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## REGULATORY UPDATE:

# COMPETITION AND FAIR BUSINESS PRACTICES ACT

### INTRODUCTION

The Government of the Republic of Maldives has ratified the *Competition and Fair Business Practices Act* on 31<sup>st</sup> August 2020, which is intended to promote positive competition and fair business practices, while prohibiting agreements and conduct that prevent, restrict and distort market competition, that would hinder economic growth. The Act also vests the Ministry [of Economic Development] with the discretion to take administrative measures to sustain a competitive business environment.

The Act will come into effect on 1<sup>st</sup> March 2021.

In this bulletin we have provided a high-level overview of the key provisions of the Act.

## **PART 1: PURPOSES AND SCOPE OF THE ACT**

Section 2 of the Act sets out the following main **purposes**:

- To promote competition and fair trade and business practices;
- To encourage new technology and developments in the market;
- To ensure that micro, small and medium-sized enterprises have an equitable opportunity to participate in the Maldivian economy;
- To provide consumers with competitive prices and product choices;
- To prohibit restrictive business practices that impede competition and affect economic development; including:
  - Agreements that prevent, restrict or distort competition;
  - Abuse of dominant position in the market; and
  - Mergers resulting in restriction of competition in the market.

Section 3 of the Act sets out the **scope** of application of the Act, which is stated as:

- Business transactions, business practices and agreements within the territory of Maldives;
- Business transactions, business practices and agreements outside Maldives that influence competition within any market in Maldives; and
- Where a state-owned enterprise conducts its business in a market, in competition with other undertakings, the provisions of this Act shall apply to that state-owned enterprise as well.

## PART 2: AGREEMENTS THAT PREVENT, RESTRICT OR DISTORT COMPETITION

Below is a summary of the salient provisions of Chapter 2 of the Act, on agreements:

<b>Agreements that Prevent, Restrict or Distort Competition</b>	<ul style="list-style-type: none"><li>• Agreements or conduct by two or more undertakings which have as their object the prevention, restriction or distortion of competition within a market is prohibited. Similarly, where an agreement between undertakings or their conduct may result in the prevention, restriction or distortion of competition within a market<sup>1</sup>, such agreement or conduct is prohibited.</li><li>• Where the object of the aforementioned agreement or conduct, or the effect of the agreement or conduct results in the following, it shall be determined as preventing or distorting competition:<ul style="list-style-type: none"><li>○ Fixing purchase/ selling price in the market;</li><li>○ Fixing sale terms and trading conditions in addition to fixing purchase/ selling price;</li><li>○ Market division or customer allocation;</li><li>○ Limiting or controlling production;</li><li>○ Refusal to sell/ deal with certain parties;</li><li>○ Controlling developments in production technology;</li><li>○ Controlling investments.</li></ul></li></ul>
<b>Exemptions</b>	<ul style="list-style-type: none"><li>• The above restrictions on agreements and conduct do not apply for group companies.</li><li>• The Minister [of Economic Development] is empowered to provide exemptions to the aforementioned rules, where the agreement/ conduct results in improvements to production and distribution, or where it promotes technological or economic development.</li><li>• The Minister [of Economic Development] is also empowered to determine block exemptions for certain types of agreements.</li></ul>
<b>Enforcement</b>	<ul style="list-style-type: none"><li>• Where undertakings have entered into a prohibited agreement, or committed prohibited conduct as defined above, the Minister [of Economic Development] is empowered to issue orders to amend such agreement or order the cessation of such conduct. The Minister may also impose a fine ranging from MVR 10,000 to MVR 100,000.</li></ul>

<sup>1</sup> 'Market' is defined to within the Maldives territory.

## PART 3: ABUSE OF DOMINANT POSITION

Below is a summary of the salient provisions of Chapter 3 of the Act, on abuse of dominant position in the market:

<b>Defining 'Dominant Position'</b>	<ul style="list-style-type: none"><li>• A 'dominant position' is determined based on the following:<ul style="list-style-type: none"><li>○ Nature of the market;</li><li>○ Number and share of undertakings in the market;</li><li>○ Market power of the undertaking i.e. its power to manipulate market supply, prices, and sale terms; and</li><li>○ Control of significant share<sup>2</sup> of market.</li></ul></li></ul>
<b>Abuse of Dominant Positions</b>	<ul style="list-style-type: none"><li>• Where an undertaking in a dominant position in the market commits the following (whether solely or together with another undertaking) to abuse its dominant position, such conduct shall be prohibited:<ul style="list-style-type: none"><li>○ Predatory pricing;</li><li>○ Imposing unfair prices;</li><li>○ Refusal to sell/ deal with certain parties;</li><li>○ Limiting production, markets or technical development to the prejudice of consumers;</li><li>○ Applying dissimilar conditions to equivalent transactions with other trading parties to place them at a competitive disadvantage; and</li><li>○ Making the conclusion of contract subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of those contracts.</li></ul></li></ul>
<b>Enforcement</b>	<ul style="list-style-type: none"><li>• Where an undertaking commits the above conduct to abuse its dominant position, the Minister [of Economic Development] is empowered to impose a fine ranging from MVR 10,000 to MVR 100,000.</li></ul>

<sup>2</sup>There is no specific market share limit, or further definition to what amounts as a 'significant' share of market.

## PART 4: MERGERS AND ACQUISITIONS

Below is a summary of the salient provisions of Chapter 5 of the Act, on mergers and acquisitions:

<b>Merger Control</b>	<ul style="list-style-type: none"><li>• Where a merger significantly impedes competition, or strengthens a dominant position within the market, such mergers shall not be permitted.</li><li>• The following arrangements are captured under the term of ‘merger’:<ul style="list-style-type: none"><li>○ Merger of two or more previously independent legal entities;</li><li>○ Acquiring direct or indirect control over all or part of the assets of an undertaking;</li><li>○ Where the acquisition of all or part of assets and goodwill of an undertaking confers decisive influence over that undertaking.</li></ul></li><li>• Control is constituted by rights, contract or any other means which either separately or in combination confer the decisive influence over an undertaking, in particular by:<ul style="list-style-type: none"><li>○ Ownership or the right to use all or part of the assets of an undertaking; or</li><li>○ Rights or contracts which confer direct or indirect influence on the composition, voting or decisions of the Board of an undertaking.</li></ul></li></ul>
<b>Exemptions</b>	<ul style="list-style-type: none"><li>• A merger between two state-owned enterprises is exempt from the above provisions.</li><li>• A merger is not deemed to arise where control is acquired by a liquidator for the purposes of winding up an undertaking.</li></ul>
<b>Enforcement</b>	<ul style="list-style-type: none"><li>• Where undertakings have merged in contravention of the above provisions, the Minister [of Economic Development] is empowered to issue orders to amend the merger agreement, and also impose a fine ranging from MVR 10,000 to MVR 100,000.</li></ul>

## CONCLUDING REMARKS

The main principles and conditions set out in the Act are mainly drawn from the United Kingdom's *Competition Act 1998* (on provisions related to agreements and abuse of dominant position) and the Council of the European Union's Council Regulation (EC) No. 139/2004 (on provisions related to mergers).

While the basic principles have been set forth in the Act, several key matters are to be determined under subordinate regulations due to be published by September 2021, including:

- Rules on granting block exemptions for agreements;
- Rules on granting exemptions for certain types of undertakings;
- Rules on granting exemptions for mergers captured under the Act, on grounds of significant public economic benefit;
- Rules on determining whether a merger significantly impedes competition, or strengthens a dominant position within the market; and
- Procedures for filing public infringement complaints at the Ministry [of Economic Development] and review of the same.

The Act does not negate or replace the industry-specific approval-based filing requirements under existing Acts for mergers in the banking sector, insurance sector and telecommunications sector, and disclosure-based filings obligations for mergers in respect of companies listed on the Maldives Stock Exchange.

With respect to mergers, it remains to be seen whether the regulations to be issued by the Ministry [of Economic Development] will introduce individual/ group turnover thresholds or establish a local-effects test (similar to those imposed under EC Merger Regulation).

While this subject matter has been placed on the legislative agenda of the Maldives Government since 2014, this marks the first time an Act has been enacted with specific provisions on regulating unfair business practices by dominant players in the Maldives market.

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