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# NEW THRESHOLDS FOR MERGER FILINGS AND INCREASING MERGER CONTROL ENFORCEMENT IN SAUDI ARABIA

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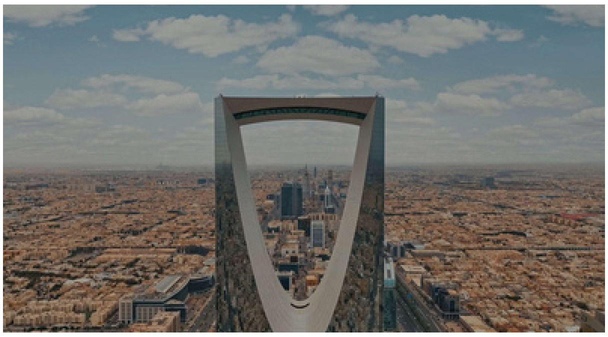
On November 1, 2023, the Kingdom of Saudi Arabia's General Authority for Competition (the "GAC") announced significant revisions to its merger control notification thresholds. These changes, raising the minimum turnover threshold and adding local nexus requirements, along with the GAC increasing merger control enforcement demonstrate the GAC's dynamic approach to merger enforcement and its commitment to addressing competitive concerns in the Kingdom.



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## NEW THRESHOLDS:

Saudi Arabia's Competition Law, enacted in 2019, (the "Competition Law") introduced initial merger control notification thresholds based on parties' turnover. A filing was initially required, by the Implementing Regulations of the Competition Law and the GAC Merger Review Guidelines, if the combined turnover of participating entities exceeded SAR 100 million (≈USD$ 26.6 million), leading to concerns of excessive filings for transactions with minimal impact on competition.

In March 2023, the GAC raised the threshold to SAR 200 million (≈USD$ 53.3 million). The GAC also decreased the filing fee cap from SAR 400,000 (≈USD $106,666.6) to SAR 250,000 (≈USD $66,666.6). However, with the lack of a local nexus requirement, this adjustment still posed challenges, particularly for foreign transactions unrelated to the Kingdom. About two thirds of the 316 notifications received by the GAC in 2022 were submitted by foreign companies.

On November 1, 2023, the GAC introduced the new thresholds applicable to mergers and acquisitions making it more challenging to trigger a filing requirement. Now, a local nexus requirement is included. A filing is mandatory only if all the below conditions are met:

1. **Worldwide annual turnover of the parties exceeds SAR 200 million (≈USD$ 53.3 million).**
2. **Worldwide annual turnover of the targets exceeds SAR 40 million (≈USD$ 10.6 million).**
3. **Domestic annual turnover of a party or parties in the Kingdom exceeds SAR 40 million (≈USD$ 10.6 million).**

These changes, integrated into the GAC Merger Review Guidelines with immediate effect, signify a positive shift, reducing unnecessary filings and allowing the GAC to concentrate on transactions with higher potential competition implications.

## THE GAC’s INCREASING MERGER CONTROL ENFORCEMENT:

The revised thresholds align with heightened competition enforcement in Saudi Arabia. Under the Competition Law, the GAC can: 1) approve, 2) conditionally approve, or 3) reject the transaction, based on potential competitive effects:

- ### First Rejection on Procedural Grounds

In late 2021, the GAC issued its first rejection (on procedural grounds) of a transaction, blocking the Germany-based Delivery Hero’s proposed acquisition (through a free zone UAE company) of its rival Saudi-based food delivery app The Chefz SPV Ltd (a registered UAE company as well).

- ### First Rejection on Substantive Grounds

In June 2022, the GAC issued its first rejection (on substantive grounds) of a transaction, blocking National Gas and Industrialization Co.’s (GASCO) proposed acquisition of a 55% stake in Best Gas Carrier Co., because of vertical competition concerns.

## • First Conditional Approvals

In May 2023, the GAC issued its first conditional approval (setting requirements and conditions for the new entity arising from the acquisition) for Tadawul Advanced Solutions Co. (Wamid) to acquire a 51% stake in Direct Financial Network Co. (DirectFN). The GAC added that it will oversee the conduct of companies once the deal is closed to ensure the parties’ commitment to the set requirements for three years.

Similarly, in August and September of the same year, the GAC conditionally cleared the following transactions: Arabian Contracting Services Co.’s (Al Arabia) full acquisition of competitor Faden Media for SAR 1.05 billion (≈USD 280 million); and the Saudi-based food delivery app Jahez International Company for Information System Technology full acquisition of its rival, The Chefz SPV Ltd. (the deal did not go through at the end).

Conditional approvals include various commitments, such as maintaining competitive prices, disclosing agreements, restrictions on entering exclusive arrangements, transferring ownership, and appointing monitoring trustees. Violations of the conditions set by the GAC are subject to high amounts of fines and potential annulments of the GAC’s approval decisions.

# CONCLUSION:

It remains to be seen but it is expected that the new thresholds will reduce the number of transactions reviewed by the GAC. The GAC is also expected to continue refining its merger control regime, demonstrating its proactive stance in adapting to evolving market dynamics. The combination of new thresholds and increasing merger control enforcement reflects the GAC’s commitment to fostering fair competition while analyzing transactions on an individual basis. As businesses navigate these changes, early engagement and transparent communication with the GAC become pivotal for successful clearances.

**Contact us for further information**


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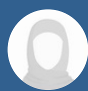
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