

Ministry of Commerce, Industry & Investment Promotion
Ministerial Decision
No. 18 / 2021

**By issuing the implementing regulations for the Law on Protection of Competition and
Prevention of Monopoly**

Based on the Competition Protection and Monopoly Prevention Law issued by Royal Decree No. 67/2014,

And to the Royal Decree No. 97/2020 amending the name of the Ministry of Commerce and Industry to Ministry of Commerce, Industry & Investment Promotion, defining their specializations and adopting their organizational structure,

And to the approval of the Council of Ministers,

And based on the requirements of the public interest.

It was decided

Article (1)

The attached provisions of the executive regulations of the Competition Protection and Monopoly Prevention Law shall be applied.

Article (2)

Anything that contradicts the attached regulation or contradicts its provisions shall be canceled.

Article (3)

This decision shall be published in the Official Gazette and shall take effect from the day following the date of its publication.

Issued on: 11th Jumada al-Thani, 1442 AH

Corresponding to: 25th January, 2021 AD

Qais bin Muhammad bin Musa Al Yousef
Minister of Commerce & Industry

Implementing regulations for the Law on Protection of Competition and Prevention of Monopoly

Chapter One

General Definitions & Provisions

Article (1)

In implementing the provisions of these regulations, the words and expressions contained in them shall have the same meaning stipulated in the Law on Protection of Competition and Prevention of Monopoly referred to, and the following words and expressions shall have the meaning assigned to each of them, unless the context of the text requires another meaning:

The Law:

Competition Protection and Monopoly Prevention Law.

Ministry:

Ministry of Commerce, Industry and Investment Promotion.

Minister:

Minister of Commerce, Industry and Investment Promotion.

Applicant:

The person who submits the exemption request provided for in Article (5) of the law, or the economic focus request.

Agreements:

Contracts between competing persons in the relevant market.

Monopoly:

The ability of two persons or a group of persons working together, directly or indirectly, to control the relevant market and restrict competition.

Article (2)

The following criteria should be taken into consideration when determining the products of interest for the concerned market:

1. The products are similar in properties and usage.
2. The ease for buyers to switch from the product to another product as a result of relative change in price in the short term or as a result of any other competitive factors.
3. The ability to switch to the products concerned and market them in the short term without incurring significant costs or additional risks as a result of the changes in their prices.
4. Changes in the market that indicate the existence of alternative products.

5. The costs of shifting demand into potential alternative products, and the challenges of such transformation, including costs and constraints that arise from laws, regulations and decisions.
6. Opinions of customers and competitors in the market.

Article (3)

The following criteria shall be taken into consideration when determining the geographical scope of the concerned market:

1. The extent ability of buyers of the specific product to move between geographical areas as a result of relative changes in prices, or other competitive factors, and whether sellers make their commercial decisions on the basis of this transfer.
2. Ease of entry of new competitors and consumers into the relevant market.
3. Transportation costs between geographical areas, including the cost of insurance, customs duties, non-customs restrictions, and other costs, and the time it takes to supply the geographical areas with the products concerned from internal or external markets.
4. The basis of buyers moving between different geographical regions as a result of relative changes in prices, or other competitive factors.
5. The extent of influence of preferences and customer loyalty to a particular product compared to other products in the geographical scope.
6. Opinions of customers and competitors in the market.

Chapter Two

Dominance

Article (4)

Dominance on the relevant market is achieved in the following cases:

1. If the person's share exceeds (35%) thirty-five per cent of the concerned market, this share is calculated on the basis of the component of the products concerned and the component of geographical scope together, during a certain time period.
2. The person's ability to influence the prices of products, or the volume of supply in the relevant market, with the inability of his competitors to limit the effect on prices, or the volume of supply of products in the concerned market, during a certain period of time.

Article (5)

The following factors are taken into account when assessing dominance:

1. The extent to which a person is able to influence the price or quantity of products or services in the relevant market, independently from his competitors during a certain period of time.
2. The level of actual or potential competition in the relevant market, including the number of active competitors, the share of each of them in the relevant market, and the possibility of expanding the actual competitors in the future, or the entry of new potential competitors, and

- the restrictions imposed by bargaining power of customers.
3. The effect of the volume of production on the supply, or the total demand for the product or services in the relevant market.
 4. Total person size, including assets, revenue, and number of employees.
 5. The extent to which the person and his competitors have access to materials needed for production, distribution channels, and sales.
 6. The commercial behavior of the person in the relevant market.
 7. Influencing the abundance and diversity of alternative products or services in the relevant market.
 8. The impact of a person's access to expansion or exit from the relevant market.
 9. The prices or volume of supply of products to the person in the relevant market.

Article (9)

The monopoly position in the relevant market is achieved whenever two or more persons do any of the following:

1. Following a uniform behavior or a joint policy in the relevant market between people, such as fixing prices, imposing re-sale prices, or using pricing below cost, or following the default pricing method, or dividing the relevant market to shares and preventing alternative products from entering the concerned market.
2. Absence of competition, limiting or easing it between people.
3. The existence of economic linkages between the products concerned, which enables them to operate independently of their competitors and consumers.

Chapter Three

Economic Focus

Article (7)

The economic focus request must be submitted in accordance with the provisions of Article (11) of the law in writing to the Ministry on the form prepared for this purpose, including the following data:

1. Name, Nationality, Address, Contact Information of the Applicant, and all persons related to the economic focus.
2. Determine the nature, structure and form of an economic focus (a union, merger, or combination of two or more departments, or any other form of economic focus), and the proposed period of time for its completion.
3. The rationale for the economic focus request.
4. The applicant's evaluation of the concerned market, and estimates of his market share.
5. A description of the products involved in the economic focus, and the arrangements for providing them by people in the relevant market.
6. Production capacity and the individual's output in relation to the products concerned.

7. Information about the main competitors, and their activities.
8. Identify the main suppliers and personal customers in the relevant market.
9. The potential impact of an economic focus on competition in the relevant market.
10. Regulatory restrictions in the relevant market, and any impediments to entering this market, including those related to intellectual property rights.

Article (10)

The application stipulated in Article (11) of the law must be accompanied by the following documents:

1. A true copy of the Articles of Association, or the Articles of Association for the person.
2. A certified original copy of the registration or commercial incorporation documents for persons from the competent authorities.
3. A certified original copy of the activity license issued by the competent authorities that may only be practiced under it such as Banking, Insurance, Telecommunications, Electricity Production, etc. and a copy of amendments made to it.
4. A copy of the draft Contract, Agreement, or conduct that will result in the economic focus.
5. A copy of the annual audited financial statements of persons during the past three years.
6. Copies of reports, studies and questionnaires prepared for the purpose of assessing the economic focus in relation to the market share, competitive conditions, actual and potential competitors, and the rationale for economic focus as well as the potential for sales growth, or general market conditions, with an indication of the date of preparation of the document, and the identification of the person issuing it.
7. The approvals obtained by the applicant from the competent authorities in organizing competition outside the Sultanate for economic focus, if any.
8. The approvals issued by the competent authorities in the Sultanate of Oman for economic focus, if any.
9. A report on the assets and volume of the applicant's business outside the Sultanate.
10. Evidence of payment of the prescribed fee.
11. Any other documents required by the Ministry, or deemed necessary by the applicant.

All documents shall be submitted in Arabic, and if they are in a foreign language, a certified Arabic translation must be attached to them.

Article (9)

The application shall not be accepted if the data and documents stipulated in Articles (7) and (8) of this regulation, and any data, documents, or additional requirements requested by the Ministry are not fulfilled.

Article (10)

The Ministry examines the application for approval of the economic focus, taking into consideration the following factors:

1. Collecting information on the impact of the economic focus on competition.
2. The level of actual or potential competition in the market or markets in question.

3. The extent to which new competitors can easily access the market or markets in question, and the obstacles that prevents it.
4. The extent of the potential impact of the economic focus on the prices of goods and services in the market or markets concerned.
5. The extent of the potential impact of the economic focus on innovation, creativity and technical competence in the relevant market or markets.
6. The potential contribution of an economic focus to encourage investment, exports, building national capacities, and the potential benefit that leads to job creation, and increasing the local added value.
7. The impact of an economic focus on the interests of consumers.

When examining the request, the Ministry may hold meetings with the applicants, the persons, their representatives, their agents, or others.

Article (11)

The Minister, or whoever he delegates, shall issue a decision regarding the application for approval of economic focus within a maximum of (90) ninety days from the date of submitting the request to the Ministry together with the required data and documents. The application is considered complete from the date on which the applicant is notified of its completion, and the passage of this period without a response will be considered as approval of the application.

Article (12)

The Minister may take one of the following decisions regarding the application for approval of an economic focus:

1. Approval of the application.
2. Approval of the application with specification of certain conditions and obligations.
3. Rejection of the request provided that the refusal is justified.

Article (13)

It is not permissible for the concerned persons, during the period of (90) ninety days stipulated in Article (11) of these regulations to take any action or conduct related to the completion of the economic focus of the request.

Article (14)

The Ministry may, on its own initiative at any time, or upon a request submitted by any party adversely affected by the approval of the economic focus within (60) sixty days of the issuance of the decision, return the general approval, if the influence is a result of failure to the commitment of the person or persons concerned to fulfill the conditions and requirements under which approval for economic focus was granted.

Article (15)

The Ministry is responsible for monitoring the extent to which the concerned persons comply with the conditions and the obligations specified in the decision issued in accordance with Clause (2) of Article (12) of these regulations, and if non-compliance is proven, the Ministry shall issue a decision canceling the approval decision to economic focus. The person shall be notified in writing of this decision at least (30) thirty days before the date of its entry into force with a specific time limit granted for him to reconcile his conditions that the Ministry estimates, and in all cases the Ministry must inform the persons concerned with the same method that was reported to the original decision, and a copy to the competent authorities.

Chapter Four

Grievances

Article (16)

The stakeholder may appeal to the Minister against the decision issued by the Ministry to reject or cancel the economic focus approval application within (60) sixty days from the date of notification of the refusal or decision cancellation, after paying the applicable fee. The fee will be refunded upon acceptance of the grievance.

Article (17)

The grievance request must contain the following documents and data:

1. The name and address of the applicant.
2. Date of issuance of the grievance decision, and the date of its notification.
3. A copy of the Economic Focus Approval Application submitted to the Ministry, which carried the grievance.
4. Subject of the grievance, and its causes.
5. Supporting documents for the grievance.

Article (18)

The grievance shall be entered in the register prepared for this, provided that a receipt is delivered to the applicant containing proof of receipt, the number and date of registration.

Article (19)

Decision on the grievance shall be taken within (30) thirty days from the date of its submission, and the passage of this period without a decision thereon shall be considered as acceptance, and

in all cases the applicant shall be notified in writing of the decision on the grievance within (7) seven days from the date of its issuance.

Chapter Five

Judicial Control

(Reporting and Controlling Violations)

Article (20)

The employees who have been granted the judicial authority status in accordance with the provisions of Chapter Three of the Law are entitled to do the following:

1. Entry to the places of work of the authorities, or the persons subject to the examination.
2. To review the records, documents of the establishments, their appendices, and their offices belonging to the persons subject to examination, and obtain copies of them.
3. Take the necessary measures to collect information, and investigate any person about any suspicion that he has committed any violation of the provisions of the law, these regulations, and the decisions issued in implementation of them.
4. Take the necessary measures to spot violations and preserve evidence.

The employees referred to shall maintain the confidentiality of the information and data that they have accessed, and they may not share it with others, and they shall not hand them over to other parties without the approval of the competent judicial authorities.

Article (21)

Any person may submit a complaint to the Ministry for any allegation of contravening the provisions of the law, these regulations, and the decisions issued for their implementation, and every concerned person may submit a complaint of violating it.

In all cases, the Ministry may on its own initiative verify the person's compliance with the provisions of the law of these regulations and the decisions issued for their implementation.

Article (22)

The notification of complaint submitted to the Ministry shall be as per the form prepared for this purpose, including the data and the following documents:

1. The name, address, and phone number of the person submitting the report, and a copy of his identity.
2. The type of violation, and the perpetrator.
3. Statement of damage to competition, if any.
4. Any data or other documents requested by the Ministry, or which the person submitting the communication deems necessary supporting his report.

The notification shall be based on a complaint signed by the person submitting it, or his legal representative, and the notification and the documents attached thereto shall be in Arabic, and if they are in a foreign language, an Arabic translation, certified and approved, shall be attached to them.

Article (23)

The complaint shall be entered in the register prepared for this, provided that a receipt shall be delivered to the person submitting the complaint including proof of receipt, number and date of registration.

Article (24)

The Ministry employees - who have been granted the status of judicial control when verifying the seriousness of reporting a complaint or suspicion of violating as per the provisions of the law, their regulations, and the decisions issued for their implementation - must write a summary of the violation. A copy of the summary must be given to the violator, including the following:

1. The name of the reporter.
2. The name and description of the violating person.
3. Date, time and place of opening the record.
4. Type of violation.
5. Actions taken.
6. Data and documents obtained.

Article (25)

The Ministry employee who was granted the status of judicial control through his direct official presents the report of the violation stipulated in Article (24) of these regulations, attached to it with a report of his opinion to the Minister, for the conduct of investigation or preservation.

Article (26)

If the Minister directs to proceed with the investigation, the official who was granted the status of judicial control shall undertake the investigation with the violator, and the persons concerned, and a report shall be prepared accordingly.

Article (27)

A report shall be submitted to the Minister - after the completion of the investigation - containing a summary of it and the result that has been produced, and the Minister, or whoever he may delegate, issues a reasoned decision notifying the cost, the amount against the violator, and all those concerned directly related to him including one or more of the following:

1. Conducting further investigation and searching within (14) fourteen days.
2. Imposing an administrative fine, and removing the violation within (10) ten days.
3. Refer the file to the public prosecution.
4. Preservation of the file.

Article (28)

People of concern may appeal against the Minister's decision to impose the administrative fine stipulated in Clause (2) of Article (27) of these regulations, or by preservation in accordance with Clause (4) of Article (27) of these regulations within (15) fifteen days from the date of notifying them of the decision, and the grievance must be decided within (30) thirty days of its submission, and the passage of this period without a response is considered as a refusal of the grievance, and in all cases the decision is considered a final. The Ministry must notify the person concerned about the final decision accordingly.

Chapter Six

Exceptions

Article (29)

The Minister may exclude any person, on a temporary basis, and for a specified period, from any agreement, procedure, or business related to products in cases that lead to reducing the initial costs and protecting and benefiting consumer in accordance with the provisions of Article (5) of Law; this is in accordance with the controls and procedures specified in this chapter.

Article (30)

The exception request must be submitted on the form prepared for this purpose, accompanied by the following data and documents:

1. The applicant's Name, Nationality, Address, and means of communication.
2. A copy of the Establishment Contract and Commercial Registry.
3. Determine the market share of the concerned market.
4. A certified original copy of the license to practice activities issued by the competent authorities that can only be practiced under it such as Banking, Insurance, Telecommunications, Electricity Production, etc. and a copy of amendments made to it.
5. Audited annual financial statements for the last three years.
6. Defining the topic carried the exception request.
7. Determine the justifications and objectives of the exception.
8. Any data or documents supporting the exception request requested by the Ministry, or deemed necessary by the applicant.
9. Evidence for payment of the prescribed fee.

The application and all documents shall be submitted in Arabic. If they are in a foreign language, a certified Arabic translation shall be attached to them.

Article (31)

The Ministry undertakes the study of the exemption request, and in this way it has the right to take the necessary measures, and prepare a report accompanied by the proposed recommendation regarding it within (90) ninety days following the completion of the request and fulfillment of the requirements stipulated in the regulations, and it shall be submitted to the Minister.

Article (32)

The Ministry - when studying the request and before deciding on it - must ensure that the exception will lead to a reduction in the basic costs, protection and benefit to the consumer, taking into account the following:

1. Type of product, volume of production, and the amount of consumer demand for it.
2. The level of influence of the exception on the overall supply or demand for similar products in the relevant market.
3. The level of actual and potential competition in the relevant market.
4. Whether the applicant has, or is likely to have, a dominant position in the relevant market.
5. Ease of extent for new competitors to enter the relevant market for the same products.
6. The potential effect of the exception on the prices of the products in the relevant market.

7. The potential impact of an exception on innovation, creativity, upgrade and technical efficiency of the products concerned.
8. The possible contribution of the exception to encouraging investment, exporting, or supporting the competitiveness of Omani SME's.
9. Considerations for maintaining the quality and type of products and the requirements of safety and security.
10. The benefits that may accrue to the consumer.

Article (33)

The Minister shall issue any of the following decisions regarding the exception request in accordance with the provisions of this chapter within thirty (30) days from the date it was submitted to him:

1. Approval of the request.
2. Approval of the application with certain conditions and specific obligations.
3. Directing for further study to be conducted on the application, provided that it be completed within (45) forty-five days from the date of re-petition.
4. Rejection of the exception request, provided that the decision is justified.

The passage of the period stipulated in the first paragraph of this article without a response is considered as approval of the exception request.

In all cases, the Ministry must notify the applicant of the decision issued in the matter of his request directly, by any means.

Article (34)

The exception shall be valid for the period specified by the Minister in the approval decision, and it may be renewed according to a new application submitted at least (60) sixty days before the expiry of the exemption period, and the same procedures specified for submitting the exception application shall be followed regarding the renewal request.

Article (35)

The holder of an exception, if he wishes to amend its conditions, must obtain the prior approval of the Ministry, and follow all the rules and procedures specified for submitting the exception request.

Article (36)

The Minister may, on its own initiative, or at the request of any person or entity adversely affected by the exception, issue a decision to amend or cancel the exception, provided that the decision is justified in the following cases:

1. Change or disappearance of circumstances or market conditions under which the exception was granted.
2. Failure of the exception holder to comply with the conditions and requirements specified in the decision approving the exception.
3. Any other reasons that the Ministry deems appropriate, and are sought by the public interest.

Article (37)

The Minister shall issue a decision canceling the exception if it was issued based on incorrect information, misrepresentation, or fraud.

Chapter Seven

The Advisory Committee

Article (38)

An Advisory Committee may be formed to discuss issues related to the work of the center, specifying its specializations, work system, and the remuneration of its members, is issued by a decision of the Minister.

Chapter Eight

Administrative Fines

Article (39)

Without prejudice to the penalties stipulated in the Law, an administrative fine of (5,000) Five Thousand Omani Rials shall be imposed on anyone who violates the provisions of this regulation, and the fine shall be doubled in the event of a repetition of the violation. It is deemed a repetition in the application of the provisions of this article to commit a similar offense within (5) five years following committing the first violation, and for continuous violations, an administrative fine of no more than (500) Five Hundred Omani Rials shall be imposed for each day on which the violation continues, provided that it does not exceed Totaling over (10,000) Ten Thousand Omani Rials.