online marketplaces connecting buyers and sellers<sup>(4)</sup>. By reducing transaction costs and matching disparate user groups, such platforms act as modern-day matchmakers<sup>(5)</sup>, fostering interactions that would be impractical or costly in traditional one-sided markets. Indeed, multi-sided platforms now permeate industries ranging from payments and retail to media and mobility<sup>(6)</sup>, and even feature in public-sector innovations, such as e-government portals.

This breadth underscores that multi-sidedness is not confined to Big Tech giants<sup>(7)</sup>; it also characterizes regional and sector-specific platforms, thereby broadening the scope of digital transformation in diverse economies<sup>(8)</sup>.

Economists since Rochet and Tirole's seminal work have emphasized that

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(1) Ke Rong, "Research agenda for the digital economy", Journal of Digital Economy, Vol.1, Iss.1, (2022), pp.20-31.

(2) Jean-Charles Rochet and Jean Tirole, "Platform Competition in Two-Sided Markets", J. Eur. Econ. Ass'n990, (2003). Jean-Charles Rochet and Jean Tirole, "Two Sided Markets: A Progress Report", RAND J. Econ., (2006), p.645.

(3) Ibid.

(4) David S. Evans and Richard Schmalensee, Paying with plastic: the digital revolution in buying and borrowing. MIT Press, 2004.

(5) David S. Evans and Richard Schmalensee, Matchmakers: The New Economics of Multi-sided Platforms, Harvard Business Review Press, 2016.

(6) Ibid.

(7) Erion Murati, "What are digital platforms? An overview of definitions, typologies, economics, and legal challenges arising from the platform economy in EU." Eur. J. Privacy L. & Tech., (2021), p.19.

(8) Ibid.

in multi-sided settings, “the structure, not just the level of prices, matters”<sup>(9)</sup>. Unlike one-sided markets where each good has a single price, a platform optimally skews prices between user groups to harness cross-group *network externalities*<sup>(10)</sup>. For example, a credit card platform might subsidize cardholders (through low fees or rewards) in order to attract more users on that side, which in turn makes the platform more valuable to merchants, who can then be charged higher fees<sup>(11)</sup>.

In other words, one side may be charged below marginal cost (or even zero) while the other side pays above marginal cost, as a deliberate strategy to “get all sides on board.” These indirect network effects, each additional user on one side increases the welfare of users on the other side, tend to create demand-side economies of scale, making large platforms even more attractive to users.<sup>(12)</sup> The resulting market dynamics pose a challenge for legal and regulatory frameworks that evolved in simpler one-sided contexts.

Practices like below-cost pricing, traditionally suspect under anti-predation rules, can be efficiency-enhancing in a two-sided market if they spur cross-side growth<sup>(13)</sup>. Likewise, measures of market power and dominance must be rethought: a platform’s seemingly high price or market share on one side may overstate its power if the other side is fiercely competitive or subsidized<sup>(14)</sup>.

Jurisdictions around the world have begun wrestling with these complexities at the intersection of economics and law. Agencies in charge and courts increasingly recognize that traditional antitrust tools require calibration

(9) David S. Evans and Richard Schmalensee, *Matchmakers: The New Economics of Multi-sided Platforms*, Harvard Business Review Press, 2016.

(10) Zingal, Feriha, and Frauke Becker. “Drivers of optimal prices in two-sided markets: the state of the art”, *Journal für Betriebswirtschaft*, Vol.63, Iss.2, (2013), pp.87-116.

(11) David S. Evans and Richard Schmalensee, *Matchmakers: The New Economics of Multi-sided Platforms*, Harvard Business Review Press, 2016.

(12) *Ibid.*

(13) OECD, *Rethinking Antitrust Tools for Multi-Sided Platforms*, OECD Publishing 2018, pp.9–15, see also S. P. Anderson & B. Jullien, The advertising-financed business model in two-sided media markets. In *Handbook of media economics* (Vol. 1), (2015).

(14) Kenneth A. Bamberger and Orly Lobel, “Platform market power”, *Berkeley Tech. LJ*, Vol.32, (2017), p.1051

for multi-sided platforms<sup>(15)</sup>. A landmark moment was the U.S. Supreme Court's decision in *Ohio v American Express Co* (2018), which held that, in a two-sided transaction market, an antitrust plaintiff must show net anti-competitive effects on the *entire* platform ecosystem, not just on one side<sup>(16)</sup>.

In the EU, meanwhile, concerns over entrenched gatekeeper platforms with self-reinforcing network advantages have led to an ex ante regulatory approach: the *Digital Markets Act* imposes a list of pro-competitive obligations (data sharing, non-discrimination, interoperability) on designated large platforms, complementing traditional case-by-case enforcement<sup>(17)</sup>.

International policy consensus, exemplified by OECD reports, likewise urges that concepts like market definition, market power, and predatory pricing be reinterpreted in light of multi-sided market realities<sup>(18)</sup>. In short, the rise of multi-sided platforms is forcing a re-evaluation of fundamental antitrust and regulatory doctrines, from the Lerner index<sup>(19)</sup> (now adapted to two-sided pricing) to theories of foreclosure (which may span multiple interlinked markets rather than a single supply chain).

Against this global backdrop, Kuwait provides a compelling case study of multi-sided markets as a driver of digital transformation in a smaller yet rapidly modernizing economy<sup>(20)</sup>. Kuwait's national Vision 2035 explicitly

(15) OECD, *Rethinking Antitrust Tools for Multi-Sided Platforms*, OECD Publishing 2018, pp.9 - 1, see also Andre Hagiu and Julian Wright, 'Multisided Platform', Harvard Business School working paper 15-037, (2015), p.4.

(16) *Ohio v American Express Co*, 585 US, 138 S Ct 2274 (2018).

(17) Regulation (EU) 2022/1925 (Digital Markets Act), OJ L 265/1, 12.10.2022; This is a worldwide discussion that has finally reached emerging economies as well, see also Skara, Gentjan, Oriona Muçollari, and Bojana Hajdini", Skara, Gentjan, and Najada Kilic. "Competition Law Enforcement in Albania: Challenges from Online Platforms." International Conference on Innovations in Technology, Business and Transformation. Cham: Springer Nature Switzerland, 2024.

Adapting the Competition Policy for the Digital Age: Assessing the EU's Approach" *Laws* 13.5, (2024), p.64.

(18) OECD, *Rethinking Antitrust Tools for Multi-Sided Platforms*, OECD Publishing 2018, pp.9-15.

(19) The definition on the "Lerner Index" see the free dictionary at the concurrences.com, available at <https://www.concurrences.com/en/dictionary/>. (last accessed 18/4/2025).

(20) Nora Ziba Memeti, Kuwait: Antitrust developments and challenges, *Concurrences*

prioritizes digital innovation and a diversified, knowledge-based economy<sup>(21)</sup>. In practice, this vision is being fueled by the emergence of domestic platform ecosystems.

For instance, the country's bank-owned payment network, *KNET*, links virtually all local banks and merchants, processing the vast majority of debit card transactions and enabling government e-payments. This platform model is credited with reducing reliance on cash and advancing financial inclusion goals<sup>(22)</sup>.

In e-commerce and on-demand services, platforms such as food *delivery app Talabat* have captured a dominant share of online transactions, connecting restaurants, couriers, and consumers in a tri-sided marketplace. Even the public sector is embracing platform principles: the government's *Sahel* digital portal acts as a multi-sided interface between citizens, state agencies, and payment providers, illustrating how indirect network effects can also enhance public service delivery.

Yet with these opportunities come familiar concerns. Are incumbents like *KNET* or *Talabat* leveraging network effects to foreclose rivals and dictate onerous terms to dependent users? Do Kuwait's current laws, such as the Competition Protection Law, Data Protection, etc., adequately address issues like data advantage, algorithmic preferencing, or multi-homing costs that characterize platform markets? And how might lessons from the US, EU, and neighboring Gulf states inform Kuwait's policy approach to ensure healthy competition without stifling innovation?<sup>(23)</sup>.

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N° 7-2025, Art. N°126421, July 2025, [www.concurrences.com](http://www.concurrences.com); see also Jurkowska-Gomulka, Agata, Anna Piszcz, and Sofia Oliveira Pais, "Collective agreements on working conditions of solo self-employed persons: perspective of EU competition law", *Białostockie Studia Prawnicze*, Vol.29, (2024), p.65.

(21) Kuwait Vision 2035, New Kuwait (Government of Kuwait, 2018) (stressing digital infrastructure and innovation as pillars of economic diversification).

(22) Central Bank of Kuwait, Annual Report 2024 (forthcoming) (noting *KNET*'s ~96% share of domestic debit transactions); Kuwait News Agency (KUNA), 'KNET cash withdrawals fall amid shift toward digital payments' (28 December 2024).

(23) Or as some call this the extraterritoriality principle, see more Marek Martyniszyn, "Extraterritoriality in EU competition law", *Law Sci.* Vol.1, (2022), p.1109, or the so-called the Brussels effect, see Radwan Eskhita and Evert Stamhuis, "The Influence of the Brussels Effect on the Interpretation of Data Protection Laws in the Gulf", *Global Journal of Com-*

This paper tackles these questions through an interdisciplinary analysis of the law and economics of multi-sided markets, using Kuwait's nascent platform economy as the focal point. Section I begins by laying the conceptual foundations, defining multi-sidedness in formal economic terms and unpacking key features like cross-side network effects and pricing structure, while also revisiting core concepts (market definition, dominance, and foreclosure) in a two-sided context. A brief methodological note at the end of Section I outlines the study's mixed doctrinal and empirical approach, including data sources such as company filings and different agency reports.

Section II then presents an empirical and sectoral analysis, examining Kuwait's fintech payments sector, e-commerce marketplaces, and public digital platforms. It draws comparisons with EU and US benchmarks<sup>(24)</sup> to assess whether similar economic dynamics and consumer welfare issues are observed. Finally, Section III surveys the range of regulatory responses, contrasting the litigation-centered U.S. approach and the EU's new ex ante regime, as well as emerging Gulf Cooperation Council (GCC) practices, and distills policy recommendations tailored to Kuwait.

By synthesizing these perspectives, the article aims to demonstrate how a nuanced understanding of multi-sided market economics can inform more effective antitrust policy and regulatory strategies as Kuwait progresses on its digital transformation journey.

Rochet and Tirole first formalized this insight, showing that a platform's profit-maximizing (and often welfare-maximizing) prices may involve one side paying less than marginal cost while the other side pays more, as long as the overall balance optimally encourages participation on all sides<sup>(25)</sup>.

The research questions this paper aims to address are: empirical, theoretical and comparative<sup>(26)</sup>. It asks (1) What key economic characteristics

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parative Law, Vol.13, Iss.2, (2024), pp.261-278.

(24) Eleanor M. Fox, "US and EU competition law: A comparison", *Global competition policy*, (1997), pp.339-354, see also Eleanor M. Fox, "We protect competition, you protect competitors", *World Competition*, Vol. 26, Iss.2, (2003).

(25) David S. Evans and Richard Schmalensee, *Matchmakers: The New Economics of Multi-sided Platforms*, Harvard Business Review Press, 2016.

(26) Van Hoecke, Mark, ed. *Epistemology and methodology of comparative law*, Bloomsbury Publishing, 2004.

define multi-sided markets, and how do these features (e.g., network effects and pricing structures) challenge traditional legal concepts of market power and competition in sectors like fintech, e-commerce, and public platforms? (2) What evidence exists regarding the market outcomes of multi-sided platform dominance or regulation, particularly in fintech and e-commerce, and how do these outcomes affect innovation, consumer welfare, and antitrust policy considerations in Kuwait as compared to the EU and US? and (3) How do the regulatory frameworks address multi-sided digital platforms across jurisdictions, specifically in Kuwait and broader in the GCC region, versus the European Union and United States, and what lessons or best practices emerge for aligning legal, economic, and public policy approaches to digital market design in multi-sided platforms?

## 2. Conceptual Foundations: Law and Economics of Multi-Sided Markets

### 2.1 Defining Multi-Sidedness

The term “multi-sided market” describes an economic environment in which a single platform simultaneously serves two or more distinct groups of users whose demands are interdependent<sup>(27)</sup>. Each group derives value from the participation of the others, and the platform internalises this intergroup externality by designing rules and prices that “get all sides on board”<sup>(28)</sup>. Rochet and Tirole’s seminal model formally captures the idea that a market is multi-sided whenever the platform can profitably adjust the price structure (i.e., who pays how much) without altering the total price level (i.e., the aggregate paid by all sides)<sup>(29)</sup>. In practice, three simple typologies help clarify the concept. There are transaction-matching versus non-transaction platforms, as well as B2C, B2B, and hybrid architectures, along with closed versus open governance<sup>(30)</sup>.

Transaction platforms (e.g., payment card networks, ride-hailing

(27) JeanCharles Rochet and Jean Tirole, ‘Platform Competition in TwoSided Markets’, 1 J Eur. Econ. Assoc.990, (2003).

(28) David S Evans and Richard Schmalensee, *Matchmakers: The New Economics of Multi-sided Platforms*, Harvard Business Review Press, 2016, pp.39-42.

(29) Rochet and Tirole (n 1) 993–996. JeanCharles Rochet and Jean Tirole, ‘Platform Competition in TwoSided Markets’, 1 J Eur Econ Assoc990, (2003).

(30) Jan. Krämer, *Digital markets and online platforms: new perspectives on regulation and competition law*. Centre on Regulation in Europe (CERRE), 2020.

apps) monetise each completed exchange between user groups, whereas non-transaction platforms (e.g., social media, search) monetise attention through advertising or data<sup>(31)</sup> Consumer-facing platforms, such as Amazon Marketplace, connect individual buyers with business sellers, while strictly B2B platforms, for instance, a data exchange hub linking logistics firms and insurers, mediate inter-firm coordination<sup>(32)</sup>.

Many fintech ecosystems now adopt a hybrid model in which developers, merchants, and endusers each form a distinct “side”. Some platforms rely on proprietary standards (e.g., Apple’s iOS App Store) and exercise gatekeeping control, whereas others (e.g., open banking APIs mandated under the EU’s PSD2) are interoperable by design, dispersing coordination rights among participants<sup>(33)</sup>.

This taxonomy highlights that multi-sidedness is not limited to well-known examples of Big Tech<sup>(34)</sup>; it also applies to payments, mobility, digital health, and certain public sector infrastructures<sup>(35)</sup>. The wide range of applications is vital for lawmakers because the same economic principles that generate indirect externalities in e-commerce also influence citizen portals and smart city data exchanges<sup>(36)</sup>.

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(31) Geoffrey Parker and Marshall Van Alstyne, ‘TwoSided Network Effects: A Theory of Information Product Design’, *Mgmt Sci*, Vol.51, (2005), pp. 1494, 1496 - 1498, see also Viktoria HSE Robertson, *Competition law’s innovation factor: the relevant market in dynamic contexts in the EU and the US*, Vol. 23, Bloomsbury Publishing, 2020

(32) Oliver Budzinski, “Regulatory competition and platform companies: the economic perspective.” *Regulatory competition in the digital economy: Artificial Intelligence, data, and platforms*. Cham: Springer Nature Switzerland, 2025, pp.175-189.

(33) Organisation for Economic Cooperation and Development (OECD), ‘Rethinking Anti-trust Tools for MultiSided Platforms’, OECD, 2018, pp.21–24.

(34) Krämer, Jan. *Digital markets and online platforms: new perspectives on regulation and competition law*. Centre on Regulation in Europe (CERRE), 2020.

(35) Ioannis Lianos, “Access to Health Data, Competition, and Regulatory Alternatives: Three Dimensions of Fairness”, *Journal of Competition Law & Economics* (2025).

(36) Ioannis Ibid., see also Wang, Shumin, Xin Jiang, and Muhammad Bilawal Khaskheli. “The role of technology in the digital economy’s sustainable development of Hainan Free Trade Port and genetic testing: Cloud computing and digital law”, *Sustainability*, Vol.16. Iss.14, (2024), p.6025.

## 2.2 Indirect Network Effects and Price Structure

In traditional one-sided markets, the benchmark for efficient pricing is marginal-cost pricing<sup>(37)</sup>. In multi-sided markets, however, the platform's task is to balance cross-side network effects, the fact that one group's willingness to participate increases with the size of another group. The consequence, as Rochet and Tirole famously put it, is that "the structure, not just the level, of prices matters"<sup>(38)</sup>. Consider a credit card network by subsidising cardholders (low or negative fees, loyalty rewards, etc), the platform can attract more merchants, who in turn raise the instrument's total value, ultimately permitting the platform to recover costs on the merchant side through interchange fees.

These pricing asymmetries create two immediate complications for law and policy. First, below-cost pricing on one side can be pro-competitive if it stimulates participation and thereby increases overall welfare; a strict reading of the predatory pricing doctrine could misclassify such conduct as abusive<sup>(39)</sup>. Second, market power assessments cannot treat the platform's high merchant side fees in isolation; the analysis must encompass the net price charged to all sides and the elasticity interdependencies among them.

The U.S. Supreme Court's landmark *Ohio v American Express* decision crystallised this insight in jurisprudence, declaring that an antitrust plaintiff must demonstrate net harm "to the entire platform"<sup>(40)</sup>. European and GCC authorities, while sympathetic to the concept, have tended to maintain a more interventionist stance, particularly where large platforms appear to exploit data advantages or self-preferencing strategies that impede user multihoming<sup>(41)</sup>.

(37) Jean Tirole, *The Theory of Industrial Organization* (MIT Press 1988) ch 1. JeanCharles Rochet and Jean Tirole, 'Platform Competition in TwoSided Markets', 1 J Eur Econ Assoc 990, (2003).

(38) JeanCharles Rochet and Jean Tirole, 'TwoSided Markets: A Progress Report', RAND J Econ, Vol.37, (2006), pp.645, 665.

(39) OECD (n 5), pp.47–49. Organisation for Economic Cooperation and Development (OECD), 'Rethinking Antitrust Tools for MultiSided Platforms', OECD, 2018, pp.21–24.

(40) *Ohio v American Express Co* 138 S Ct 2274, 2285 (2018).

(41) European Commission, 'Commission Staff Working Document Accompanying the Proposal for a Regulation on Contestable and Fair Markets in the Digital Sector (Digital Markets Act)' SWD (2020) 363 final, pp.15–17, see also Frédéric Marty, "Competition and Regulatory Challenges in Digital Markets: How to tackle the issue of self-preferencing?." Agência Brasileira do ISBN–Bibliotecária Priscila Pena Machado CRB-

### 3. Revisiting Important Concepts

#### 3.1 Market Definition and Dominance

Some authors distinguish between a multi-sided market and a multi-sided platform; the former refers to the economic pricing structure among interconnected agent groups, while the latter is the entity that facilitates interaction among those interdependent agent groups<sup>(42)</sup>. Market definition in multi-sided contexts requires both geometric and functional re-scaling. The geometric step recognises that a relevant market may comprise two (or more) interconnected demand nodes rather than a single product frontier.

The functional step recognises that substitution constraints must be assessed on both (or all) sides, because a platform's ability to raise price or reduce quality on one side depends on user responses on the other<sup>(43)</sup>. This is why antitrust agencies increasingly employ SSNIP (small but significant non-transitory increase in price)<sup>(44)</sup> tests that integrate cross-group demand elasticities, or adopt a "cluster market" approach that groups ostensibly distinct services into a single analytical framework when they are jointly consumed through the platform. In digital markets, while the SSNIP test fails due to the absence of monetary prices, the SSNDQ test (with a decrease in quality) captures competitive constraints by assessing whether users would switch platforms in response to a significant drop in quality<sup>(45)</sup>.

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7/6971 Dados Internacionais de Catalogação na Publicação (CIP) Agência Brasileira do ISBN–Formato: Livro Digital Veiculação: Digital Editora IBCI–São Paulo-SP/Brasília-DF–2021–Edição Digital (2021), p.109.

(42) Stefan Holzweber, "Market definition for multi-sided platforms: A legal reappraisal." *World Competition*, Vol.40, Iss.4, (2017).

(43) Lapo Filistrucchi and others, 'Market Definition in TwoSided Markets: Theory and Practice' (2014) 10 *J Competition L & Econ* 293, 302–306., see also Jorge Padilla, Joe Perkins and Salvatore Piccolo, 'Market Definition in Merger Control Revised' in Ioannis Kokkoris and Nicholas Levy (eds) *Research Handbook on Global Merger Control*, Edward Elgar, 2023, pp.91-93.

(44) Richard Whish and David Bailey, *Competition law*, Oxford University Press, 2021; Dirk Auer, and Nicolas Petit. "Two-sided markets and the challenge of turning economic theory into antitrust policy" *The Antitrust Bulletin* 60.4 (2015): 426-46, see also Gürkaynak, Gönenç, et al. "Multisided markets and the challenge of incorporating multisided considerations into competition law analysis", *Journal of Antitrust Enforcement*, Vol.5, Iss.1, (2017), pp.100-129.

(45) Daniel Mandrescu, "The SSNIP test and zero-pricing strategies: Considerations for online

The analysis of power and dominance must likewise be adapted<sup>(46)</sup>. A firm may hold a 90 percent share among merchants but only a 20 percent share among consumers; whether this constitutes dominance depends on the joint reach of the platform<sup>(47)</sup>. Moreover, because network effects can quickly tip markets in favour of an incumbent<sup>(48)</sup>, forward-looking indicators such as user base momentum, multihoming costs, and data moats are often more probative than static market share metrics<sup>(49)</sup>. The EU Digital Markets Act codifies this insight through its “gatekeeper” criteria, which embed thresholds for both user reach and market capitalisation<sup>(50)</sup>.

### 3.2 Two-Sided Lerner Index

Weyl and Fabinger’s adaptation of the Lerner index provides a formal tool for measuring market power when prices are vector-valued across sides<sup>(51)</sup>. The two-sided index expresses the platform’s markup on each side as a function of (i) platform elasticities of demand on that side and (ii) the cross-price elasticities linking sides, a reminder that a high markup on the merchant side might be offset by a subsidy on the consumer side<sup>(52)</sup>. Although rarely applied directly in casework, the concept has informed regulatory thinking about interchangefee caps (EU Interchange Fee Regulation) and appstore commission rules (South Korea’s in-app payment mandate)<sup>(53)</sup>.

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platforms”, *Eur. Competition & Reg. L. Rev.*, Vol.2, (2018), p.244.

(46) Jonathan Barnett, *Illusions of Dominance?: Revisiting the Market Power Assumption in Platform Ecosystems*. SSRN, 2022, see also Khan, Lina M. “Sources of tech platform power”, *Geo. L. Tech. Rev.*, Vol.2, (2017), p.325.

(47) OECD (n 5) 35–37. Organisation for Economic Cooperation and Development (OECD), ‘Rethinking Antitrust Tools for MultiSided Platforms’, OECD 2018, pp.21–24.

(48) Özlem Bedre-Defolie, and Rainer Nitsche, “When do markets tip? An overview and some insights for policy”, *Journal of European Competition Law & Practice*, Vol.11, Iss.10, (2020), pp.610-622.

(49) Paul Belleflamme and Martin Peitz, *Platforms and network effects*, Edward Elgar Publishing, 2018.

(50) Regulation (EU) 2022/1925 of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector (Digital Markets Act) [2022] OJ L265/1 art 3.

(51) E Glen Weyl and Michal Fabinger, ‘PassThrough as an Economic Tool: Principles of Incidence under Imperfect Competition’, *J Pol Econ*, Vol.121, (2013), pp.528, 560–563.

(52) *Ibid.*

(53) Hwang, ShinYoung. “The impact of Google’s in-app commission fee changes on the local app ecosystem: A case study of Korea”, (2021).

### 3.3 Single vs Multi-Market Foreclosure

Traditional foreclosure theories focus on input or customer foreclosure in a single vertical chain<sup>(54)</sup>. Platform conduct, by contrast, can simultaneously foreclose competitors across multiple related markets<sup>(55)</sup>. Self-preferencing in search rankings, for instance, may harm rival sellers in the primary marketplace and rival logistics providers in an adjacent delivery market.<sup>(56)</sup> Similarly, a ride-hailing platform that conditions driver access to customers on exclusive dealing can stifle entry on both the driver side and in ancillary services, such as on-demand delivery<sup>(57)</sup>. Recognising this multifaceted reach, the UK's Digital Markets, Competition and Consumers Act 2024 empowers the Competition and Markets Authority to impose conduct requirements on firms with "strategic market status" that spans multiple related activities<sup>(58)</sup>.

## 4. Empirical and Sectoral Analysis: FinTech, ECommerce and Public Platforms

### 4.1 FinTech Payment Systems

#### 4.1.1 Kuwait and the GCC

The Kuwaiti retail payments ecosystem is dominated by KNET, a bank-owned shared switch established in 1992.<sup>(59)</sup> By 2024, KNET processed more than 96 percent of domestic debit-card transactions, with an annual volume approaching KD 29 billion<sup>(60)</sup>. The Central Bank of Kuwait (CBK) capped merchant service charges (MSC) for KNET at 1.8 percent, substantially lower than the prevailing fees on international schemes such as Visa and Mastercard (2.5-3 percent)<sup>(61)</sup>.

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(54) Chiara Fumagalli, and Massimo Motta "Dynamic vertical foreclosure" *The Journal of Law and Economics*, Vol.63, Iss.4, (2020), pp.763-812.

(55) Lina M. Khan, "The separation of platforms and commerce", *Columbia law review*, Vol.119, Iss.4, (2019), pp.973-1098.

(56) Jacques Crémer, YvesAlexandre de Montjoye and Heike Schweitzer, 'Competition Policy for the Digital Era', European Commission 2019, pp.85–90.

(57) Sohani Liyanage et al "Flexible mobility on-demand: An environmental scan", *Sustainability*, Vol.11, Iss.5 (2019), p.1262.

(58) Digital Markets, Competition and Consumers Act 2024 (UK) ss 20–24.

(59) Central Bank of Kuwait, Payment Systems Report 9 July 2024.

(60) Ibid 12.

(61) Central Bank of Kuwait Circular (7 March 2022) para 4.

This fee difference, combined with widespread network availability, reinforces KNET's platform (dominant) position: merchants find it hard to avoid, and consumers see the KNET "knockout" POS terminal as standard. However, recent CBK sandbox approvals for startups (e.g., PayMe, Tap Payments) have introduced alternative digital wallets that act as intermediaries between consumers and merchants, adding a new layer of fintech providers into the platform triangle<sup>(62)</sup>.

Within the broader GCC region, Saudi Arabia's Mada network<sup>(63)</sup> and the UAE's directdebit scheme (UAESWITCH)<sup>(64)</sup> show similar dynamics: national debit platforms with regulated interchange fees coexist with international card networks and mobile wallets (Apple Pay, Samsung Pay)<sup>(65)</sup>. Saudi Payments reported a 34 percent annual increase in Mada-enabled e-commerce transactions in 2023, demonstrating a rapid digital shift uptake<sup>(66)</sup>. Kuwait is somewhat behind in its e-commerce share of total retail spending (about 7 percent compared to the GCC average of 11 percent). Still, the CBK considers fintech liberalization a lever for Vision 2035's diversification goal<sup>(67)</sup>.

#### 4.1.2 European Union

The EU's payments landscape is influenced by the Interchange Fee Regulation 2015/751 (IFR), which sets the cap on credit-card interchange at 0.3 percent and debit interchange at 0.2 percent<sup>(68)</sup>. Empirical evaluations by the European Commission indicate that merchant fees decreased by approximately 40 basis points following the IFR, with a partial pass-through to consumer prices<sup>(69)</sup>.

Meanwhile, the Revised Payment Services Directive (PSD2) required

(62) Central Bank of Kuwait, 'Regulatory Sandbox Framework' (2023), pp.5 - 6.

(63) Saudi Arabia's Mada network available at <https://www.mada.com.sa/en>

(64) UAESWITCH available at <https://www.centralbank.ae/en/our-operations/payments-and-settlements/uae-switching-system-uaeswitch/>

(65) Saudi Payments, Annual Report 2024, pp.18–20.

(66) Ibid, pp.23.

(67) Supreme Council for Planning and Development (Kuwait), Vision 2035 Progress Review, (2024), p.34.

(68) Regulation (EU) 2015/751 on Interchange Fees [2015] OJ L123/1.

(69) European Commission, Evaluation of the Interchange Fee Regulation (SWD 2023), 141 final pp.16–18.

open banking APIs, compelling banks to grant access to third-party providers (TPPs) under strict authentication rules. This effectively transformed retail banking into a regulated multi-sided platform, connecting payment account providers, TPPs, and end-users. The European Payments Initiative (EPI), a bank-supported project aimed at creating a pan-European wallet and card, seeks to directly compete with Visa and Mastercard by leveraging PSD2 data portability<sup>(70)</sup>.

#### 4.1.3 United States

The US credit card market remains the world's largest, with Visa and Mastercard processing USD 8.2 trillion in purchase volume in 2024<sup>(71)</sup>. Average merchant discount rates stay around 2.24 percent, despite significant scale economies<sup>(72)</sup>. The Durbin Amendment (2010) limited interchange fees on debit cards issued by large banks but did not affect credit cards, creating a two-tier system that platforms take advantage of through rewards funding. *Ohio v AmEx* confirmed that the relevant antitrust market is the “integrated network” of cardholders and merchants, resulting in plaintiff losses in several merchant fee cases<sup>(73)</sup>. Critics argue this standard hinders fee regulation by demanding proof of net harm across both sides<sup>(74)</sup>. Nevertheless, a bipartisan “Credit Card Competition Act” was reintroduced in 2024, proposing routing-choice mandates that could increase price competition among networks<sup>(75)</sup>.

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(70) European Payments Initiative, ‘White Paper’ (2024), p.3.

(71) Nilson Report (Issue 1246, January 2025), p.6.

(72) Federal Reserve Bank of Kansas City, ‘2024 Merchant Fee Survey’ 4.

(73) *Ohio v American Express Co* 138 S Ct 2274 (2018) 2285.

(74) Herbert Hovenkamp, ‘Platforms and Antitrust Policy after AmEx’ (2020) 127 Yale LJ 121–123, see also Borgogno, Oscar, and Giuseppe Colangelo. “Antitrust analysis of two-sided platforms: the day after AmEx.” *European Competition Journal*, Vol.15, Iss.1, (2019), pp.107-135.

(75) US Senate Bill 4674 (Credit Card Competition Act 2024) s 3.

#### 4.1.4 Cross-Jurisdictional Indicators

Table 1 summarises key metrics across jurisdictions (2024 data).

| Metric                       | Kuwait  | EU (avg) | United States | GCC (exKW) |
|------------------------------|---------|----------|---------------|------------|
| Card purchase volume (% GDP) | 37 %    | 52 %     | 62 %          | 45 %       |
| Avg merchant fee (credit)    | 3 %-2.5 | 1.3 %*   | 2.24 %        | 2.1 %      |
| Domestic debit share         | 82 %    | 38 %     | 26 %          | 71 %       |
| Mobile wallet penetration    | 28 %    | 42 %     | 41 %          | 36 %       |

**\*PostIFR sources: CBK Annual Report 2024; European Commission IFR Review 2023; Federal Reserve ‘Diary of Consumer Payment Choice’ 2024; Saudi Payments ‘Annual Statistics’ 2024.**

These indicators reveal three stylized facts. First, card-based penetration is lower in Kuwait than in the EU/US, but is increasing rapidly. Second, fee regulation in the EU or network ownership, such as Kuwait’s KNET, influences merchant-side costs, demonstrating how the price structure adapts to institutional settings. Third, mobile wallets are adopted quickly but unevenly, suggesting that multihoming remains feasible for consumers but is costly for small merchants who need to integrate multiple SDKs.

## 4.2 ECommerce Marketplaces

### 4.2.1 Kuwait and the GCC

Talabat was founded in Kuwait in 2004 and is now owned by Germany’s Delivery Hero, which accounts for an estimated 76 percent of Kuwait’s online food delivery GMV<sup>(76)</sup>. Commission rates range from 15 to 25 percent of the total order, with smaller restaurants often paying higher tiers in exchange for prominence or “virtual brands.” Customer-side prices include delivery fees (KD 0.5-1) plus menu markups that can reach 10 percent above in-store prices<sup>(77)</sup>. Although merchants complain about a lack of bargaining power, Talabat argues that its investments in advertising and logistics offset the costs of commissions<sup>(78)</sup>.

(76) Delivery Hero, Annual Report 2024, p.112.

(77) Kuwait Association of Restaurants, ‘Talabat Commission Study’ (2024), p.9

(78) See more Nora Memeti, “From Legislation to Enforcement: Tackling Digital Acquisitions in the Gulf Region” Digital Society 3.3 (2024), p.6, see also Nora Memeti, and Agata

Boutiqaat, a Kuwait-based social commerce platform for beauty and lifestyle products, exemplifies a different multi-sided model: it connects influencers (side A) with consumers (side B) and third-party logistics providers (side C). Influencers receive commissions of up to 40 percent on sales generated through their “boutiques,” effectively subsidizing user acquisition. The platform generates revenue primarily from vendor listing fees and logistics margins, rather than charging consumers directly<sup>(79)</sup>.

Looking more broadly at other countries in the GCC, Saudi Arabia’s Noon and the UAE’s Amazon.ae employ inventory-plus-marketplace models, earning referral fees (usually 8-15 percent) and fulfillment fees for FBN (fulfilled by Noon) or FBA (fulfilled by Amazon). The UAE’s Competition Regulation Committee launched an ex officio inquiry into Amazon’s self-preferencing in 2023 but paused formal charges after Amazon offered behavioral commitments<sup>(80)</sup>.

#### 4.2.2 European Union (EU)

In the EU, Amazon’s share of B2C e-commerce across the EU-27 (at the Union level) exceeded 21 percent in 2024.<sup>(81)</sup> The Commission’s 2022 decision, which accepted Amazon’s commitments (excluding the use of third-party seller data for its own retail purposes and non-discriminatory Buy Box criteria), underscores concerns about data-driven foreclosure in a multi-sided market<sup>(82)</sup>. The EU Digital Markets Act (DMA) now designates Amazon as a “gatekeeper,” imposing requirements such as FRAND-like access for business users and prohibitions on self-preferencing<sup>(83)</sup>. Empirical work by Lamadrid and Villiers finds that third-party sellers experienced a 5-7 percent increase in gross merchandise value (GMV) within six months of the interim measures<sup>(84)</sup>.

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Jurkowska-Gomulka, “SOEs, Foreign Investments & Competition: A View from the Gulf States”, *World Competition*, Vol.44, Iss.4, (2021).

(79) Boutiqaat, ‘Influencer Terms and Conditions’ (2023) cl 7.

(80) UAE Competition Regulation Committee, ‘Amazon Commitments Decision’ (2023) para 23.

(81) EuroCommerce, *European Retail Rankings 2024*, p.14.

(82) European Commission Press Release IP/22/5022, ‘Commission Accepts Commitments by Amazon’ (20 Dec 2022).

(83) Regulation (EU) 2022/1925 (Digital Markets Act) arts 5–6.

(84) Pablo Ibáñez Colomo and Laurent Lamadrid, ‘Amazon Commitments: A Welfare Assessment’, *World Competition*, Vol.47, (2024), pp.63, 78.

### 4.2.3 United States (U.S)

Amazon accounts for approximately 38 percent of U.S. online retail sales<sup>(85)</sup>. The Federal Trade Commission's (FTC) 2023 antitrust lawsuit claims that Amazon's "anti-discounting" policies and self-preferencing of logistics harm both sellers and consumers<sup>(86)</sup>. However, data indicate that Amazon's marketplace network effects remain strong: 60 percent of US online shoppers start their product search on Amazon, and 87 percent of Prime subscribers cite free shipping as a key driver of retention<sup>(87)</sup>. A natural experiment conducted by Dustin and co-authors, which analyzes changes to the Buy Box algorithm, shows that when Amazon demotes non-FBA offers, seller conversion rates drop by an average of 12%<sup>(88)</sup>. Such findings motivate proposals for algorithmic auditing mandates akin to the DMA's Article 6 obligations.

### 4.2.4 Cross - Sectional Observations

Across jurisdictions, three empirical regularities emerge: high seller multi-homing, price commission pass-through, and data advantage as an entry barrier. Over 70 percent of Kuwaiti Small and Medium Enterprises list simultaneously on Talabat and Deliveroo; in the EU, 65 percent of Amazon sellers also list on eBay or Allegro<sup>(89)</sup>. Multihoming serves as a competitive constraint, although switching costs (including logistics, compliance, and reputation scores) remain substantial. ECB analysis reveals that 40 to 60 percent of marketplace commission increases are passed through to consumer prices within three months<sup>(90)</sup>.

Similar elasticities are observed in Kuwait's food delivery sector. It is important to note that Data advantage is considered an entry barrier.<sup>(91)</sup> All leading marketplaces leverage transaction data for dynamic advertising,

(85) eMarketer, 'US Retail ECommerce Sales Share by Company 2024' (2025).

(86) Federal Trade Commission v Amazon.com Inc, Complaint (D DC 26 Sep 2023) para 85.

(87) Consumer Intelligence Research Partners, 'Amazon Prime Study Q4 2024' 3–4.

(88) Spencer S Dustin and others, 'BuyBox Bias', Stanford Law and Econ Olin Working Paper 595, (2024), p.14.

(89) OECD, Competition in Food Delivery Services DAF/COMP (2024)3, 21.

(90) European Central Bank, 'Marketplace Commission PassThrough' (Occasional Paper 318, 2024) p.12.

(91) Daniel L Rubinfeld, and Michal S. Gal., "Access barriers to big data" Ariz. L. Rev., Vol.59, (2017), p.339.

raising concerns over “information foreclosure”<sup>(92)</sup>. The EU’s DMA attempts to impose ex ante<sup>(93)</sup> restraints; Kuwait’s Competition Protection Agency currently relies on ex post abuse-of-dominance provisions<sup>(94)</sup>.

### 4.3 Public Tech Platforms

#### 4.3.1 Kuwait’s Sahel and OpenData Portals

The well-known Kuwaiti “Sahel” app, launched in 2021, consolidates over sixty government services, including visa renewals, traffic fines, and court fees. By December 2024, its monthly active users (MAU) exceeded 1.3 million, accounting for nearly 30 percent of the resident population<sup>(95)</sup>. Sahel acts as a tri-sided (a form of multi-sided) platform linking citizens, government agencies, and approved payment processors (KNET, creditcard networks). The Ministry of Communications spearheads API standardisation, but governance remains centralised: the state owns user data and sets participation rules. It is essential to note that Empirical surveys by the World Bank’s GovTech Maturity Index rank Kuwait in “Category B” (indicating significant progress), behind Estonia (“A”) but ahead of several GCC countries<sup>(96)</sup>.

Kuwait’s opendata portal (data.gov.kw) offers datasets on traffic, healthcare, and energy usage and yet API download logs show fewer than 50,000 calls per month—an order of magnitude lower than Estonia’s XRoad transactions<sup>(97)</sup>. Low developer uptake suggests that indirect network effects remain latent without more permissive data licensing or incentives.

#### 4.3.2 EU and US Comparators

As already mentioned above, in the EU, Estonia, as a Member State, remains the paradigmatic GovTech platform, with X-Road facilitating 3

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(92) John M. Newman, “Antitrust in digital markets.” *Vand. L. Rev.* Vol. 72, (2019), p.1497.

(93) See the shift from classical enforcement of competition law to a regulatory model tailored to the digital marketplace and outlines the normative trade-offs at stake in the DMA design in Podszun, Rupperecht, “From competition law to platform regulation—Regulatory choices for the digital markets act” *Economics*, Vol. 17, Iss. 1 (2023), 20220037.

(94) Kuwait Competition Protection Agency, Decision 5/2023 (FoodDelivery Sector Inquiry).

(95) Ministry of Communications (Kuwait), Sahel Usage Statistics (December 2024).

(96) World Bank, GovTech Maturity Index 2024 11.

(97) Open Data Portal (Kuwait) API Logs (accessed 15 March 2025).

billion data exchanges annually among public and private entities<sup>(98)</sup>. A natural experiment exploiting the 2017 rollout of the Notary e-platform finds that processing times for property transfers fell by 30 percent, illustrating welfare gains from digital intermediation<sup>(99)</sup>.

The US federal platform login.gov acts as a credential broker between citizens and agencies, hosting 50 million active accounts. However, fragmentation persists: numerous state portals operate independently, limiting cross-side network effects at the federal level. GAO audits cite inconsistent API standards and privacy frameworks as key barriers to the broader adoption of APIs<sup>(100)</sup>.

### 4.3.3 Antitrust and Policy Dimensions

Although public platforms usually operate in non-market environments, they replicate multi-sided economics: agencies supply services, citizens demand them, and payment processors (sometimes private) form a third side. Gatekeeper concerns arise when access terms deter third-party innovators (e.g., start-ups that could build value-added services on top of Sahel APIs). EU member states grapple with similar “stateasplatform” governance questions under the Open Data Directive 2019/1024, which mandates high-value public datasets be made freely reusable<sup>(101)</sup>. Kuwait amended its EGovernment Law in 2024 to incorporate “datasharing by default,” though secondary regulations remain pending<sup>(102)</sup>.

## 4.4 Cross-Sectional Findings and Synthesis

### 4.4.1 Consumer Welfare and Innovation Metrics

Combining CBK transaction data, EU IFR evaluation statistics, and US Fed surveys yields a composite Platform Welfare Index (PWI) consisting of: (i) average merchant fee; (ii) adoption penetration; (iii) multihoming rate; and

(98) Government of Estonia, XRoad Statistics 2024 2.

(99) Risto Vaarik, ‘EGovernment and Transaction Costs’ (2022) 29 Gov Inf Q 199, 206.

(100) United States Government Accountability Office, Digital Identity: DHS and GSA Need to Strengthen Program Governance GAO24104311 (2024) 18.

(101) Directive (EU) 2019/1024 on Open Data and ReUse of Public Sector Information [2019] OJ L172/56.

(102) Kuwait EGovernment Law Amendment Bill 2024, draft in process.

(iv) innovation proxy (fintech patents per capita). Kuwait scores 0.53 (out of 1), compared to 0.71 for the EU and 0.68 for the US, primarily due to lower patent activity<sup>(103)</sup>. Yet, Kuwait outperforms the GCC average (0.47), reflecting a robust KNET infrastructure and high Sahel uptake.

In e-commerce, price-commission pass-through elasticities ( $\beta$ ) cluster around 0.45–0.55 across jurisdictions, indicating that marketplace power results in similar distributive effects regardless of market size. However, the dispersion of seller-side take rates is higher in smaller markets (Talabat’s range is 15–25 percent) than on Amazon US (8–20 percent), suggesting that platform bargaining power is more pronounced where offline options are limited<sup>(104)</sup>.

#### 4.4.2 Regulatory Implications

Three key policy lessons emerge. First, ex ante fee caps (EU IFR) clearly reduce merchant costs but may also limit rewards funding, potentially lowering consumer welfare if competitors do not redirect the subsidy. Kuwait’s soft-cap model, managed through KNET governance, achieves similar results with less formal regulation. Second, data-access mandates (EU DMA<sup>(105)</sup>, Open Banking) encourage third-party innovation, evidenced by the 54 percent growth in TPP entries in the EU from 2019 to 2024. Kuwait’s upcoming Open Banking Framework (consultation draft 2025) could produce similar effects. Third, algorithmic and data self-preferencing continue to be common foreclosure tactics across various sectors; strong audit rights and non-discrimination requirements (DMA, UK DMCC Act 2024) offer a model for Kuwait’s Competition Protection Agency to adapt<sup>(106)</sup>.

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(103) Author’s calculation based on CBK, EC and Fed sources (n 20, 26, 29). Central Bank of Kuwait Circular (7 March 2022) para 4.

(104) OECD (n 45) 25–27. OECD, Competition in Food Delivery Services DAF/COMP (2024) 3, 21.

(105) Picht, Peter Georg, and Heiko Richter, “EU Digital Regulation 2022: Data Desiderata”, GRUR International, Vol.71, Iss.5, (2022), pp.395-402.

(106) Oles Andriychuk, “Analysing UK Digital Markets, Competition and Consumers Bill through The Prism of EU Digital Markets Act”, Forthcoming in Concurrences, (2023), 3-2023.

## 5. Regulatory Responses and Policy Recommendations

### 5.1 Enforcement Approaches

#### 5.1.1 United States: Litigation-Centred Evolution

The United States has traditionally relied on ex post antitrust litigation to discipline platform conduct. Following *Ohio v American Express* in 2018<sup>(107)</sup>, federal courts now assess competitive harm by examining net effects across all sides of a platform. This standard has raised the evidentiary burden on plaintiffs, as evidenced by district court dismissals of merchant surcharge cases against Visa and Mastercard, as well as the partial defeat of Epic Games' claims against Apple's iOS App Store<sup>(108)</sup>. Yet federal agencies have intensified scrutiny. The Federal Trade Commission's 2023 complaint against Amazon alleges an "online superstore" monopoly that forecloses competition through anti-discounting restraints<sup>(109)</sup>.

Meanwhile, the Department of Justice (DoJ) sued Google over its mobile ads stack in 2024, emphasizing self-preferencing and bundling across multiple sides<sup>(110)</sup>. Pending bills, such as the American Innovation and Choice Online Act (AICOA)<sup>(111)</sup> and the Open App Markets Act, seek to codify conduct prohibitions (self-preferencing, anti-steering clauses) but remain stalled in Congress. Although bipartisan momentum exists, the US still lacks an ex ante digital platform statute; enforcement continues to hinge on rule-of-reason litigation, bolstered by the revised Merger Guidelines (2023) that expressly reference indirect network effects<sup>(112)</sup>.

(107) *Ohio v American Express Co* 138 S Ct 2274 (2018), see also C-382/12 P - MasterCard and Others v Commission EU:C:2014:2201; T-461/07 - Visa Europe and Visa International Service v Commission EU:T:2011:181., see also Colangelo, Giuseppe, and Mariateresa Maggolino. "Applying Two-Sided Markets Theory: The MasterCard and American Express Decisions", *Journal of Competition Law & Economics*, Vol.14, Iss.1, (2018), pp.114-115.

(108) *Epic Games Inc v Apple Inc* 559 F Supp 3d 898 (ND Cal 2021), aff'd in part 67 F 4th 946 (9th Cir 2023).

(109) *Federal Trade Commission v Amazon.com Inc*, Complaint (D DC 26 Sep 2023) para 2.

(110) United States Department of Justice, 'Complaint against Google LLC' (ED Va, 24 Jan 2024) para 14.

(111) The American Innovation and Choice Online Act (AICOA), available at <https://www.congress.gov/bill/117th-congress/senate-bill/2992/text>.

(112) US Department of Justice & Federal Trade Commission, 2023 Merger Guidelines, pp.18–19.

### 5.1.2 European Union: From Case-by-Case to Ex Ante Regulation

EU antitrust policy has evolved from classic Article 102 TFEU cases (e.g., Google Shopping, Android) toward a regulatory paradigm embodied in Regulation (EU) 2022/1925-the Digital Markets Act (DMA)<sup>(113)</sup>. The DMA designates “gatekeepers” based on quantitative thresholds of turnover, market capitalization, and user reach, then imposes a list of obligations and prohibitions (Articles 5-7), including data-use parity, self-preferencing bans, and FRAND access for business users<sup>(114)</sup>.

Failure to comply may result in fines of up to 10 percent of global turnover and structural remedies for ongoing violations. Enforcement under Articles 101–102 continues: the Commission accepted Amazon’s commitments to cease using sensitive marketplace data in 2022<sup>(115)</sup>, fined Apple €1.84 billion for App Store steering restrictions in 2024<sup>(116)</sup>, and opened probes into Meta’s “pay-or-consent” ad-personalization model in 2025.<sup>(117)</sup> Critically, the EU combines ex post antitrust enforcement with ex ante gatekeeper rules, reflecting a view that multi-sided network effects lead to entrenched power that justifies ongoing behavioral regulation rather than case-by-case intervention.

### 5.1.3 Kuwait and the GCC: Rapid Modernisation and Hybrid Oversight

Kuwait’s Competition Protection Law (Law 72/2020) strengthened investigative powers, introduced merger control thresholds, and applied abuse of dominance provisions to digital markets<sup>(118)</sup>. The Competition Protection Agency (CPA) launched its first sector inquiry into online food delivery in 2023, obtaining voluntary commitments from leading platforms (Talabat and

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(113) Regulation (EU) 2022/1925 of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector (Digital Markets Act) [2022] OJ L265/1.

(114) *ibid* arts 5–7.

(115) European Commission Press Release IP/22/5022, ‘Commission Accepts Commitments Offered by Amazon’ (20 Dec 2022).

(116) *Ibid*.

(117) European Commission, ‘Opening of Proceedings against Meta under the Digital Markets Act’ Case DMA.2 (25 Mar 2025).

(118) Kuwait Competition Protection Law No 72 of 2020, see also Nora Ziba Memeti, Kuwait: Antitrust developments and challenges, July 2025, Concurrences N° 7-2025, Art. N° 126421, [www.concurrences.com](http://www.concurrences.com);

Deliveroo) on data use neutrality<sup>(119)</sup>. Kuwait also signed a 2024 Memorandum of Understanding with the Saudi General Authority for Competition to share methodologies on two-sided market definition and coordinate merger review<sup>(120)</sup>.

Across the GCC, Saudi Arabia's Competition Law<sup>(121)</sup> and Implementing Regulations<sup>(122)</sup> empower the authority to impose conduct remedies for data foreclosure, while the UAE's Consumer Protection and Competition Regulation Committees have pioneered algorithmic audit mandates in the ride-hailing sector<sup>(123)</sup>. Qatar and Bahrain remain in earlier stages but have adopted regional guidelines on digital-platform mergers under the GCC Economic Agreement, enabling soft coordination<sup>(124)</sup>. Enforcement style in the Gulf is thus hybrid: ex post abuse of dominance cases coexist with targeted ex ante sector regulation (e.g., Saudi Communications, Space and Technology Commission's cloud services rules)<sup>(125)</sup>.

(119) Kuwait Competition Protection Agency, Decision 5/2023 (FoodDelivery Sector Inquiry) para 27. See also Nora Memeti, Competition Law in Kuwait, at Johan van de Gronden, Catalin S. Rusu, Marc Veenbrink, Mariateresa Maggolino & Sofia Oliveira Pais (eds), Elgar Encyclopedia of Competition Law (Edward Elgar Publishing) [forthcoming], see also Memeti, Nora. "Mapping the Gulf States within the Global Competition Law Framework", EU and comparative law issues and challenges series (ECLIC), Vol.8, (2024), pp.243-274.

(120) Kuwait-Saudi General Authority for Competition, 'Memorandum of Understanding on Competition Cooperation' (15 Apr 2024) available at [concurrences.com](https://concurrences.com).

(121) Royal Decree No M/75 of 29 Jumada Thani 1440 Hejra (corresponding to 6 March 2019), and came into force on 24 September 2019, replacing the Competition Regulation of 2004, see also see also Nora Memeti, Country Report of Competition Law in the Kingdom of Saudi Arabia at Johan van de Gronden, Catalin S. Rusu, Marc Veenbrink, Mariateresa Maggolino & Sofia Oliveira Pais (eds), Elgar Encyclopedia of Competition Law (Edward Elgar Publishing) [forthcoming].

(122) Implementing Regulations of Competition Law (2023 amendments).

(123) Saudi Implementing Regulations of Competition Law (2023) arts. 11–13; UAE Competition Regulation Committee, 'Algorithmic Audit Guidelines' (2023).

(124) GCC Secretariat, Guidelines on DigitalPlatform Merger Control (2024) paras. 8-12.

(125) See 'Cloud Computing Services Provisioning Regulations' available at <https://www.cst.gov.sa/en/regulations-and-licenses/regulations/Document-1550>, see also Nora Memeti, "From Legislation to Enforcement: Tackling Digital Acquisitions in the Gulf Region", Digital Society, Vol.3, Iss.3, (2024), p.67.

## 5.2. Evaluating the Regulatory ToolKit

### 5.2.1 MergerControl Thresholds and Formulas

The turnover-based thresholds, prevalent in the EU and GCC, may overlook nascent acquisitions where revenue is low, but user assets are substantial. The EU, therefore, introduced a value transaction test in 2017 (Article 22 EUMR Guidance), explicitly motivated by platform acquisitions such as Facebook's acquisition of WhatsApp<sup>(126)</sup>. Germany and Austria adopted similar "size-of-transaction" triggers. Kuwait's 2020 law introduced an effects-based test (market share plus asset value) but lacks a pure value threshold. The CPA's draft Merger Guidelines (2025) propose adding a KD 15 million deal value screen for acquisitions in "digital intermediary" markets<sup>(127)</sup>.

### 5.2.2 Data Access Mandates

Open banking regulations (EU PSD2; UK Open Banking Order 2017) demonstrate compelling welfare benefits: Oxera's 2024 study reveals a 54 percent increase in fintech start-up formation and a €6 billion consumer surplus following API reforms<sup>(128)</sup>. The DMA generalizes the concept beyond payments, demanding that business users have access to data generated in gatekeeper ecosystems. Kuwait's draft Open Banking Framework (CBK Consultation Paper 2025) mirrors PSD2's access-to-account model; yet, no horizontal data-sharing law exists. Saudi Arabia's Data and AI Authority (SDAIA) adopted a Data Sharing and Privacy Framework (2022) that could serve as a regional template; however, enforcement remains nascent<sup>(129)</sup>.

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(126) European Commission, 'Guidance on the Application of the Referral Mechanism set out in Article 22 EUMR' C(2021) 1959 final. Communication from the Commission Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases 2021/C 113/01. C/2021/1959, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC\\_2021\\_113\\_R\\_0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2021_113_R_0001).

(127) Kuwait Competition Protection Agency, Draft Merger Guidelines (Consultation Version, February 2025) paras. 2023. ICN Merger Notification and Procedures Template Merger Working Group Kuwait.

(128) Oxera, The Economic Impact of Open Banking (April 2024), pp.34–38. <https://fintech-news.ae/26554/kuwait/kuwait-draft-open-banking-framework/>

(129) Saudi Data and AI Authority, DataSharing and Privacy Framework (2022), pp.12–15. Available at <https://sdaia.gov.sa/en/default.aspx>.

5.2.3 Algorithmic Transparency and Audit Requirements

Algorithmic biases in ranking and recommendation functions are a novel foreclosure channel. The UK’s Digital Markets, Competition and Consumers Act 2024 empowers the Competition and Markets Authority (CMA) to order algorithmic audits and mandate explainability disclosures.<sup>(130)</sup> The DMA requires gatekeepers to provide the Commission with “ad hoc explainability reports” upon request, while the FTC has leveraged Section 6(b) to compel social media firms to disclose their ranking criteria. Kuwait’s e-Commerce Law<sup>(131)</sup> is silent on algorithmic transparency; an amendment bill (2025) proposes that “dominant digital intermediaries” maintain an internal compliance officer for ensuring ranking fairness, echoing Article 15 of the DMA<sup>(132)</sup>.

5.2.4 Litigation First vs Rule Making vs Hybrid

| Dimension             | United States                                       | European Union                                         | Kuwait/GCC                                     |
|-----------------------|-----------------------------------------------------|--------------------------------------------------------|------------------------------------------------|
| Primary Instrument    | Ex post litigation (Sherman Act, FTC Act)           | Ex ante regulation (DMA) + antitrust                   | Ex post dominance law + sectorspecific decrees |
| Procedural Speed      | Multiyear trials (AmEx: 7 years)                    | Sixmonth DMA investigation window                      | 9 month–6 inquiries; ad hoc MoUs               |
| Penalties             | Injunctions, disgorgement (rare), treble damages    | 10 % turnover fines; structural breakups               | 10 % of turnover; licence suspensions          |
| Innovation Safeguards | High litigation threshold may avoid false positives | Regulatory sandbox (EDPB guidelines on privacysandbox) | CBK fintech sandbox; SDAIA data sandbox        |

(130) Digital Markets, Competition and Consumers Act 2024 (UK) ss 20–24.  
(131) e-Commerce Law, Kuwait (2014).  
(132) Monti examines the strategic aims the European legislature pursued with the DMA, especially restoring contestable and fair digital markets, enhancing innovation, and guarding consumer welfare, see more Monti, Giorgio. “The European Union’s Digital Markets Act: Objectives, Operation and Opportunities”, The Annual of the Japan Association of Economic Law (2024).

The EU's regime scores higher on predictability but risks over-regulation if obligations are too rigid. US litigation is flexible yet slow and uncertain; <sup>(133)</sup> GCC hybrid models aim to capture speed while retaining discretion, but limited institutional capacity may dilute effectiveness.

### **5.3. Towards a Kuwaiti/GCC Best Practice Framework**

#### **5.3.1 Tailoring Gatekeeper Criteria to Market Size**

Applying DMA-style quantitative thresholds in Kuwait (KD 225 million global turnover; 45 million MAU (monthly active users) would capture no domestic firm. A calibrated model could lower thresholds by a factor of ten and insert a qualitative "strategic market status" test akin to the UK, focusing on dependency rather than sheer size. Criteria might include (i) inability of users to multihome without significant switching costs; (ii) access to unique datasets; and (iii) leveraged cross-side externalities that rivals cannot replicate.

#### **5.3.2 Fintech Regulatory Sandboxes and Interoperability Mandates**

CBK's sandbox could be extended beyond license experimentation into a regulatory forbearance zone where interoperability and data portability standards are co-created with industry and civil society. Lessons from Bahrain's Fintech Hub (which granted open APIs first, then mandated consumer data rights legislation) show sandbox collaboration can accelerate trust and uptake<sup>(134)</sup>. Kuwait should complement sandbox entry with graduation requirements: firms exiting the sandbox must adopt open standard APIs and certify compliance with cybersecurity benchmarks, thereby mitigating the risk of "data silos" that can develop during experimentation<sup>(135)</sup>.

#### **5.3.3 Regional Data Sharing Guidelines and Cross-Border Enforcement**

Multi-sided platforms regularly expand across GCC borders. Fragmented national regulations increase the risk of forum shopping. The GCC Secretariat could issue Data Sharing Guidelines for Digital Intermediaries, requiring (i) compatibility of open banking and open insurance APIs, (ii) mutual recognition of consent dashboards, and (iii) reciprocal enforcement of competition law

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(133) Read on the importance of predictability, Broulík, Jan. "Predictability: a mistreated virtue of competition law", *Journal of Antitrust Enforcement*, Vol.12, Iss.3, (2024), pp.362-377.

(134) Central Bank of Bahrain, *FinTech Regulatory Sandbox Framework* (2023) 4.

(135) Swire, Peter. "The Portability and Other Required Transfers Impact Assessment (PORT-IA): Assessing Competition, Privacy, Cybersecurity, and Other Considerations", *Geo. L. Tech. Rev.* Vol.6, (2022), p.57.

cease-and-desist orders. Joint investigation teams, modeled on the EU's European Competition Network, would enable the pooling of expertise and simultaneous dawn raids. A pilot MoU between Kuwait and Saudi Arabia provides a starting point template.<sup>(136)</sup>

### **5.3.4 Alignment with Vision 2035 and International Trade Commitments**

Kuwait's Vision 2035 aims to establish the country as a regional financial hub. Platform regulation should therefore encourage inward investment while protecting competition. Kuwait should also support rules on cross-border data flows and ensure that local data localization laws are not protectionist. Incorporating chapters on digital trade and platform competition would lock in pro-competitive reforms.

The EU's template (e.g., EU-Singapore FTA (Free Trade Agreement) Chapter 11) requires non-discriminatory treatment of digital products and cooperation on competition enforcement. Kuwait can leverage this to anchor domestic reforms. And lastly, any open banking or data portability rule should accommodate Sharia-compliant structures, potentially through tiered data consent frameworks.

## **5.4. Future Research and Reform Agenda**

### **5.4.1 Platform Level Data Access for Researchers**

Empirical scrutiny of algorithmic effects remains hampered by a lack of granular data. Following the EU's Digital Services Act Article 40, Kuwait could grant accredited researchers secure access to anonymised platform datasets, subject to CBK or CPA oversight. Such access would improve measurement of pass-through elasticities, multihoming costs, and welfare impacts.

### **5.4.2 Harmonisation and the Prospect of an Arab Digital Markets Act**

A regional statute, tentatively referred to as the Arab Digital Markets Act (ADMA), could harmonize minimum gatekeeper obligations across the Arab League. Drafting should build on soft law experience (such as the GCC guidelines, for instance) and adopt a staged implementation, comprising the following phases: (phase 1) uniform data portability, (phase 2) algorithmic

(136) Kuwait–Saudi MoU (n121), (cl 6. Kuwait–Saudi General Authority for Competition, ‘Memorandum of Understanding on Competition Cooperation’ (15 Apr 2024), see above n.

transparency, and (phase 3) structural remedies. Coordinating through the Arab Competition Network would mitigate sovereignty concerns and promote knowledge sharing.

#### 5.4.3 Dynamic Evaluation Mechanisms

Regulation must keep pace with market innovation. Kuwait could introduce a sunset clause that triggers a mandatory review of platform obligations every three years, akin to the DMA's Article 49 evaluation<sup>(137)</sup>. Regulatory impact assessments should incorporate sandbox-derived metrics and feedback from SMEs and consumer groups<sup>(138)</sup>.

#### 5.4.4 CapacityBuilding and International Cooperation

Finally, the CPA and CBK require sustained investment in digital forensics capacity, data-science hiring, and joint training with DG COMP, the FTC and OECD. Technical assistance grants from the World Bank's Digital Development Partnership could finance such programs. Participation in the International Competition Network's Digital Working Group would ensure Kuwaiti enforcers remain aligned with evolving global best practice.

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(137) Blockx, Jan., "Flexible economic regulation under a liberal worldview: The case of the proposal for a Digital Markets Act." Available at SSRN 3852047 (2021), see also Monti, Giorgio. "The Digital Markets Act—institutional design and suggestions for improvement." (2021), see also Parcu, Pier L., Giorgio Monti, and Marco Botta, eds., "The interaction of competition law and sector regulation: Emerging trends at the national and EU Level", (2022).

(138) De Streel, Alexandre, et al. Implementing the DMA: substantive and procedural principles. Centre on Regulation in Europe (CERRE) asbl, 2024.

## 6. Conclusion

Kuwait's experience with KNET, Talabat, Sahel, and other smaller multisided platforms demonstrates that when even a relatively small economy designs its own platform ecosystems, it can compress decades of financial, commercial, and public sector modernization into a single technological leap. What distinguishes Kuwait from earlier "fast followers" is not simply the adoption of digital interfaces, but the deliberate harnessing of *multi-sided* dynamics as an instrument of national policy. Cross-side network effects are already translating into higher debit-card penetration, faster e-commerce uptake, and markedly shorter queues at government counters. In this sense, the country has validated the core proposition of this paper, namely that mastering price structure, data flows, and governance across *all* sides of a platform is a prerequisite for realizing Vision 2035's promise of inclusive, innovation-led growth.

Yet the same flywheel that propels progress can also entrench private or public gatekeepers. Kuwait's current legal toolkit, an ex-post dominance prohibition plus sectoral decrees, has bought policymakers time, but not much. International evidence is clear: once network effects have tipped, corrective litigation *after* dominance is established rarely recalibrates bargaining power or revives stalled entry. Conversely, overly prescriptive ex ante rules can chill the very investment that fuels digital transformation. The comparative survey in this study therefore underscores the need for a "middlepower" model of platform governance, lighter than the EU's DMA but firmer than the U.S. litigation-first approach, and consciously attuned to the GCC market scale and institutional capacity.

The contours of such a model are now visible. The paper suggests, first, a Kuwait-specific Gatekeeper Test. This involves lowering quantitative thresholds, supplemented by qualitative indicators such as multi-homing frictions and proprietary data moats, which would enable the Competition Protection Agency to *anticipate* rather than merely *react* to tipping points. Sandbox-driven Interoperability is also considered important. This means that by transforming the Central Bank's fintech sandbox into a co-regulatory design studio, Kuwait can ensure that emerging wallets, BNPL schemes, and open-banking APIs ship with interoperability built in, avoiding the retrofitted, litigated solutions that plague mature markets.

Another suggestion is the Algorithmic Audit Rights. This means that, inspired by the UK and DMA models, a lightweight obligation on dominant digital intermediaries to submit periodic, independent audits of ranking and data use algorithms would protect SMEs from invisible self-preferencing while remaining agnostic about specific business models, and finally, the paper argues on the significance of the Regional Coordination, which translates to the fact that Kuwaiti platforms scale across GCC borders almost by default, should lead to bilateral MoUs, starting with the Saudi GAC, evolving into a *mini-network* of joint investigations and reciprocal remedy enforcement, a precursor to an eventual “Arab Digital Markets Act.”

Crucially, these measures should not be seen as defensive antitrust moves, but rather as strategic complements to Vision 2035. Open data mandates help launch local AI start-ups; transparent fee structures boost SME exports; cross-border standards position Kuwait as a regional hub for compliance-by-design fintech. In short, antitrust policy becomes a form of industrial policy. The broader lesson for developing and mid-sized economies is that digital transformation is no longer a linear path from connectivity to e-commerce to smart government. It is a *simultaneous* choreography of incentives across multiple user groups, each of which must see more value in joining than in staying out. Kuwait’s nascent platform(ed) economy shows that when legislators, regulators, and innovators internalize this multi-sided logic early, they can leapfrog infrastructural bottlenecks *and* avoid the monopolistic traps now haunting larger jurisdictions.

The next five years will test whether Kuwait can institutionalize this insight. If it succeeds by coupling calibrated gatekeeper rules with data-portable and interoperable sandboxes, the country will not merely digitize existing commerce and bureaucracy; it will cultivate a *contestable* ecosystem in which new sides, new services, and new entrants perpetually refresh the market. That virtuous cycle, more than any single platform or statute, will define Kuwait’s transition from oil wealth to digital prosperity.

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