Sayı : 38591462-720-2021-787 08.03.2021
Konu : Umman Rekabet Mevzuatı Hk.

Sirküler No: 205

Sayın Üyemiz,

Türkiye Odalar ve Borsalar Birliği'nden (TOBB) alınan 22.02.2021 tarihli Ek'te sunulan yazıda, Umman Ticaret, Sanayi ve Yatırım Teşvik Bakanlığı tarafından Rekabetin Korunması ve Tekelleşmenin Önlenmesine Dair Sultanlık Kararnamesi kapsamında çıkarılan Bakanlık Kararnamesi ile rekabet alanında tekelleşmenin önlenmesinin hedeflendiği bildirilmektedir.

Yazıda devamla, söz konusu kanuna göre; pazarda payı %35'in üzerine çıkan ve fiyatları veya arzı etkileme gücüne sahip olan kişilerin pazara hâkim kabul edileceği, pazar koşulları gereği söz konusu durumda bulunan firmaların Bakanlığa yazılı olarak başvurmaları ve durumu gerekçeli bir şekilde açıklamalarının beklendiği ifade edilmektedir.

Söz konusu kararın Arapça ve İngilizce dillerinde metni ile 2014 tarihli Rekabetin Korunması ve Tekelleşmenin Önlenmesine Dair Sultanlık Kararnamesi Ek'te sunulmaktadır.

Bilgilerinize arz/rica ederim.

Saygılarımla,

İsmet SALİHOĞLU
Genel Sekreter

Ek:TOBB'dan alınan 22.02.2021 tarihli yazı ve Eki. (51 sayfa)

Dağıtım:
- Tüm Üyeler (WEB sayfası)

Bu belge, 5070 sayılı Elektronik İmza Kanuna göre Güvenli Elektronik İmza ile İmzalanmıştır.

AKREDİTE ODA TOBB
Odamızda ISO 9001:2015 KALİTE YÖNETİM SİSTEMİ Uygulanmaktadır
Odamızda Sıfır Atık Yönetimi Sistemi Uygulanmaktadır. SIFIR ATIK

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Bilgi için: Esat Emre ERDOĞAN **Telefon:** 0212 252 01 30/485 **E-Posta:** emre.erdogan@denizticaretodasi.org.tr
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BEL93KCMM

ODA VE BORSALARIN GENEL
SEKRETERLİKLERİNE

TOBB
TÜRKİYE ODALAR VE BORSALAR BİRLİĞİ

Tarih : 22.02.2021
Sayı : 34221550-720- 1760
Konu : Umman / Rekabet Mevzuatı Hk.

İlgi : Ticaret Bakanlığı'nın 19.02.2021 tarihli ve 61645520 sayılı yazısı.

Ticaret Bakanlığı'ndan alınan ilgi yazıda, Muskat Ticaret Müşavirliğimizden alınan bir yazıya atfen; Umman Ticaret, Sanayi ve Yatırım Teşvik Bakanlığı tarafından Rekabetin Korunması ve Tekelleşmenin Önlenmesine Dair Sultanlık Kararnamesi kapsamında çıkarılan Bakanlık Kararnamesi ile, rekabet alanında tekelleşmenin önlenmesinin hedeflendiği bildirilmektedir.

Yazıda devamla, bahse konu kanuna göre; pazarda payı %35'in üzerine çıkan ve fiyatları veya arzı etkileme gücüne sahip olan kişilerin pazara hâkim kabul edileceği, pazar koşulları gereği söz konusu durumda bulunan firmaların Bakanlığa yazılı olarak başvurmaları ve durumu gerekçeli bir şekilde açıklamalarının beklendiği ifade edilmektedir.

Söz konusu kararın Arapça ve İngilizce dillerinde metni ile 2014 tarihli Rekabetin Korunması ve Tekelleşmenin Önlenmesine Dair Sultanlık Kararnamesi ekte iletilmektedir.

Bilgilerinizi ve konunun ilgili üyelerinize duyurulmasını rica ederim.

Saygılarımla,

e-imza
Ali Emre YURDAKUL
Genel Sekreter Yardımcısı

EK:
1- 2014 Tarihli Sultanlık Kararnamesi (20 sayfa)
2- Kanun (İngilizce) (14 sayfa)
3- Kanun (Arapça) (16 sayfa)

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.
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E-Posta: info@tobb.org.tr ● **Web:** www.tobb.org.tr ● **KEP:** tobb@hs02.kep.tr
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Sultanate of Oman
The Public Authority
for Consumer Protection

Royal Decree
Bearing No. 67/2014

Promulgating Competition Protection and Monopoly Prevention Law

The first edition 2015

Royal Decree

Bearing No. 67/2014

Promulgating Competition Protection and Monopoly Prevention Law

We, Qaboos Bin Said…….. Sultan of Oman

After perusal of the state's basic law promulgated by virtue of Royal Decree Number 101/96;

And the Law of the Public Authority for Customer Protection law promulgated by virtue of Royal Decree Nr. 53;

and after the referral of the same to the Council of Oman
and as required by public interest;

We have decreed the following:

Article I
The provisions of the attached Consumer Protection and Monopoly Prevention Law shall take effect and come into force.

Article II
This Decree shall be published in the official gazette.

Promulgated on: Safar 7th for the year 1436 H
Corresponding to: November 30th, for the year 2014AD

Qaboos Bin Said
Sultan of Oman

Competition Protection and Monopoly Prevention Law

Chapter I
Definitions and General Provisions

Article (1)

In application of the provisions of this law, the following words and phrases shall have the meaning herein assigned thereto, unless the context requires otherwise:

The Authority:

Public Authority for the Customer Protection.

The Board :

The board of the Public Authority.

The Chairman

The chairman of the Public Authority.

The Regulations

The executive regulations of the Competition Protection and Monopoly Prevention Law.

The Person:-

Any natural or legal person or any other legal entity whatsoever its legal status, does practice or exercise any economic or commercial activity.

The Concerned Market:-

The concerned market will be based on two elements that are the relevant products and geographic sphere. The relevant products shall mean all products that any of the same is deemed as an alternative to the other, or can substitute or replace the same as per the point of view of the service or good receiver, including without being limited to the products offered

by the competitors within any other markets near to the customer. The geographic sphere shall mean the zone where the competition circumstances are similar or identical, which within its scope both vendor and purchaser deal with such products to determine the prices.

Monopoly:-

Any form of the control to be imposed by any person or group of people directly or indirectly over the quantity or the price for any good or service in such manner that the freedom of the competition is restricted or the same was adversely affected.

The Products:

The local and imported commodities and services

Domination:-

The ability demonstrated by any individual or a group of people directly or indirectly co-engaging in the control over the concerned market, and hence, acquiring a rate exceeding (35%) thirty five percent of the volume of this particular market.

Economic Concentration:

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.

Article (2)

This law aims at regulating the freedom of practicing any economic activity, stabilizing the principles of the market rules and freedom of pricing in such manner that the same shall not restrict the integral competition, prevent the same or to be negatively affected thereby.

Article (3)

The provisions of this law shall be applied on all activities relevant to

production, trade and services or any other economic or commercial activities practiced in the Sultanate of Oman or any other economic or commercial activities to be practiced outside the sultanate and the same shall have consequences prevailing in the Sultanate of Oman.

Moreover, the provisions of this law shall be applied on any form of violation relating to intellectual property rights, trade marks, patents and copyrights, given the fact that the same has negative or adverse impact on competition.

Article (4)

The provisions of this law shall not be applied on the activities relevant to the public facilities fully owned or controlled by the Sultanate of Oman. This law shall not be applied on any activities relating to researches and development to be conducted by any public or private bodies.

Article (5)

The board may, in accordance with the controls stated under the regulations, exclude any person out any agreement, procedure or businesses relevant temporarily to the products and for a certain period in any of instances that reduces the preliminary costs and entail customer protection and benefit, in particular, should the same aims at any of the following:-

A/ Seeking rationalization of the organizational structure, commercial scope or enhancement of the project efficiency from a commercial point of view.

B/ Encouraging the technical or technological progress or promote the quality of the products.

C/ Increasing the capabilities of the Omani Small and Medium size Enterprises in terms of the competition

D/ Stimulation of the unified application of the standards and criteria of quality and technological estimations for all kinds of products.

C/ Unification of the terms and conditions governing the trade, delivery of the commodities and payment, provided however that the same shall be relevant to the prices or any pricing elements.

E/ Drawing general benefits including without being limited to Energy conservation, environment protection, provision of aids given emergency circumstances and natural disasters.

Article (6)

The regulations determine the instances of domination or control over the concerned market as per criteria regulating the market structure and the smoothness extent for entering new competitors or subject to any criteria set by the board.

Article (7)

Any person may conclude any agreement for importing any product licensed to be traded within the Sultanate of Oman for the purpose of selling, distribution, marketing or promoting of the same, regardless whether such imported product was previously monopolized as the same was imported, sold, distributed, marketed or promoted by any exclusive agent or not.

Chapter II
Forbidden Practices

Article (8)

Any agreement or contract may not be concluded either inside or outside the Sultanate of Oman, or to take any procedures, whether written or oral, for the purpose of monopolization in terms of import, production, distribution, and sale or purchase of any commodity or trade of the same or to take any form of monopoly that may negatively affect the market.

Article (9)

Any agreement or contract may not be concluded either inside or outside the Sultanate of Oman, or take any procedures or practices, whether written or oral implied or expressed, for the purpose of prevention of competition, elimination or undermining the same, particularly with regard to the following:-

A/ Pricing, discounts, sale or purchase terms and conditions or provisions of the services.

B/ Determination of the production quantities or elimination of the flows of the same to the market or removal thereof as entirely or partially through covering, storing of the same or refraining from dealing therein.

C/ Induction of the dealers in their market to provide quantities of the products in abrupt manner leading the trade of such product or performance of such service for unreal prices.

D/ Division of any current or potential market for the products on the geographic or consuming basis, depending on the client's class, seasonal or period of time basis or depending on the commodities basis.

E/ Prevention, hampering, suspending any practice for any per-

son to perform his economic or commercial activity within the market.

F/ Dealing or refraining from dealing with specific people.

G/ Refraining from trading the product in the market whether in terms of sale or purchase with certain persons(s).

H/Suspending the conclusion of any arrangement subject to approving obligations to be, given its nature or the commercial use thereof, irrelevant to the subject matter of the transaction or the agreement.

I/Manipulations to be acted in the auctions or tenders among certain people, setting stipulations under the tender conditions including without being limited to listing the trademarks of the commodity or a description of the same.

Article (10)

Any person having a dominant position may not practice any activities that may infringe, negatively affect the competition, eliminate or prevent of the same, including without being limited to the following:-

A/ Selling the product in a price lower than its actual cost for the purpose of preventing certain competitors to enter the market, excluding them therefrom or expose them to losses with which they will not be able to perform their activities.

B/ Imposing restrictions on supplying the product in an attempt to create unreal shortage in an endeavor to increase the prices.

C/ Imposing specific requirements regulating the sale or purchase or dealing with another person in such manner that such person became in weak competitive position with regard to the other competitive persons.

D/ Refraining from dealing with any other person without rea-

sonable cause in order to prevent such person from entry into the market or in an attempt to force them out therefrom.

E/ Stipulating the sale or supply of certain commodity or rendering specific services against purchase of certain commodity or performance of this service from the same or any other person.

F/ Pricing or directly or indirectly determining the conditions for the resale of the products.

G/ Enforcing certain obligation in an attempt to cease manufacturing, production or distribution with respect to a certain product for a limited period(s).

H/ Purchase, store or spoil certain commodities for the purpose of increasing the prices or preventing the reduction of the same.

I/ Reducing or increasing the quantities available of certain product in such manner that the same results in creating shortage or unreal abundance thereof.

J/ Discrimination without a reasonable cause among the clients concluding similar contracts in terms of product prices, sale or purchase terms and conditions subject thereto.

K/ Inducing dealers not to allow for certain competitor to use it may be in need thereof in terms of facilities or services pertaining thereto, even if such use is economically practical.

L/ Keeping any manufacturer or supplier under obligation not to deal with any other competitor.

M/ Pending conclusion or execution of an agreement or contract on condition of accepting obligations to be – given its nature or by virtue of the commercial use thereof, irrelevant to the subject matter of the transaction or the agreement.

Article (11)

The persons intending to take any action resulting in economic concentration shall submit a written request to the authority which shall peruse such requests and render the resolution thereon within a period not exceeding ninety (90) days after receipt of such request thereby. If such period was expired without determination rendered therein, the same shall serve as an approval thereon. The actions subject of the request shall not be taken unless after rendering a resolution by the authority or the elapse of the period referred hereto without determination of the same.

This person may submit a complaint to the chairman within a period of sixty (60) days as of the date of rendering the resolution for rejection. Such compliant shall be determined during a period of thirty (30) days as of the date of its submission. The elapse of such period without any replay shall serve as an approval on this complaint.

The authority may cancel the request after rendering of an approval thereon, if it was proved thereto that the information submitted thereto by the applicant is not true or correct or marred with any fraud or forgery.

In all instances, the approval may not be rendered on any action resulting in economic concentration leading to the acquisition of a rate exceeding (50%) fifty percent of the concerned market.

Chapter III
Regulating violations

Article (12)

The personnel whose identifications were determined by virtue of a resolution rendered by the competent body along with the chairman, shall bestowed with the capacity of judicial execution regarding the application of the provisions stated under this law and the regulations, resolutions rendered for the enforcement of the same.

Article (13)

The authority personnel bestowed with the powers of the judicial execution may peruse any cases of monopoly and economic concentration and investigate the forbidden practices. They will have also the powers and authorities to scrutinize and audit the required information, particulars and records. Any officer shall serve the authority with what the authority deems required in this regard without any delay.

Article (14)

Any person shall not prevent any judicial execution officer from entering the establishment, annexes and head offices of the same or conceal any information required in this regard, give information deemed as irrelevant or misleading, hide or damage any documents or deeds required in the investigation process.

Article (15)

The violations shall be administratively reported and investigated or the same may be referred to the jurisdiction as the case may be and as contemplated under the regulations and in pursuance of laws, regulations and resolutions applicable in this regard.

Article (16)

The officers who got acquainted with any information, particulars and records by force of their capacity, shall keep and save guard the same as confidential and they may not get any third party acquainted with the

same or to be submitted to any other entity unless after obtaining the approval of the competent judicial authorities.

Article (17)

Any person may report to the authority upon any conclusion of certain agreement, procedure or practice forbidden in pursuance of the provisions of this law.

Chapter IV
Penalties

Article (18)

Without prejudice to any other severer penalties imposed pursuant to the Omani penal Code or under any other laws, the crimes stated under this law shall be punished by the penalties provided for therein.

Article (19)

Whoever has violated the provisions stated under any of articles (8), (9) and (10) of this law, shall be imprisoned for a term not less than three (3) months and not exceeding three (3) years and with a fine equal to what was gained thereby in terms of profits from selling the products subject of the violation, or any of the aforementioned penalties plus a rate not less than (5%) five percent and not exceeding (10%) ten percent of the total annual sales of the products subject of the violation, and which was gained the violator during the last fiscal year.

Article (20)

Whoever has violated the provisions stated under any of articles (11), (14) and (16) of this law, shall be imprisoned for a term not less than one (1) month and not exceeding three (3) years and with a fine not less than an amount of (OMR 10000), Ten thousand Omani Riyals and not exceeding an amount of (OMR 100000), hundred thousand Omani Riyals or by either of these two penalties.

Moreover, whoever has breached the authority resolution rendered under article (11) of this law shall be punished by the same penalty.

Article (21)

Without prejudice to any other penalties stipulated upon under both articles (19) and (20) of this law, the court may take the following procedures or any of the same upon violating the provisions of this law:-

A/ Rendering a ruling to the effect of keeping the violator under obligation to legalize his status or rectify the violation

during a fixed period of time as determined by the court, provided however that such period shall not exceed three (3) months.

B/ Rendering a ruling to the effect of keeping the violator under obligation to dispose of some assets, shares or right equity or take any other actions procuring the removal and rectification of the violation effects.

C/ Rendering a ruling to the effect of keeping the violator under obligation to settle a fine on daily base till removal of the violation, estimated in an amount less than (OMR 100) one hundred Omani Riyals and not exceeding (OMR10000) Ten thousand Omani riyals.

Article (22)

The same penalties stipulated under this law shall be applied to the chairman, the members of the board of directors, Executive Chief Officer, authorized directors and officers reported to the violator person, should it was substantiated that they were substantially aware of such violation, and their failure to fulfill the tasks entrusted therewith has contributed to the occurrence of the crime.

The legal person shall be jointly held liable for fulfilling what was ruled in terms of financial penalties, remedies and liquidated damages, if the violation was committed by any of the personnel serving for such legal person or in its favor.

Article (23)

Upon the recurrence of the same violations, the penalties contemplated under articles (19) and (20) shall be doubled along with closing the commercial business or enterprise or suspension of the commercial activity - as the cases may be- provided however that the period shall not exceed thirty (30) days.

Article (24)

Should any violations stipulated under both articles (8) and (9) of this law, was committed, the court may render its ruling to the effect of mitigating or discharge of such penalty, with regard to the violators who tend initiatively to report the violation to the authority and to serve the authority with all evidences in its possession supporting the commission of such violation and hence, the court shall determine how far the same has contributed to the detection of the elements of the crime and substantiating the pillars of the same at any phase of investigation, perusal, collecting evidences, investigation and persecution.

Article (25)

Notwithstanding any other penalties stipulated under the penal Codes of this law, the president may impose administrative fines concerning what was rendered thereby in terms of regulations and resolutions for the violations of the provisions of this laws as amended, provided however that such fine shall not exceed (OMR 5000) five thousand Omani Riyals and the fine shall be doubled upon recurrence. The commission of a similar violation during a period of five (5) years shall be deemed as a recurrence in the application of the provisions of this law. Upon the sustainable violation, administrative fine may be imposed in an amount not exceeding (OMR 500) five hundred Omani riyals per day during the sustainability of such violation, provided however that the total fine in aggregate shall not exceed (OMR 10000) Ten thousand Omani riyals.

Article (26)

The violations stated under this law shall be referred to the general prosecutor by virtue of a resolution to be rendered by the president or whoever authorized thereby.

Article (27)

The final resolutions and provisions rendered in execution of the provisions of this law, shall be published at the cost of the violating party in two daily newspapers, provided however that one of the same shall be edited in Arabic or through any other media means.

Chapter V
Final Provisions

Article (28)

The chairman of the board shall render this regulation following an approval from both the board and the ministerial cabinet, during a period of time not exceeding six (6) months as of the date of promulgation of this law, and shall also issue the regulations and resolutions required to execute the provision of this law.

Article (29)

All provisions considered in contradiction of this law or in conflict with the provisions thereof shall be deemed void and nullified.

Article (30)

This law shall be put into force and take effect as of its date of publication in the official gazette.

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General Authority for Consumer Protection ©

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: 25th January, 2021

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 (6)

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 (8)

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.

وزارة التجارة والصناعة وترويج الاستثمار

قـرار وزاري

رقـم ١٨ / ٢٠٢١

بإصدار اللائحة التنفيذية لقانون حماية المنافسة ومنع الاحتكار

استنادا إلى قانون حماية المنافسة ومنع الاحتكار الصادر بالمرسوم السلطاني رقم ٢٠١٤/٦٧،

وإلى المرسوم السلطاني رقم ٢٠٢٠/٩٧ بتعديل مسمى وزارة التجارة والصناعة إلى وزارة التجارة والصناعة وترويج الاستثمار وتحديد اختصاصاتها واعتماد هيكلها التنظيمي،

وإلى موافقة مجلس الوزراء،

وبناء على ما تقتضيه المصلحة العامة.

تـقـرر

المـادة الأولـــى

يعمل بأحكام اللائحة التنفيذية لقانون حماية المنافسة ومنع الاحتكار المرفقة.

المـادة الثانيـــة

يلغى كل ما يخالف اللائحة المرفقة، أو يتعارض مع أحكامها.

المـادة الثالثـــة

ينشر هذا القرار في الجريدة الرسمية، ويعمل به من اليوم التالي لتاريخ نشره.

صـدر في : ١١ من جمادى الثانية ١٤٤٢هـ

الموافـــق : ٢٥ من ينايـــــــــر ٢٠٢١م

قيـس بن محمـد بن موسـى اليـوسـف

وزير التجارة والصناعة وترويج الاستثمار

اللائحة التنفيذية لقانون حماية المنافسة ومنع الاحتكار

الفصل الأول

تعريفات وأحكام عامة

المادة (١)

في تطبيق أحكام هذه اللائحة يكون للكلمات والعبارات الواردة فيها المعنى ذاته المنصوص عليه في قانون حماية المنافسة ومنع الاحتكار المشار إليه، كما يكون للكلمات والعبارات الآتية المعنى المحدد قرين كل منها، ما لم يقتض سياق النص معنى آخر:

القانون:

قانون حماية المنافسة ومنع الاحتكار.

الوزارة:

وزارة التجارة والصناعة وترويج الاستثمار.

الوزير:

وزير التجارة والصناعة وترويج الاستثمار.

مقدم الطلب:

الشخص الذي يقدم طلب الاستثناء المنصوص عليه في المادة (٥) من القانون، أو طلب التركيز الاقتصادي.

الاتفاقيات:

التعاقدات بين الأشخاص المتنافسة في السوق المعنية.

التكتل الاحتكاري:

قدرة شخصين أو مجموعة أشخاص يعملون معا بشكل مباشر، أو غير مباشر على التحكم في السوق المعنية وتقييد المنافسة.

المادة (٢)

يراعى عند تحديد المنتجات المعنية للسوق المعنية المعايير الآتية:

١ - تماثل المنتجات في الخواص، والاستخدام.

٢ - مدى سهولة تحول المشترين عن المنتج إلى منتج آخر نتيجة للتغير النسبي في السعر على المدى القصير أو نتيجة لأي عوامل تنافسية أخرى.

٣ - القدرة على التحول إلى المنتجات المعنية، وتسويقها على المدى القصير دون تكبد تكاليف، أو مخاطر إضافية كبيرة نتيجة للتغيرات التي تطرأ على أسعارها.

٤ - التغييرات التي تشهدها السوق التي توضح وجود منتجات بديلة.

٥ - تكاليف تحول الطلب إلى المنتجات البديلة المحتملة، وتحديات هذا التحول، وتتضمن التكاليف، والقيود التي تنشأ عن القوانين واللوائح والقرارات.

٦ - آراء العملاء والمتنافسين في السوق.

المادة (٣)

يراعى عند تحديد النطاق الجغرافي للسوق المعنية المعايير الآتية:

١ - مدى القدرة على انتقال المشترين للمنتج المعني بين مناطق جغرافية نتيجة التغيرات النسبية في الأسعار، أو في العوامل التنافسية الأخرى، وما إذا كان البائعون يتخذون قراراتهم التجارية على أساس هذا الانتقال.

٢ - سهولة دخول منافسين ومستهلكين جدد إلى السوق المعنية.

٣ - تكاليف النقل بين المناطق الجغرافية، وتشمل تكلفة التأمين والرسوم الجمركية والقيود غير الجمركية، وغيرها من التكاليف، والوقت الذي تستغرقه لتزويد المناطق الجغرافية بالمنتجات المعنية من أسواق داخلية، أو خارجية.

٤ - أساس انتقال المشترين بين المناطق الجغرافية المختلفة نتيجة التغيرات النسبية في الأسعار، أو في العوامل التنافسية الأخرى.

٥ - مدى تأثير التفضيلات، وولاء العملاء لمنتج معين مقارنة بالمنتجات الأخرى في النطاق الجغرافي.

٦ - آراء العملاء والمتنافسين في السوق.

الفصـل الثانـي

الهيمنـة

المـادة (٤)

تتحقق الهيمنة على السوق المعنية في الحالات الآتية:

١ - إذا تجاوزت حصة الشخص (٣٥٪) خمسة وثلاثين في المائة من السوق المعنية، وتحسب هذه الحصة على أساس عنصر المنتجات المعنية، وعنصر النطاق الجغرافي معا، خلال فترة زمنية معينة.

٢ - قدرة الشخص على إحداث تأثير على أسعار المنتجات، أو على حجم المعروض منها في السوق المعنية، مع عدم قدرة المنافسين له على الحد من التأثير على الأسعار، أو حجم المعروض من المنتجات في السوق المعنية، خلال فترة زمنية معينة.

المـادة (٥)

يراعى عند تقدير الهيمنة العوامل الآتية:

١ - مدى قدرة الشخص على إحداث تأثير في سعر، أو كمية المنتجات أو الخدمات في السوق المعنية على نحو مستقل عن منافسيه خلال فترة زمنية معينة.

٢ - مستوى المنافسة الفعلية أو المحتملة في السوق المعنية، بما في ذلك عدد المنافسين النشطين، وحصة كل منهم في السوق المعنية، وإمكانية توسع المنافسين الفعليين في المستقبل، أو دخول منافسين محتملين جدد، والقيود التي تفرضها قوة مساومة العملاء.

٣ - تأثير حجم الإنتاج على العرض، أو الطلب الكلي على المنتج، أو الخدمات في السوق المعنية.

٤ - الحجم الكلي للشخص، بما في ذلك الأصول، والإيرادات، وعدد الموظفين.

٥ - مدى قدرة الشخص، ومنافسيه على الوصول إلى المواد اللازمة للإنتاج، أو قنوات التوزيع، والمبيعات.

٦ - السلوك التجاري للشخص في السوق المعنية.

٧ - التأثير على وفرة وتنوع المنتجات أو الخدمات البديلة في السوق المعنية.

٨ - أثر وصول الشخص إلى السوق المعنية، أو التوسع فيه، أو الخروج منه.

٩ - أسعار أو حجم توريد المنتجات للشخص في السوق المعنية.

المادة (٦)

يتحقق وضع التكتل الاحتكاري في السوق المعنية متى قام شخصان أو أكثر بأي من الآتي:

١ - اتباع سلوك موحد، أو سياسة مشتركة في السوق المعنية بين الأشخاص كتحديد الأسعار، أو فرض أسعار إعادة البيع، أو استخدام لتسعير بأقل من التكلفة، أو اتباع أسلوب التسعير الافتراسي، أو تقسيم السوق المعنية لحصص ومنع المنتجات البديلة من الدخول إلى السوق المعنية.

٢ - غياب المنافسة أو الحد منها أو إضعافها بين الأشخاص.

٣ - وجود روابط اقتصادية بين المنتجات المعنية، التي تمكنهم من العمل على نحو مستقل عن منافسيهم والمستهلكين.

الفصل الثالث

التركيز الاقتصادي

المادة (٧)

يجب أن يقدم طلب التركيز الاقتصادي وفقا لأحكام المادة (١١) من القانون كتابة إلى الوزارة على النموذج المعد لهذا الغرض، متضمنا البيانات الآتية:

١ - الاسم والجنسية والعنوان ومعلومات الاتصال الخاصة بمقدم الطلب، وكافة الأشخاص ذوي العلاقة بالتركيز الاقتصادي.

٢ - تحديد طبيعة التركيز الاقتصادي، وهيكله وصورته (اتحاد أو اندماج أو الجمع بين إدارتين أو أكثر أو أي شكل آخر من أشكال التركيز الاقتصادي)، والمدة الزمنية المقترحة لإكماله.

٣ - مبررات طلب التركيز الاقتصادي.

٤ - تقييم مقدم الطلب للسوق المعنية، وتقديرات الحصص السوقية له.

٥ - وصف المنتجات المعنية في التركيز الاقتصادي، والترتيبات اللازمة لتوفيرها من قبل الأشخاص في السوق المعنية.

٦ - القدرة الإنتاجية، والناتج الخاص بالأشخاص فيما يتعلق بالمنتجات المعنية.

٧ - معلومات عن أهم المنافسين، والأنشطة الخاصة بهم.

٨ - تحديد أهم الموردين، وعملاء الأشخاص في السوق المعنية.

٩ - التأثير المحتمل للتركيز الاقتصادي على المنافسة في السوق المعنية.

١٠ - القيود التنظيمية في السوق المعنية، وأي معوقات للدخول في هذا السوق، بما في ذلك تلك المتعلقة بحقوق الملكية الفكرية.

المادة (٨)

يجب أن يرفق بالطلب المنصوص عليه في المادة (١١) من القانون المستندات الآتية:

١ - نسخة طبق الأصل من عقد التأسيس، أو النظام الأساسي للأشخاص.

٢ - نسخة طبق الأصل من وثائق التسجيل، أو التأسيس التجارية للأشخاص من الجهات المختصة.

٣ - نسخة طبق الأصل من ترخيص مزاولة الأنشطة الصادر من الجهات المختصة، والتي لا يمكن مزاولتها إلا بموجبه، كالأعمال المصرفية أو التأمين أو الاتصالات أو إنتاج الكهرباء وغيرها، ونسخة من التعديلات التي تمت عليه.

٤ - نسخة من مشروع العقد، أو الاتفاقية، أو التصرف الذي سينتج عنه التركيز الاقتصادي.

٥ - نسخة من القوائم المالية السنوية المدققة للأشخاص خلال السنوات الثلاث الماضية.

٦ - نسخ من التقارير والدراسات والاستبانات المعدة لغرض تقييم التركيز الاقتصادي فيما يتعلق بحصص السوق والظروف التنافسية والمنافسين الفعليين والمحتملين، والأساس المنطقي للتركيز الاقتصادي وإمكانات نمو المبيعات، أو ظروف السوق العامة، مع بيان تاريخ إعداد الوثيقة، وتحديد الشخص المصدر لها.

٧ - الموافقات التي حصل عليها مقدم الطلب من الجهات المختصة بتنظيم المنافسة خارج السلطنة للتركيز الاقتصادي إن وجدت.

٨ - الموافقات الصادرة من الجهات المختصة في السلطنة للتركيز الاقتصادي إن وجدت.

٩ - تقرير بأصول وحجم أعمال مقدم الطلب خارج السلطنة.

١٠ - ما يثبت سداد الرسم المقرر.

١١ - أي مستندات أخرى تطلبها الوزارة، أو يعتبرها مقدم الطلب ضرورية.

وتقدم كافة المستندات باللغة العربية، وإذا كانت بلغة أجنبية فيرفق بها ترجمة باللغة العربية مصدقة ومعتمدة.

المادة (٩)

لا يقبل الطلب إذا كان غير مستوف البيانات، والمستندات المنصوص عليها في المادتين (٧) و(٨) من هذه اللائحة، وأي بيانات أو مستندات، أو متطلبات إضافية تطلبها الوزارة.

المادة (١٠)

تتولى الوزارة فحص طلب الموافقة على التركيز الاقتصادي مع الأخذ في الاعتبار العوامل الآتية:

١ - جمع المعلومات عن تأثير التركيز الاقتصادي على المنافسة.

٢ - مستوى المنافسة الفعلية، أو المحتملة في السوق، أو الأسواق المعنية.

٣ - مدى سهولة وصول منافسين جدد إلى السوق أو الأسواق المعنية، والعقبات التي تحول دون ذلك.

٤ - مدى التأثير المحتمل للتركيز الاقتصادي على أسعار السلع والخدمات في السوق أو الأسواق المعنية.

٥ - مدى التأثير المحتمل للتركيز الاقتصادي على الابتكار والإبداع والكفاءة الفنية في السوق أو الأسواق المعنية.

٦ - المساهمة المحتملة للتركيز الاقتصادي في تشجيع الاستثمار، والصادرات، وبناء القدرات الوطنية، والفائدة المحتملة التي تؤدي إلى توفير فرص العمل، وزيادة القيمة المحلية المضافة.

٧ - تأثير التركيز الاقتصادي على مصالح المستهلكين.

ويجوز للوزارة عند فحص الطلب عقد اجتماعات مع مقدمي الطلب، أو الأشخاص، أو ممثليهم، أو وكلائهم، أو غيرهم.

المادة (١١)

يصدر الوزير، أو من يفوضه قرارا بشأن طلب الموافقة على التركيز الاقتصادي، في موعد، أقصاه (٩٠) تسعون يوما من تاريخ تقديم الطلب للوزارة مستوفيا البيانات، والمستندات المطلوبة، ويعتبر الطلب مستوفيا من تاريخ إشعار مقدم الطلب باكتماله، ويعتبر مضي هذه المدة دون رد بمثابة موافقة على الطلب.

المادة (١٢)

للوزير اتخاذ أحد القرارات الآتية بشأن طلب الموافقة على التركيز الاقتصادي:

١ - الموافقة على الطلب.

٢ - الموافقة على الطلب مع تحديد شروط، والتزامات معينة.

٣ - رفض الطلب، على أن يكون الرفض مسببا.

المادة (١٣)

لا يجوز للأشخاص المعنية، خلال فترة (٩٠) التسعين يوما المنصوص عليها في المادة (١١) من هذه اللائحة، اتخاذ أي إجراء أو تصرف متعلق بإتمام التركيز الاقتصادي محل الطلب.

المـادة (١٤)

يجوز للوزارة، من تلقاء نفسها في أي وقت، أو بناء على طلب مقدم من أي جهة تتأثر سلبا بالموافقة على التركيز الاقتصادي خلال (٦٠) ستين يوما من صدور القرار، إعادة النظر في الموافقة، إذا كان التأثر نتيجة لعدم التزام الشخص أو الأشخاص المعنية باستيفاء الشروط، والمتطلبات التي تم بموجبها منح الموافقة على التركيز الاقتصادي.

المـادة (١٥)

تتولى الوزارة متابعة مدى التزام الأشخاص المعنية بالشروط، والالتزامات المحددة في القرار الصادر وفقا للبند (٢) من المادة (١٢) من هذه اللائحة، وإذا ثبت عدم الالتزام تصدر الوزارة قرارا بإلغاء قرار الموافقة على التركيز الاقتصادي، ويخطر الشخص كتابيا بهذا القرار قبل (٣٠) ثلاثين يوما على الأقل من تاريخ سريانه، مع منحه مهلة محددة لتوفيق أوضاعه تقدرها الوزارة، وفي جميع الأحوال يتعين على الوزارة إبلاغ الأشخاص ذوي العلاقة بالوسيلة ذاتها التي تم الإبلاغ بها عن القرار الأصلي، ونسخة للجهات المختصة.

الفصـل الرابـع

التظلمـات

المـادة (١٦)

يجوز لصاحب الشأن التظلم إلى الوزير من القرار الصادر من الوزارة برفض أو إلغاء طلب الموافقة على التركيز الاقتصادي خلال (٦٠) ستين يوما من تاريخ الإبلاغ بقرار الرفض أو الإلغاء، بعد سداد الرسم المقرر لذلك، ويرد قيمة الرسم حال قبول التظلم.

المـادة (١٧)

يجب أن يتضمن طلب التظلم المستندات، والبيانات الآتية:

١ - اسم وعنوان مقدم الطلب.

٢ - تاريخ صدور القرار المتظلم منه، وتاريخ الإخطار به.

٣ - نسخة من طلب الموافقة على التركيز الاقتصادي المقدم للوزارة محل التظلم.

٤ - موضوع التظلم، وأسبابه.

٥ - المستندات المؤيدة للتظلم.

المـادة (١٨)

يقيد التظلم في السجل المعد لذلك على أن يسلم إلى مقدم الطلب إيصال متضمن إثبات التسلم ورقم وتاريخ القيد.

المـادة (١٩)

يكون البت في التظلم خلال (٣٠) ثلاثين يوما من تاريخ تقديمه، ويعتبر مضي هذه المدة دون البت فيه بمثابة قبول له، وفي جميع الأحوال يبلغ مقدم الطلب كتابيا بقرار البت في التظلم خلال (٧) سبعة أيام من تاريخ صدوره.

الفصـل الخامـس

الضبطية القضائية

(البلاغات وضبط المخالفات)

المـادة (٢٠)

يحق للموظفين الذين تم منحهم صفة الضبطية القضائية وفقا لأحكام الفصل الثالث من القانون القيام بالآتي:

١ - الدخول إلى أماكن، أو مقار عمل الجهات، أو الأشخاص الخاضعين للفحص.

٢ - الاطـلاع علـى السجـلات، والمستندات الخاصة بالمنشآت، وملحقاتها، ومكاتبها التابعة للأشخاص الخاضعين للفحص، والحصول على نسخ منها.

٣ - اتخـاذ الإجراءات اللازمة لجمع المعلومات، والتحقيق مع أي شخص في شأن شبهة ارتكابه أي مخالفة لأحكام القانون، وهذه اللائحة، والقرارات الصادرة تنفيذا لهما.

٤ - اتخاذ الإجراءات اللازمة لضبط المخالفات، والحفاظ على الأدلة.

ويلتزم الموظفون المشار إليهم بالمحافظة على سرية المعلومات والبيانات التي اطلعوا عليها، ولا يجوز لهم إطلاع الغير عليها، ولا تسليمها إلى جهات أخرى إلا بموافقة الجهات القضائية المختصة.

المـادة (٢١)

يجوز لأي شخص تقديم بلاغ بشكوى للوزارة بأي شبهة لمخالفة أحكام القانون، وهذه اللائحة، والقرارات الصادرة تنفيذا لهما، كما يجوز لكل ذي مصلحة تقديم بلاغ بشكوى بمخالفتها.

وفي جميع الأحوال يجوز للوزارة من تلقاء نفسها التحقق من التزام الأشخاص بأحكام القانون، وهذه اللائحة، والقرارات الصادرة تنفيذا لهما.

المـادة (٢٢)

يقدم البلاغ بشكوى إلى الوزارة على النموذج المعد لهذا الغرض متضمنا البيانات، والمستندات الآتية:

١ - اسم وعنوان ورقم هاتف مقدم البلاغ، وصورة من هويته.

٢ - نوع المخالفة محل البلاغ، ومرتكبها.

٣ - بيان الضرر على المنافسة، إن وجد.

٤ - أي بيانات أو مستندات أخرى تطلبها الوزارة، أو يعتبرها مقدم البلاغ ضرورية، أو داعمة لبلاغه.

ويكون البلاغ بشكوى موقعا من مقدمه، أو من يمثله قانونا، ويكون البلاغ، والمستندات المرفقة به باللغة العربية، وإذا كانت بلغة أجنبية، فيرفق بها ترجمة باللغة العربية، مصدقة ومعتمدة.

المـادة (٢٣)

يقيد البلاغ بشكوى في السجل المعد لذلك، على أن يسلم إلى مقدمه إيصال متضمن إثبات التسلم، ورقم، وتاريخ القيد.

المـادة (٢٤)

يجب على موظفي الوزارة - الذين تم منحهم صفة الضبطية القضائية عند التحقق من جدية البلاغ بشكوى أو وجود شبهة بمخالفة أحكام القانون، وهذه اللائحة، والقرارات الصادرة تنفيذا لهما - تحرير محضر بالمخالفة، تسلم نسخة منه إلى المخالف، متضمنا الآتي:

١ - اسم محرر المحضر.

٢ - اسم وصفة الشخص المخالف.

٣ - تاريخ وساعة ومكان فتح المحضر.

٤ - نوع المخالفة.

٥ - الإجراءات التي تم اتخاذها.

٦ - البيانات والمستندات المتحصلة.

المادة (٢٥)

يرفع الموظف الذي منح صفة الضبطية القضائية بواسطة مسؤوله المباشر محضر المخالفة المنصوص عليه في المادة (٢٤) من هذه اللائحة، مرفقا به تقريرا برأيه إلى الوزير، للسير في التحقيق، أو الحفظ.

المادة (٢٦)

إذا وجه الوزير بالسير في التحقيق، فيتولى الموظف الذي منح صفة الضبطية القضائية التحقيق مع المخالف، والأشخاص ذوي العلاقة، ويحرر محضر بذلك.

المادة (٢٧)

يرفع إلى الوزير - بعد الانتهاء من التحقيق - تقرير يتضمن ملخصا به، وبالنتيجة التي أسفر عنها، ويصدر الوزير، أو من يفوضه قرارا مسببا يخطر به المبلغ، والمبلغ ضده، وجميع الأشخاص ذوي العلاقة مباشرة متضمنا واحدا أو أكثر من الآتي:

١ - إجراء المزيد من التقصي، والبحث خلال (١٤) أربعة عشر يوما.

٢ - فرض غرامة إدارية، وإزالة المخالفة خلال (١٠) عشرة أيام.

٣ - إحالة الملف إلى الادعاء العام.

٤ - حفظ الملف.

المـادة (٢٨)

يجـوز لـذوي الشـأن التظلـم مـن قـرار الوزير بفرض الغرامة الإدارية المنصوص عليه في البند (٢) من المادة (٢٧) من هذه اللائحة، أو بالحفظ وفقا للبند (٤) من المادة (٢٧) من هذه اللائحة، وذلك خلال (١٥) خمسة عشر يوما من تاريخ إخطارهم بالقرار، ويجب البت في التظلم خلال (٣٠) ثلاثين يوما من تقديمه، ويعتبر مضي هذه المدة دون رد بمثابة رفض للتظلم، وفي جميع الأحوال يعد القرار الصادر في شأن التظلم نهائيا، وعلى الوزارة إخطار صاحب الشأن بالقرار النهائي الذي تم التوصل إليه.

الفصـل السـادس

الاستثنـاءات

المـادة (٢٩)

يجوز للوزير استثناء أي شخص بصفـة مؤقتـة، ولمـدة محـددة مـن أي اتـفاق أو إجـراء أو أعمال تتعلق بالمنتجات في الحالات التي تؤدي إلى تخفيض التكاليف الأولية، وحماية ونفع المستهلك وفقا لحكم المادة (٥) من القانون؛ وذلك وفقا للضوابط، والإجراءات المحددة في هذا الفصل.

المـادة (٣٠)

يجب أن يقـدم طلـب الاستثنـاء على النموذج المعد لهذا الغرض، مرفقا به البيانات والمستندات الآتية:

١ - اسم مقدم الطلب وجنسيته وعنوانه ووسيلة التواصل.

٢ - نسخة من عقد التأسيس والسجل التجاري.

٣ - تحديد حصته السوقية من السوق المعنية.

٤ - نسخة طبق الأصل من ترخيص مزاولة الأنشطة الصادر من الجهات المختصة والتي لا يمكن مزاولتها إلا بموجبه، كالأعمال المصرفية أو التأمين أو الاتصالات أو إنتاج الكهرباء وغيرها، ونسخة من التعديلات التي تمت عليه.

٥ - القوائم المالية السنوية المدققة للسنوات الثلاث الأخيرة.

٦ - تحديد الموضوع محل طلب الاستثناء.

٧ - تقرير بالمبررات، والأهداف من الاستثناء.

٨ - أي بيانات، أو مستندات تدعم طلب الاستثناء تطلبها الوزارة، أو يعتبرها مقدم الطلب ضرورية.

٩ - ما يفيد سداد الرسم المقرر.

ويقدم الطلب، وكافة المستندات باللغة العربية، وإذا كانت بلغة أجنبية فيرفق بها ترجمة باللغة العربية، مصدقة ومعتمدة.

المادة (٣١)

تتولى الوزارة دراسة طلب الاستثناء، ولها في سبيل ذلك اتخاذ ما يلزم من إجراءات، وتعد تقريرا مشفوعا بالتوصية المقترحة بشأنه خلال (٩٠) التسعين يوما التالية لاكتمال استيفاء الطلب المتطلبات المنصوص عليها في اللائحة، ويرفع إلى الوزير.

المادة (٣٢)

يجب على الوزارة - عند دراسة الطلب، وقبل اتخاذ قرار بشأنه - التأكد من أن الاستثناء سيؤدي إلى خفض التكاليف الأساسية، وحماية، ونفع المستهلك، وذلك بمراعاة الآتي:

١ - نوع المنتج، وحجم الإنتاج، ومقدار الطلب عليه من قبل المستهلك.

٢ - مستوى تأثير الاستثناء على العرض أو الطلب الكلي على المنتجات المماثلة في السوق المعنية.

٣ - مستوى المنافسة الفعلية، والمحتملة في السوق المعنية.

٤ - ما إذا كان مقدم الطلب لديه، أو من المحتمل أن يكون له مركز مهيمن في السوق المعنية.

٥ - مدى سهولة دخول منافسين جدد إلى السوق المعنية للمنتجات ذاتها.

٦ - التأثير المحتمل للاستثناء على أسعار المنتجات في السوق المعنية.

٧ - التأثير المحتمل للاستثناء على الابتكار، والإبداع، والتجديد، والكفاءة التقنية للمنتجات المعنية.

٨ - المساهمة المحتملة للاستثناء في تشجيع الاستثمار، أو التصدير، أو دعم قدرة المؤسسات العمانية الصغيرة والمتوسطة على المنافسة.

٩ - اعتبارات الحفاظ على جودة ونوعية المنتجات، ومقتضيات الأمن، والسلامة.

١٠ - الفوائد التي قد تعود على المستهلك.

المادة (٣٣)

يصدر الوزير أيا من القرارات التالية بشأن طلب الاستثناء وفقا لأحكام هذا الفصل خلال (٣٠) ثلاثين يوما من تاريخ رفعه له:

١ - الموافقة على الطلب.

٢ - الموافقة على الطلب بشروط معينة، والتزامات محددة.

٣ - التوجيه بإجراء المزيد من الدراسة على الطلب، على أن يتم الانتهاء منها خلال (٤٥) خمسة وأربعين يوما من تاريخ الإعادة.

٤ - رفض طلب الاستثناء، على أن يكون القرار مسببا.

ويعتبر مضي المدة المنصوص عليها في الفقرة الأولى من هذه المادة دون رد بمثابة الموافقة على طلب الاستثناء.

وفي جميع الأحوال، يجب على الوزارة إخطار مقدم الطلب بالقرار الصادر في شأن طلبه مباشرة بأي وسيلة كانت.

المادة (٣٤)

يكون الاستثناء ساريا للمدة التي يحددها الوزير في قرار الموافقة، ويجوز تجديده بموجب طلب جديد يقدم قبل انتهاء مدة الاستثناء بـ (٦٠) ستين يوما على الأقل، ويتبع في شأن طلب التجديد الإجراءات ذاتها المحددة لتقديم طلب الاستثناء ابتداء.

المادة (٣٥)

يجب على الحاصل على الاستثناء إذا رغب في تعديل شروطه، الحصول على موافقة مسبقة من الوزارة، ويتبع بشأن طلب التعديل كافة الضوابط، والإجراءات المحددة لتقديم طلب الاستثناء ابتداء.

المـادة (٣٦)

يجـوز للوزيـر، مـن تلقـاء نفسـه، أو بنـاء علـى طلب من أي شخص أو جهة تتأثر سلبا من الاستثناء، أن يصدر قرارا بتعديل الاستثناء، أو إلغائه، على أن يكون القرار مسببا، في الأحوال الآتية:

١ - تغير، أو زوال الظروف، أو أحوال السوق التي منح بموجبها الاستثناء.

٢ - عـدم التـزام صاحب الاستثناء بالشروط، والمتطلبات المحددة في قرار الموافقة على الاستثناء.

٣ - أي أسباب أخرى تراها الوزارة، وتقتضيها المصلحة العامة.

المـادة (٣٧)

يجـب علـى الوزيـر إصدار قرار بإلغاء قرار الاستثناء إذا كان صادرا بناء على معلومات غير صحيحة، أو شابها غش، أو تدليس.

الفصـل السابـع

اللجنـة الاستشاريـة

المـادة (٣٨)

يجوز تشكيل لجنة استشارية لبحث الموضوعات المتعلقة بعمل المركز، ويصدر بتشكيل اللجنة، وتحديد اختصاصاتها، ونظام عملها، ومكافآت أعضائها، قرار من الوزير.

الفصـل الثامـن

الغرامـات الإداريـة

المـادة (٣٩)

مع عدم الإخلال بالعقوبات المقررة في القانون، تفرض غرامة إدارية مقدارها (٥٠٠٠) خمسة آلاف ريال عماني على كل من يخالف أحكام هذه اللائحة، وتضاعف الغرامة في حالة تكرار المخالفة، ويعتبر تكرارا في تطبيق أحكام هذه المادة ارتكاب مخالفة مماثلة خلال (٥) الخمس سنوات التالية لارتكاب المخالفة الأولى، وبالنسبة للمخالفات المستمرة فتفرض غرامة إدارية لا يزيد مقدراها على (٥٠٠) خمسمائة ريال عماني عن كل يوم تستمر فيه المخالفة، على ألا يزيد مجموعها على (١٠٠٠٠) عشرة آلاف ريال عماني.