

# **The Emergence of Competition Law in the Gulf Cooperation Council Countries and the Need for Common Competition Law and Policy\***

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## **Abstract**

This paper addresses an important question: Do GCC countries need a uniform competition policy and law that regulate competition in the region, similar to that of the European Union? The paper provides an analysis of competition law and policy adoption, the reasons for policy adoption, and the competition authority in each GCC country. Finally, the need for adopting regional competition law and policy to regulate competition among GCC countries is examined in comparative with the European Union Example.

**Key words:** Gulf Corporation Countries, Common Competition Law, Anti-trust, European Union, Competition Law.

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### Introduction

“Antitrust laws...are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”<sup>(1)</sup> Competition law is an essential aspect of all economies. Embracing this legislation has become increasingly important in the past decade with the adoption of competition law in more than 130 countries<sup>(2)</sup> and especially in Gulf Cooperation Council (GCC) countries, where growing investment and trade in the region has made regulating competition crucial. Although most GCC countries included unfair competition clauses in their commercial codes to restrict illegal competitive practices, the first competition law was adopted only 13 years ago in Saudi Arabia, which led to several other GCC countries adopting similar laws.<sup>(3)</sup>

The adoption of a regional competition authority is essential for GCC countries due to the large number of trade and bilateral investment treaties implemented in the region. Also there is no unified laws within the GCC relating to the question. In addition, because five of the six countries in the region have implemented competition laws, oversight of competition is a growing concern.

In order to achieve the aims of the paper the researcher used the methodology that was based on several research methods. Emphasis will be paid in this paper on analyzing competition laws and policy adoptions.

The methodology that will be used will be mainly analytical which will be based mainly on a critical analysis and assessment of both the completion laws in GCC and European Union Competition Law and Policy.

Various resources will be aid the research and a variety of sources will be consulted as part of the analysis; these will include, inter alia, primary sources such as statutes, regional conventions and cases. The research also relies on

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(1) United States v. Topco Associates Inc., 92 U.S. 1126, 1135 (1972).

(2) Andrew I. Gavil, William E. Kocasic, Jonathan B. Baker & Joshua D. Wright, *Anti trust law in perspective cases, concepts and problems in competition policy 2* (West academic publication) (3rd ed. 2017).

(3) See: the Royal decree No. (M/25) dated 4/5/1425 H and the amending based on the Royal Decree No. (24/M) dated 11/4/1435H, Um Alqura, Saudi Arabia. Law No. 19 of 2006 on the Protection of Competition and Prevent Monopolistic Practices, Almeezan, Qatar. Law No. 10 for the year 2007 for the protection of competition, Kuwait Today, Kuwait. Federal Law No .4 of 2012 on the Regulation of Competition, Official Gazette. No. 67/2014 Promulgating Competition Protection and Monopoly Prevention Law Qanoon, Oman.

secondary sources and literature: books on the subjects under discussion, journal articles and other scholarly publications.<sup>(4)</sup>

The comparative methodology will be employed mainly in comparing the Charter of the Gulf Corporation Council with the Treaty of the European Union.

## **Section one: GCC Countries and Competition Law**

### **1. Competition protection in Islam**

The need to insure fair competition is an important and long-standing policy in Islamic law. Muslim nations and territories, including those now included within GCC countries, recognized competition law, or rather the notion of protecting the market from unfair practices that affect competition, long before they became sovereign states.<sup>(5)</sup> The Quran encourages fair and just economic practices and prohibits all forms of economic exploitation that would harm the market.<sup>(6)</sup>

Islam has three bases for economic growth that align with competition law and policy. First, it encourages individuals to trade and grow within the market, provided this growth does not restrict competition; second, it maintains that the state should regulate the market to avoid market restrictions; and third, it safeguards the freedom to compete provided people do not abuse competitive practices.<sup>(7)</sup> Thus, Islamic law identifies anti-competitive actions individuals should avoid in business within the market and acknowledges the need for a competition authority to regulate the market and protect it from unfair and abusive practices that might affect the market as whole.

The concept of consumer welfare plays an important role in the Islamic laws that shape a fair marketplace.<sup>(8)</sup> Islamic economic law includes rules that would regulate the market in cases where prices rise to a level that is unfair to consumers; in that case, the state must act to protect consumers by stopping the activity causing the price rise and forcing the reversal of that process.<sup>(9)</sup>

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(4) See: Maher M. Dabah, *Competition law and policy in the middle east* (Cambridge university press) (1st ed. 2007). Laurent Warlouzet, *The Rise of European Competition Policy, A Cross-Disciplinary Survey of a Contested Policy Sphere*, 7 RSCAS 2010/80 (2010).

(5) Maher M. Dabah, *Competition law and policy in the middle east* 21 (Cambridge university press) (1st ed. 2007).

(6) Id. at 22.

(7) Id. at 23.

(8) Id. at 25.

(9) Id.

The Islamic principle of “Hijr” (meaning restrain) gives the state the power to restrain any business that acts in a way that would adversely affect the market or the consumer.<sup>(10)</sup> This principle is reflected in modern competition law by statutes that not only authorize the state to bring criminal actions against a competition law violator, but also assess criminal penalties, including a possible prison sentence, against that violator.<sup>(11)</sup>

Lastly, the Islamic principles for market protection include the principle of “Hisba,” (meaning accountability). This principle serves as a market regulation mechanism whereby the state may employ market inspectors to detect any unfair practices within the market that might harm the market, competitors within the market, or consumers.<sup>(12)</sup>

### **2. Competition Law within the GCC Countries**

Despite GCC states’ common background and familiarity with competition law and policy through a shared Islamic principles and similar commercial codes limiting unfair trade practices, between the years 2004 and 2014 most GCC countries independently adopted competition laws and policies that are non-uniform and in many ways dissimilar. Saudi Arabia was the first country to enact a competition law, followed by Qatar, then Kuwait, and, subsequently, the United Arab Emirates and Oman. Bahrain has not yet adopted a competition law. Because these five countries have adopted legislations protecting competition, the next logical step would be for the GCC to follow their steps.<sup>(13)</sup>

#### **I. Saudi Arabia**

Saudi Arabia applied to join the World Trade Organization (WTO), the country had to implement laws and regulations to create a free-market economy,<sup>(14)</sup> which resulted in the adoption of the first law regulating competition in the GCC region through Royal Decree No. M/25 in 2004.<sup>(15)</sup>

Prior to the adoption of its new competition law, Saudi Arabian commercial law prohibited unfair behaviors that would result in a negative impact on the commercial market.<sup>(16)</sup> The adoption of the new law involved several challenges and implementing the regulation was slow due to the need to define

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(10) Id. at 26.

(11) Id.

(12) Id. at 28.

(13) Supra Note. 4.

(14) Musaed N. Alotaibi, Does the Saudi Competition Law Guarantee Protection to Fair Competition? 35 (2010).

(15) Supra. note 5 at 199.

(16) Id. at 51; see KSA Royal Decree No. 32 of 1931, the Law of the Commercial Court.

the scope of the law.<sup>(17)</sup> On July 1, 2014, the Competition Council, pursuant to Article 9(6) of the Competition Act, published the Implementing Regulation of the Act<sup>(18)</sup> to aid execution of the law and address hurdles that would affect competition in Saudi Arabia. The Competition Council was established under Article 9 to serve as an independent body and the competition authority in Saudi Arabia.<sup>(19)</sup>

Article 6 and its implementing regulation sets out Saudi Arabian merger policy providing that if companies intend to advance a merger or an acquisition they must first notify the Competition Council and request its approval.<sup>(20)</sup> However, not all mergers and acquisitions are subject to this notification requirement, only those that result in an entity with a 40 % market share of a specific product must give notification and obtain Council approval.<sup>(21)</sup>

The Competition Council began operating in 2012 and has since reviewed 59 cases (one in 2012, two in 2013, 13 in 2014, 17 in 2015, and 26 in 2016),<sup>(22)</sup> with the number of actions increasing every year. In addition, the Council has dealt with 33 violations, which included horizontal agreements, vertical agreements, price fixing, agreements not to deal, and bid rigging. The Council issued resolutions to condemn these actions; and referred them to the administrative court.

## II. Qatar

Qatar, the second GCC country to adopt competition laws, has a well-established economy that has advanced in the last decade within and outside the Middle East.<sup>(23)</sup> To enhance its economy, create an open market, and attract foreign investors, Qatar adopted Law No. 19 of 2006 on the Protection of Competition and Prevention of Monopolistic Practices<sup>(24)</sup> to guarantee the protection under the law from illegal or unfair practices that affect competition within the state.<sup>(25)</sup> The Act aligns with EEC competition law, focusing on protecting competitors as a way to protect competition.<sup>(26)</sup> In addition, the law applies to all forms of

(17) Id at 200.

(18) Saudi Arabia implementing regulation of competition law <http://www.wipo.int/edocs/lexdocs/laws/en/sa/sa007en.pdf>.

(19) Promulgated under the Royal decree No. (M/25) dated 4/5/1425H and the amending based on the Royal Decree No. (24/M) dated 11/4/1435H, Art.9 [http://coc.gov.sa/AdminImages/Competition\\_Law%20EN%20July2014.pdf](http://coc.gov.sa/AdminImages/Competition_Law%20EN%20July2014.pdf).

(20) Supra. Note 5 at 136.

(21) Id.

(22) Saudi Arabia Council of competition [http://coc.gov.sa/index\\_en.aspx](http://coc.gov.sa/index_en.aspx)

(23) Supra. note 5 at 207–208.

(24) Id. at 209.

(25) Id.

(26) Id.

unfair practices that affect competition within the country and to conduct that occurs outside the county that affects competition inside Qatar.<sup>(27)</sup>

Qatar took a different approach to enforcing competition law than Saudi Arabia by establishing a Committee for the Protection of Competition and Protection from Monopolistic Practices. Article 8 of the Act sets out the duties of the committee, which operates under the auspices of the Ministry of Trade and Economy and not as an independent body.<sup>(28)</sup>

Article 10 of the Law imposes an obligation on merging or acquisitioning companies to notify the Committee and request its approval for their planned actions.<sup>(29)</sup> Once notified, the Committee must reach a decision within 90 days.

Article 11 of the Act grants the Committee the power to excuse a merger or acquisition from the approval process if the action will result in economic progress for the market.<sup>(30)</sup> But a major issue in the law is that there is minimum percentage for market shares after the merger of the acquisition of companies and that would put a burden on both the enforcement body and the competitors whom plans on merging and acquisitioning from another competitor. Also what is dominance without a percentage to it the only definition of dominance in the law can be found in article 1 “The power of a person, or group of persons acting together, to dominate the market and effectively to influence prices and the volume of products on offer, while their competitors have no power to prevent this”<sup>(31)</sup> and that is not enough for the enforcement body to enforce the law without some sort of guidance.

Despite its seemingly broad powers, under Article 16 of the Act, the Committee may not impose criminal sanctions without the approval of the Minister of Trade and Economy or one of his deputies.<sup>(32)</sup> In addition, under Article 5, the Minister can declare companies exempt from application of the law for any illegal practices mentioned in Articles 3 and 4 if this exemption benefits consumers.<sup>(33)</sup> Thus, the Committee requires ministerial approval before proceeding with application of the law; this affects the implementation of the law and bestows exceptional powers on the Minister that allow him to override the Committee’s work to protect competition.<sup>(34)</sup>

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(27) Id. at 210.

(28) Id. at 211.

(29) Supra. note 5 at 210.

(30) Id.

(31) Law No. 19 of 2006 on the Protection of Competition and Prevent Monopolistic Practices, Art. 1 [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=248933](http://www.wipo.int/wipolex/en/text.jsp?file_id=248933).

(32) Id. Art. 16.

(33) Id. Art. 5.

(34) Supra. note 5 page 211.

### III. Kuwait

Kuwait was the third GCC country to adopt competition law. Oil is the country's main economic resource, and it has played a considerable role in the development of the GCC area.<sup>(35)</sup> Kuwait joined the WTO in 1995,<sup>(36)</sup> and, as part of its strategy to develop its economy, it offered incentives to attract foreign investors, specifically by enacting the Law Regarding Organization of Direct Investment of Foreign Capital.<sup>(37)</sup> Prior to the passing of this law, any foreign investor was required to have a Kuwaiti partner with a 51% share in the company.<sup>(38)</sup>

Kuwait was familiar with the concept of competition law, as Article 60 of the country's Commercial Code restricted unfair competitive practices.<sup>(39)</sup> Nevertheless, in 2007, Kuwait adopted an independent law for the protection of competition, Law No. 10 of 2007, which established regulations outside the sphere of commercial law.<sup>(40)</sup> Similar to Saudi Arabia and Qatar, Kuwait based its law on EEC competition rules, as can be inferred from state exemption from the application of Article 6,<sup>(41)</sup> which states that illegal and unfair practices that affect competitors be deemed violations of Kuwaiti competition law and it exempted "Facilities and projects owned or operated by the State, Projects and activities organized by a special law, Activities aimed at facilitating economic activity such as cooperation between companies in the development of standards and the collection and exchange of statistics and information on a particular activity, Finally, Research and development activities."<sup>(42)</sup> Furthermore, in terms of Article 10 of the Act, the Competition Protection body has a legal personality which is attached to the Minister of Commerce and Industry and created to enforce the rules. Their duty, as set out under article 10, includes:

"Adopting the policies and procedures necessary to protect and strengthen competition; dealing with and investigating complaints; creating and maintaining a database that contains information about "markets, alternative products, and economic activities"; overseeing corporate reporting on

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(35) Trade Policy Review Report by the state of Kuwait, 18 [https://www.wto.org/english/tratop\\_e/tpr\\_e/g258\\_e.doc](https://www.wto.org/english/tratop_e/tpr_e/g258_e.doc).

(36) Id.

(37) Supra. note 5 at 222.

(38) Id. at 222.

(39) Id. at 224.

(40) Supra. note 31.

(41) Law No. 10 for the year 2007 for the protection of competition, Art. 4 <http://www.gcc-legal.com/BrowseLawOption.aspx?country=1&LawID=3725> (Arabic Site).

(42) Id. Art. 6

competitive practices; and researching and analyzing markets to identify harmful practices.”<sup>(43)</sup>

Article 8 of the Kuwaiti Law on the Protection of Competition sets out the merger and acquisition mechanism that companies should follow in order not to violate competition law. Companies that are involved in any merger or acquisition that would result in “dominance” of the applicable market are required to notify the Competition Protection body and pay a fee as set in the law.<sup>(44)</sup> What constitutes dominance under Kuwaiti law has been defined in Article 1as “a situation in which a person or group of persons can work together, directly or indirectly, to control the productive sector, by attempting to own more than 35% of the specified market.”<sup>(45)</sup>

The Implementing Regulation, adopted two years after the law was enacted, specifies the framework for decision-making methods to be used by the Competition Protection body in applying Kuwait’s competition law. Article 16 of the Implementing Regulation<sup>(46)</sup> specifically makes any decision-making power the body holds under the statute itself by requiring that the Body’s decisions regarding unfair practices that affect competition to be approved by the Ministry of Trade and Commerce.

#### IV. United Arab Emirates

The United Arab Emirates (UAE) was the fourth GCC country to adopt competition legislation.<sup>(47)</sup> In the early twentieth century, the UAE was one of the least developed countries in the world, however, currently, its income levels match those of other industrialized nations.<sup>(48)</sup> One reason the UAE adopted competition law was to attract foreign investors; these investors desired guarantees that they would be protected from unfair and anti-competitive acts from local companies within the market.<sup>(49)</sup> Another reason was because anti-competitive practices in the market had led to unreasonable price increases; the WTO encouraged the country to adopt competition regulation to combat these increases. Subsequently, in 2012, the UAE adopted its federal law on

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(43) Id. Art.10.

(44) Id. Art. 8.

(45) Id. Art. 1.

(46) Law No. 10 for the year 2007 for the protection of competition Implementing regulation Art. 16 <https://alwatan.wordpress.com/2013/10/10/قانون-حماية-المنافسة-ومنع-الاحتكار/> (Arabic site).

(47) Federal Law No .4 of 2012 on the Regulation of Competition [http://ejustice.gov.ae/downloads/latest\\_laws/federal\\_law\\_4\\_2012\\_en.pdf](http://ejustice.gov.ae/downloads/latest_laws/federal_law_4_2012_en.pdf).

(48) Mohamed Shihab, Economic Development in the UAE 249) [https://www.uaeinteract.com/uaeint\\_misc/pdf/perspectives/12.pdf](https://www.uaeinteract.com/uaeint_misc/pdf/perspectives/12.pdf).

(49) What is the scope of competition law in the UAE? - A comparative study with developed and developing nations, 145 (2013) (Published LLM thesis, The University of Western Ontario).



the regulation of competition, which came into force in 2013. Implementing regulations were published in 2014.

Article 2 of the UAE Federal Competition Law, set out its objectives that are to:

“Maintain a competitive market governed by market mechanisms in accordance with the principle of economic freedom by prohibiting restrictive agreements as well as the acts and conducts taking advantage of a dominant position, control the economic concentration process and avoid all what might violate, reduce or prevent competition.”<sup>(50)</sup>

Moreover, Article 12 specifies the creation of a competition authority, the Competition Regulation Committee, which serves under the Deputy Minister of Economy; thus the Committee is an entity affiliated with the Ministry of Economy and not an independent entity. Furthermore, the duties of the Committee<sup>(51)</sup> indicate that it has limited powers in terms of the application of the law and serves only as an advisory body to the Ministry of Economy, with Article 14 assigning the actual responsibility of regulating competition to the Ministry.<sup>(52)</sup> In practice, the Committee has limited powers—it can do little more than make recommendations. Nevertheless, under Article 14, the Ministry of Economy itself is an important regulatory body.<sup>(53)</sup>

Article 9 requires a mandatory filing be made at least 30 days prior to closing a transaction (merger or acquisition) if that transaction is treated as an economic concentration in the market; the Ministry has 90 days to reply to this filing subject to extension, if needed.<sup>(54)</sup> Article 1 defines an economic concentration as “any act resulting in a total or partial transfer (merger or acquisition) of a property, usufruct, rights in stocks or shares, or obligations, from one establishment to another, empowering the establishment or the group of establishments to control, whether directly or indirectly, another establishment or group of establishments.”<sup>(55)</sup> The law and implementing regulations give no guidance as to a specific minimum percentage under which no economic concentration occurs and no filing is necessary.<sup>(56)</sup>

In addition, the Act specifies that the Ministry and Competition Regulation

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(50) Supra. note 46 Art. 2 (2).

(51) Id. Art. 13.

(52) Id. Art. 14.

(53) Id. Art. 14.

(54) Id. Art. 9.

(55) Id. Art. 1.

(56) UAE Federal Law No .4 of 2012 on the Regulation of Competition Implementing regulation No. 37 2014 Art.8 .

Committee must observe confidentiality and may disclose information received in investigations or economic concentration filings only to competent authorities.<sup>(57)</sup> The task of implementing the Act falls to the Ministry of Economy: “The Ministry’s responsibilities include investigating possible anti-competitive conduct and analyzing requests for exemption, carrying out studies on competition matters and coordinating its activities with other national public bodies and foreign authorities.”<sup>(58)</sup> However, to date no anti-competition cases have been filed for review.<sup>(59)</sup>

### V. Oman

In 2014, the Sultanate of Oman became the fifth GCC country to implement a competition law, the Competition Protection and Monopoly Prevention Law.<sup>(60)</sup> Adopting laws that advance the economy has long been part of Oman’s long-term economic and development strategies;<sup>(61)</sup> it joined the WTO in 2000.<sup>(62)</sup> Prior to the enactment of the 2014 law, Oman addressed competition protection and monopoly prevention through its Commercial Law of 1990, which safeguarded competition within the market through Articles 47–50. Additionally, in 2000 the state enacted the Law of Trademarks, Descriptions, and Secrets, and Protection from Unfair Competition. Nevertheless, only in 2014 did Oman enact a law focusing on the protection of competition in the market.<sup>(63)</sup> The law applies to all acts within and outside the state that affect competition and includes intellectual property rights, trademarks, patents, and copyrights, provided they affect competition.<sup>(64)</sup>

Article 11 sets out the merger mechanism, which provides that if an intended merger or acquisition would reach the threshold of an economic concentration as defined in the law, the companies involved must file a notification to the Authority.<sup>(65)</sup> If the Authority does not reply within 90 days, its failure to reply shall be considered approval for the transaction.<sup>(66)</sup> If the Authority

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(57) Supra.note46 Art. 15.

(58) Supra. note 47 at 2.

(59) Cleary Gottlieb, UAE Competition Law Framework Now Complete memorandum 1 (Apr. 8 2017 6:00 PM) <https://www.clearygottlieb.com/~media/cgsh/files/publication-pdfs/alert-memos/alert-memo-201699.pdf>.

(60) No. 67\2014 Promulgating Competition Protection and Monopoly Prevention Law <https://pacp.gov.om/Laws-and-decisions/Anti-Monopoly-Law-Eng.aspx>.

(61) Supra. note 5 at 225.

(62) WTO Oman Member information [https://www.wto.org/english/thewto\\_e/countries\\_e/oman\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/oman_e.htm).

(63) Supra. note 5 at 226.

(64) Supra. note 58 at Art. 3.

(65) Id. Art. 11.

(66) .Id.

prohibits the requested transaction, the affected companies have a 60-day period to object<sup>(67)</sup> Any merger or acquisition that would result in an economic concentration above 50% is prohibited without further consideration.<sup>(68)</sup> Economic concentration is defined by Article 1 as “any act resulting in partial or whole transfer of the equity for assets, shares, dividends, interests, rights or obligations assumed by any person towards another, or the establishment of consortiums, mergers, consolidation of two or more than managements within one joint management, in such manner that the same directly or indirectly renders such person or group of people in a dominant and controlling position.”<sup>(69)</sup> Dominance is defined in Article 1 as more than 35% control of the volume of a particular market.<sup>(70)</sup> These provisions allow both the authority and the competitor to identify which transactions should be brought before the authority for review.

Omani competition law has not established a new or an independent body to regulate competition, instead assigning oversight to the Public Authority on the Protection of Customers and tasking it with preserving competition, investigating any act that violates competition, reviewing concentration practices within the market, and making exceptions for cases that would benefit competition.<sup>(71)</sup> In contrast to the authorities in the GCC countries previously discussed, the Omani Authority has no powers to suggest policies, special legislation, or even issue reports concerning the competition status in the country. Its only power extends to implementing the law and preventing anti-competitive acts; however, these powers rest solely with the Public Authority on the Protection of Customers, which gives the Authority and the law itself a distinct advantage in efficacy and implementation.<sup>(72)</sup>

## VI. Bahrain

The Kingdom of Bahrain, the sixth and final member of the GCC, has considerable influence in the global market that derives from its foreign direct investment law that aims to enhance the welfare of the local market.<sup>(73)</sup> In addition, its emphasis on economic development and advancing in the local and global markets is evident from its focus on economic development strategies

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(67) Id.

(68) Id.

(69) Id. article 1.

(70) Id.

(71) Id. Art. 1,5,13.

(72) Id. Art. 11.

(73) Supra. note 5 at 218.

and its WTO membership, which it has held since 1995.<sup>(74)</sup> Nevertheless, Bahrain is unique in the GCC region as the only country that has not adopted an independent competition law.

Bahrain addresses competition law through Chapter 4 of its Consumer Protection Law of 2012, entitled “Rules of Competition and Monopoly and Manifestations of Breach of their Rules.”<sup>(75)</sup> However, anti-competitive practices are, in effect, limited to an agreement between competitors to safeguard competition and limit monopoly.<sup>(76)</sup> Consequently, the law does not prohibit many acts that affect competition, such as concentrated action and abuse of dominance. Furthermore, under Article 39 of the Implementing Regulation, a committee is responsible for implementing the law and has the right to conduct inquiries, research and collect information regarding competition violations, and dismiss cases or refer them to the public prosecutor.<sup>(77)</sup>

Bahrain has minimally addressed the issue of acquisition/merger regulation in Article 312 of its Commercial Companies Law of 2001 by prohibiting the filing in its Commercial Registry of a consolidation resulting in (78).monopolization

### **Section Two: The Need For Common Competition Law and Policy for The Gulf Cooperation Council**

#### **1. The GCC Economic Agreement**

The GCC was established in Abu Dhabi in 1981 under the Charter of the Gulf Cooperation Council, with the goal of integration in the fields of economics, financial affairs, commerce, customs, communications, education, and culture.<sup>(79)</sup> It is a union of six states, namely the Kingdom of Saudi Arabia, Kuwait, the United Arab of Emirates, Qatar, Bahrain, and Oman, which share unique characteristics such as language (Arabic), religion (Islam), economic status, and ethnicity (Arab), and it is the only union with such similarities in the world. The objective stated in Article 4 of the Charter was building an association that would advance the welfare of member states through a single currency, an open market, and joint ventures between the countries.<sup>(80)</sup>

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(74) Id. at 219.

(75) Law No. 35 of 2012 with respect to Consumer Protection <http://www.moic.gov.bh/En/Regulation/Documents/96a8c846262049e0aeeb4e244ecbb06a352012.pdf>.

(76) Id. Art. 13, 14.

(77) Law No. 35 of 2012 with respect to Consumer Protection Implementing regulation art. 39 <http://www.moic.gov.bh/En/Regulation/Documents/96a8c846262049e0aeeb4e244ecbb06a352012.pdf>.

(78) Supra. note 5 at 219.

(79) Charter of the Gulf Cooperation Council, Art. 4, May 25, 1981.

(80) Supra. note 5 at 193.

In 2001, GCC countries adopted the Economic Agreement between the GCC States. Articles 1 and 3 of the agreement set objectives for creating a common market with unified customs and a shared currency.<sup>(81)</sup>The variation of a common market requires GCC states to implement laws and regulations in order to achieve that aim.<sup>(82)</sup>In light of this agreement and the objectives it sets out, it is reasonable to anticipate that competition problems will arise due to the lack of a unified policy to regulate competition in the region and inconsistencies in that regulation. To safeguard consumer welfare, block unfair competition practices and thus encourage companies to advance in their innovation while at the same time protecting them is imperative. Therefore, it is crucial to formulate a competition policy and law that would regulate activities under the Economic

In 2001, the six GCC countries adopted the GCC Economic Agreement to establish an integrated economy seeking to achieve advanced stages of economic integration that would lead to a common market and an economic and monetary union among the member states.<sup>(83)</sup>This economic integration and move to a common market is to be accomplished gradually according to a specific timetable, while at the same time enhancing market mechanisms and fostering the role of the private sector.<sup>(84)</sup>

The Economic Agreement motivated all GCC countries to implement national laws that would facilitate the execution of the agreement and the achievement of the aims set out therein. Of particular importance to the current discussion, is the goal of a common market set out more particularly in Article 3 of the Agreement. This article addresses the establishment of a common market specifically for GCC citizens, both legal and natural, in which all such citizens shall have the right to similar treatment in each GCC country in all economic activities, including movement and residence, engagement in economic, investment and service activities, and stock ownership. In addition, it places an affirmative duty on member states to implement laws to facilitate the establishment of the common market between GCC countries.<sup>(85)</sup>

The most specific facets of the common market in terms of competition law are engagement in economic, investment, and service activities and stock

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(81) Economic agreement between the GCC states, Art. 1,3 Dec. 31, 2001.

(82) Id.

(83) The GCC Economic Agreement, preamble (2001)

(84) Id.

(85) Id. Art. 3.

ownership.<sup>(86)</sup> However, the GCC Economic Agreement contains no reference to the need for coordinated competition law and policy addressing these areas. The European Union bears several similarities to the GCC in its quest to create a common market for its citizens. In its early stages, according to the Spaak Report, a common market could not be achieved “unless practices whereby competition between producers is distorted [were] put to an end.”<sup>(87)</sup> Therefore, a common competition policy is essential for GCC countries to achieve the goals set out in the Economic Agreement. In addition, a regulatory body for the enforcement for that law and policy is essential if a, common market is to be achieved. Agreement between the GCC States. Due to similarities in structure, the European Union offers valuable insights into and examples of regional competition law and policy.

### 2. EU Competition Law and Policy

In 1950, French Minister Robert Schuman called for a body to regulate the European market. Subsequently, the Schuman Declaration set out the framework for an institution that led to the establishment of the European Coal and Steel Community in 1951.<sup>(88)</sup> This was the first mention of regional competition law in European countries,<sup>(89)</sup> and it was necessary for states to adopt such regulations to create a unified market for commodities such as coal and steel and to address German influence after World War I.<sup>(90)</sup>

Six years later, in 1957, the Treaty of Rome was ratified. The treaty serves as the founding charter for the European Union, specifically in terms of competition law. It was Challenging to create a common market for EU countries without the competition policy and law in the Treaty of Rome. Article 3 states; “Competition shall remain undistorted in the internal market.”<sup>(91)</sup> This was the first time European countries included competition law in a treaty, imposing anti-cartel laws and legislation governing competitive practices to

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(86) Id.

(87) Eric F. Hinton, *European Community Competition Law, Subsidiarity, and the National Courts* 303 (1997) (Published paper, Brigham Young University).

(88) Laurent Warlouzet, *The Rise of European Competition Policy, 1950–1991: A Cross-Disciplinary Survey of a Contested Policy Sphere*, 7 RSCAS 2010/80 (2010).

(89) Alison Jones and Brenda Sufrin, *EU Competition Law: Text, Cases and Materials Text, Cases and Materials* 34 (Oxford university press) (5th ed. 2014).

(90) Andrew Schupanz, “Creating Europe”: *The History of European Integration and the Changing Role of EU Competition Law* 3 (2013) (Published working paper, Stanford Law School and the University of Vienna School of Law).

(91) Anestis S. Papadopoulos, *The role of the competition law and policy of the EU in the formation of international agreements on competition* 155 (2008) (Published PhD dissertation, London school of economics).

regulate trade in the common market. Articles 81 and 82 of the Treaty on the European Economic Community (EEC) directly prohibit horizontal and vertical agreements that affect competition and address the abuse of dominance practices.<sup>(92)</sup> This treaty was the corner stone for the adoption of Articles 101–109 of the Treaty on the Functioning of the European Union (TFEU).<sup>(93)</sup>

Rules for anti-competitive acts in the European Union can be found mainly in two TFEU articles, namely Articles 101 and 102..<sup>(94)</sup> Article 101 prohibits any agreement or concerted practice by undertakings that may affect trade between Member States.<sup>(95)</sup> This Article applies to horizontal and vertical agreements that do or might lead to “restriction or distortion of competition within the internal market.”<sup>(96)</sup> An exception to this rule applies if the agreement would lead to improving the product in the market for the distribution of goods or will help in the technological advancement of the product; however the exception should not assist in the elimination of market competition.<sup>(97)</sup>

TFEU Article 102 lays down a prohibition on the abuse of dominance in the market by one or more undertakings.<sup>(98)</sup> A simple dominant party in the market is not considered anti-competitive under Article 102, in fact dominance may be a result of successful business practices. To be anti-competitive, thus violate Article 102, dominance must be accompanied by an act that would restrict competition in the internal market of the European Union through the exploitation of dominance resulting in harm to competitors, distributors, licensees or customers.<sup>(99)</sup>

### 3. EU Common Market

In 1957, Europe first employed the concept of a common market when France, Germany, Italy, Belgium, Netherlands, and Luxembourg signed the Treaty of Rome establishing the European Coal and Steel Community.<sup>(100)</sup>

The Preamble of the Treaty of Rome reflects the aim of these countries to persuade the states to adopt an economic community, which would later act

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(92) Id. at 156

(93) MarcinSzczepeński, EU competition policy: key to a fair Single Market 9 140814REV1 (2014).

(94) Slaughter and May, A general overview of the European competition rules applicable to cartels, abuse of dominance, forms of commercial cooperation, merger control and State aid 1 (Apr. 27 2017 4:00 PM). <http://www.slaughterandmay.com/media/64569/an-overview-of-the-eu-competition-rules.pdf>.

(95) Id.

(96) Id.

(97) Supra. Note 91.

(98) Id.

(99) Id.

(100) BenceSoltesz, Past, Present and Future of the Single Market of the EU 3 (2009) (Published working paper, University of Economics Prague).

as the cornerstone for the creation of the European Common Market.<sup>(101)</sup> Their objective to build a common market was expressly set out in the Treaty on Establishing the European Economic Community.<sup>(102)</sup> The EEC Treaty stated, “The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of member states, to promote throughout the community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relationship between the states belonging to it.”<sup>(103)</sup> Thus the Common Market became not just an objective but an affirmative obligation of all parties to the treaty.<sup>(104)</sup>

The EU merger policy is governed by the EC Merger Regulation 139/2004 and its Implementing Regulation 1268/2013, supplemented by notices and guidelines.<sup>(105)</sup> The regulation and the implementing regulations set out the powers of the European Commission in deciding merger and acquisition cases.<sup>(106)</sup> Companies that wish to merge in the EU market and hold at least a 15% combined market share on any market where they both compete, or a 25% market share of vertically related markets must notify the Commission of their intent and seek its approval.<sup>(107)</sup> This rule applies to businesses within EU countries as well as businesses outside but operating in the EU.<sup>(108)</sup>

#### **4. Proposed common GCC competition policy**

The European Union is an example of a successful union of states that have achieved a single common market. The evolution of European competition law over the last 60 years and the establishment of the European Union support the view that implementing competition policy and laws created to regulate the relationship between the countries involved in such an undertaking is an effective means to achieve market goals. Therefore, the Gulf States may similarly benefit from implementing a common GCC policy to regulate transactions that involve common market or overlapping market situations in terms of anti-competitive practices and the abuse of dominance.

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(101) Jurgen SCHWARZE, *The development of the European Union from a common market to a political union* 92 Nr. 17330021 (2006).

(102) *Id.*

(103) *Id.*

(104) *Id.*

(105) *Supra.* note 5 at 11.

(106) *Id.*

(107) Merger control procedures [http://ec.europa.eu/competition/mergers/procedures\\_en.html](http://ec.europa.eu/competition/mergers/procedures_en.html).

(108) *Id.*



For instance, in 2013, an acquisition was proposed between two major companies in the Gulf that would result into the possibility of creating a dominant firm that would control the market in both countries<sup>(109)</sup> Given there is currently no GCC-wide competition regulation, this acquisition nor a merger between companies in different countries of the Gulf region could result in one dominant firm for the regional market. The risk of a resulting unregulated monopoly that could harm the capital markets of the individual Gulf countries is substantial.

Because five of the six GCC states have implemented national competition legislation, an agreement maybe easily reached on a unified market definition to govern common GCC competition policy. Moreover, of these states already share a common definition of the market in their competition laws: “a commodity, service, or a group of products or services which may be substituted, on the basis of its price, characteristics and uses, or whose alternatives may be chosen to meet the consumer’s needs in any specific geographical area.”<sup>(110)</sup> This definition includes the two major elements in defining the market, namely commodity and geographic area.

Necessarily, a regional competition authority to regulate the common policy of GCC countries must be created. A jurisdictional framework, similar to that of the EU system, whereby trans-boundary competition violation cases fall under EU/GCC authority, but state violations fall under the laws of the individual state in which the violation was committed.<sup>(111)</sup>

Finally, violations of common GCC competition law and policy should be referred to the GCC Economic Court. Under Article 13 of the Statute of the Economic Judiciary between the Arabian Gulf Cooperation Council, the Court would have the jurisdiction to hear any case involving a violation of GCC laws or treaties.<sup>(112)</sup> This treaty could be amended to give the Court authority to issue awards specifically designed as punishment for the violation of the common competition law.

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(109) The application of the rule of law in competition law and policy: An Analysis of the delayed implementation of competition law in Kuwait P. 115, Kuwait International Law School Journal, Special Supplement No. 2 part 2, 2017.

(110) Supra. Note 16,31,41,45,59 Art. 1

(111) Supra. note5 at 9

(112) The statue on the economic judiciary between the Arabian Gulf Cooperation Council, Art13 <http://www.gcc-sg.org/arsa/CognitiveSources/DigitalLibrary/Lists/DigitalLibrary/الاقتصاد/judiciary.pdf> (Arabic site)

### Conclusion

The Islamic rules and teaching coming from its different sources on the protection of the market from unfair competition through its principles helped in shaping the markets of the GCC countries even before they have adopted competition law through their constitution that restrict any monopoly in the market and also through the commercial codes of each countries that included many provisions that restricted any unfair competition to the market.

The adoption of competition law is an essential part of every economy in every system in order to prosper and advance. The GCC countries adopting a competition law in each individual state with the aim of advancing in their economic is what would make competition law a strong instrument in the GCC. The adoption of foreign direct investment in the GCC countries and accompanied with the adoption of competition law would help in attracting all corporations from over the world to invest and do business in the GCC area.

One of the main concern is that without a Regulation or a policy that overview the competition process between the GCC country and with the GCC adopting an economic agreement that would create a common market between the gulf state it would be hard to achieve that goal and the GCC would suffer from the unfair and anticompetitive practices that would result as an absence on a Common competition policy to stop the anticompetitive practices.

In analyzing the European Union Example as regional organization with the main purpose of establishing a common market the facts shows that having a competition law helped a lot in the creation of the common market and the continuation of trade among the European Union countries since no undertaking would have to right to harm or act in an anticompetitive way that would affect the internal market of the European Union as a whole. Also given there is regulatory body to regulate the anticompetitive acts that occurs between states helped a lot in the enforcement mechanisms of European Union competition law in the region.

The GCC countries in adopting laws that would help in advancing their economic seeks to go from being a developing countries into the next step of being a developed ones and with GCC countries entering to international agreement between each other in order to advance the economic it is the aim of the GCC to achieve the best economic possible.

The Common GCC Competition Policy would be a huge step for both regionally and internationally in the advancement of competition law globally

with 6 countries that are considered a wealthy nations globally this policy would change the way they operate among each other's and would help them in the advancement of the economics of how the region operate.

The task of building an effective economic that would advance the Gulf area lies over the states individually and collectively by the GCC through the adoption and the implementation of a common competition law to govern all the interstate transaction and helps in avoiding all anticompetitive practices among them and would help in the innovation process within the market.

For all these reasons the GCC countries needs a uniform competition policy and law that regulate competition in the region, but in a way that they would adopt what the European Union have and modify it to fit the region and the needs of the GCC countries in order to evolves their economics and establish their goals of reaching a Common market for all the Gulf countries.

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### Table of Contents

<b>Subject</b>	<b>Page</b>
Abstract	125
Introduction	126
Section one: GCC Countries and Competition Law	127
1. Competition protection in Islam	127
2. Competition Law within the GCC Countries	128
I. Saudi Arabia	128
II. Qatar	129
III. Kuwait	131
IV. UAE	132
V. Oman	134
VI. Bahrain	135
Section Two: The Need For Common Competition Law and Policy for The Gulf Cooperation Council	136
1. The GCC The GCC Economic Agreement	136
2. EU Competition Law And Policy	138
3. EU Common Market	139
4. Proposed common GCC competition policy	140
Conclusion	142
References	144