

**Economic and Social Commission for Western Asia (ESCWA)****Second Joint ESCWA-UNCTAD-OECD Competition Forum for the Arab Region****23-24 March 2021, UN-ESCWA, Beirut, Lebanon****Summary of Discussions****Tuesday, 23 March 2021****Welcome & Opening Session**

Mr. Tarik Alami, Governance and Conflict Prevention Cluster Leader at ESCWA, opened the forum by welcoming and thanking the participants, speakers, and country representatives that have joined from all over the world.

**Egypt:** After giving his introductory speech, Mr. Alami introduced Dr. Mahmoud Momtaz, Chairman of the Egyptian Competition Forum, and invited him to chair the opening session. In his turn, Dr. Momtaz began by thanking UNCTAD, OECD, and ESCWA for their everlasting support in promoting competition policies in the Arab region and giving the chance for countries to share their experiences and best practices. He states that there is more of a need nowadays for cooperation and support to face challenges caused by the COVID-19 pandemic. He adds that monopolistic practices have been on the rise in some economic sectors which could act as a barrier to economic growth, free trade, and efficient economies in the Arab region.

Dr. Momtaz says he is looking forward to experts, competition officials, and policymakers joining them for the next two days to discuss the latest developments on competition policy, measure taken during COVID-19, sharing and exchanging experiences, presenting the best practices related to implementing competition policy, and working together to come up with recommendations for future forums. He ended his speech by saying that to achieve the goals of sustainable development Egypt believes in the need to achieve economic integration in the Arab region.

H.E Ms. Nevin Jameh, Minister of Trade and Industry of the Arab Republic of Egypt, gave her introductory speech through a pre-recorded video as she could not attend the online sessions due to urgent travel reasons. She began by expressing her content in participating in second competition forum held jointly by OECD, UNCTAD, and ESCWA. She states that this forum is of high importance today as the global economy is facing several challenges caused by COVID-19. She calls on the Arab countries to improve cooperation and exchange ideas and experiences on issues related to competition policy. She notes that the Egyptian economy is fully committed to the highest level of accountability and governance, support the pillars of competition, banning any monopolistic actions, and boosting investment. The points mentioned above have been translated into a comprehensive plan to be executed by 2030 in order for Egypt to achieve the sustainable development goals. She adds that Egypt believes in the importance of achieving

economic integration in the Arab region and the cooperation on topics such as trade, industry, and investment to build a better future for the Arab region. For the Arab region to achieve these goals, there should be close cooperation with international organizations such as OECD and UNCTAD to improve competition policy. She goes on to say that all barriers to free trade should be lifted for the region to achieve sustainable economic development.

Finally, she expressed her thankfulness to all who contributed to the success of this forum. She stated that the sessions held in the next two days, where countries will be sharing experiences and best practices, will help form solid recommendations and work plans to improve competition policy in the Arab region.

Dr. Rola Dashti, Executive Secretary, United Nations Economic and Social Commission for Western Asia (ESCWA), began her opening speech by welcoming all the participants and expressing her content that the forum is being held in these especially challenging times for the Arab region.

She stated that youth unemployment rate had reached 23% in the Arab region, the highest rate in the world, and that number will only get worse due to low economic growth and few employment opportunities. In addition, she stated that GDP growth declined by 5.5% in the Arab region due to COVID-19 and the private sector lost 75 billion dollars due to closures caused by the lockdown all over the region. Ms. Dashti stressed on the need to improve the competitiveness of Arab economies by deterring any monopolistic action in the market which could be a useful tool to boost the macroeconomy and the different sectors within it.

After giving some background information on the Arab region, Ms. Dashti delved into the issues affecting competition. She states that competition in Arab countries is inequitable because of the dominance of cartels and the informal sector. She then mentions that the Arab economies' ability to compete is very limited and then back her claim by referring to the Global Competitiveness Index published by the World Economic Forum which states that the competitive ability for Arab economies stands at 57 percent meaning that the Arab region ranks as one of the lowest regions in this index. Next, she states a couple of reasons as to why Arab economies aren't competitive such as the independence of the bodies concerned with the regulation of competition, the lack of clear definition of the structures of these bodies in the laws governing, the ambiguity of the definitions, terms and components of competition, and the abundance of exemptions in some key sectors. Ms. Dashti continues by stating that we are here today to improve national capabilities of member countries, bolster cooperation on issues related to competition policy, and build a regional network for competition which would help boost economic growth, governance and achieve SDGs in the Arab region.

Lastly, Ms. Dashti ended her opening speech by thanking the participants, Oman for accepting to host next year's forum, and Egypt for hosting this year's forum.

Ms. Teresa Moreira, Head of Competition and Consumer Policies Branch, Division on International Trade and Commodities, UNCTAD, began her opening speech by greeting the different representatives from OECD, ESCWA, and UNCTAD.

Ms. Moreira stated that UNCTAD has a very positive assessment of the work done, strongly supporting regional approaches in competition law and policy. She stated that 140 countries have adopted competition law and policy with help from UNCTAD. In addition, several regional economic organizations for example in Africa – COMESA, WAEMU, and the Africa CFTA have adopted regional competition rules. She continued by saying that the COVID-19 pandemic caused serious disruptions in markets and supply chains, leading to anticompetitive practices and bankruptcies. Ms. Moreira lists a couple of ways in which competition authorities responded to

abusive practices: law enforcement and market monitoring, horizontal agreements between competitors due to supply essential goods during the pandemic, merger control, and advocacy. She adds that competition authorities need to be involved in the design and implementation of sector specific measures to ensure that markets remain fair during COVID-19. Member states' governments need to get advice from competition authorities to be able to implement pro-competitive regulatory frameworks regarding new public companies to promote fair and healthy competition in the market. Ms. Moreira stressed that UNCTAD is committed to expand its cooperation in the Arab region: technical cooperation project on SMEs and competition policy is being implemented in cooperation with ESCWA. In addition, UNCTAD carried out the MENA program on Competition and Consumer protection which gathered stakeholders such as government officials, sectoral regulators, chambers of commerce representatives, and academics.

Lastly, UNCTAD hopes that the exchange of experiences with more experienced Competition Authorities would be useful and interesting. Ms. Moreira ended her speech by thanking ESCWA for standing ready to support Competition Authorities in the Arab region.

Prof. Frederic Jenny, Chairman of OECD Competition Committee, began his opening speech by welcoming all the participants on behalf of OECD and thanked ESCWA and UNCTAD for having helped organize this meeting.

Prof. Jenny stated that competition policy has been adopted by a significant part of the Arab region but there still remain countries who haven't adopted it. He states that support in implementing competition law and policy should be provided to Arab countries for three reasons. First, the newness of competition law in the Arab region and the fact that most competition authorities in the region are young. Such competition authorities may feel the need for technical assistance from more experienced authorities. Second, the COVID-19 pandemic has added several layers of complexity to competition law enforcement. Those complexities have to do with how one can maintain the standards of competition law enforcement in times of crises when it's difficult to get information and the fact that the prioritization mechanism changes as new challenges arise due to the crisis. Thirdly, competition authorities should advocate their work by spreading a competition culture among government officials. He states that some of the debates over the next two days are going to be linked to the previous points. International competition authorities will talk about their best practices and the challenges they faced. He adds that a panel discussion on competition developments in the Arab region will be held where representatives from the region will share their experiences.

Lastly, Prof. Jenny provides three recommendations to better improve competition policy and law in the Arab region. First, he suggests creating a regional network between competition authorities in the Arab region where they could coordinate and cooperate on issues related to competition law and policy. Second, he recommends setting up a hotline between ESCWA, UNCTAD, OECD, and competition authorities. The hotline would allow countries to ask these organizations questions about similar challenges faced by other countries when implementing competition law and how to overcome them. Lastly, he suggests organizing a meeting under the sponsorship of the organizers of this meeting where they would have technical ministries and competition authorities. Such a meeting would help persuade the relevant ministries to adopt pro-competitive policies and it would help competition authorities discuss certain issues related to competition with the relevant ministries.

## Session 1: Regional and International Organizations

Ms. Nathalie Khaled, Economic Affairs Officer, Shared Economic Prosperity Cluster, ESCWA, set the stage for the first session with a presentation on ESCWA's latest work done on Competition in the Arab region.

Ms. Khaled began her speech by explaining that a main part of ESCWA's work on improving competition policy and law in the Arab region focuses on developing knowledge on the subject and conducting research based on facts to spread awareness on the importance of competition and its effect on the economy. She states that it is now clear that competition is linked to economic growth, gender equality, strong institutions, and other socioeconomic factors. She then goes on to talk about the projects on competition that ESCWA carried out during 2020. The first project analysed the business environment legislative framework in the Arab region by assessing laws on competition, consumer protection, anticorruption, and foreign direct investment. The second project studied the prospects for competition in the Arab region by analysing market structure and barriers to competition law. Finally, ESCWA conducted a study on the relationship between competition and regional trade agreements in which they analysed the benefits of effective competition policies on the economy.

Ms. Khaled continues by discussing ESCWA's calculations of competitiveness in the Arab region which show a bleak picture compared to the rest of the world despite slight improvement. The Arab region scored 56.68 on the competitiveness index, which was an improvement from previous years, but that score meant that the region was still under the global average. She adds by stating that competitiveness varies between Arab regions and countries, reaching nearly 70 percent in high-income countries (such as the Gulf Cooperation Council region), while other sub-regions score below the regional average. Market dominance varies from one country to the other, as a result, in underdeveloped countries the number of business groups dominating the market are much less than in other countries. As for market share, companies have an equal amount of the shares split between them. Ms. Khaled presented ESCWA's findings that if market power is gradually reduced by 50 percent in various economic activities, the final demand will increase by approximately 10 percent. Next, Ms. Khaled focused on the barriers to fair competition in the Arab region. She began by stating that the macroeconomic effect of fair competition laws in the Arab region is not clear because several sectors and firms owned by the state are exempt from competition law. According to World Bank indicators, 54.5 percent of companies in the Arab region compete against unregistered and unofficial companies. Ms. Khaled then lists some barriers that competition authorities face. A lack of adequate formulation of competition policy in the region has hindered fair competition in the region. As noted before, many state owned enterprises in the Arab region have been granted exemptions from competition law, this hinders effective implementation of such laws. Third, the absence of an effective system of penalties and fines to fight anti-competitive practices. Fourth, the leniency when dealing with several merger programs and cartels in the Arab region encourages more anti-competitive behavior. Lastly, most competition authorities in the Arab region are not independent entities which leads to several anti-competitive practices especially with state owned enterprises.

Ms. Khaled then presented the findings of ESCWA's study on the Arab Business Environment Legislative Framework which concentrated on four main laws: competition and consumer protection, anticorruption, and foreign direct investment. The study was based on several competition indicators. ESCWA found that in comparison with the standards of the international community on competition law, developments in competition in many Arab countries are moving slowly. The majority of Mashreq countries have weak legislative definitions of competition as

some countries lack clarity on basic concepts related to competition. She added that All Arab countries, except for countries that do not have a competition law, have existing institutions to implement the law in their legislation, but many of these institutions lack the independence and enforcement authority to implement and enhance competition. ESCWA suggests that member countries are in dire need of technical assistance and capacity development.

Ms. Khaled briefly talked about ESCWA's research on the relationship between national competition policies and trade agreements in the Arab region. She states that this project emphasizes the fact that the implementation of competition policies is one of the main conditions needed to resist anticompetitive practices and cartels. The report focuses on assessing the economic profits that some Arab countries may achieve from adopting effective competition policies that take into account the most important international standards.

Lastly, Ms. Khaled discussed the cooperation between ESCWA, UNCTAD, and OECD which aims to develop effective competition frameworks for the Arab region. Last year, as part of the cooperation between the three organizations, a webinar was held to discuss the effect of COVID-19 on competition policies in the Arab region. In addition, she stated that they are currently in the process of developing an online course on bid rigging in public procurement. The course aims to familiarize stakeholders with the costs of bid rigging, the benefits of competition in public procurement, and provide them with practical guidelines to prevent and combat bid rigging.

Ms. Ebru Gokce Dessemond , Legal Officer in the Competition and Consumer Policies Branch at UNCTAD, presented UNCTAD's work since the first competition forum in January 2020 and plans for future projects.

Ms. Dessemond began by stating that since the first forum there has been a big disruption in the world economy due to the COVID-19 pandemic. Similarly, UNCTAD's work and technical assistance activities have also been influenced. She states that nevertheless UNCTAD adjusted its work format to webinars and virtual interactions. In addition, UNCTAD adjusted their work to support member countries in the challenging times. During this period, UNCTAD organized around 20 webinars which addressed hot topics such as competition and digital platforms, consumer protection, consumer protection, COVID-19, and cross-border violations. She then reminded the participants of the webinar "Competition law and policy during and in the aftermath of the COVID-19 pandemic, reflections in the Arab region" held last year by UNCTAD in cooperation with ESCWA and OECD.

Ms. Dessemond also mentioned the Eighth United Nations Review Conference which was held in October 2020 in a hybrid format of physical presence and virtual meetings. She added that in that conference member states agreed on future areas of work such as competition and consumer protection, stronger focus on advocacy, priority setting, and international cooperation.

Ms. Dessemond moved on to briefly talk about the project on "Global Initiative towards post-Covid-19 Resurgence of the Micro, Small and Medium Enterprises (MSME) sector" which was launched as a response to the pandemic. She explained that this project is aimed at providing advice, capacity building and support to governments and MSMEs in developing countries, to strengthen their resilience against COVID-19.

The second part of Ms. Dessemond's presentation focused on the need for international cooperation on topics such as competition law and policy which are increasingly faced with cross-border challenges. She stated that the Eighth Review Conference in October 2020 adopted the "Guiding policies and procedures under section F of the UN Set", which is a comprehensive and practical guidance instrument on, and to facilitate and assist cooperation among competition authorities worldwide, in particular between young and experienced authorities. The guiding policies and procedures serve as a tool to facilitate communication between competition

authorities, promote an understanding of each other's legal framework, and clarify what is possible under different schemes particularly for young inexperienced competition authorities. Ms. Dessemond mentioned that UNCTAD's publication on "International cooperation in competition law enforcement – challenges for developing countries and best practices" which basically gathered and reproduced the previous points will be published shortly. In addition, UNCTAD is also involved in the 2nd phase of negotiations of the AfCFTA process which includes three areas: competition, investment, and intellectual property. Lastly, Ms. Dessemond briefly mentions the four working groups on consumer protection and safety, modalities for UNCTAD peer reviews, cross-border cartels, and consumer protection in e-commerce. She then states that despite all these challenges UNCTAD are ready to support competition authorities in the Arab region based on their requests and needs.

Ms. Lynn Robertson, Manager GFC, LACCF, Competition Expert, Competition Division, OECD, presented OECD's work and future plans on competition law and policy in the Arab region.

Ms. Robertson began by mentioning a couple of ongoing projects such as the competition assessment work in the ASEAN region, SOE project in Brazil, public procurement project in Peru. She then moved on to talk about OECD's letter of understanding with ESCWA and UNCTAD which allowed OECD much greater presence in the Arab region. She mainly focused on OECD's cooperation with the Tunisian government.

Ms. Robertson stated that the OECD had been closely working with the Tunisian government and the Conseil de la Concurrence on a series of projects, the latest one was launched in February 2021 to foster pro-competitive reforms in the country. She states that this project builds on the success of the 2019 Competition Assessment of two important sectors of the economy: wholesale & retail trade and freight transport. To make the previous point clearer, Ms. Robertson explains that OECD competition assessments are based on the OECD Competition Assessment Toolkit which is designed to identify shortcomings in the regulatory and policy environment. If applicable, recommendations are made to remove or change regulations to allow for competition. For example, 220 recommendations were made for the 2019 project with Tunisia and their estimated positive effect if implemented was around 0.6% of GDP.

Ms. Robertson stated the new project launched last month with Tunisia includes three main components: (i) a Peer Review of Tunisia's competition law and policy, (ii) a Competition Assessment of laws and regulations in two new sectors: tourism and banking, and (iii) a market study of the banking sector.

Next, Ms. Robertson spoke briefly about the OECD peer reviews and the goal behind them. She stated that these peer reviews are a core element of OECD work. She highlighted the importance of these peer reviews as they provide valuable insights on ways in which each country deals with competition and regulatory issues, from the soundness of its competition laws to the structure and effectiveness of its competition institutions. To date, the OECD has undertaken peer reviews in several countries in Asia such as Vietnam several across Latin America, as well as Eurasia including Ukraine and Kazakhstan.

Lastly, Ms. Robertson explained the role of market studies in OECD's work. She elaborated on that point by saying that market studies assess whether competition in a market is working efficiently and identify measures to address any issues that are identified. She added that these measures can include recommendations such as proposals for regulatory reform or improving information dissemination amongst consumers.

## **Session 2: International Best Practices**

Prof. Jenny opened the second session by stating that there are two sub-themes related to international best practices: what are those international best practices and how were those international best practices maintained during the COVID-19 pandemic? He pointed out to two major types of disruption. The first being due to the COVID-19 pandemic which caused a surge in demand on markets for medicine, respirators, and masks. On the other hand, a collapse of supply occurred in other markets due to disruptions in supply chains caused by lockdown measures.

Prof. Jenny explained that these disruptions raised three very important questions for competition authorities worldwide: how to efficiently eliminate the gaps between supply and demand, how to allocate the scarcity of products in markets where demand exceeds supply, what could we do to kickstart the economy. Such questions meant that competition authorities now face different types of challenges. First, the challenge of getting information from firms during lockdown as mobility was limited. Second, the ability to maintain the strict standards that have been upheld for years. Lastly, the gaps between supply and demand lead to price gauging which raised a question: could competition authorities fight against price gauging or would other governmental bodies handle such issues in a better way.

Prof. Jenny explained that the last point also led to several other issues. The first one was the temptation of firms in some markets to cooperate with competitors to increase supply. These firms cooperate to find new vaccines for COVID-19, efficient distribution, and restore supply chains. During COVID-19, there were many issues with respect to merger control such as uncertainty about the future, maintain standards, getting the information, and having to make such decisions in severe time constraint. Fourth, governments faced several challenges with regard to public procurement. The most important challenge was to keep the public procurement process a fair and competitive one and prevent any protectionist or anti-competitive behavior. Lastly, Prof. Jenny stated that competition authorities couldn't maintain the same level of advocacy due to the measure imposed during COVID-19.

**USA:** Mr. Daniel Haar, Chief of the Appellate Section, Antitrust Division United States Department of Justice, continued with a presentation on procedural fairness in competition enforcement.

He began by asserting that competition is a central organizing principle in the United States economy and procedural fairness is central to the operation of their judicial system. Mr. Haar explained that his presentation will focus on three key principles which are transparency, opportunity to be heard, and judicial review. He believes that these principles are applicable during time of crisis and prior to them as well. He stated that it is of vital importance that competition authorities are transparent to investigated parties about theories they are looking into. They provide the parties with an opportunity to be heard by allowing them to talk to representatives from the department. A judicial review of the decisions taken by competition authorities is applied to ensure compliance with competition law.

Mr. Haar then moved on to talk specifically about transparency while focusing on examples from civil investigations. He states that transparency comes up in a number of aspects in their investigations. When staff does an investigation, along the way staff will share their theories that they are investigating, markets they are looking at, key competitors in the market. He continues by saying that when a lawsuit is filed, they are always filing that in a United States court. During this lawsuit, the theories of harm would be explained and supporting evidence against whom the lawsuit is brought. When an investigation is closed, the Department of Justice may issue a closing statement to explain the reasons. He then lists three benefits from improved transparency: incentivizes investigating staff to refine theories, gives investigative parties an opportunity to focus nowhere they really need to put their resources to defend themselves, and instills public confidence in the agency.

Mr. Haar then continued by talking about how the department gives the parties involved an opportunity to be heard. He explains that the department invites parties to come in and allow their experts to present their views on the issue. In addition, the department invites written discussions on issues of major concern to them, these are called “white papers”. White papers are very informative as they point to the facts as the different parties involved see them which could lead to change of opinion within the department. Before a decision is made the parties are allowed a meeting with the Department of Justice antitrust leaders to give their opinion on why the lawsuit shouldn’t be initiated. He presented a specific example of an opportunity to be heard which is when the department issues information demands to make sure they prioritize the most important information and attempt to minimize burdens. The benefits of giving the parties an opportunity to be heard it helps the department refine their investigations, narrows disputes, improves perceptions of fairness of the agencies process both by the parties and public, and promotes efficiency.

Mr. Haar then focused on the last key principle which is the judicial review. He stated that because the department of justice is not a regulatory agency, they can’t issue orders to parties without going to court. Civil settlements also need to undergo court review under the Tunney Act to ensure that the measures in the settlement are in the public interest. An appellate review is available beyond trial. Judicial review ensures that their actions are fair, rooted in the evidence, and correct in view of the law.

Lastly, Mr. Haar noted that the ICN has a framework for Competition Agency Procedures (CAP) that the Department of Justice was a co-creator of. He explained that CAP sets forth a core set of universal, basic transparency/procedural-fairness principles. In addition, it invites agencies to go through self-evaluation and its non-binding, but members promise to adhere to framework in good faith to the extent consistent with their laws.

**South Africa:** Mr. Hardin Ratshisusu, Deputy Commissioner of the South African Competition Commission, gave a presentation on excessive pricing in South Africa due to the COVID-19 pandemic.

He began by stating that South Africa has been experiencing a surge in prices during the COVID-19 pandemic. The Competition Act in South Africa provides for excessive pricing regulations as it is prohibited for a dominant firm to charge excessive prices. He added that amendments had been introduced around a year ago which allowed government to prescribe regulation for excessive pricing.

Mr. Ratshisusu explained that government prescribed regulation and it defined price gauging as a form of excessive pricing. This move allows competition authorities to pursue the cases and also stipulated a test that if companies increases its margins in a way which cannot be explained then the competition commission can prosecute them. He claims that there were around 2000 complaints this year compared to around 300 complaints last year. The complaints ranged from increased prices of face masks, sanitizers, and basic foodstuff. He states that to date they have prosecuted over 31 firms. The majority of these cases were resolved through settlements.

Mr. Ratshisusu continues by presenting a case which they referred on a contested basis to the tribunal against a small firm. He claims that the firm was challenging their application of the Competition Act by stating that they were a small firm and so cannot be deemed dominant. The case, he stated, was decided in the competition commission’s favour but the parties appealed before the competition appeal court. The court then decided that the firm was guilty, but it could not levy a fine on them as they thought that this firm had made very minuscule profits in the grand scheme of things.



Lastly, Mr. Ratshisusu presented another case of excessive pricing in South Africa when the prices of ginger and garlic increased astronomically. The retailers came forward and agreed to keep the profit margins low. Mr. Ratshisusu explained that there was a surge in demand for garlic and ginger. He added that the wholesale prices increased significantly which meant that the nominal margins of these retailers were normally going to increase. He stated that it was a tricky situation as the prices looked quite high for consumers. Consumers then raised their concerns to the competition commission. He explained that what happened it not something that squarely violates the regulation, but it could potentially be deemed excessive. Mr. Rathsisusu stated that the commission engaged with the retailers to try and resolve this. They came to an agreement with the retailers to keep their margins at a fair level for the period of the pandemic.

Prof. Jenny intervened with by asking Mr. Ratshisusu how they allocated cases related to price gauging between the competition law and consumer protection law?

Mr. Ratshisusu answered by explaining that both commissions received complaints from the public often times with the same complaint. They had to engage with the consumer protection authority and streamline these investigations to minimize overlaps. He added that if the case could not be resolved under the Competition Act then the it would be transferred to the consumer protection authority.

**Canada:** Mr. Majid Charania, Director of Compliance, Canadian Competition Bureau, presented Canada's experience when dealing with competitor collaboration and bid rigging in public procurement.

Mr. Charania began his presentation by explaining the measures the bureau took as a response to the COVID-19 pandemic. The COVID response team was designed to increase the speed of information flowing from outside the bureau and within the bureau so that they could make decisions in an informed way. The team was put together from representatives and senior staff from across the bureau. He stated that unlike in South Africa, Canada's Competition Act does not have any price gauging provisions. They received many complaints on this issue because there was an awareness gap amongst the public on who enforces which provision. He added that because the response team was made up of people across the bureau in different functions, they were able to leverage the relationships that they had with other enforcers to quickly and efficiently refer these complaints to the right authorities.

Mr. Charania moved on to talk about the competitor collaboration guidance produced by the bureau. He stated that from early on in the pandemic the bureau had guidance out to the public in relation to the commissioner of competition's exercise of discretion. He added that Canada follows a prosecutorial model and so the guidance they could provide was limited to the exercise of discretion. The idea behind the guidance was to be clear that where there is a demonstrated necessity for collaboration to provide appropriate crisis response and where the intent is not gain an advantage against other players in the market then the bureau would not need to take an enforcement action. Authorities walk a fine line between potentially positive collaborations and ensuring that businesses do not use a crisis as cover for unnecessary and abusive behaviour.

Mr. Charania then focused on bid rigging in public procurement and some of the initiatives they've been taking to bolster capacity and awareness. He began by discussing the internal initiatives at all levels of government. The first area that they wanted to tackle early on is culture of competition which is considered high-level awareness at all levels in government. He stated that there were existing working groups whether at the federal level or sub-nationally where procurement managers would come together to get the message out about bid-rigging and

collusion in a very effective way. This was used in one of their Federal Central Agencies where the treasury Board Secretariat spoke to procurement managers from the federal level and the territories across Canada to create the circumstances for them to follow up with concrete resources for working level officials and procurement. He added that they created training videos which allowed to transition from the typical in-person training for procurement officials to an online virtual format. The video contained content they would normally have in their presentations with video narrations from agents that would normally deliver that in person. This allowed for a more proactive approach to training presentations. He then moved on to talk about the bureau's external activities and outreach to build awareness around bid rigging in public procurement. The bureau publishes articles to highlight issues as a form of public advocacy. He adds that recently they have focused on issues related to competition and public procurement. They also developed some educational resource for SMEs who may not have the benefit of competition councils. The most recent bootcamps focused mostly on deceptive marketing issues and the upcoming one will relate to collusion and bid rigging.

Lastly, Mr. Charania briefly discussed the procurement outreach strategy of the bureau. He stated that the remote work enabled them to accept more training opportunities and use the online tools to reach wider audiences. The bureau worked with training platforms within government on online resources such as podcasts and other videos that talked about bid rigging in public procurement.

Prof. Jenny asked Mr. Charania if there was possibility for firms to come to the bureau and get advice on whether the kind of collaboration could benefit from the prosecutor of discretion that they exercised or if they were going too far?

Mr. Charania explained that they offered an informal mechanism to obtain their views on the proposed collaboration and they set out in their guidance the information they would need in order to make a determination which they would make between 7-10 days.

Prof. Jenny followed up with another question on whether talking to procurement managers actually works or not in the sense that they have very few competition issues in public procurement?

Mr. Charania states that they do have ongoing cases in relation to bid rigging but they think it is very important to make sure that both officials and businesses that bid for contracts are as well informed as possible about the rules and the risks of engaging in such activity.

**Turkey:** Ms. Esin AYGÜN, Acting Head of Supervision and Enforcement Department V, Turkish Competition Authority, gave a presentation on the challenges of cartel enforcement during the COVID-19 crisis.

Ms. Aygun began her presentation by explaining how the TCA managed to work during COVID-19. She stated that TCA has continued taking the same actions against anti-competitive behaviours during the COVID-19 pandemic. TCA warned that any increase in the prices especially in fresh fruits and vegetables will be monitored and penalised by the law. She added that the Turkish Competition Board has continued to convene once week to discuss merger applications and other antitrust issues. Most of the meeting with the undertakings are being held via teleconference tools.

Ms. Aygun then briefly mentioned some of the outstanding investigations that TCA has initiated. The TCA has been investigating several sectors such as supermarket chains, protective masks,

and mask fabrics, and the lemon industry. Each of these investigations are at different stages and the results are expected to appear by the end of 2021.

Ms. Aygun then emphasized the challenges that the TCA had to overcome due to the COVID-19 pandemic. She stated that planning during these times was very difficult due to several reasons such as duration, size of team, and number of targets. The TCA used health related measures such as masks, gloves, hand sanitizers, and disinfectants to protect its inspection teams and the employees of the inspected firms. In addition, TCA encouraged the use of alternatives to public transport such as car rentals to avoid exposing its employees to the risk of contracting COVID-19. Lastly, dealing with employees who worked from home proved to be challenging as communication and coordination between them was not as smooth as before.

Next, Ms. Aygun explained how TCA cooperated with other public authorities regarding the price increases during the COVID-19 outbreak. She stated that TCA's scope of authority covers protection of competition in markets while consumer protection and unfair trading are overseen by other authorities. The Board has legal power to impose fines following an investigation concerning exploitative prices. She added that TCA collaborates with the directorate General of consumer protection and Market Surveillance and Unfair Price Assessment Board for Consumer Protection on issues raised by COVID-19 such as price gauging and deceptive pricing.

Ms. Aygun continued her presentation by talking about other developments that happened within other authorities. She stated that several measures had been taken regarding the production, supply, and use of medical and protective masks such as the need for prior authorization to export them. In addition, a measure was taken to enable the sale of a surgical masks in retail stores and it was decided that their maximum price would be 1 Turkish Lira. Several complaints were submitted regarding the increase in prices of automobiles and real estates, but no further inquiry commenced. She added that TCA has worked on shortening the period of some investigations to quickly intervene against price increases during COVID-19.

Lastly, Ms Aygun briefly shared TCA's work with regards to competition advocacy. She stated that two ICF webinars were held by the Istanbul Competition Forum with the participation of OECD and UNCTAD. Moreover, TCA has created its official YouTube channel where videos on general competition issues are shared.

Prof. Jenney asked Ms. Aygun if they found it hard to get information from firms because of the lockdown measures.

Ms. Aygun replied by agreeing that it has been hard to gather information especially because the TCA works mostly with international companies.

**Mexico:** Mr. Rodrigo Rios Executive Director of Regulatory Analysis and Collaboration with the Public Sector, from the General Directorate for Advocacy-COFECE, Mexico, gave a presentation on the guidelines as advocacy for post-COVID reactivation of economic activity.

He began by stating that COVID-19 has caused a fall in production and consequently Mexican SMEs have been the most affected. Companies with greater capital are more likely to remain in the market thus increasing the risk of absorbing a greater concentration in some economic sectors. He stressed the importance of involving the largest number of companies possible in the recovery period. They consider that economic recovery will be sustainable only in the case of healthy competition between firms to better meet consumers needs and preferences.

Mr. Rios states that the commission issued a document with 12 proposals to promote competition in several markets which are relevant for the national economy because of their cross-cutting impact and since they are related to generalized consumption goods with a direct

effect on Mexican families budgets. He then listed out some of the measures that had been proposed in the document. They proposed to expand access to credit to a greater number of Mexicans and small companies by facilitating the credit score assessment through data help by the government. In addition, they recommended the increase of purchase options for medicines to increase market access. Promote a reduction of prices for transportation. Moreover, they proposed to recover concessions close to expire and grant them through tenders specifically in the ports, railways transportation, and passenger transportation markets. They also recommended to reform the Mexican Constitution so that the competition commission may file constitutional actions on general rules that violate competition principles.

Mr. Rios then shifted his focus to the energy sector in specific. He stated that this sector has recently opened to private participation just six years ago. Before that, only the state-owned monopolies in the gas, oil, and electricity sector participated in this market. He added that private participation in the gasoline sector has been steadily increasing mainly in the retail activities. The government has issued new laws that could affect the markets competitive neutrality as they unduly favour SOEs. He stated that they recommended in their document that the resolution of permit requests are carried out in a neutral and expeditious manner meaning that at no time any authority discriminating granting these permits on the basis of specific brand of diesel supply.

Next, Mr. Rios presented their recommendation for the electricity sector. He stated that their proposal is aimed at maintaining the current legal framework for electricity, dispatch, transmission, and distribution. Last April, the independent operator of the electric system issued an agreement establishing extraordinary measures that could be contrary to competition and would generate higher electricity prices. He said that in response the commission issued an opinion identifying risks to competition. In addition, the commission filed a constitutional controversy before the Supreme Court of Justice on the grounds that the policy severely affected competition in the dispatch of electricity hence rendering the commission's power null. The Supreme Court of Justice ordered the suspension of the policy.

Lastly, Mr. Rios spoke briefly on the work they have done with regards to public procurement. Last October, the Transparency and Anti-Corruption Commission of the Chamber of Deputies approved the temporary debarment to participate in procurement procedures for suppliers who have been investigated and sanctioned for taking part in monopolistic actions such as collusion. In addition, the commission is monitoring closely the congressional discussions to make sure that they adopt all their recommendations presented in this document.

**Albania:** Ms. Juliana Latifi, Chairwoman of the Albanian Competition Authority, presented the key achievements of the Sofia Competition Forum (SCF)

She began by explaining that the SCF was a joint initiative between UNCTAD and the Bulgarian Commission for the Protection of Competition. She stated that the forum was initially conceived as a regional initiative for competition authorities of the Balkan countries but later on the forum was pen to other countries as well. The first meeting between the competition authorities of the Balkan region was held on November 12, 2012 in Sofia, Bulgaria.

Ms. Latifi emphasized that the Forum seeks to foster cooperation and the development of regional ties in the Balkan region to be able to ensure uniform application of competition law, to assist countries in drafting and enforcing competition law, and to provide Balkan competition authorities with a platform to share experiences and exchange information on competition law and policy. She then explained that the format of the SCF is based on periodic meetings where issues and aspects of competition are addressed.

Ms. Latifi ensured the Albanian Competition Authority's everlasting support to the functioning and expansion of the SCF. They have used the Albanian case as a benchmark for others and have

provided contributions according to the topics and issues raised. She then mentioned a couple of topics that had been discussed during the past years such as competition advocacy, transparency in the implementation of competition law, and public procurement agreements. She then proceeds to list some of the benefits to the Albanian Competition Authority from joining the Forum: to promote and strengthen the long term relations of competition institutions in the region, to support the implementation of competition legislation in line with EU requirements, and to enable the exchange of information and expertise in the field of competition.

Ms. Latifi stressed on the fact that the regional cooperation between the competition authorities continued during COVID-19. The Albanian Competition Authority has investigated a considerable number of markets during this period with the help and expertise of other authorities in the region. The markets that had been investigated included pharmaceutical products (masks, alcohol, disinfectants), healthcare (price of PCR test), telecommunications (prices of prepaid bundles), supermarkets, and football association (prices of tickets).

Lastly, Ms. Latifi emphasized the need for cooperation between the competition authorities and the sharing of experiences between them to provide assistance in handling and resolving cases.

**Brazil:** Mr. Alexandre Barreto de Souza, President of the Brazilian Competition Authority, presented the authority's experience during COVID-19 and the role it will play in the recovery period.

Mr. Barreto began by stating that Brazil has been facing a number of new social and economic challenges due to COVID-19 and that he believes competition authorities have a very important role to play given that competition is one of the main drivers of economic growth. He stated that he will give observations on the three main responsibilities of competition authorities during times of crisis which are controlling structures, monitoring practices, and taking competition advocacy measures

The first topic that Mr. Barreto focused on was mergers and acquisitions. He pointed out that they have been able to maintain their historic pace of reviewing mergers and acquisitions. Last year, they reviewed 454 M&A's with an average time frame of 29 days this was made possible as they had already attained a high level of digitalization. He believes that one of the duties of competition authorities is to respond quickly so that the market can also adapt quickly. The longer it takes to address the subject the longer it costs. He then explained that an important factor involved in merger review during crises is the failing firm defence given which says that bankrupt firms can result in reduced supply. This makes it even more preferable to have tighter competition restrictions. He stated that, on the other hand, in situations where firms are not about to go bankrupt but that experience difficulties may need to be assessed in a different way. Mr. Barreto then discussed some observations to do with conduct cases. He explained that during crises there is a higher risk that firms will attempt to enter collaboration agreements which reduce the supply and raise prices as an answer to market shocks. He pointed out that they provided guidance on the recommended requirements for developing strategies to face the pandemic and the available procedures for economic agents to request an opinion from the authority. Companies can consult the authority when in doubt on whether the agreements are lawful or not and by doing so, they can avoid getting sanctioned. He stated that there are no efficiencies involved in maintaining artificial and inefficient market structures at the expense of consumer well-being. He then presented a practical example relating to the previous point. In May 2020, some major food and beverages firms including Coca Cola, Nestle, PepsiCo., and other local firms requested permission to sign a memorandum of understanding within the scope of the Small Trade Activity. The authority authorized this coordinated action and provided the legal

certainty that they would not be at risk of being punished for anti-trust violations. The authorisation came with several conditions to avoid prejudice to consumers.

Mr. Barreto then talked about their efforts in terms of competition advocacy. He stated that at times in an effort save the economy , parliaments and governments emulate monopolies by imposing protectionist measures and price controls. Such measures could be implemented in normal situations but they tend to happen more often in the context of economic crises as market players want to protect themselves from the effects of the crisis and governments are more prone to bring some sort of protection to vulnerable market sectors. He stated that last year there was a bill in the Brazilian congress that proposed a freeze on drug price during the COVID-19 crisis. The authority issued a note of caution warning of the potential social side effects of this freeze considering there were controls on medicine pricing already. Although well intended the bill could result in an overlap between two pricing policies further unbalancing commercial relationships. He presented a second example concerning a study into the government controls on the price of liquified petroleum gas which is used in Brazil as cooking gas. The state of Sao Paulo established a maximum resale price for the product and other states were soon to follow. He added that in effort to prevent price control from spreading across the country, the authority prepared a study on this matter. The study demonstrated that setting a maximum price for cooking gas could cause losses to resellers who are more vulnerable and have less market power which could cause shutdowns. The effects of such shutdowns could include an increase in market concentration which would have negative effects on competition.

Lastly, Mr. Barreto stated that he believes the role of competition authorities in times of crisis is more important. He added that in such times firms try to protect themselves from mergers and acquisitions, increase agreements with one another, and ask competition authorities to review obligations imposed on them.

Prof. Jenny thanked all the speakers for the insightful and interesting presentations that they gave. He then allowed the panellists to react to something the others mentioned during the discussions and then gave the floor to Mr. Haar to allow him to revisit the post-COVID period.

Mr. Haar explained that in his presentation he focused on general procedures but pointed out that they do have in some circumstances specialized procedures specifically applicable to the pandemic situation one on the pro-competitive side and on the anti-competitive side. On the pro-competitive side, drawing on an established procedure called the Business Review procedure which is a way that they can exercise prosecutorial discretion and do a review of proposed future collaborations they developed an expedited way of doing so for COVID related measures. He added that their website specifies the types of information that collaborations should provide. The reviews were made on collaborations involving the manufacturing of PPEs and other medical equipment. He stated that just prior to the pandemic the Procurement Collusion strike force was created. The strike force was created to focus on collusion affecting government procurement.

Mr. Momtaz asked the Brazilian Competition Authority about their Brain Project which helps identify cartels and whether it was effective in doing so or not.

Mr. Barreto state that in part due to the reduction in leniency agreements and in part due to better data they have more cases open. Despite the problems related to the pandemic, there has been a significant increase in the use of the Brain Project when opening cases in Brazil.

Mr Ratshisusu stated that they advocate for a regulated outcome as an alternative for price controls. The meaning behind regulated outcomes is basically monitoring prices and assessing whether they are excessive or not. If they were found to be excessive, they use objective instruments to assess these prices. He added that they have discouraged responding by way of fixing prices during the pandemic instead they have advocated for firms to remain competitive as that is the only way to ensure fair pricing.

Prof. Jenny talked about Europe's tradition in considering anti-competitive state aid may lead to distortions of competition there are relatively strict rules which are imposed on member states on how they can allocate state aid. He considers that example helpful for other countries which may face this issue especially when thinking about airlines which need large infusion of cash to survive which in turn may affect competition in this market. Moreover, he believes that this is an era where competition authorities could give some type of advice to governments trying to minimize the risk that their state aid is going to diminish competition.

### **Wednesday, 24 March 2021**

Mr. Tariq Al-Alami began the second day of the forum by welcoming the participants again and recalling the goal of this initiative which is to make a fundamental contribution to improving economic growth and governance in the Arab region in line with the sustainable development goals for the 2030 plan. He mentioned that this meeting is aimed at continuing efforts to create a regional competition network, facilitate the exchange of knowledge and best practices, and coordinate and implement competition-related initiatives at the national and regional levels. In addition, the goal for the second day of the forum is to work together to define recommendations and develop an action plan for the near future. He stated that during the first session of the second day there will be a discussion session on the recent developments of competition in the Arab region.

### **Panel Discussion: Competition Developments**

Dr. Abdulaziz bin Abdullah Al-Zoum, Governor of the Saudi General Authority for Competition, began the third session by reminding the participants of the session's title which is "Developments in National Competition and Reforms Related to Competition Frameworks in Arab Countries and Measures Taken During the Covid-19 Pandemic". He mentioned that the differences in the countries' handling of this pandemic is due to the economic situation of the relevant country and its level of development, for example, experience of the Kingdom of Saudi Arabia was different from the rest of the countries. He then invited Mr. Mahmoud Al-Osaimi to talk about the legal action undertaken by the Saudi General Authority for Competition during the COVID-19 pandemic to prevent anti-competitive behavior.

**Saudi Arabia:** Mr. Mahmoud Al-Osaimi, Director of the Legal Department at the General Authority for Competition, Saudi Arabia, said that the COVID-19 pandemic came in exceptional circumstances without introductions, therefore, it was necessary for the Competition Authority to take rapid and immediate measures to confront its repercussions on competition. He gave a presentation on the most prominent violation cases that the authority had undertaken in light of the pandemic and explained that this presentation would include the most prominent preparations made by the General Authority for Competition, in addition to the most prominent treatments it had carried out, the most prominent sectors that were monitored by the authority,

what the authority had done in activating cooperation with other government agencies, and a summary of some of the violations of the competition law.

Mr. Mahmoud Al-Osaimi stated that with the onset of the pandemic, the authority began receiving many complaints specifically since the end of February 2020. The most common complaints were about the unavailability of some commodities, the significant price surges, and the refusal of some establishments to cooperate. He said that the Authority's effort to prepare for this pandemic began by authorizing the Board of Directors to His Excellency the Governor of the Authority to issue research and investigation decisions and collect evidence and investigation, the aim of which is to urgently initiate investigations into cases without the need to wait for the Board of Directors to convene because this may take time. In addition, Article Fourteen Paragraph (2) of the Competition Law has been activated, which stipulates that "The president or the governor, in urgent cases, may issue a decision to take measures such as investigation, research, collecting evidence, or investigating anti-competitive practices, provided that the decision is presented to the council at the first meeting following its issuance. This has largely helped direct intervention during this pandemic. He also added that with regard to the main sectors that were investigated, His Excellency the Governor of the General Authority for Competition issued an urgent decision to start taking investigation, research, and gathering evidence measures against a number of public facilities in a number of sectors the most prominent of which is the mask sector, the medical device sector in particular thermometers, sterilizers and pharmaceuticals sector. In addition, they mandated the authority's specialized teams to oversee the wholesale sector of the central markets for vegetables, fruits, and other supply goods, and to be prepared to issue decisions when needed. He also mentioned that they played an important oversight and awareness role during the pandemic. In order to initiate complaints received by the authority during the pandemic, investigation teams made inspection visits to 14 establishments related to the pandemic through which 27 investigation records and 6 minutes of contravention were prepared, and the total number of working hours reached 56 hours. Moreover, many of the relevant establishments were educated during those visits on the competition system to be able to achieve two goals, the first is to ensure that the facilities do not violate the competition system and secondly to educate other establishments of the anti-competitive practices that may be undertaken by suppliers of masks, gloves, and sterilizers. As a result of that some practices that are suspected of violating the competition law and its implementing regulations such as the condition of suspending the sale of oversize gloves by purchasing small-size gloves are banned. He also added that during the pandemic a lot of cooperation had taken place with other government agencies such as cooperation with the Consumer Protection Agency, where coordination was made with the Consumer Protection Agency to conduct joint visits between the teams to handle complaints in the face masks, sterilizers and gloves sectors. The authority adjusted these prices by setting an upper limit on the selling price of masks. He pointed out that this isn't something the competition authority would normally do, but its laws permit this to be done during emergency situations. Also, joint tours were conducted between the General Authority for Competition, Municipal Affairs, and the Riyadh Municipality in the central vegetable market in Riyadh, which is one of the largest portals for exporting local and foreign vegetables and fruits to all parts of the Kingdom and the Gulf countries, to ensure the availability goods and ensuring that they are not stored with the aim of creating an artificial shortage of goods and services. They also cooperated by referring practices violating other regulations to the relevant authorities, as some cases of suspected tax evasion were referred to the Zakat and Income Authority and it became evident during the supervisory rounds carried out by the Authority, that there were several cases of suspicion of fraud. He mentioned that one of the most important actions that the authority had taken during the



pandemic was that a major company operating in the field of medical supplies was referred to the dismissal committee for committing violations such as withholding data and information from investigators and the authority during the initiation of cases. The General Authority for Competition has made many efforts in the field of economic concentration as it continues to provide its services including receiving and studying requests for economic concentration during the pandemic, despite the general closure, with the aim of ensuring the provision of services to the business sector by activating reception online requests. The authority has received and studied more than (55) economic concentration requests, (25) of which are required for reporting and (30) non-compulsory requests for reporting. Any emergency, not just this pandemic, to ensure high competitiveness, and the presence of services and goods in a way that does not hinder legal competition. He explained that the authority has benefited from the development that has been made in its work as they noticed that they are ready to face any emergency, not just this pandemic, to ensure high competitiveness.

Dr. Abdulaziz bin Abdullah Al-Zoum thanked Mr. Mahmoud Al-Osaimi for his presentation and noted that there is an important factor in the Kingdom's successes in managing the Covid-19 crisis which is that the Kingdom during the last ten years has invested a great deal of money in government technology in particular in what is called electronic governance (E -government). He pointed out that when the crisis began the feared that shortages in the food and medicine sectors, but they were fully aware through the government linkages of all levels of stocks of food, medicines, and various medical equipment. The COVID-19 pandemic causes two shocks, the first is the external shock (Exogenous shock), and the second is the one that worries the most, which is the internal shock (Endogenous shock). The external shock is the one that cannot be controlled at all. He stated that they feared consumers would behave in an economically irrational way by hoarding goods in the first period of the pandemic therefore they adopted a policy of absolute transparency with the consumer in coordination with other regulatory authorities. He added that because the Saudi consumer has high levels of exposure to social media that makes it easier for Saudi citizens to talk to them through different means of communication and different media. Hence, they adopted transparency as a general policy to reassure consumers that the products are available not only for the next month or two, but also for the next six months. Dr. Abdul Aziz bin Abdullah Al-Zoum believes that this policy which they call symmetry of information was very successful as they did not witness any hoarding of goods in commercial markets or pharmacies.

**Morocco:** Mr. Hassan Abu Abdel Majid, Vice President of the Competition Council in the Kingdom of Morocco, highlighted one of the problems produced by new Moroccan legislation in the field of competition, represented in the lack of a clear definition for competition, and therefore according to him, his speech will focus on the following points:

- Forming the general framework for the topic
- Problem arising because of the lack of a clear definition of competition
- Suggestions aimed at trying to overcome the effects of the absence of a clear definition of competition

He said that with regard to the general framework, the Moroccan Competition Council has been known in its new form since its inception in 2018 as a constitutional body that enjoys decisive authority relying in its work on five basic legal points which are as follows: the Constitution of July 30, 2011, Law No. 104.12 on Freedom of Prices and Competition, Implementation decree of Law 104.12, followed by Law 20.13 organizing the Competition Board, and the decree applicable

to it. The competition board was mentioned in the 2011 constitution in Chapter 12 titled The New Governance and in Article 166 the discussion about the Council came as follows: The Competition Council is an independent body charged with the framework of organizing free and legitimate competition to ensure transparency and fairness in economic relations especially through analyzing and controlling the situation Competition in markets, monitoring of anti-market practices, unfair trade practices, economic concentration processes, and monopoly. He added that as stated in a previous article regarding the constitution namely Article 35, Paragraph 3, "The state guarantees freedom of initiative enterprise and competitiveness." Law 20.13 has empowered the council in its first paragraph of Article 2, which came as follows: "The rules of competition, and monitoring the processes of economic concentration, as defined in the law relating to freedom of prices and competition." He explained that, given the importance of this in relation to the subject at hand, it is necessary to recall the general framework and the general conditions that defined the creation of Law 104.12 which concerns itself with freedom of prices and competition and Law 20.13 which is concerned with the organization of the Council and their implementation decree. He added that the author of the legal texts related to even competition has benefited from a plan drawn up in 2009 by the General Secretariat of the Moroccan Government within the framework of the joint project between the General Secretariat of the Government and its counterparts in the two member states of the European Union, France and Spain, and this work is also included in a joint work plan between Morocco and the European Union which aims to support Morocco in the area of competitive policy. After examining how competition laws were set up in Morocco by following the French school and in violation of the spirit of French law the consequences of the absence of a clear definition of the term competition were observed. He mentioned here that the legal wording of the French school tends not to clarify the definitions, with some exceptions, as for the Anglo-Saxon school they tend to provide definitions at the beginning of the texts or at least at the beginning of every section or point of every legal text.

Mr. Hassan Abu Abdel Majid referred to the problems related to the absence of a clear definition of the term competition. He said: Legal work 104.12, which deals with freedom of prices and competition, and Law 20.13, which deals with the organization of the Council, revealed some problems regarding the concept of competition. He explained that this matter attracted his personal attention since he was working in the council between November 2018 and March 2021, bearing in mind that when talking about the competition council for Morocco, it had started its work since 2001, but the most important period was the last period because the council had acquired more authority since 2018. He stated that despite how short this period is it has become agreed that competition is an economic confrontation process between producers of services and products, with the same specifications or with close specifications that can be exchanged for the same market. A large number of economic actors in Morocco head to the Competition Council after their victory in a specific public deal has faltered opposing an administration, a local group, a public institution, instead of contesting a company competing against them, they may be charged for engaging in practices that are inconsistent with the competition rules mentioned in Law 104.12. This problem is of particular importance, as the government deals for the year 2019 constituted 24 out of 50 deals, which is nearly half, however, given that Article 3 of Law 20.13 gives contractors the right to refer some cases that follow some practices contrary to the competition law to the Council, so for this reason some request had been accepted and some were rejected as the Council lacked jurisdiction over them.

In conclusion, Mr. Hassan Abu Abdel-Majid made a proposal regarding this problem which is the introduction of the rules of the Anglo-Saxon doctrine in the drafting of legal texts, and this is what the Moroccan legislator has suggested for a long time, compiling a list of terms for which it would

be useful to set definitions, to facilitate the understanding of the users of the council's role, which would spare the Council from dealing with many files.

Dr. Abdul Aziz bin Abdullah Al-Zoum asked Mr. Hassan Abu Abdul Majeed, if this definition lead to the absence of any cases that were submitted to the competition board?

Mr. Hassan Abu Abd al-Majid replied that, on the contrary, he mentioned that out of the 50 cases<sup>24</sup> of them were related to public deals, in addition, we have received many different cases such as issues related to the opinion request. For example, in relation to economic concentrations, the body to which I belong, which is made up of the President with his four deputies, meets consistently, almost every week to discuss a number of requests that concern economic concentrations. He added that there is an abundance of issues, but he just wanted to indicate that there is a legal problem, because Morocco took the French approach regardless if at the level of the European Union they do not always take this rule, on the contrary, the European Union may take the Anglo-Saxon approach. He explained what matters to them here is to reach a solution to the problem while taking some precautions, for example not to prolong the list of terms. For example, there are those who warn against this possible transgression and there are those who warn against adopting this approach because it may introduce a kind of instability in understanding some concepts because this school allows changing the list and the content of some words which may cause some problems. He indicated that he prefers to make use of the other side of the Anglo-Saxon school that offers some sort of clarity because the Moroccan reader may have known for a long time.

**Lebanon:** Mrs. Marlene Nehme, Head of the Legal Studies Department on the Competition Law Project at the Lebanese Ministry of Economy, stated that she is pleased with her participation, and mentioned that the legal project related to the competition law had started since 2002, but it has not been approved yet in Parliament for various reasons, including political and economic reasons. Despite this, all these reasons did not prevent them from working on this law and updating it regularly. She indicated that the most important reason that led to the failure to pass the law until now is the frequent change of government in Lebanon as according to the Lebanese law when the government changes the bill is returned from the Council of Ministers to the relevant minister to re-sign it again. In addition, the new minister has the authority to make adjustments to the law. This resulted in the legal draft being subject to repeated amendments, in 2019 the draft law was sent to the Council of Ministers, but it was not presented to a group session of the Council of Ministers then the government changed and it was reconsidered in 2020. The current minister decided to display the project on the ministry's website to give official departments, concerned people, and civilians a chance to express an opinion on it. Several suggestions had been made from all sides, some which are suitable to be included in the bill and some of which are not. In addition, the World Bank, the Organization for Economic Cooperation and Development, and the United Nations Conference on Trade and Development were consulted and they also made their observations from which some of them were taken into consideration and some of them were not taken due to their incompatibility with the draft law and its legal structure. Ms. Nehme explained that because of this, her intervention today will be limited to the most important amendments that have been made in the draft law for the year 2019 and the bill for the year 2020-2021.

Ms. Nehme explained that in relation to Article 3 of the 2019 draft law, the term "economic activities" has been replaced by a more detailed term which is "activities of production, distribution, marketing and services", to include the scope of application of the law activities of

production, distribution, marketing and services. She stated that she does not personally favour this detailed phrase, but rather considers the term economic activities a comprehensive term that can be interpreted by the competition board later on to include all activities outside the framework of the four expressions in which it was specified. According to Ms. Nehme, the second amendment to the law concerns Article 4 which is related to prices. In the past, prices of goods and services were determined on Lebanese territory according to market rules and principles of free competition with the exception of prices for goods and services related to sectors or regions where price competition may be limited. The second exception is for prices that are determined by a decision of the Council of Ministers. In the new amended draft law, the exceptions were reduced to include prices that are determined by the Council of Ministers, after taking the opinion of the National Competition Authority. She indicated that she agrees with this amendment because competition laws, especially at the beginning of their application as is the case in Lebanon, are supposed to include very few exceptions and that reducing exceptions was a positive thing for the law. Ms. Nehme said that the other amendment was in Article 5, which is the article that raised the objection of economic agencies, merchants, industrialists, and all economic bodies operating on Lebanese lands as it is related to exclusive commercial representation agencies. She added that as we know until now, the exclusive commercial representation agencies are still in effect in Lebanon since 1967 meaning that there are still merchants who enjoy exclusive importing rights from major foreign companies and are considered as monopolists on Lebanese lands. These merchants are stakeholders and with time they have become a huge economic power to be reckoned with so Article 5 which includes the abolition of exclusive agencies, provoked their strong objection. It is natural for these economic forces to exert pressure on the Parliament to prevent its approval and so accordingly the amendment that had occurred is that Article 5 was given the title of freedom to import which stated that "Any person may import any foreign product allowed to be circulated on Lebanese territory in order to sell it, distribute it, market it, or promote it regardless of whether the imported product was previously banned from being imported, sold, distributed, marketed, or promoted by an exclusive agent in Lebanon." This meant that this article of the 2019 law says that anyone was allowed to import goods, commodities, or services from abroad even if there was an exclusive agent for it in Lebanon. Ms. Nehme explained that the World Bank and all organizations concerned with competition have supported this move and that despite all the pressure from these monopolists and all the negative comments about this article, it was amended by adding a final paragraph to it that stipulates that anyone who wants to import goods that had been only imported by exclusive agents in the past is allowed to import, provided that he secures the international guarantees and guarantees specified by the foreign producer in accordance with international standards. Although this amendment to the article harms competition in the market according to Ms. Nehme, the minister and the economic authorities consider that without this addition, the bill cannot pass because in the year 2000 a law was proposed to abolish the exclusive agencies in Lebanon which was approved but never implemented. Ms. Nehme said that this is a problem preventing the implementation of the bill and that she believes that if the exclusive agencies remain in force in Lebanon there is no point in the competition law. She added that with regard to Article 7, "confined agreements and practices", this article has been amended at the request of international bodies concerned with competition affairs, as some acts that were considered not to be agreements that should be prohibited, but rather as a type of practice that can be addressed in another way which relieves the burden on the competition board later. As for Article 9, "Banning the Abuse of the Dominant Position," it has been significantly modified and the most important paragraphs have been removed from which are the paragraphs that determine whether a person is in a dominant

position in the market or not. Such paragraphs were removed as a result of pressure and objections by economic bodies because these clarifications prevent merchants, industrialists and all producers from resorting to monopolistic actions. Ms. Nehme stated that the process of reporting economic concentration has been clarified further so that the law will be applicable later. As for the economic concentration operations, all of them must be reported and investigations cannot be started before reporting them even those that are not subject to the Board's oversight also must be reported. A paragraph has been added that gives the minister the authority to approve a concentration process despite the competition board's violation of it, provided that this is justified in the public interest. The public interest has been defined in the law and this is a good addition because the term public interest is a very broad term so the cases that are considered in the public interest have been identified to be economic development, competitiveness of pledges, and the ability to create job opportunities. In addition, one of the amendments is the prohibition of anti-competitive aid which obligates entities that receive government aid to obtain prior approval from the Competition Authority before obtaining this assistance. The organization of the body was subject to amendment, in the previous draft there was a government commissioner at the Competition Council which has been removed because it constitutes an interference in the work of the Council and the Council must be independent in making its decisions. The structure of the council has also been amended according to a recommendation from the World Bank. The number of its members has been reduced from seven to five members and only the president of the board is full-timer because a small country like Lebanon does not it is necessary for everyone to be working full-time which helps reduce the financial burden on the state in terms of spending on the council.

Dr. Abdulaziz bin Abdullah Al-Zoum commented on some of the amendments mentioned by Mrs. Nehme, including the amendment of Article 3, which separated the term economic activities to become activities of production, distribution, marketing, and services. He said that when they wanted to place the law in the Kingdom, they used the term economic activities, but in the executive regulations they used production, distribution, and marketing. Dr. Abdulaziz bin Abdullah Al-Zoum praised the amendment regarding reducing exceptions in the system stating that there is no doubt that the system that contains the lowest possible level of exceptions is closer to international practices in this aspect. He added that with regard to exclusive agencies he believes that competition laws may have a more detailed opinion regarding controls related to them as exclusive agencies may enter into what is called intellectual property, and the exclusivity given to them may be acceptable within systems known to specialists in competition regimes.

**Egypt:** Dr. Mahmoud Momtaz, Chairman of the Board of Directors of the Authority for the Protection of Competition and the Prevention of Monopolistic Practices in Egypt, noted that the Egyptian Competition Protection Authority would like to share with the attendees the concept of competition culture. He added that the concept of competition culture is not seen as ideal in the Arab region, because this culture was built on concepts that are not clear and incomprehensible. Therefore, the Egyptian Competition Authority has developed a strategy based on three main axes: the first axis is the enforcement of the competition law, the second axis is to set policies, legislation and decisions that support and enhance freedom of competition, and the last and most important axis in Dr. Momtaz's view is spreading the culture of competition. He explained that spreading the culture of competition requires the efforts of many concerned parties that must be contacted periodically and permanently, to stimulate the concept, stimulate the idea of competition, not to engage in monopolistic practices, and to comply with the law. Therefore, one

of these concerned parties is the government agencies such as the National Telecommunications Regulatory Authority, the boards of directors of the Electricity Utility and Consumer Protection Regulatory Agency, the Gas Regulatory Authority, and the Supreme Council for Media Regulation have worked together to establish cooperation protocols. He added that the goal from cooperating with these councils is to be present to protect the concept of competition and that the decisions issued by these councils take into account competition. In addition, they worked on the judicial aspect. The Egyptian Competition Protection Law is a criminal law; therefore, most cases are referred to the Public Prosecution and then to the Economic Court. They started running sessions for all of these bodies and these sessions are still ongoing for two reasons: the first reason is that judges are changed periodically, and the same for members of the Public Prosecution, therefore, it is important that there is continuity in this matter. He also added that they worked around the same issue with the judges of the administrative courts, because they issue administrative rulings for the apparatus that are challenged before the administrative courts, therefore, it was important to start communicating with these judges. It was important for the communication to be two-sided rather than only from their side so they began to make sure that they go to the Centre for Judicial Studies so that their workers learn how to approach the investigation and learn the method of collecting evidence to reach common ground and to understand the way each of them thinks. He noted that other concerned parties are universities and educational institutions and that as many Arab countries know, subject of competition unfortunately does not exist in most Arab universities. Consequently, we need to create a generation that is aware of all kinds of competition laws. Next, they worked to establish cooperation protocols with different Egyptian universities such as University of Hamburg and Cairo University to have competition law as a course that is taught in these universities program. He stated that also the German University in Cairo added a course on competition law, and explained that in most master's degrees competition law will become a subject to be taught and he indicated that this subject would soon be included in the bachelor's curriculum to be an essential part of the educational process of economic laws. As for the second framework, it is the idea that students in universities understand this concept, therefore, this year in April they will start a simulation model for the competition protection agency. Every year they choose around 30 to 35 students from Egyptian universities and set up a short five-day course for them to understand the idea of competition and on these days, they are present with the council and attend the side sessions. During the last three days, they perform the simulation for them by raising a case to solve and the team that solves the case better gets the opportunity to come to a summer training within the competition protection agency. This of course creates a generation that is aware of the competition agency and at the same time the council has people who are likely to be employed within the agency in the future. He added that the third framework of the concerned parties that the council works on is the business community and it is the most important for them, and therefore they worked on the so-called consensus guide. As for the compatibility guide, they did produced it not only by developing checklists, but also by clarifying what constituted a crime, how to identify it, what should be done, and what should not be done during some meetings such as meetings of the Federation of Industries or any meeting with competing members. In the compatibility guide it is made clear as to which matters can be talked about and the matters that are prohibited to speak about because they may constitute a crime according to the competition protection law. He mentioned that the other thing they worked on was the idea of competition in government contracts, as they had taken the initiative "No to collusion in government contracts." The aim of it is to educate the various government agencies on how to identify the concept of collusion in government contracts and how to report, here they have made procurement officials in government sectors inform them of such contracts as such

collusions can be reported without the name of the person reporting and without any information about him if he wanted to do so. Dr. Momtaz added that they also worked on the sectoral guidelines in cooperation with the sectoral agencies, such as the National Telecommunications Regulatory Authority, to set guidelines for competition in the relevant sectors. Dr. Momtaz added that they also worked on SMEs where they put out awareness booklets for them. They worked with the Small and Medium Enterprises Authority on two things, the first thing is that they worked on the idea of informing them of the law because they will be subject to monopolistic practices and the second thing is the decisions and laws that limit entry to the market, because they face many obstacles at work, and thus educate these companies in this regard as it helps them to deal with the market effectively. Dr. Momtaz also mentioned that they are working on guidelines for sharing sensitive information, which appeared more during the Covid-19 pandemic, so the Competition Protection Authority is working to issue these guidelines as soon as possible to inform the business community about these practices that constitute a crime in the competition protection law.

Dr. Abdulaziz bin Abdullah Al-Zoum stressed that the spreading a culture of competition is one of the biggest challenges facing all those involved in the field. He indicated that he believes that the problem is due to the acceptance of society itself because it still needs more effort to be aware of this culture. He also expressed his admiration for the efforts made by the Egyptian Competition Authority, especially with regard to educational information, as he believes that such information can play a very impressive role if directed to a specific group and he pointed out that the Kingdom is also carrying out some similar practices. He also asked Dr. Mahmoud Momtaz about the results of the authority's efforts that were carried out in the different categories.

Dr. Mahmoud Momtaz explained that in the agency they have seen, with regard to the Arab business community, cross-border practices, as they have found that there are practices by some companies to prevent sales from some areas in the Arab world, however, there is an Arab Partnership Agreement and an Arab Trade Agreement that prohibits these practices and therefore cooperation between Arab competition agencies in this regard is important to have. The second thing that they came up with is the idea of entrepreneurs, as most new companies are started by young businessmen with a goal of selling the company for the largest possible amount and leaving the market. This exposes the market to the idea of "killer acquisitions", which is that large companies buy this company and close it in order to remain in the forefront in the market, thus increase the economic concentration in the market and prevent any kind of development in these sectors. Therefore, it is important to communicate with the business community, especially SMEs, to change this concept and to develop legal mechanisms within the concept of mergers and acquisitions by developing the so-called behavioural remedy so that these industries do not disappear from the market.

**Oman:** Mrs. Marwa Rashid Khamis Al-Alawi, a legal researcher at the Ministry of Commerce, Industry and Investment Promotion in the Sultanate of Oman, began by clarifying that the Law on Protection of Competition and Prevention of Monopoly contains many chapters and that the aim of the Omani Competition Protection and Monopoly Law is to regulate the freedom to practice economic activity and to establish the principle of market rules in a way that guarantees positive results on the national economy and on the consumer as well. She explained that this law applies to all activities of production, trade, services, and economic activities whether inside or outside the Sultanate of Oman if they have internal effects on competition. She added that

there is an exception to the application of this law which could happen either by force of law, as the Law on the Protection of Competition and Prevention of Monopoly does not apply to the activities of public utilities that are fully owned and managed by the state as well as the research and development activities carried out by public or private bodies. The other exception it is applied for by the company or institution if it aims at a number of objectives mentioned in the law specifically in Article 5. She added that the second chapter of the Law on Protection of Competition and Prevention of Monopoly dealt with the subject of prohibited practices as it divided them into three articles each article spoke about a specific violation. The first article talks about monopolies where it is prohibited to conclude any agreement or contract inside or outside the Sultanate or to take any measure that would lead to the monopoly of any good or service in the market. The second article deals with agreements between people (Cartels), as it stipulates a number of practices. She then listed some of the activities that are considered monopolistic or anti-competitive:

- Determining the quantities of production or limiting their flow to the market or taking them out entirely or partly from it by concealing them, storing them, or refraining from dealing with them.
- Influencing dealers in the market by providing unexpected quantities of products whose circulation leads to unreal prices.
- To divide any existing or potential market for products on the basis of geography, consumption, customer type, seasonal basis, time periods, or commodity basis.
- Complicity in auctions or tenders between people, or putting texts in the conditions of tenders, such as listing the trademark of the commodity or defining its class.

Mrs. Marwa Rashid Khamis Al-Alawi also spoke about domination as she explained that the position of dominance or the presence of a person in a dominant position is not considered a breach, but the exploitation of this person who has a dominant position in the market by carrying out some of the practices mentioned in Article 10 is considered a violation. Among these practices are selling the product at a price lower than the actual cost with the aim of hindering the competitors from entering the market, excluding them from it, or exposing them to losses in a way that makes it difficult to continue their activities. In addition, abstaining from dealing with another person without justification in order to limit his entry into the market or take him out of it. Also, one of the practices is the requirement to sell or supply a commodity or provide a service on the condition that a commodity or other service be performed from the same person or another person. Buying, storing or destroying goods with the intention of raising prices or preventing their decline. Finally, obligating a producer or supplier to deal with another competitor. She added that it is possible to measure other practices that are not mentioned in this article but lead to the same result. She also said that the law talks about economic concentration which is any process of buying or selling whether it is assets, stakes, or even rights or usufruct between people, whether through acquisition, merger, or others as stated in the Omani law. The economic concentration is made by submitting an application to the Ministry of Trade, Industry and Investment Promotion, as the period for studying the application is 90 days and passing this period without giving a decision is considered an implicit approval. This article states that it is prohibited to agree to any economic concentration request that leads to the acquisition of more than 50% of the market. In addition, the Ministry or the Minister may at any time cancel any economic concentration request whenever it is discovered that this information provided to him by the persons behind the request is tainted with fraud or deception. She added that the last chapter in the law talked about penalties, whereby anyone who carried out any of



the prohibited practices mentioned in the law would be punished with imprisonment from 3 months to 3 years and a fine equivalent to the profits earned by the violator from selling the products that were the subject of the violation or one of these two penalties. In addition, a rate equivalent to 5% -10% of the annual total sales of the products subject to the violation that the violator achieved during the past fiscal year. These penalties are strict with high fines because the Omani legislator deals with a percentage rather than a specific amount and this is a matter of fairness. Among the penalties, those who violate the provisions related to economic concentration and people who prevent the judicial officers from entering their facilities or conceal any of the required documents or data. In addition, the authorized employees will be punished with the capacity of the judicial branch. People that exceed the scope of their jurisdiction are imprisoned from one month to 3 years and a fine ranging between 10,000 Omani Rials and 100,000 Omani Rials or one of these two penalties. She also clarified that the Omani legislator has not concealed the subject of the continuous or repeated violation, and therefore it has stipulated that the penalty is doubled in the event of a repeat violation with the closure or stopping of the project or the commercial store for a period not exceeding 30 days. The Minister may impose administrative fines more than 5,000 Omani riyals on violations by people in conflict with the law or the executive regulations with the possibility of doubling them in case of repetition within the next five years. It is permissible to impose a daily fine not exceeding 500 Omani Rials in the event of a continuous violation and not exceeding a total of 10,000 Omani Rials. The minister or his authorized person refers the violations mentioned in this law to the public prosecution. She also talked about the law to protect competition and achieve the future vision, Vision 2040. In this vision, there are a set of topics that the Centre for Competition Protection and Monopoly Prevention contributes to and aims to achieve. First, a diversified and sustainable economy to which the centre contributes by applying the law to protect competition and prevent monopoly optimally, this will attract investments and attract more diversified economic activities. It will also lead to the provision free, open markets and fair competition, which will lead to the sustainability and diversity of projects and companies. Another topic is a competitive economy which is related to the previous item. The third topic is encouraging production and innovation, she explained that since the Centre for Competition Protection and Prevention of Monopoly is now under the jurisdiction of the Ministry of Trade, Industry and Investment Promotion, they now aim to achieve the same goal, which will lead to integration and an increase in production and innovation in the Sultanate. Article 5 of the law gave the minister and the ministry the ability to grant an exception if this exception was to improve the quality of service. Lastly, they aim to provide job opportunities, so when the Law on Protection of Competition and Prevention of Monopoly is optimally applied, this will lead to an increase in investments and an increase in companies and institutions which leads to the provision of more job opportunities. She explained that in the past year some market manipulation led to the exclusion of a large number of companies from the market, thus large numbers of workers were laid off so to prevent this the center seeks to implement the competition protection law and prevent monopoly to provide a greater number of job opportunities.

Finally, she spoke about the challenges facing the application of the competition law and among these challenges is the difficulty of proving violations especially verbal agreements. Consequently, they met with many international experts to support them on this point, but they still need a lot of experience to be able to prove the verbal agreement. The other challenge is the difficulty of obtaining information and data on cross-border people and what is meant here by these people is the companies and commercial establishments to which the Competition Protection and Monopoly Prevention Law applies. The Omani Competition Protection and Monopoly Prevention Law applies to companies even if they do not exist in the Sultanate as long

as they affect other companies within the Sultanate. As a result, it is difficult to apply this law optimally because these companies exist in other countries. The other challenge is the lack of specialists and experts in the field of competition at the local and regional level. At the local level, there is great difficulty in finding specialists in the field of competition, same applies to the regional level, because the competition protection law is somewhat new to the region. Also, the overlap of specializations between the competition protection law and other regulatory laws or regulatory bodies that apply some laws that apply to certain sectors such as the telecommunications sector, the transport sector, or the corporate sector represents another challenge to the application of the competition protection law. She explained that they find a kind of overlap and it is not an overlap between the specializations in its literal sense, but there is a difficulty in understanding each side, as they find some parties cling to their jurisdiction and want to exclude the role of the centre or the ministry. Therefore, the Ministry seeks to hold periodic meetings with the organizing bodies to discuss this matter and in order to clarify the role of the centre and the role of the law, because the law is applied to certain issues pertaining to competition only and not other issues. In addition, one of the challenges is the public's lack of awareness of the difference between competition law and consumer protection law. They find many complaints that are not related to the competition law but to the consumer protection law are directed to them due to the lack of awareness in these laws. Therefore, they were keen to spread awareness to the public so that they could understand the difference, as the Competition Law protects traders from each other and protects competition in the market. On the other hand, Consumer Protection Law protects the consumer in particular and it is directly responsible for prices and not the Competition Law, even though Competition Law also aims to achieve freedom of prices. The final challenge stems from the lack of adequate research on the local market. She explained that they find it difficult in this regard because if there was sufficient market research, they can punish people easily, but they find it difficult in this matter because there is insufficient research available.

Dr. Abdulaziz bin Abdullah Al-Zoum asked whether the law has been implemented in the Sultanate or if it is still in the discussion stage. Mrs. Marwa Al-Alawi replied by stating that the law had been passed at the end of 2014. Initially it was applied by the Consumer Protection Authority, then the Competition Protection Center was established in 2018, and in the recent period the Competition Protection Center was added to the Ministry of Trade and Industry and Investment Promotion. During the past month, the executive regulations of the Competition Protection and Monopoly Prevention Law were issued, including the Ministry's plan that they are working on for the next five years to amend the law.

Dr. Abdulaziz bin Abdullah Al-Zoum explained that he was interested in some points of the law, for example, including research and development activities carried out by public or private bodies and were excluded from the law, so he asked where is the economic rationality in excluding research and development activities from the competition system. Mrs. Marwa Al-Alawi replied that sometimes the application of the optimal competition law stands in the ways of the optimal goal of conducting such research and development because research and development is summarized in the end to a number of results and a number of procedures to be applied. Therefore, the application of competition law may be an obstacle if, for example, it aims to achieve a public benefit, or a reduction in prices, or improve a certain quality with regard to innovations. For example, if person in the market has an innovative idea and the competition law is applied on him, he becomes treated like the rest of the people who have been present for a

long time in the market which may constitute an obstacle or difficulty for him to continue in the market.

Dr. Abdulaziz bin Abdullah Al-Zoum also mentioned the law that states that 50% acquisition is prohibited in any sector, so he asked if this includes all sectors or in specific sectors because dominance in itself is not considered a violation of competition laws. Mrs. Marwa Al-Alawi explained that this law is only concerned with the aspect of economic concentration that is if there is a merger between two departments or the purchase of shares or some kind of merger and acquisition or other forms of economic concentration and it has nothing to do with the dominance of the company or the person in a single way and in his natural state. If there is a person in the market who has achieved dominance in the market naturally without any anti-competitive practices, then he is not considered violating the law. On the other hand, if there is an economic concentration that includes two or more companies that intervene in one administration to dominate the market, then this is what is considered a violation and this includes all sectors unless there is a specific exception from the application of the law.

Dr. Abdulaziz bin Abdullah Al-Zoum mentioned that he was also interested in the penalty related to imprisonment from 3 months to 3 years, so his question was whether this applies to all violations, even if they were not per se violation. Mrs. Marwa Al-Alawi replied that in the list of violations we stipulate that it is possible to preserve for multiple reasons, as not all violations are referred to the public prosecution. It is possible that there is reconciliation or preservation, whether for trivial reasons or for lack of sufficient evidence or otherwise. As for imprisonment, the judge has the choice, and this is not part of the ministry's procedures as this happens after the violation reaches the court. The judge has the choice to impose a fine and imprisonment, or imprisonment only, or only a fine, and this includes all violations as the discretionary power is in the hands of the judge. She explained that they seek, in amendments to the law, to remove imprisonment or any penalties involving freedom and to only keep monetary fines.

**Iraq:** Mr. Tahseen Mahmoud Muthana, Head of the Market and Private Sector Section of the Iraqi Ministry of Planning, explained that his speech focused on two important matters. The first is the impact of the economic crisis on the Iraqi economy and the second is the latest developments in competition in Iraq. He stated that it is no secret that Iraq is a country of diversity and plurality in its ethnicities, religions, resources, material and human capital and that the forces of attraction that Iraq possesses can make it a distinct development model as it represents a historical opportunity that can turn into an exceptional success story. However, the successive crises and challenges to which Iraq has been exposed have exacerbated the problems in terms of impact and result. We can understand this through a review of some economic indicators before and after the pandemic, as Iraq is one of the rentier countries that depend on oil as a main source of budget financing. Therefore, Iraq was exposed to two shocks, the first being the drop in oil prices and the second the Covid-19 pandemic and the general closure that resulted from it. Mr. Muthana touched on some macroeconomic indicators such as the gross domestic product which decreased at current prices in the third quarter of 2020 by 21% compared to the same period last year. Also, the gross domestic product (GDP) excluding oil at current prices has decreased by 3.2 and these two figures show us Iraq's dependence on oil as a main resource to finance the general budget. He added that this was reflected in the decrease in the average per capita GDP in the third quarter of 2020 by 25% compared to the same period last year. As for public revenues, the decline amounted to 61.9% in the third quarter of 2020 compared to the same period last year. Tax revenues decreased in the third quarter of 2020 by 49.3% compared to the same period last

year, this was due to the lockdown and the closure of most projects in that period. This is reflected in the decline in revenues on government expenditures, which decreased by 26% in the third quarter of 2020 compared to the same period last year. The largest decline happened in investment expenditures by around 91.8% compared to the same period last year and this also caused a large deficit in the general budget.

As for the second axis related to the latest developments in competition in Iraq, Mr. Tahseen Mahmoud Muthana stated that at the end of 2019, Resolution 245 was approved, which aims to facilitate and organize the investment process and create an encouraging climate for investment in Iraq by removing all obstacles that stand in its way, which will positively affect the acceleration of the development process. This decision includes six axes, the first axis is concerned with the allocation of lands where all government agencies are tasked with providing real estate suitable for investment and placing them within an investment map that occurs annually. The second axis is facilities and loans where the Central Bank of Iraq adopts an initiative to support investment projects with an amount of two billion Iraqi dinars equivalent to 1.37 million dollars. In addition, this axis includes the announcement of investment opportunities by the National Investment Commission and their referral to investors through advertising and competition as well as the allocation of special gates for investors at airports and border crossings. As for the third axis, which is company registration, it guarantees the establishment of an electronic registration window in Iraqi embassies, attachés and consulates, in addition to the adoption of electronic payment for the purpose of paying the fees and wages needed to reserve the trade name. The fourth axis included granting an entry visa to investors, businessmen and merchants directly from inside the airports. With regard to the fifth axis, which is the axis of legislation, it included the amendment of the residency law in terms of cancelling the financial insurance and increasing the period of multiple entry visas for investors, and preparing a draft law for the Reconstruction and Investment Council. These are the items of Resolution 245 that was issued in 2019, that is, before the pandemic. After that, the Iraqi government launched the White Paper in 2020 in July. This paper aims to restore balance to the Iraqi economy and put it on a path that allows it to take appropriate steps in the future to develop into a diversified dynamic economy that creates opportunities for citizens to live a decent life. This is made possible by proposing a set of comprehensive reforms and policies aimed at addressing the structural imbalance of the Iraqi economy and within an important set of priorities that are to be applied in the medium term as follows:

He explained that this paper targeted a period of time from one to three years for some reforms, and included several axes, including the first axis, which is achieving sustainable financial stability. This axis included reducing the primary budget deficit to 3% as a percentage of GDP over the next three years as it currently stands at 20%. In addition, reducing the salary bill over the next three years to 12.5% of GDP and currently it is 25%. Reducing total government support to 5% as a percentage of GDP also over 3 years and currently stands at 13%. Lastly, working to increase tax and customs revenues by automating all work departments and creating a tax identification number (TIN) for citizens to be able to conduct an electronic tax assessment, in addition to studying the current exchange rate of the dollar against the dinar and taking into consideration the requirements of financial and monetary stability and achieving competitiveness. As for the second axis, which aims to achieve strategic economic reforms and providing sustainable job opportunities, it included an actual increase in the private sector's contribution to economic activity by supporting small and medium enterprises to provide sustainable job opportunities. He explained that the private sector's current contribution to economic activity does not exceed

30%. He added that this axis also includes strengthening producer and consumer protection policies through controlling border crossings. Also, facilitate the work of the private sector in aspects such as starting a commercial business, commercial licenses, company registration, and others. It also included amendments to a number of basic laws related to the economy and businesses with the aim of improving the business environment and updating the legal structure regulating it. It also ensures the simplification of investment procedures, by imposing a single window and permitting the establishment of service companies. Mr. Muthana stated that the third axis is the improvement of the basic infrastructure. It ensures the provision of digital infrastructure, by introducing advanced technology (fourth generation) at the beginning of next year and preparing for the introduction of the fifth-generation technology in the future. In addition, the introduction of digital financial services and digital platforms necessary to stimulate the movement of funds and trades. The implementation of a comprehensive plan to develop the main roads that support trade and main service areas, achieve international connectivity of roads, and ensure the establishment of free zones and the completion of projects of major industrial cities. He also talked about the fifth axis which includes developing governance and legal systems to enable institutions and individuals to implement reforms. This axis included the amendment of the regulations for the implementation of government contracts instructions to achieve the simplification of procedures and the introduction of electronic governance procedures in government contracting. Lastly, the implementation of the electronic signature and electronic transactions law which will shorten the procedures and get rid of paper transactions, implement the electronic entry visa project and apply the procedures for granting the features at the Iraqi border crossings.

Dr. Abdul Aziz bin Abdullah Al-Zoum asked Mr. Tahseen Mahmoud Muthana about whether there is a body responsible for competition laws, their application, and enforcement in Iraq. Mr. Muthana answered that there is a Council for Competition and Monopoly Prevention which was established in 2010 and is headed by an independent person who is not linked to the government apparatus and some members from some relevant ministries work with him. However, the Iraqi economy has a special nature as it is still under the auspices of the government until now because the government is still the largest owner of the economy. They are working to get rid of this situation to allow the private sector to practice its natural activity as it is the main and auxiliary arm of the development process and then legislate some laws that serve this activity.

**Tunisia:** Mr. Ridha Ben Mahmoud, President of the Tunisian Competition Council, explained that his intervention will be about the Tunisian Competition Council. He will talk about the achievements during the COVID-19 pandemic, future trends, and the necessity imposed by this crisis to reform competition legislation and develop the work of the Competition Council. Mr. Ben Mahmoud stated that the repercussions of this pandemic were significant on the citizens' health and the number of deaths which was relatively high. However, this pandemic has raised the necessity for investing in some important sectors such as the health sector and also increased the need to review legislation related to the field of competition. He added that the Competition Council in Tunisia is a judicial body and that the Council did not carry out its work in isolation from the repercussions of this pandemic. Tunisia imposed at the beginning of the pandemic a comprehensive lockdown and later replaced it with a forced quarantine. The comprehensive lockdown meant putting an end to the work of the judicial, administrative, ministerial bodies, and some activities of private economic institutions for a period of time that lasted nearly two months. During this period, the Council responded to the various preventive measures taken and responded to the circular issued by the Supreme Council. As well as the decree issued by the

Prime Minister, which entails the suspension of work within the various applicable deadlines at the level of investigation and judiciary as well as the suspension of legal deadlines related to economic concentration operations and exemptions. During this period, the Council put itself at the disposal of the government to activate its advisory role because the Council in Tunisia is an advisory body that expresses its opinion on the projects and laws that the government intends to take. He considered the draft decrees taken to surround the pandemic economically and socially, as well as the draft decree adopted to tighten penalties related to monopolistic practices within the framework of the revision of the law regulating prices and competition. In addition, in a number of draft regulatory texts prepared by the government to correct the course of some activities that were known to have flaws during the pandemic, the subsidized materials sector and bakeries are mentioned in this context. However, these circumstances did not prevent the Council from activating its judicial role through the authority granted to it by law opening investigative research into the numerous deficiencies that marred the telecommunications sector. Whereas, that during this period, the Council found that there was an agreement between the three telecom operators who raised the fee for internet subscription during this period to the same price and with an equal increase when they promoted a new commercial offer to subscribe to high-capacity mobile internet services. Therefore, an investigation was opened into this matter and the Council undertook this issue which is under consideration at this time. He added that the Council also investigated an economic concentration process between internet operators which they considered that it did not take into account the legal requirements that require obtaining a prior license from the Minister of Merchants. However, in the end he concluded that there was no need to obtain the license because the market share of both operators did not reach the legally required minimum and he considered that the process was sound. He also pledged a practice issued by Tunisian banks that requires the employment of surpluses on loans granted to individuals and institutions during the period of suspension of loans by the government during the COVID-19 pandemic, in violation of the decree issued by the Prime Minister and the circulars issued by the Central Bank requiring the suspension of work with these surpluses during the pandemic. Mr. Ridha Ben Mahmoud also mentioned another issue that the Council had dealt with which is the issue of raising the prices of medical oxygen. This violation was carried out by the private clinics that treat Covid-19 patients and he explained that they noticed that patients were required to pay high fees for oxygen; therefore, the Council looked into this issue and it will be decided on soon. He added that the lockdown period during the COVID-19 pandemic did not prevent the council from continuing its activities, but it worked with a deficient team that did not contain all its members and employees and despite that it was able to settle 37 cases and also considered 23 issued consultations. During this period, they issued 6 convictions and the sectors subject to conviction were public deals (tenders) of some health services in the private health sector, public works, sports stadiums, washing powders, the physical care market, the newspaper distribution sector, and building materials sector. As for the practices concerned with condemnation during this period, they included the agreements, the excessive exploitation of a position of economic dominance, the excessive exploitation of the status of economic dependence, and the application of excessive prices. He also mentioned that the total of these financial penalties amounted to nearly two million dinars. However, in addition to the judicial and advisory activity, the Council was keen during this period to intensify the media visibility or by working through social media to spread the culture of competition and invite all institutions or persons to report all monopolistic practices. Mr. Ridha Ben Mahmoud added that the Council's international work did not stop during this period as they maintained their activities whether with UNCTAD or with UNISA. They also kept close cooperation with some peer institutions such as the Turkish Competition Authority and also some Young Competition Councils

in Africa. As part of this cooperation, they are in the process of transferring and introducing the Tunisian experience to some of these countries such as Burkina Faso. Mr. Ben Mahmoud stated that he believed that the distinguished work that was done in this period regarding international cooperation was made possible due to the involvement of the Competition Council within the framework of the general program that brings the European Union together with the Tunisian state within the framework of the so-called program to support the government's efforts to support the economic performance of the state. He explained that they seek to benefit from this program because it includes, in part, a review of national legislation and policy related to competition, which may help Tunisia improve its competition policy in accordance with international standards. In addition, they studied the effect of laws and arrangements on competition in two important economic sectors in Tunisia namely tourism and the banking sector. This project and the selection of these two sectors came after consultations with the Competition Council, the Ministry of Trade and Export Development, the Ministry of Tourism, and the Central Bank. After organizing a seminar to launch it on February 2, 2021, they prepared the questionnaire that was directed by the Organization for Economic Cooperation and Development, to both the Competition Council and the Ministry of Trade. In the meantime, they are preparing for the next phase, which will culminate in presenting competition policy in Tunisia to counterparts within the framework of the International Competition Day organized by the Organization for Economic Cooperation and Development, which had previously worked with the Council and the Ministry of Trade in 2019 when preparing a study of the impact of laws in the trade and goods transport sectors. This study has made it possible to present many recommendations to alleviate the obstacles to competition in these two sectors and the government is now tasked with studying these proposals and converting them into practical measures. He added that the pandemic period had been used to present a new concept of competition law in Tunisia, and to present a paper to the Prime Minister, the Ministry of Trade and the Ministry of Justice to define their vision of what legislation should be in the field of competition later, as well as for the new structural organization that the competition board should have after it was found that there is in fact a deficiency in laws and a lack of legislation to deter monopolistic practices. He also mentioned that they had submitted a project aimed at developing the council's activity in the field of competition to protect the market and create a favourable environment for investment in line with international rules and practices. The most important reforms proposed to develop the activity and role of the Competition Council aim at establishing a single independent competition authority in Tunisia, because the Competition Authority in Tunisia is a two-headed authority, one of which is in the Ministry of Trade, which is the General Administration for Competition, Economic Research and Prices, and the second is the Competition Council, which is considered a judicial body. Therefore, the Council supports the idea of establishing only one body concerned with competition in Tunisia, and this requirement is shared by the Council with the organizations working in this field, both the Organization for Economic Cooperation and Development, as well as the European Union, similar to global experiences in this field. In Tunisia they used the French experience, which followed the existence of a general administration for competition and a competition authority, but it developed to follow the establishment of a single body concerned with competition. He added that they also demanded a review of all procedures regarding requests for exemptions such as exploitation contracts and economic concentration operations and granted them to one party which is the Future Unified Competition Authority. Since the council is considered a judicial body, one of their suggestions was that the appeal of the primary judgments would be issued by the council. Such decisions are taken by the competition board instead of appealing these rulings before the administrative judiciary because the work in the administrative judiciary is very slow, which

makes the period of separating cases take many years which is inconsistent with the need for speed in the separation of cases in the economic field given their impact on economic activity and their harmful consequences in some cases. He also said that they suggested that the review phase currently entrusted to the Administrative Court be referred to the Court of Cassation or the Judicial System, because the judicial system is characterized by speed in deciding on judgments. They also suggested reviewing the penal system in the field of anti-competitive practices and assigning the system for implementing penalties to the Competition Council instead of the Minister of Trade, because they have noticed that a large percentage of the decisions issued by the Competition Board have not been implemented so far and the implementation rate does not exceed 30% or 40% in the best cases. He made clear that they believe that Tunisia, like all other Arab countries, needs strong competition apparatus that enjoys complete independence and puts at its disposal all the material and logistical capabilities to fight many of the violating practices. He concluded by stating that Tunisia was one of the first pioneers in developing the competition law, but they now need to develop this law to increase its effectiveness.

Dr. Abdul Aziz bin Abdullah Al-Zoum asked Mr. Ridha Ben Mahmoud about the meaning of the concept of economic dependency which he mentioned in his presentation. The answer was that this concept indicates that some institutions are fully connected with other institutions, as they provide them with materials and products, a large number of transactions, and benefit from the reputation of the institution that handles the provisions. The company supplying the product may suddenly cut off the relationship with the distributing company due to the fact that it is looking for a partner or any other reason as it places it in a position that makes it unable to provide a product with the same characteristics in the market instead of the product provided by the institution. Therefore, this situation puts the institution that distributes the product in a position of complete subordination to the institution supplying the product which may put it out of economic activity if the relationship with the provider company is suddenly cut off. This situation requires the existence of conditions which are the importance and reputation of the parent institution, the volume of transactions with the affiliate institution, and the dominance position that the original institution enjoys in the market. He added that the law has defined the concept of economic dependency as refraining from selling or buying, abstaining from sales or conditional purchases, imposing minimum resale prices, imposing discriminatory conditions or cutting commercial relations without an objective reason or because of refusal to be subject to unfair commercial conditions.

#### **Participants interventions on what has been discussed:**

- Dr. Mahmoud Momtaz asked the participants if the violations and the amounts imposed on the violating companies are calculated according to the ability to pay in light of the Covid-19 pandemic? And whether there is a balance between the payment mechanism and the deterrence mechanism?

Dr. Abdulaziz bin Abdullah Al-Zoum explained that most of the violations in the Kingdom of Saudi Arabia take a very long judicial path so the violations that are currently due are ones that have been there for a long time since their occurrence, because these violations have been claimed before the pandemic. As for recent cases that occurred during the Covid-19 pandemic, they will also take a long judicial path that may end after the pandemic. He added that most of the violations that they deal with are violations that are unlawful in their nature and that their



greatest focus is in this area. Collusions that occur in government procurement are a big problem in KSA and in the past year alone there were more than 50 conspiring companies in some government purchases. Usually these companies are large and capable companies, but if the violating company is small then there is always some kind of negotiation by taking into account the financial position of the company.

Mr. Ridha Ben Mahmoud said that most of these violations took place before the pandemic, as was mentioned by Dr. Abdulaziz bin Abdullah Al-Zoum, while the violations that occurred during the Covid-19 pandemic are currently being studied. In addition, the violations system in Tunisia demands a maximum amount equivalent to only 10% of the value of the violating company's transactions.

- Dr. Abdulaziz bin Abdullah Al-Zoum stated that the issue of exclusive trademarks that was mentioned in Lebanon's presentation caught his attention. He asked if there are specific treatments with regard to commercial agencies and exclusive rights in Tunisian, Egyptian law, and in some other Arab countries?

Mr. Ridha Ben Mahmoud explained that the Tunisian law has addressed this issue in Chapter 6 of the Competition and Prices Law by stating that firms can be exempt from the application of the provisions of Chapter Five agreements or practices or items of contracts if the owners prove that it is necessary to ensure technical or economic progress. In addition, it should give the consumers a fair share of its benefits, provided that it does not lead to the imposition of restrictions beyond what is necessary or the complete exclusion of competition in the relevant market. This exemption is granted by a justified decision of the Minister of Commerce after taking the obligatory opinion of the Competition Board. The content of the opinion issued by the Competition Board is published by the official newspaper which means that everyone is aware of the opinion. However, in Tunisia an order and decision was issued by the Minister of Trade exempting some sectors from a request for exemption meaning that representation is free and this included approximately 84 activities while the rest of the sectors that were not covered by the Minister of Trade's decision are compulsorily subject to the request for the exemption decision from the Minister of Trade.

- Mr. Tahseen Mahmoud Muthana kindly asked about the issue of economic concentration and limiting it. He said that as it is known that economic concentration is one of the advantages of competitiveness as it gives the owner of the project or industry abundant volume that allows him to penetrate markets abroad. Does reducing economic concentration limit competition at the regional level or at the level of industry within the country? He also asked about the impact of macroeconomic policies on enforcing competition and monopoly laws especially in exceptional cases such as the Covid-19 pandemic. Most countries have increased their public spending, whether for support or aid, so how has this affected the level of Competition within the country?

Dr. Mahmoud Momtaz mentioned that, there are many benefits resulting from economic concentrations and for this reason a mechanism is being put in place to evaluate such clusters which is called the serious reduction of competition. Consequently, by conducting such tests for such concentrations these concentrations are often approved with consent or conditional approval if there is a possibility to treat these concentrations, whether it is a structural remedy or a behavioural remedy. Therefore, most of these concentrations are approved with the

exception of some concentrations. He stated that a study indicated that 90% of the concentrations are approved in Europe.

Dr. Mahmoud Momtaz also said that recently in the matter of agencies or exclusive agencies they were reviewing the intellectual property law and they were able in the competition authority to include the idea of compulsory licensing within the intellectual property law if there were monopolistic practices. They faced many issues which included refusal to deal and the refusal to license the owners of the trademark. Also in this issue, they looked at the idea of a link between competition and intellectual property rights and how to deal with it especially since the Agreement on Commercial Aspects of Intellectual Property Rights (TRIPS Agreement) provides for the concept of competition in its requirements with the idea of compulsory licensing.

Dr. Abdulaziz bin Abdullah Al-Zoum stated that the competition authority in the Kingdom believes that giving the facility or group of establishments that want to merge the right to enjoy the effects of size is a major right for these establishments because the effects of size affect the costs of the facility. If the enterprise is able to achieve cost efficiencies, this will be reflected in future prices. When the future effects of economic concentration are analysed, all the theories of potential harm are taken into account. Therefore, competencies are one of the aspects that must be taken into account when analysing economic concentration and if it is possible in some industries to benefit from the effects of the size inherent in them then the competition authority in the Kingdom welcomes such competencies. The Authority when analysing economic concentration takes into consideration the effect on prices, the effect on quality, and the impact on innovation and diversification in the economy, and often the effects of size are reflected positively on these main axes. He also added that regarding the second question related to economic policies, as is known, many companies are facing many problems related to the flow of funds due to the general closure during the COVID-19 pandemic. He emphasized that in the Kingdom the restaurant sector was one of the biggest victims, so the state had many stimulus packages that were intended to save these companies and sectors. He believed that these policies reflected positively on the macroeconomy and that although some of these policies were exaggerated in some countries, which may be reflected in the future on inflation, they were necessary because the COVID-19 pandemic is a crisis without precedent in our present history.

Mr. Ridha Ben Mahmoud explained that the issue of economic concentration is an issue that has aspects affecting competition, but that the law in Tunisia came to regulate this issue and considered that the process of economic concentration needs approval and a decision for approval from the minister in charge of trade, when two conditions are met. The first condition is when the average share of the institutions concerned with the merger together exceeds 30% of sales or purchases, meaning that their market share is at least 30% or more. The second condition stipulated that the number of transactions of the companies involved in the process of economic concentration exceeds an amount determined by an order issued by the Prime Minister and this order stated that the amount for the number of transactions completed by these institutions should be 100 million dinars combined. Institutions that fulfil these two conditions are subject to the approval of the Minister of Commerce. He added that the Council rarely refused any economic concentration process as they were always keen to give approval because they believed that this supports the competitiveness of some institutions in the markets, creates strong economic institutions, allows development, and reflects positively on the consumer and the price of the product. He explained that they decided to allow the process of economic concentration in the private education sector, which is controlled by two or three

institutions in Tunisia as long as they kept their registration fees the same. These universities agreed to this matter before getting the approval for this concentration process. Therefore, the Competition Council and the Minister of Commerce can stipulate some conditions that the concerned institutions must adhere to before granting a license for the economic concentration process.

- Dr. Mahmoud Momtaz asked the participants if any of the Arab competition authorities had considered the issue of vaccination against COVID-19, or the issue of competition within it, or the effects on competition if governments were to be the buyers.

Mr. Ridha Ben Mahmoud stated that the issue of vaccination has not been raised in Tunisia until now because the incoming quantities were very few quantities that were donations by the World Health Organization and some other countries. The issue of purchasing the vaccine in Tunisia has not been formally clarified yet, despite the government's talk about its request to supply it with large quantities of the vaccine. He added that this issue must be closely examined by ensuring that the principles of transparency and competition especially competitive neutrality are respected. He stated that it must be asked why the state monopolizes this procedure and why it does not open competition to the rest of the economic institutions to be able to import vaccines after obtaining all the necessary licenses in this field.

Mr. Hassan Abu Abdel Majid said that Morocco had no problem with regard to this issue, because the Moroccan state was tasked with bringing the vaccine and the vaccine was given free of charge for all citizens and residents in the Kingdom by a decision from the King.

Dr. Abdulaziz bin Abdullah Al-Zoum said that with regard to the Kingdom of Saudi Arabia, the government has pledged to bring in a sufficient quantity of vaccines and they are given to all citizens and residents alike free of charge. At the same time, it allowed the private sector to supply vaccines under its supervision to ensure the quality and safety of the product and they were also allowed to vaccinate, but the services of these companies were paid.

At the end of this session, Mr. Tariq Al-Alami thanked Dr. Abdulaziz bin Abdullah Al-Zoum for chairing this session and thanked all the attendees for their valuable interventions. He then called Dr. Mahmoud Mumtaz to chair the closing session in which some recommendations and key milestones will be determined for the near future.

#### **Fourth Session:**

Dr. Mahmoud Momtaz began the session by asking Ms. Nathalie Khaled to brief the participants on the results of the initial survey, and invited all participants to participate in this year's survey and to form the best knowledge report on what needs to be covered in the upcoming events and dialogues.

Ms. Nathalie Khaled shared the results of the questionnaire that was completed by the Arab countries to determine the topics that will be addressed in the competition dialogues that will follow the forum. This questionnaire included some topics related to competition, including the promotion of competition, which received the highest percentage of votes from Arab countries followed by cartels / competition and cross-border cartels, competition and regional trade agreements, e-commerce and digitization, competition and small and medium enterprises. Ms.

Khaled presented these topics again to the attendees to see if they agree that the next dialogues would include one to three of these topics that were raised, so that the three organizations would organize the dialogues based on the chosen topics.

She added that Professor Jenny from the Organization for Economic Cooperation and Development presented some ideas and recommendations that could be useful in addition to recommendations that were also collected by the team during the discussions and dialogues on these two days of the conference which will be put forward for discussion and agreement on some of the items for this year's action plan. Some of these recommendations included:

1. Establishing a network of Arab competition authorities to help exchange information at the regional level as these countries share a common culture, legal systems, and similar economic foundations. This topic could be started in an informal way by creating a group through some social media platforms such as LinkedIn or through a group on WhatsApp where it is faster and easier to organize.
2. The second recommendation that was raised is that if there is need for technical assistance from ESCWA, UNCTAD and the Organization for Cooperation and Development, it is possible for Arab countries to communicate with the three organizations through the hotline to request references on a specific issue, and to identify similar cases for this issue. This recommendation basically involves the creation of a hotline through which member states can access the three organizations
3. The third recommendation concerns the follow-up of competition developments as it is possible, for example, to organize an initial meeting during the year before the competition forum instead of waiting a full year for the next one to follow up on competition developments, but on a smaller scale than the annual forum.
4. The recommendations made by Professor Jenny in the forum are mostly regarding the culture of competition and spreading the culture of competition among government officials, businessmen, and the general public. Consequently, he recommends the idea of establishing a meeting between the competition authorities and the selected ministries to discuss issues of common interest as this meeting contributes to spreading the culture of competition.

In addition to putting forward these recommendations, Ms. Khaled opened the way for countries to apply to host the third competition forum.

Dr. Abdulaziz bin Abdullah Al-Zoum spoke on behalf of the Kingdom of Saudi Arabia to express their desire to host and organize the third competition forum. He added that with regard to the recommendations he believed that they were all useful. He submitted a proposal that stresses on the need for communication between competition authorities in Arab countries to develop proposals based on deep thinking given the great disparity between Arab countries in terms of competition as some of them are still beginners, some have not yet developed clear competition laws, and some have become very advanced in this regard. Therefore, it may be in this way that the bodies reach specific formulations of some of these recommendations in some detail, and

send them very soon, so that the recommendations will become more profound and beneficial to all.

Dr. Mahmoud Momtaz also expressed his agreement to what Dr. Abdul Aziz bin Abdullah Al-Zoum suggested and stated that they should take time to study the proposals. He expressed his desire to add another proposal, related to the presence of SOEs in our Arab countries, as this matter was clarified in the last report issued by the World Bank in 2019 where he spoke about this concept and he made it clear that, accordingly, the concept of competitive neutrality can be studied and added to the recommendations that he mentioned.

Dr. Abdulaziz bin Abdullah Al-Zoum also presented an idea related to the written Arabic content for the competition, which was referred to by Dr. Mahmoud Momtaz when he spoke about the concept of competition culture. As it is known, competition is not studied in all Arab countries which constitutes an obstacle to localizing the concepts of competition in many countries and that the written Arabic content related to competition is very little. Therefore, in the Kingdom of Saudi Arabia, they will take a step to Arabize many approaches related to competition. Also, they began to Arabize the products that come to them from the Evidence Competition Network, and they have a set of activities related to this topic as well, as they collected competition policies that were established and Arabized in the past during the last ten years in addition to UNCTAD products that adopt the Arabic language. They will publish these concepts and previous policies on the updated General Authority for Competition website which will be launched in April. He added that, in his belief, stimulating efforts to develop an Arabization of curricula, concepts, and theories of competition, whether in the economic or legal aspect are the tasks that must be undertaken and focused on.

Mrs. Teresa Moreira stated that what was presented was interesting and that the suggestions and the exchange of experiences raised many issues that could be discussed. Therefore, her intervention was only to suggest and support what has been proposed regarding the generalization of the outcome of previous countries' contributions, because we are already hearing about other ways to work in the future or at least to explore further cooperation. She added that what Dr. Abdulaziz bin Abdullah Al-Zoum suggested is a very interesting matter which is to start building or at least expand the repository of readable documents into Arabic. She also wanted to propose this idea of academic support and discuss it formally, because many speakers indicated the need to improve and work on the idea of teaching the concept of competition in graduate and university curricula in a number of countries. In addition, she wanted to mention that within the framework of UNCTAD's MENA Technical Cooperation Program, they have approached some universities in some MENA countries in an effort to foster exactly this kind of informal network of cooperation between researchers and specialists in this field. The basic idea of this was to encourage work with competition authorities in the region, so Mrs. Moreira expressed her happiness to share this idea because it was proposed by them and it was only popularized at a very late stage of the project. As a result they did not receive any collective reaction from the countries they worked with, but she just wanted to make it clear that they have this project in a preliminary stage but she thinks it is a good idea to continue discussing it and she would like to suggest this idea as a recommendation.

Mr. Mahmoud Al-Osaimi said that all the recommendations included many topics, but he wanted to add some topics to the recommendations to be discussed in the future. They are issues related to the existence of regulatory sectors, regulatory agencies, or other regulators that may enforce competition policies in sectors other than the competition authority which creates a conflict in

the enforcement of competition policies and the prevention of monopolistic practices in a particular sector. For example, the aviation or telecommunications sector which witnessed conflict of jurisdiction in this field and so they have to think about how to get rid of double punishment that may come from the presence of two agencies that implement competition policies. Therefore, it may be appropriate to consider having a recommendation discussing this issue in future meetings or to organize in one way or another this topic which is specifically the clash between the competition authority and the regulatory agencies regulating other sectors.

Dr. Abdulaziz bin Abdullah Al-Zoum added that he believes that one of the biggest problems facing Arab countries is capacity building, because not all Arab countries have the financial capacity to train and assist members in competition councils. Therefore, he suggested that ESCWA conduct a questionnaire on the needs of competition agencies in Arab countries related to capacity building and then arrange these needs which would give a clearer view of the needs of Arab countries in terms of capacity building and would indicate the areas that must be worked on.

Mr. Tarik Al-Alami ended the forum by thanking all the attendees and participants, all those who worked on this forum, and the partners from UNCTAD and the Organization for Economic Cooperation and Development.

\*\*\*End All\*\*\*

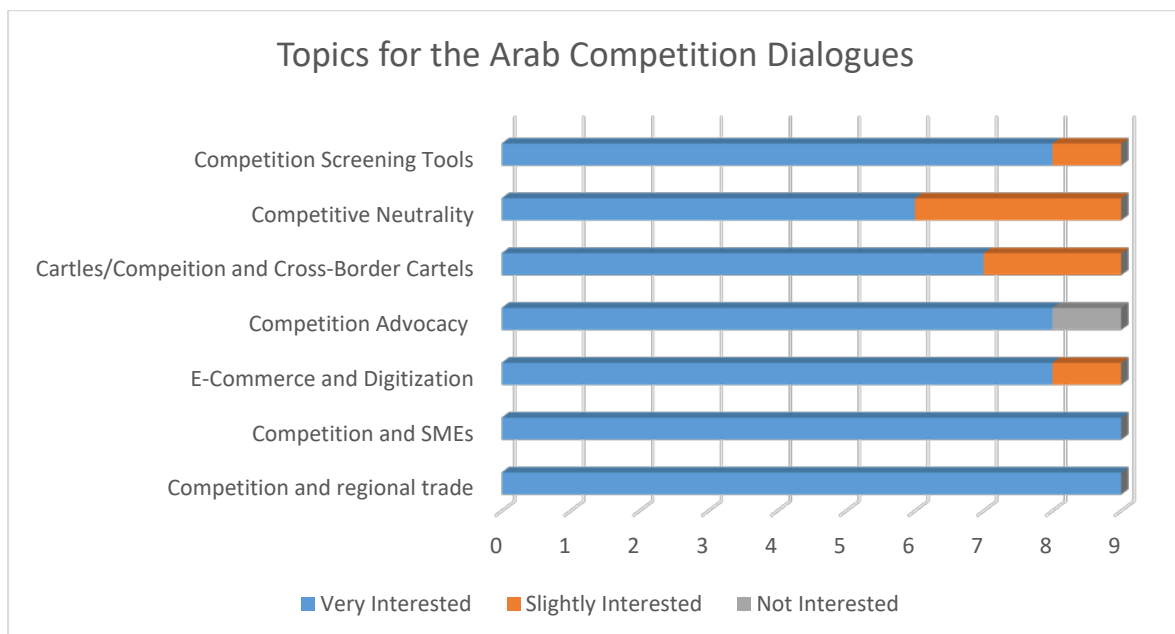
**ANNEX 1: SUMMARY of the FORUM RECOMMENDATIONS AND CONCLUSIONS**

A number of recommendations on how to improve the competition in the Arab region were made by different experts and participants. The recommendations mostly focused on improving cooperation between Arab competition authorities on matters related to competition law and policy. ESCWA prepared and circulated a survey to better understand member countries interests. Participants demonstrated great interest in establishing a regional competition network. WhatsApp has been chosen as the platform of communication. Participants also showed interest in receiving technical assistance from ESCWA, UNCTAD, and OECD. In addition, they were interested in scheduling an interim follow-up meeting on competition developments towards the end of 2021. Participants were interested in facilitating meetings between the competition authorities and relevant ministries to discuss common interests. Finally, participants were very interested in expanding the publications and studies on competition in the Arab region by translating them into Arabic.

Regarding topics of interest for the competition dialogues, participants showed most interest in competition and regional trade agreements followed by competition and SMEs, e-commerce and digitalization, competition screening tools, competition advocacy, cartels and cross-border cartels, and competitive neutrality.

The results of the survey are displayed below.

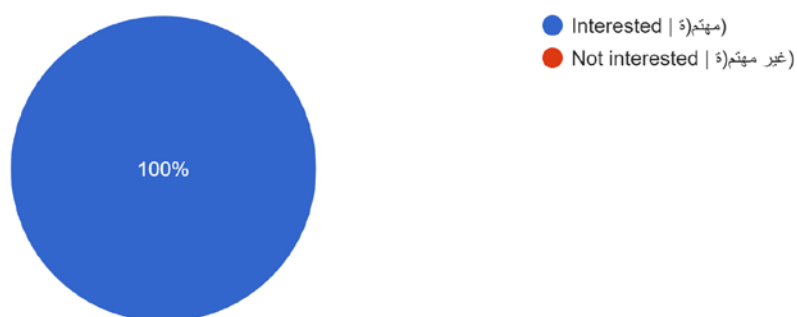
**Q1. Which topics for the Arab Competition Dialogues are of most interest for you?**



## Q2. Are you interested in forming a regional network of competition authorities?

تشكيل شبكة إقليمية من هيئات المنافسة | Forming a regional network of competition authorities

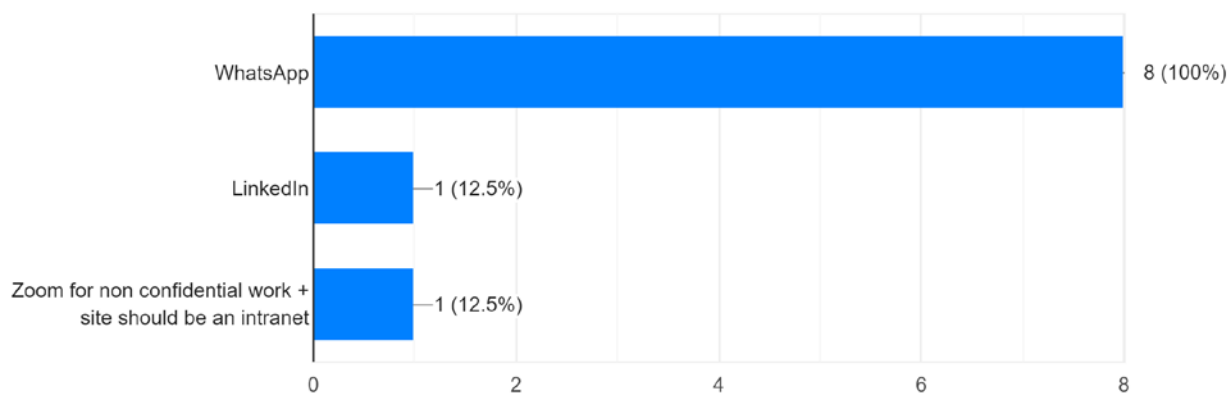
8 responses



## Q3. Which digital platform is preferred for the regional network?

المنصة الرقمية المفضلة للشبكة | The preferred digital platform for the network

8 responses

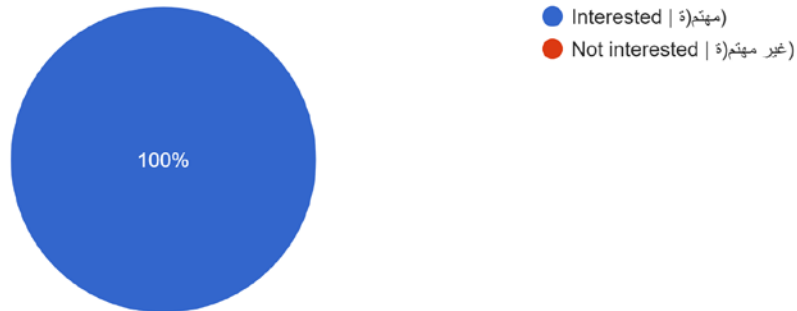


**Q4. Are you interested in receiving technical assistance from ESCWA, UNCTAD, and OECD? All participants expressed interest in this idea**



المساعدة الفنية للدول العربية من الإسكوا والأونكتاد ومنظمة التعاون الاقتصادي والتنمية | Technical assistance for Arab countries from ESCWA, UNCTAD, and the OECD

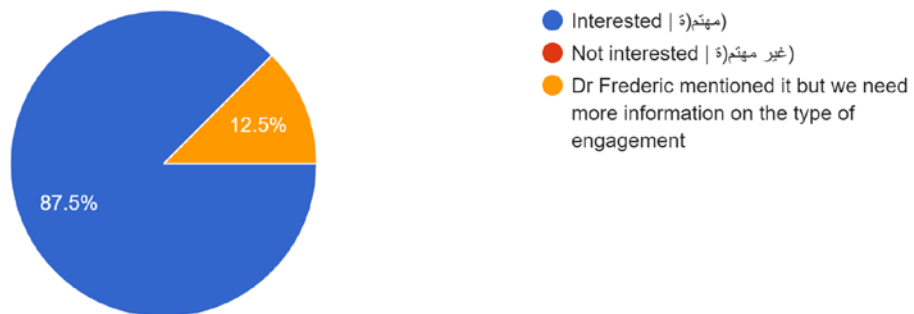
8 responses



**Q5. Would you be interested in having meetings between competition authorities and selected ministries to discuss common interests?**

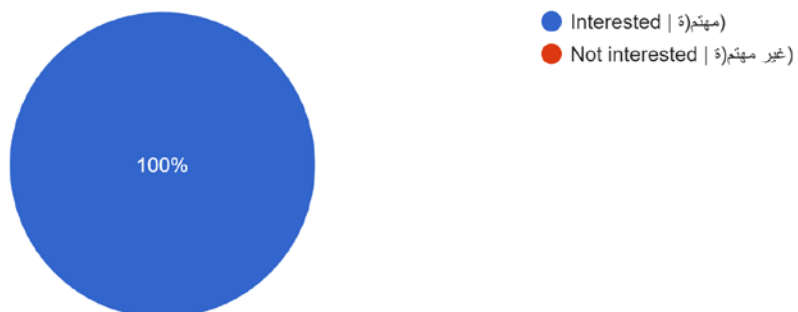
اجتماع تنسقه الاسكوا بين سلطات المنافسة ووزارات مختارة لمناقشة القضايا ذات الاهتمام المشترك | Meeting between competition authorities and selected ministries t...on interest (Facilitated by ESCWA, UNCTAD, OECD)

8 responses



**Q6. Are you interested in expanding publications and studies in the Arab region by translating such literature into Arabic? All participants expressed interest.**

توسيع نطاق المنشورات والدراسات حول المنافسة في المنطقة العربية من خلال ترجمة المؤلفات الموجودة والمبادئ التوجيهية والدورات الجامعية إلى اللغة العربية | Expand the publications an...erature, guidelines, and university courses into Arabic  
8 responses



## ANNEX 2: AGENDA

### Agenda

Tuesday, 23 March 2021	
Welcome & Opening Session	
<p>10:00 – 10:30 EET</p> <p>Session Chair: Dr. Mahmoud Momtaz, Chairman Egyptian Competition Authority</p>	<p><b>Opening Remarks and Introductory Comments</b></p> <ul style="list-style-type: none"> <li>• H.E Ms. Nevin Jameh, Minister of Trade and Industry of the Arab Republic of Egypt</li> <li>• Dr. Rola Dashti, Executive Secretary, United Nations Economic and Social Commission for Western Asia (ESCWA)</li> <li>• Ms. Teresa Moreira, Head of Competition and Consumer Policies Branch, Division on International Trade and Commodities, UNCTAD</li> <li>• Professor Frédéric Jenny, Chairman of the OECD Competition Committee</li> </ul>
Session I	
<p>10:30 – 11:00 EET</p> <p>Session Chair: Mr. Tarik Alami, Governance and Conflict Prevention Cluster Leader at ESCWA</p>	<p><b>Regional &amp; International Organizations</b></p> <p>In this session, ESCWA, UNCTAD, and the OECD present their newest work on competition.</p> <p>Each of the three organizations will give a presentation on their work since the 1<sup>st</sup> Competition Forum in January 2020 and their plans for future projects on competition that are targeted towards Arab countries.</p>
<p>Speakers</p>	<ul style="list-style-type: none"> <li>• Nathalie Khaled, Economic Affairs Officer, Shared Economic Prosperity Cluster, ESCWA</li> <li>• Ms. Ebru Gokce Dessemond, Legal Officer, Competition and Consumer Policies Branch, UNCTAD</li> <li>• Ms. Lynn Robertson, Manager GFC, LACCF, Competition Expert, Competition Division, OECD</li> </ul>
Session II	
<p>11:00 – 13:00 EET</p> <p>Session Chair: Professor Frédéric Jenny, Chairman of the OECD Competition Committee</p>	<p><b>Panel Discussion: International Best Practices</b></p> <p>Peer learning is an efficient mechanism for competition authorities to learn from their counterparts. This newly acquired knowledge can then be adapted and applied to their own jurisdictions.</p> <p>In this session competition authorities from different parts of the world discuss challenges and enforcement initiatives taken during the COVID-19 pandemic to safeguard competition in markets. Topics to be addressed</p>

	include advocacy measures, co-operation between competitors, exploitative pricing, public procurement. The session will also consider the role that competition authorities can and should play in the recovery process.
Speakers	<p><b><u>Part 1: Best practices</u></b></p> <ul style="list-style-type: none"> <li>• Ms. Juliana Latifi, Chairwoman of the Albanian Competition Authority (Key Achievements of Sofia Competition Forum)</li> <li>• Mr. Hardin Ratshisusu, Deputy Commissioner of the South African Competition Commission (excessive pricing, especially dominance in the aftermarket)</li> <li>• Mr. Rodrigo Rios Executive Director of Regulatory Analysis and Collaboration with the Public Sector, from the General Directorate for Advocacy-COFECE, Mexico (advocacy guidelines)</li> <li>• Mr. Majid Charania, Director of Compliance, Canadian Competition Bureau (public procurement, especially bid rigging)</li> <li>• Mr. Daniel Haar, Chief of the Appellate Section, Antitrust Division United States Department of Justice (procedural fairness)</li> </ul> <p><b><u>Part 2: Role of the agency in recovery</u></b></p> <ul style="list-style-type: none"> <li>• Mr. Alexandre Barreto de Souza, President of the Brazilian Competition Authority (CADE)</li> <li>• Ms. Esin AYGÜN, Acting Head of Supervision and Enforcement Department V, Turkish Competition Authority</li> </ul>

<b>Wednesday, 24 March 2021</b>	
<b>Session III</b>	
10:00 – 13:30 EET Session Chair: Dr. Abdulaziz bin Abdullah Al-Zoom, Governor of the Saudi General Authority for Competition	<p><b>Panel Discussion: Competition Developments</b></p> <p>In this session, competition authorities present their national competition developments since the 1st Competition Forum in January 2020. Additionally, they discuss their latest reforms of competition frameworks and their measures taken during the COVID-19 pandemic.</p> <p>Different countries from each of the four Arab sub-regions will be given the chance to speak in the panel discussion.</p>
Speakers	<ul style="list-style-type: none"> <li>• Mr. Mohamed Tayab Medjahed, Permanent Member Algerian Competition Council (restoring competition in Algeria: horizon and prospects)</li> <li>• Mr. Hassan Abouabdelmajid, Vice President Conseil de la Concurrence du Maroc (some of the problems arising from the absence of a definition of the concept of competition in the Moroccan legislation)</li> </ul>

	<ul style="list-style-type: none"> <li>• Ms. Marlene Nehmeh, Head of Legal Studies Department Ministry of Economy (latest competition developments, "progress with the Law")</li> <li>• Dr. Mahmoud Mumtaz, Chairman of the Egyptian Competition Authority (The Culture of Competition and Efforts of the Egyptian Authority)</li> <li>• Ms. Marwa Rashid Khamis Al Alawi Legal researcher, Ministry of Commerce, Industry and Investments Promotion, the Sultanate of Oman (Competition Law - challenges and future vision)</li> <li>• Mr. Tahseen Mahmoud Muthana, Head of market and private sector section, Ministry of Planning, Iraq (latest competition developments)</li> <li>• Mr. Ridha Ben Mahmoud, President of Tunisian Competition Council (Tunisia Competition Assessment)</li> <li>• Mr. Hammoud Al-Osaimi, Director of the Legal Department at the General Authority for Competition in the Kingdom of Saudi Arabia (Cases against competition violations initiated by the authority in the Kingdom during the Covid-19 pandemic)</li> <li>• Other countries that had new competition reforms and developments recently: UAE, Kuwait, Qatar, and others</li> </ul>
<b>Session IV</b>	
<p>13:30 – 14:00 EET</p> <p>Session Chair: Dr. Mahmoud Momtaz, Chairman Egyptian Competition Authority</p>	<p><b>Discussion &amp; Closing Session</b></p> <p>In this session participants get the chance to discuss their thoughts on their new learnings; identify best practices; develop recommendations for projects, strategies, and actions plans; share their visions for the upcoming year; form cross-border initiatives; and agree on some milestones for the near future.</p>

## ANNEX 3: LIST OF PARTICIPANTS

### A. Member Countries

#### **Algeria (No show)**

Mr. Mohamed Tayab Medjahed  
Permanent Member  
Algerian Competition Council

#### **Egypt**

Mr. Mahmoud Momtaz  
Chairman  
Egyptian Competition Authority  
Cairo (ECA), Egypt

Mr. Sherif Aboualam  
Investigation Division Head  
Egyptian Competition Authority  
Cairo (ECA), Egypt.

Mr. Mohamed Baroudy  
Investigation Division  
Egyptian Competition Authority  
Cairo (ECA), Egypt.

Ms. Marwa Moussa  
Head of international relations  
Egyptian Competition Authority  
Cairo (ECA), Egypt.

#### **Iraq**

Mr. Tahseen Mahmoud Muthana  
Head of market and private sector section  
Ministry of Planning

#### **Jordan**

Mr. Jamil Zayed  
Director of Competition Directorate  
Ministry of Industry, Trade and Supply

#### **Kuwait**

Mr. Ali Al Arbash  
Head of Economics Department  
Competition Protection Agency

Ms. Shurouq Al Najdi  
Statistics Expert  
Competition Protection Agency

Mr. Nawad Al Sabah

#### **Lebanon**

Ms. Marlene Nehmeh  
Head of Legal Studies Department  
Ministry of Economy

#### **Libya**

Mr. Ibrahim Ali  
Chairman  
Libyan Transparency Association (LTA)

#### **Mauritania (No show)**

Mr. Cheikhna Chavei  
Head of the Regional Programs  
Department at the Strategies and Policies  
Department  
Ministry of Economy and Industry

Mr. Moustapha Moloud  
Director in the ministry of Economy and  
Promotion of Productive Sectors

#### **Morocco**

Mr. Hassan Abouabdelmajid  
Vice President

Conseil de la Concurrence du Maroc

**Oman**

Ms. Marwa Rashid Khamis Al Alawi  
Legal researcher  
Ministry of Commerce, Industry and  
Investments Promotion

**Palestine**

Mr. Jamal Abu Farha Director  
of Competition Ministry of  
National Economy

**Qatar**

Shiekh Fahad Abdulrahman Al-Thani  
Head of the Competition Complaints  
Examination and Follow-up Section,  
Competition Protection Department,  
Ministry of Commerce and Industry

**Saudi Arabia**

Dr. Abdulaziz Bin Abdullah Al-Zoom  
Governor and Vice-President  
General Authority for Competition

Mr. Hammoud Al-Otaibi  
Director of the Legal Department  
General Authority for Competition

Mr. Mohammed Fahad

**Sudan**

Ms. Mahasin Ali Yagoub Nozal  
Director General of the Greater Free Trade  
Arab Agreement  
Ministry of Economy and Industry

**Somalia**

Mr. Abdisamad H. Ahmed (Qorane)  
Director of the Climate change

Directorate of the Environment and  
Climate Change

Office of the Prime Minister  
Federal Republic of Somalia

**Syria**

Mr. Majd Merza  
General Manager  
General Commission of Competition and  
Anti-Monopoly in Syria

**Tunisia**

Mr. Ridha Ben Mahmoud  
President of Tunisian Competition Council

**United Arab Emirates (No show)**

Mr. Marwan Al Sboosi  
Director of Competition and Consumer  
Protection

**Yemen**

Ms. Gharam Aman  
Director General  
General Department of International Trade  
Relations  
Foreign Trade Sector  
Ministry of Industry and Trade  
Republic of Yemen

Mr. Nabil Mansour Al Abasi  
Assistant Director General of the  
Minister's Office  
Ministry of Industry and Trade

**B. Experts**

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Acting Head of Supervision and  
Enforcement Department V  
Turkish Competition Authority

Mr. Alexandre Barreto de Souza  
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Ms. Carolina Andrade  
Chefe da Assessoria Internacional  
CADE- Brasil

Mr. Daniel Haar  
Chief of the Appellate Section  
Antitrust Division United States  
Department of Justice

Mr. Hardin Ratshisusu  
Deputy Commissioner  
South African Competition Commission

Mr. Majid Charania Director of  
Compliance Canadian  
Competition Bureau

Mr. Rodrigo Rios  
Executive Director of Regulatory Analysis and  
Collaboration with the Public Sector General  
Directorate for Advocacy – COFECE, Mexico

Ms. Juliana Latifi  
Chairwoman  
Albanian Competition Authority



## **OECD**

Mr. Antonio Capobianco Acting  
Head of Division Financial and  
Enterprise Affairs Directorate,  
Competition Division

Ms. Lynn Robertson Manager,  
GFC, LACCF Competition  
Expert Competition Division,  
DAF OECD

Ms. Rebecca Lambert

Ms. Erica AGOSTINHO

Ms. Cristina Volpin

## **UNCTAD**

Ms. Teresa Moreira  
Officer in Charge  
Division on International Trade and

### **C. Participants from over the world**

Mr. Osman Tan Catalcali  
International Relations Coordinator

## Commodities

Ms. Ebru Gokce Dessemond  
Legal Officer  
Competition and Consumer Policies  
Branch  
Division on International Trade and  
Commodities

Ms. Akari Yamamoto  
Competition expert  
Japan Fair Trade Commission  
Competition and Consumer Policies  
Branch Division- UNCTAD.

Ms. Elona Lazaj  
Assistant – UNECA&ESCWA Portfolios UN-  
DA COVID SME Surge Project Competition  
and Consumer Policies Branch  
Division on International Trade and  
Commodities

Department of External Relations,  
Training and Competition Advocacy  
Turkish Competition Authority

Mr. Sayed Badawy  
League of Arab States (LAS)

Mr. Tareq Sadeq

Ms. Ana Vich  
Advisor in CNMC- Spain

Mr. Andrea Minuto Rizzo  
Head of International Affairs  
Italian Antitrust Authority

Mr. Edgar Jaimes  
International Affairs  
COFECE, Mexico

Ms. Daniela Eleodor  
Competition Inspector  
Romanian Competition Council

Ms. Zoe Karathanasi  
Counsellor

Ms. Molly Askin  
Counsel for International Antitrust

#### **D. ESCWA Staff**

Dr. Rola Dashti  
Under-Secretary-General  
Executive Secretary  
UNESCWA

Mr. Tarik Alami  
Cluster Leader  
Governance and Conflict Prevention  
ESCWA

Ms. Nathalie Khaled  
Economic Affairs Officer  
ESCWA

Federal Trade Commission

Permanent Delegation of Greece to the  
OECD

Ms. Rita Wehbe  
Economic Affairs Assistant  
ESCWA

Ms. Loyal Issa  
Staff Assistant  
ESCWA

Laura Rihm  
Research Assistant  
ESCWA

Mr. Bilal Farhat  
Research Assistant  
ESCWA

Mr. Karim Al Najjar  
Intern

Mr. Faisal Hasan  
Intern

