Fourth Arab Competition Forum

Session III. Cross-border merger control

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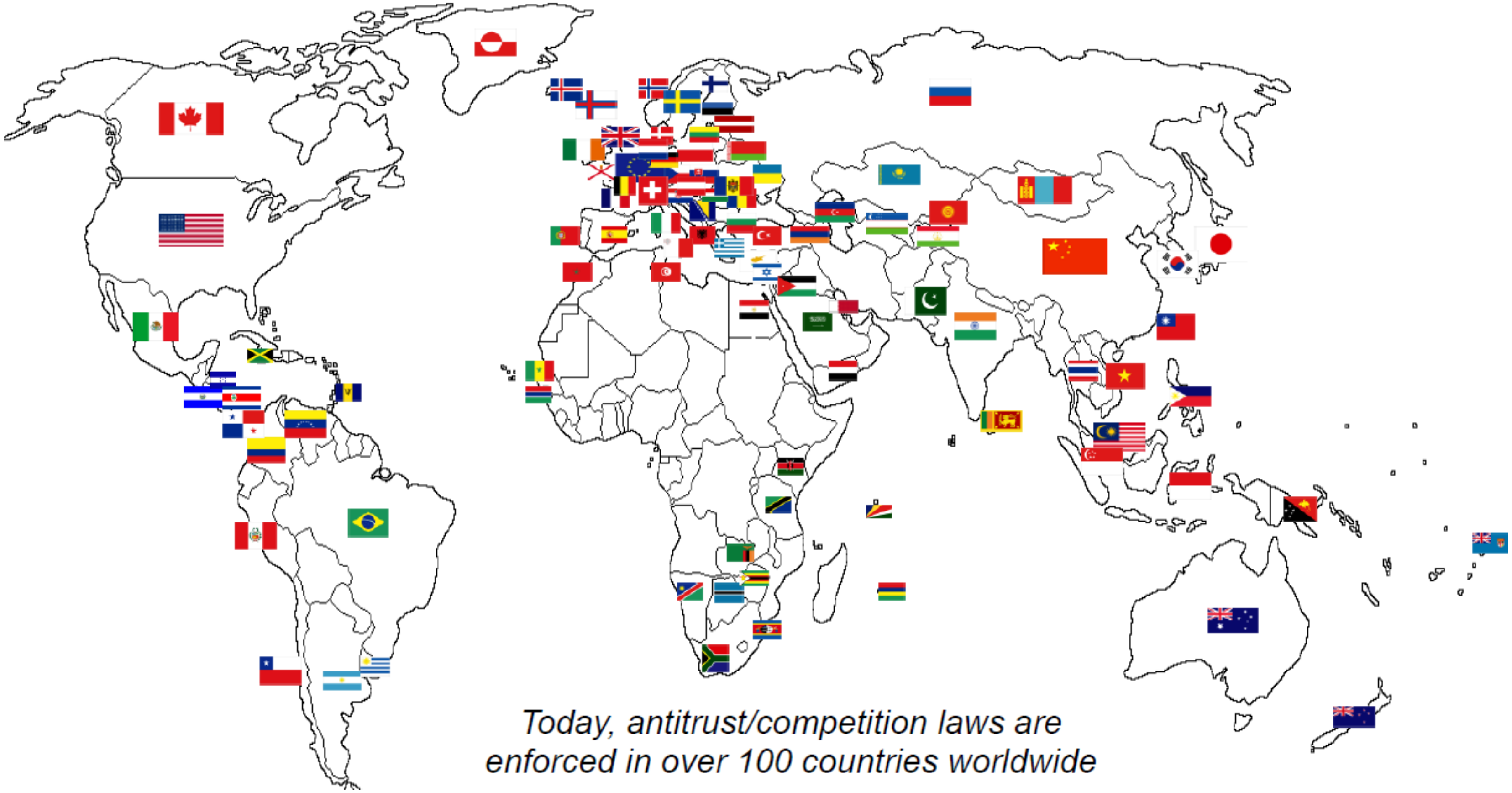
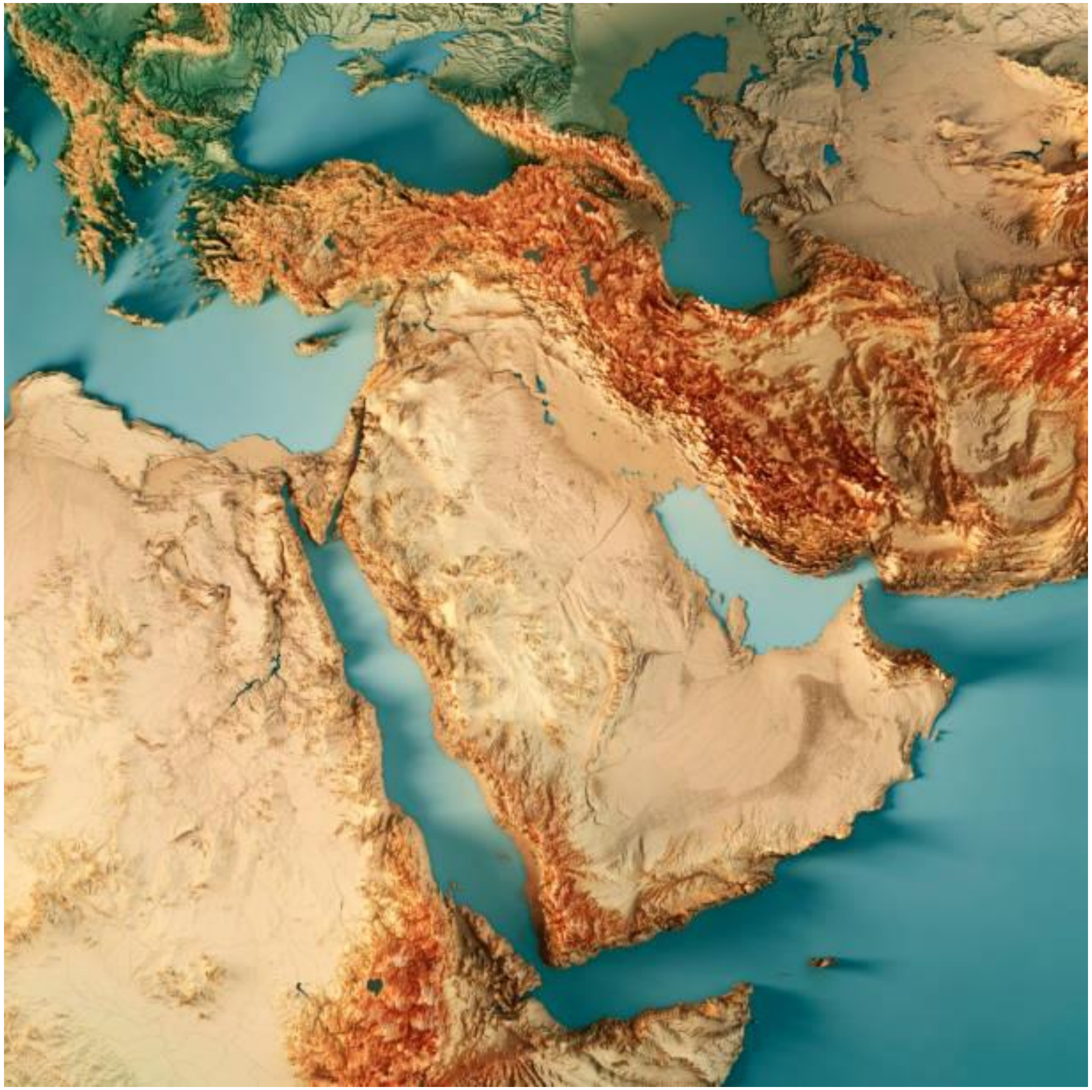
The Global Expansion of Competition Law



Today, antitrust/competition laws are enforced in over 100 countries worldwide

Increasing focus on competition law in the Middle East



Examples:

- 2004 – Jordan & Saudi Arabia
- 2005 – Egypt
- 2006 – Qatar
- 2007 – Kuwait
- 2008 – Syria
- 2010 – Iraq
- 2013 – UAE
- 2016 – UAE (further clarifications)
- 2018 – Egypt (updated)
- 2018 – Oman (not in force yet)
- 2019 – Saudi Arabia (updated)
- 2020 – Kuwait (updated)
- 2022 - Lebanon

Key Features Middle East Merger Control Regimes

Country	Key Features				
	Threshold	**Local nexus**	**Triggering event**	**Transparency**	**Active enforcement**
Bahrain	No exact thresholds yet established	Y	Change of control; further guidance expected	No public information	N
Egypt	1) All pp in Egypt > USD 36m and T/O of at least two pp > USD 8m OR 2) All pp worldwide T/O >USD 300m and T/O in Egypt of at least one p > USD 8m	Y	Change of control	Limited public information	Y
Iran	Market shares >40%; AND HHI ≥4000	[Y]	Change of control	No public information	Y
Jordan	Holding or acquisition of >40% market share in Jordan	[Y]	Change of control	Limited public information	Y
Kuwait	1) Any party in Kuwait >USD 1.63m OR 2) All pp in Kuwait >USD 2.44m OR 3) All pp registered assets value in Kuwait >USD 8.16m	Y	Change of control	Limited public information	Y
Lebanon (*Not yet in force*)	Average combined market share >30%	[Y]	Change of control	Limited public information	N (Authority has not yet been established)
Oman	Acquisition of dominant position (>35%)	[Y]	Control over a company with market dominance	No public information	Unclear
Qatar	No quantitative thresholds, but dominance test	[Y]	No control required, but linked to dominance	No public information	N
Saudi Arabia	Total T/O >SAR 200m (USD 53.3m)	N	Control and acquisition of corporate governance rights<control	Basic details on social media	Y
UAE	Holding or acquisition of >40% market share in UAE	Y	Change of control	No public information	N

A few key features for an effective merger control regime

- A consistent and transparent approach signals to industry that the regulator is capable to credibly enforce the law

- In practical terms, it is particularly advisable that the agency provides for:

  - A clear definition of notifiable transactions
  - A non-ambiguous local nexus requirement
  - A well-articulated analytical framework
  - Transparency on the agency’s enforcement record: notified transactions and reasoned decisions
  - Due process rights and procedural guarantees

International Best Practices Provide Guidance

- The mission of the ICN Merger Working Group (MWG) is to promote the adoption of best practices in the design and operation of merger review regimes in order to: (i) enhance the effectiveness of merger review mechanisms; (ii) facilitate procedural and substantive convergence; and (iii) reduce the public and private time and cost of multijurisdictional merger reviews

- ICN Recommended Practices for Merger Notification and Review Procedures and OECD / UNCTAD work products provide meaningful guidance, for example:

  *"Jurisdictions should consider carefully the types of transactions that are included within the scope of their merger laws and seek to include in the scope of their merger laws only transactions that result in **a durable combination of previously independent entities** or assets and are likely to **materially change market structure**."*

  *"Merger notification thresholds should incorporate appropriate standards ensuring **a material nexus** to the reviewing jurisdiction"*

- Inter-agency collaboration and information exchange may be highly beneficial, but exchange of companies' confidential information may raise issues under **privacy laws**, undermine rights of due process and **procedural fairness** and undermine **trust** in competition agencies and create **disincentives** for parties to provide highly confidential information to enforcers in the course of an investigation.

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