

Competition and Law Enforcement in the MENA Region

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Issues to be discussed

1) The role of competition in a market economy

Building blocks of a market economy

The role of Competition and competition law

Macro-economic impact of competition

2) Is competition relevant in the Mena countries

Challenges of competition in small economies

Competition as an import: competition and Islam

Soes and competitive neutrality in the Mena region

Competition and competitiveness in the Mena region

Competition laws in the Mena region

Relationship between Competition authorities and sectoral regulators

Regional cooperation on competition

Competition law as an evolutionary process

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Building blocks of a market economy

Markets are two way roads on which suppliers and demanders travel and meet each other.

A market economy requires **a network of such roads to link supply and demand**, economic entities (**firms**) using these (markets) roads **to deliver goods to consumers** , **fuel (and therefore gas stations)** to allow economic activity to take place, and **rules** to make sure that the activity of the economic agents using the roads promotes welfare and economic growth.

Building the network of markets, so that demand and supply can meet, requires that governments provide the foundations on which these markets can be developed. A number of public policies such as **deregulation, privatization of SOE, development of a business friendly legal environment through regulatory reform** etc... contribute to building the foundations.

Building blocks of a market economy (II)

To use the market system we need producers willing and able to get to the consumers and to satisfy them. This often requires the government to **restructure the economy** so that firms will be **large enough and/or efficient enough** to take advantage of the market opportunities **and flexible enough** to answer consumers demands in a meaningful way. In the short run this may also require the government to **direct resources toward certain sectors through a variety of industrial policy instruments**.

Of course for firms to be in a position to deliver to consumers what they want they must have **access to fuel (ie investment money and profits)**. Governments may use their influence over the financial sector to channel money in certain industries. They may also give tax incentives for domestic firms. Governments may also try to **attract foreign investment** in certain sectors through a variety of devices (**liberalisation of FDI, tax incentives etc...**).

Building blocks of a market economy(III)

Once the network of markets allowing producers and consumers to meet is established, and once firms have the incentive and the ability to deliver goods to consumers, we have the **prerequisites for a meaningful market economy** (one that will grow over time).

However, we have not solved all problems.

We must make sure that traffic on our economic roads is both intense and orderly.

We do **not want to see the big trucks of the large firms pushing the small cars of the less powerful firms out of the way.**

We do **not** want to **see** the cars **running over the pedestrians.**

Also, **we want our infrastructure to be used as much and as intensively as possible.** At the same time we do not want the traffic to be so clogged that nothing can move and that goods do not get in a timely fashion to consumers.

Building blocks of a market economy (IV)

To make sure that the **(market) roads are used as intensively as possible**, governments allow foreign firms to use them by opening their economic system through **trade liberalization measures**.

To make sure that big trucks do not push small cars out of the way or run over pedestrians, **we must establish a traffic regulation** prohibiting certain practices by firms which harm competition or their competitors (**competition law**).

We must also establish a traffic regulator (**competition authority**) and we must make sure that the regulation is enforced.

Building blocks of a market economy (V)

Thus:

Deregulation

Privatization

Industrial policy

Creation of a business friendly environment (legal reform and financial markets)

Foreign direct investment liberalization

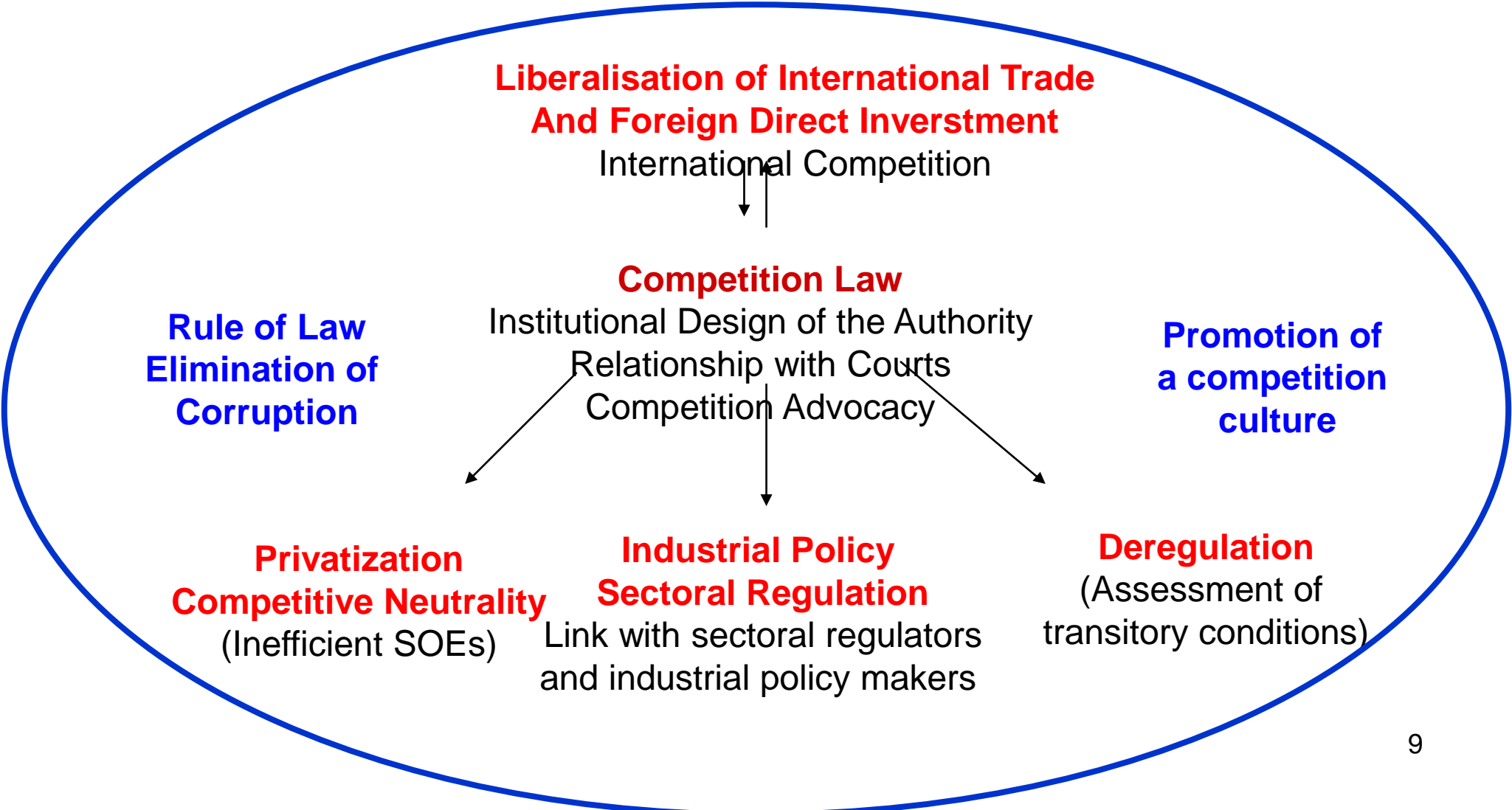
Trade liberalization

Competition policy

are complementary instruments of a market reform policy

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Competition law and competition policy



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Economic Underpinnings of Competition



Market economy: the dual role of the price system:

- relative prices and profits as determinants of consumer behaviours
- prices and profits as determinants of investment and production



The dilemma: how to make economic freedom compatible with economic efficiency ?



Consumer:

Given my income, the price of fish and the price of bread I will not buy more than two loafs of bread par week.

If I could buy bread at a lower price, I would buy more



High price of bread

High profit in bread making



The dual role of the price of the price system

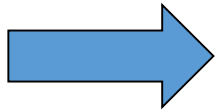
Producer:

Given the price of bread I make a large profit when I produce bread. I do not make so much profit on pastries. To make more money I will reduce the quantity of pastries and increase the quantity of bread.

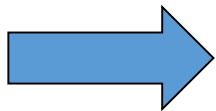
The role of competition in market mechanisms



Competition forces firms to reduce their cost to remain competitive



Competition forces firms to reduce their profit margins to the minimum and pass on their efficiency gains to consumers



Competition pushes firms to innovate



Competition will not prevail spontaneously



Powerful lobbies try to get **legal protection** from competition (ex agriculture in Europe, lawyers, cement manufacturers etc)



Firms try to **avoid competing** in order to maintain their economic rent. They merge or fix price and market shares.



Monopolistic firms or cartels engage in **exclusionary tactics** to eliminate their weak competitors.



Exclusionary practices



Examples: predation, eviction, raising a rival's cost, exclusive vertical agreements (in some cases)

Exploitative practices



Examples: price fixing, market sharing, bid-rigging, exchange of information, abusively high prices (in some jurisdictions)

Suppressing competition



Example: anticompetitive mergers, killer acquisitions

Direct and indirect impact of anti-competitive practices or transactions

| | |
|------------------|-----------------------------------------------------------|
| -Final Consumers | Welfare Loss for Consumers |
| -Competitors | Loss of Economic Opportunities |
| -Customers | Loss of Competitiveness for Downward Sector |
| -Suppliers | Loss of Economic Opportunities Loss of Competitiveness |

Competition law is the legal instrument to ensure that competition prevails where it can play a useful role



Prohibition of anticompetitive agreements between firms (horizontal or vertical)



Prohibition of abuses of monopolies or dominant positions



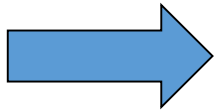
Merger control



State Aid Control (in some countries)

But there is no « one size fits all » competition law.
The law must be adapted to the level of economic development,
the specificity of the legal system, the socio-political circumstances
of the country, etc...

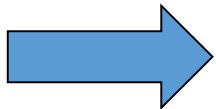
Direct benefits from competition



Protects the standard of living of citizens



Prevents abuses of market power and guarantees economic freedom



Forces firms to be as efficient as possible



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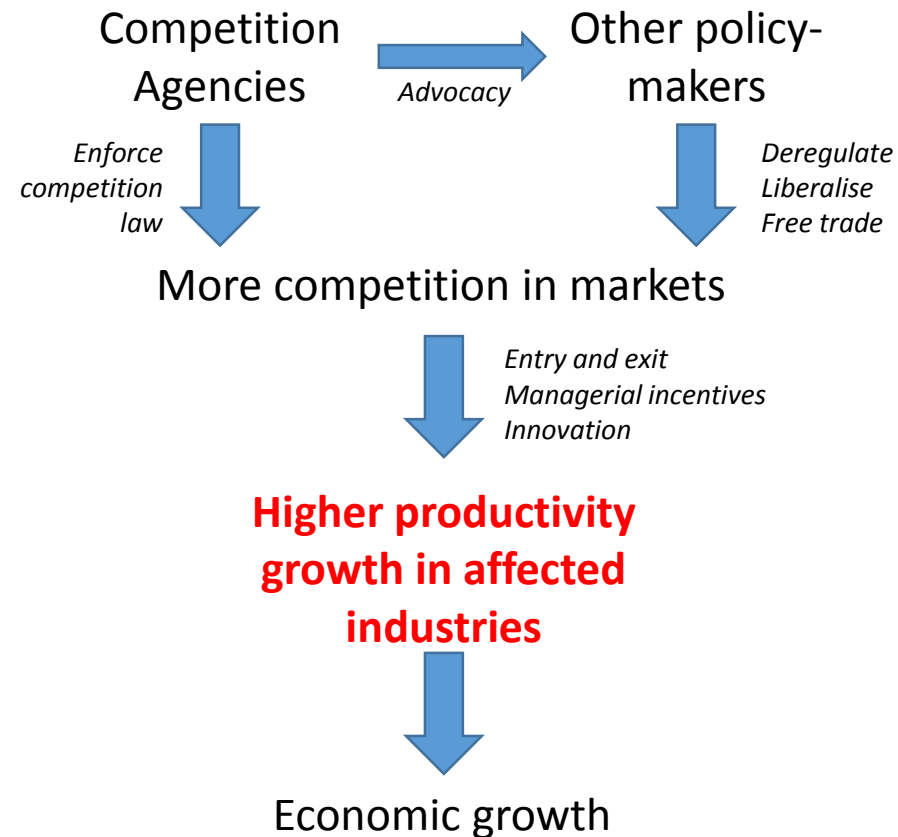
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Macroeconomic benefits from competition

Competition and productivity growth

It can be hard directly to measure the effect of – for example – competition law on economic growth. But there is solid evidence in support of each of the relationships shown below.



Link between competition and productivity

First, productivity can grow due to changes within existing enterprises, such as the introduction of new technology and organisational change. For convenience, we call this internal restructuring.

Most micro-level productivity studies emphasise this mechanism focussing, for example, on the contribution of downsizing (Oulton, 1999), new technology and organisational change (Gregg, Machin and Metcalf, 1993, Haskel and Szymanski, 1997) and increased competition (Blanchflower and Machin, 1996, Nickell, Wadhvani and Wall, 1992, Nickell, 1996).

The **second** source of productivity growth **is the process of market selection whereby low productivity establishments exit and are replaced by higher productivity entrants, while higher productivity incumbents gain market share.**

Richard Disney, Jonathan Haskel and Ylva Heden, Restructuring and Productivity Growth in UK Manufacturing, *The Economic Journal*, 113: 666–694.

Competition, intellectual property and innovation

A connection between competition and innovation appears when the strength of intellectual property is also considered.

In countries with strong intellectual property protection, firms facing competitive rivals innovate more than monopolies (although after such competition a firm may of course end up with a monopoly through a patent).

Empirical studies done by the OECD have found a negative correlation across national economies between the level of anti-competitive product market regulation and innovation.

Of the many policy levers studied, **reducing anti-competitive regulation was found to be the second most powerful incentive to raise the level of business R&D spending.**

Competition and Investment

Both bottlenecks related to insufficient respect for the rule of law and weak competition in local markets, reinforced by uneven application of bureaucratic red-tape and of competition rules to all economic actors in the market, are profoundly damaging to any country's investment climate. In these critical areas requiring improved governance and more effective institutions.

Competition and economic growth

Because more competitive markets result in higher productivity growth, policies that lead to markets operating more competitively, such as enforcement of competition law and removal of regulations that hinder competition, will result in faster economic growth.

Some studies have also directly tried to relate pro-competitive policies such as competition law or deregulation to the level of economic growth of the national economy.

Disentangling the effects of these policies from all the other factors affecting growth is hard, but these studies confirm the positive relationship between competition policy and growth.

Competition and economic growth

As per the effect of competition policy rules on economic growth **in MENA countries, competition measures exert a positive and statistically significant effect on the growth of the trend component of GDP**, while its effects on the cyclical component is rather insignificant.

Jala Youssef and Chahir Zaki, BETWEEN STABILIZATION AND ALLOCATION IN THE MENA REGION: ARE COMPETITION LAWS HELPING?, Economic Research Forum, Working Paper Series, 2019

Competition and poverty reduction

Poor people interact with the economy in a number of ways. **Governments must take responsibility for helping markets to function effectively for the poor, so that they enable choice, encourage innovation and provide goods and services to consumers at the lowest possible prices.**

The poor tend to be less mobile than the rich. Hence **local conditions of competition are important.** Fighting anticompetitive practices at the local level is important. Local retail trade in particular must deliver goods as efficiently as possible to local communities.

Many of the poor are small entrepreneurs, including farmers. They will benefit if entry and exit barriers are low, if they can purchase inputs at fair prices, and if they are able to sell their output on fair terms. They need a level playing field.

Many of the poor are also recipients of government-funded services. Bid-rigging for government provided infrastructure and services appears to be common, and diminishes what governments are able to provide for their people from any given budget allocation (e.g. four new schools instead of five).

WHY IS COMPETITION IMPORTANT FOR GROWTH AND POVERTY REDUCTION? Nick Godfrey, OECD Global Forum on International Investment VII

Pro-competitive reforms and output growth in OECD countries

| | | | |
|------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|-----------------|------------------------------------------------|
| Adopting best-practice regulation to support competition | Lower prices Innovation | Enhanced Output | + 1% US + 5.6% Japan, Spain (OECD, 1997) |
| Adopting best practices for: Tariffs Foreign Investment Domestic trade | Lower prices Increased Investment Increased Trade Innovation | Enhanced Output | 3 to 5% (OECD, 2005a) |

- 1) OECD (1997), *The OECD Report on Regulatory Reform*, vol. 2, Thematic Studies, Paris
- 2) OECD (2005a), "The benefits of liberalising product markets and reducing barriers to international trade and investment in the OECD", OECD Economics Department Working Papers, no. 463, Paris

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Types of Competition Challenges in Small Economies

- Challenges due to the small size of the **country** and its low level of development
- Challenges due to the small size of the **economy** (challenges to competition)
- Challenges due to the small size of the **competition agency** (challenges to enforcement)

Challenges Due to the Small Size of the Developing Country

Small business elite, **no clear distinction between political and business elites** Hence governance problems, difficulties of separating the interest of the public at large and the interest of special groups.(see the next slides on Castel in Africa).

The smallness of the country often means **severe budgetary limitations** for the Government. Hence it is difficult to get the government to create an independent competition agencies alongside many other agencies. **Temptation to maintain the competition authority within the ministry (without real independence).**

The lack of resources available through the budget (particularly when tax or custom revenues are dependent on volatile foreign trade) may breed **corruption in government** (bid rigging in public procurement markets which will distort competition).

Challenges Due to the Small Size of the Developing Country

Possible mitigating factors

-Necessity to **promote transparency in decision making**. Hence, worth fighting for the ability of the Competition Authority to **make public statements** « proprio motu » on controversial **policy proposals**.

-**Advocacy** to the government and the general public **on the social cost of anti-competitive practices and the benefit of having a competition authority**.

-**Advocacy toward non governmental bodies** (such as the business community, consumer organisations, academics, journalists) to **secure a base of support outside of government**.

-**Careful selection of enforcement cases** at the beginning of the institutions to target the cases which may have the most impact in the general public (ex pharmacies in Chile, bread in Brazil, Cement in many countries, bus, etc...)

-**Focus enforcement on bid-rigging if possible by establishing a working relationship through negotiated MOUS with the anti-corruption body or with the Public Procurement Commission** (see examples of Mauritius, Indonesia etc...)

Challenges Due to the Small Size of the Economy

-Small size of the domestic market

-**Dominance may be more prevalent** (see Minister Ashni Singh of Guyana) and abuse of dominance requires a rule of reason analysis somewhat complex (see yesterday))

- **Foreign entry may not be so easy** for two reasons:

-The small size of the **market** may make it **relatively unimportant and costly** for large transnational firms to get a foothold on the market.

-**Network effects creating a barrier to entry** may also come from the fact that local diversified groups engage in a multiplicity of market and therefore can easily sustain their collusion since each player has many opportunities to punish cheaters in case of explicit or tacit collusion (reference Korean Chaebols)

Challenges Due to the Small Size of the Economy

-Small size of the domestic market

Possible mitigating factors

-**Active policy on the part of the Competition Authority of fighting abuses of dominance by local or international firms** (ex in the telecommunication industry)

- But also intensifying fight against **cartels and concerted practices** as the latter are likely to be prevalent (see various examples)

- **Advocating liberalization of international trade to keep open the possibility of entry.**

Challenges Due to the Small Size of the Economy

-Small size of the domestic markets

Possible mitigating factors

- Advocacy of **regulatory reform to ensure ease of foreign direct (greenfield) investment**
- Relaxation of rules on vertical restraints and exclusivity requirements (rule of reason approach) as they may be a way for foreign producers to access relatively cheaply the domestic market and increase competition (see yesterday)
- Reinforcement of **rules against cross directorships or cross holdings** (see policies in Japan or Korea along these lines)
- If possible use of **merger control against foreign transnational firms acquiring domestic firms to eliminate local competitors**

Challenges due to the Small Size of the Competition Authority

- Small size (and lack of experience) of the competition authority
 - **Lack of budgetary resources**
 - **Lack of human resources** (lawyers and economists)
 - Once the competition authority is being successful, it loses its staff (to law firms); hence **a problem of turnover**
 - **Difficulty in training staff** due to the lack of resources on competition domestically
 - **Difficulty of the competition authority to devote the time and resources necessary to be an active member of the large networks of competition authorities** (ICN, OECD)
 - **Capacity of parties to impose huge costs to the Competition Authority** by making their cases complex

Challenges due to the small size of the competition authority

- Small size (and lack of experience) of the competition authority
 - **Lack of consideration of the competition authority** by multinational firms)
 - **Difficulty of competition authorities to impose structural measures** on transnational anticompetitive mergers **when such mergers have already been accepted in larger jurisdiction**, hence, focus on behavioural remedies (with claim of unjustified interference in market mechanisms by the competition authority of developing countries).
 - **Pressure on the part of the Government to « do something » about the rising prices of essential goods** (such as oil or foodstuff) at the risk of being seen weak or ineffective.
 - **Difficult relationship with the Appellate Judges**

Challenges Due to the Small Size of the Competition Authority

-Small size (and lack of experience) of the competition authority

-**Limitation of the tools that the authority can use to speed up enforcement.** For example, **leniency programs** may lack credibility with a young agency, or lack effectiveness, since there is **no clear track record of strong enforcement by the competition authority.**

Challenges Due to the Small Size of the Competition Authority

-Small size (and lack of experience) of the competition authority

-Possible remedies

- Build a track record** (on enforcement and advocacy) **as fast as possible**;

- Publish guidelines on the criteria and tests** the Competition Authority is going to use;

- **Careful case selection** as a function of what is feasible (given the resources), what is understandable for the general public, what is likely to stand in court etc.... **Keep it simple and clear**;

- **Resorting to international cooperation for acquiring qualified staff** (lots of former officials willing to work part time or full time in new jurisdictions); large pool of knowledge available in international organisations (OECD, ICN, IBA, IADB, World Bank, UNCTAD, WTO);

Challenges Due to the Small Size of the Competition Authority

-Small size (and lack of experience) of the competition authority

-Possible remedies

-Develop working relationship with courts;

-Advocacy;

-International cooperation (Peer reviews , Global foras etc....) to promote legislative change domestically.

Competition Advocacy

Habits

Laziness

Misunderstanding

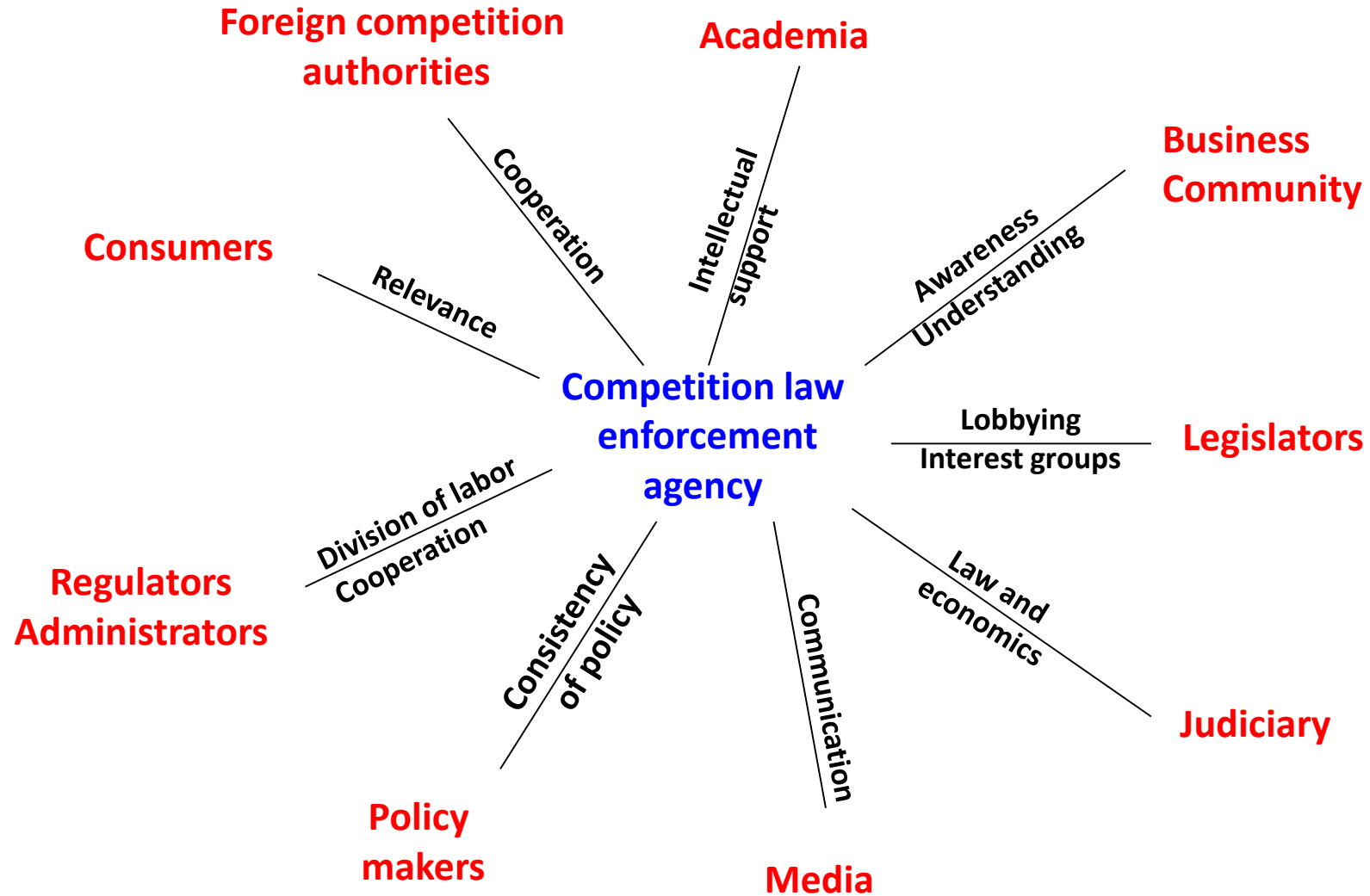


Vested interests

Conflicting political goals

Ignorance

Competition Authority and its Stakeholders



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Competition and Islam

Three key elements

A. The Value of Trade and Competition

Encouraging and engaging in trade or business activity is a fundamental principle in Islam. (...) Islam's recognition of the right to trade includes recognition of the special and important relationship that exists between trade and competition in the market place and between trade law and policy on the one hand, and competition law and policy on the other.

- a) Trade is encouraged and competition must not be restricted;
- b) The state should take an active role in the sphere of trade;
- c) **The freedom to compete is a right that must be safeguarded and upheld so long as it is not abused, which connotes that normally there should be no intervention by the state in the market.**

Competition and Islam

B. Pricing Practices and Policies

It is not a principle of Islam to control prices or regulate market prices constantly, under normal conditions of competition. On the contrary, **Islam favors having a free market system and only allows regulation of prices in cases of market failure.**

In the case of a market failure, Islam lays a duty on public authorities to act for the purposes of putting an end to the suffering of the people.

(...) An important factor behind laying down this duty is the concept of consumer welfare and **the need to maximize consumer welfare. This fundamental idea was articulated by several prominent Islamic scholars, who argued that the basis of the state's power of intervention in the market place to regulate the price is a fundamental principle of Shariah, namely that such intervention is necessary in special circumstances in order to eradicate the suffering of the people.** One such scholar is Imam Ibn taimiyah who commented that in cases where the process in the market is not fixed at a reasonable level to fulfill the need of the great public by the operation of normal principles of marketing.

Competition and Islam

C Abuse of Dominance of Market Power

The undesirability and harmful effects of abuse of market power by firms or collusion between firms are well-articulated ideas in Islam. One of the fundamental Islamic ideas of economic nature revolves around the need to fight and unearth such harmful practices. **The adverse consequences which may follow from situations in which a market operator colluding to fix the price, share markets or limit trading in a certain product have long been recognized in Islam.** Indeed, Islam was fairly quick in realizing the harmful effect of such practices and for this reason important Islamic principles were developed for the purposes of dealing with such cases.

Among these is **the principle of Hijr which is a power reserved to the state for the purposes of restraining anti-competitive behavior and practices.** In a modern law context, it would be essential for a state to implement this principle as a precondition for the principle to be used in an effective way. However, the deployment of the tool in practice is not supported by the necessary legal framework for its implementation.

Islamic doctrine and competition law and policy

Several basic Islamic principles can be applied to the promotion of promoting fair-trading and healthy competition.

The doctrine of Maslaha refers to the **need to balance between private interests and the larger public interest**, which is congruent with the (maqasid) objectives of the shariah

An example that can be found in the traditional fiqh book is that sale by a city dweller to a desert dweller. In Islamic time it was common for city merchants (someone who is knowledgeable of real market prices) to take advantage of the ignorance of desert dwellers (likely to be ignorant of these prices) and buy their goods at low price or sell the goods at unfairly high prices.

The prophet prohibited this kind of sale in his statement. **“A city dweller should not sell things to a desert dweller, leave people to obtain their livelihood from each other by the grace of God”**. The point behind interdicting this sale is safeguarding the interest of the Muslim community.

Islamic doctrine and competition law and policy

Sadd Al-Dharai (blocking the means to an evil deed)

The principle of sadd al-dharai' is **the basis for the Prophet prohibition on monopoly or" ihtikar"**. Ihtikar means a single person or company being the only producer of a commodity either goods or service of which there is no close substitute available in the market.

This prohibition refers to one hadith where the Prophet states that Allah will curse a person who monopolise others.

In another hadith reported by al-Tirmidhi, Prophet declared that: "**He who monopolizes is not but a wrongdoer"**

Islamic doctrine and competition law and policy

Iktinaz (case where shortages are created by holding large stocks of goods in warehouses and withholding them from sale)

In hadith narrated by Ibnu Majah the Prophet said: **“He is a criminal who hoards grain to sell it at higher price”**. In another hadith he said: “He also keeps back grain from sale for forty days only to sell it at higher prices, sale it that such a man is not aware of the existence of God or that God has cut himself off from him”

As a comparison, we may refer to the Article 102 of the Treaty of Rome..

Islamic doctrine and competition law and policy

su isti'mal al-haq (prohibition of any exercise of rights that lead to the infliction of real harm to others)

Consistent with article 102 and abuse of dominance to consumers or competitors.

ZULKIFLI HASAN , ISLAMIC PERSPECTIVE ON THE COMPETITION LAW AND POLICY

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The role of SOEs

SOEs are major contributors to both developed and developing economies. From a global perspective, SOEs are everywhere. They are found in industries as diverse as manufacturing, utilities, banking, energy, telecommunications, natural resources, and services (tourism, for example). According to the International Finance Corporation (IFC, 2018), SOEs account for 20 percent of global investment and contribute up to 40 percent of domestic output. SOE contributions are more prominent in developing economies, including in the Middle East and North Africa (MENA). I

In MENA, SOEs are fundamental to the economic architecture of the region. They operate in a range of sectors—such as hydrocarbon and electricity, transportation, telecommunications, postal services, manufacturing, finance, and real estate (see Table II.4).

The importance of SOEs in their economies makes it imperative that countries, including those in the MENA region, give SOE reform first order importance to unlock the full value of these enterprises to the economy and to the society at large. **Strengthening corporate governance is central to any reform of SOEs, and the push to undertake that task has gained momentum over the last two decades.**

SOEs in the Mena Region

High level of state ownership is characteristic of nearly all Arab countries, oil-exporting and importing, in economies as diverse as Saudi Arabia, Syria, the United Arab Emirates (UAE) and Egypt.

While significant state ownership is not unique to the MENA region, the complex structures of ownership, including an absence of centralized or coordinated ownership entities and multiple sovereign investors are more region specific.

In the UAE for instance, state ownership is exercised through multiple investment vehicles, including the Investment Corporation of Dubai , the Emirates Investment Authority and Mubadala, as well as through state-owned banks such as Abu Dhabi Commercial Bank (ADCB) and National Bank of Abu Dhabi (NBAD).

Based on Alissa Amico: The "invisible hand" of the state in MENA economies ; A close look at the role and impact of state ownership in the region reveals that the state is not always — as is commonly assumed — an inefficient owner.

SOEs in the Mena Region

The success of state ownership in the Arab world has been highly uneven.

While **many Algerian, Tunisian and Egyptian SOEs are unprofitable, the same cannot be said of all Moroccan, Emirati or Saudi state-owned firms.**

For instance, Saudi SOEs such as Ma'aden and SABIC have grown to be large and successful multinational enterprises, while undertaking social mandates on behalf of the state.

in a few sectors such as **telecom, state-owned incumbents have generally performed well despite intensive competition.**

For instance, **Saudi Telecom competes with Mobily , which is owned by the Emirati state-owned Etisalat.** Both enterprises are listed on the Saudi Stock Exchange, Tadawul, and are subject to the same corporate and governance regulations as private companies. Likewise, **partially state-owned Batelco in Bahrain competes with Zain, Viva and other service providers.** The telecom sector is indeed **a success story** in most countries of the region, **in large part owing to the establishment of sectoral regulators which have been instrumental in fostering a level of competition higher than in other sectors.**

SOEs and competition in the Mena Region

MENA **SOEs generally do not live in a world of perfect competition** and in many instances are **subsidized** — often in an ad hoc manner — which does not facilitate budgetary stability or transparency.

A number of countries such as the UAE explicitly exclude SOEs from the remit of the Competition Law which would normally facilitate competition between SOEs and private firms.

In Egypt, launching investigations against SOEs is difficult and actual cases investigated by the Competition Authority are rare.

In addition, **competition authorities in the MENA region are not empowered to ensure the presence of a level playing field between SOEs and their private competitors.**

Role of SOEs in the Mena Region

Some SOEs such as Emirates National Oil Company (ENOC) or Saudi Aramco are **strategically important** companies and a major source of fiscal revenues.

Others such as Al Omrane in Morocco **or Électricité du Liban in Lebanon** are charged with **important social objectives** such as provision of subsidised housing in the case of the former and electricity in the case of the latter.

Even in wealthier Gulf states, **SOEs perform extra-commercial functions on behalf of the state** by building stadiums, training companies in their value chain and developing rural areas.

Across the region, whether in Iraq, Tunisia or Kuwait, SOEs are **resistant to re-structuring due to employment obligations or other entrenched interests**.

Lack of competitive neutrality Ex Tunisia

in 1962, the Tunisian Government decided to nationalize the generation, transmission, distribution, import and export of electricity and gas entrusting these activities to the Société Tunisienne de l'Electricité et du Gaz - STEG under the guidance of the Ministry of Industry.

The monopoly of generation was ended in 1996 (Law No. 27 of April 1st 1996) opening it to independent power producers while leaving to STEG the role of single buyer and the activities of transmission and distribution (8 Decree No. 8 of April 3rd 1962). STEG is the dominant producer of electricity.

It controls the Tunisian grid, holds a monopoly on electricity transportation and distribution; it is a member of a number of advisory instances which establish the terms of concessions for new projects or select the operators of these projects; it also sets the interconnection technical and financial conditions for operators who need to connect to the grid.

Competitive neutrality

In the MENA region there are as many failures to achieve competitive neutrality at the broad level sectoral or multi- sectoral level as at the firm level.

Tax neutrality: Public and private business activities should be treated equally under tax law. In Algeria, Iraq, Jordan, Kuwait, Libya, Qatar, Syria, Saudi Arabia, Tunisia, and Yemen, SOEs are theoretically subject to the same tax system as private companies. Yet, exemptions from corporate income taxes persist.

Non-incorporated operations in Egypt and Kuwait, are tax exempt—for example, when the state offers services directly through a ministry. In Lebanon and Libya, SOEs are exempt from the income tax law. SOEs in the oil sector enjoy tax privileges in Bahrain and Oman.

Competitive neutrality

Debt neutrality and outright subsidies: Access to credit is important to most business enterprises and if the playing field is to be level, private companies and SOEs must have equal ability to obtain financing and at the same terms. In most MENA countries,

SOEs tend to enjoy debt financing on preferential terms and can get subsidies unavailable to private companies.

In Jordan, the Government provides support to key SOEs, mainly to the National Electrical Power Company (NEPCO) and the water authority, including bond guarantees for NEPCO since 2011 to ensure continuous power supply.⁹⁷ In the UAE, reports show that selected SOEs have received capital infusions and preferential treatment from the government. Lack of rules on subsidy design to minimize competition distortions can further exacerbate potential market distortions.

Competitive neutrality

Regulatory neutrality: Public and private business should, as much as possible, conduct their activities under the same regulatory environment to avoid regulatory advantages for SOEs that distort competition.

Nevertheless, **Algeria, Djibouti, Oman, Qatar, and Saudi Arabia exclude SOEs from the competition law. Others grant exemptions.** These exemptions may be on case-by-case, as in Egypt and Tunisia⁹⁸; target certain categories of SOEs, such as utilities in Egypt, Kuwait, Syria and Tunisia; or even, as in the UAE, cover total sectors such as telecommunications, financial services, and oil and gas.

Other economy-wide regulations that offer differential treatment to SOEs include commercial and company laws in Tunisia; audit law in Saudi Arabia; and bankruptcy laws in Kuwait. In addition, sector-specific regulation also provides exemptions to SOEs—including electricity in Morocco, oil and gas in Bahrain, and banking in Lebanon. In some sectors, SOEs enjoy legal monopolies—for example, port operations in Kuwait and air transport and telecom in Egypt.

Competitive neutrality

***Regulatory neutrality:* Public and private business should, as much as possible, conduct their activities under the same regulatory environment to avoid regulatory advantages for SOEs that distort competition.**

Moreover, public bodies often act both as regulators and operators: through regulatory agencies that provide services themselves or through SOEs with regulatory powers.

For example:

- In Lebanon, the Ministry of Telecoms provides services even though it also acts as a regulator.
- In Morocco, the SOE in charge of developing and managing highways is also simultaneously an owner, administrator, manager and supplier.
- In the UAE, the publicly owned electricity supplier—responsible for generation, transmission and distribution—can also set prices and connection fees.

Competitive neutrality

Public procurement: To ensure the level playing field and also to facilitate the entry of competitors in the public contract market, procurement policies and procedures should be transparent, competitive, and non-discriminatory, especially when it concerns the access of SOEs to public contracts and their treatment during public procurement.

In principle, SOEs should receive no preferential treatment and participate in bids on government contracts on an equal footing with private enterprises.

But many procurement laws in the MENA region reduce the competitive nature of tenders—such as by requiring national content, as well as giving explicit preferences, issuing overall exemptions from the public procurement rules or granting specific benefits to SOEs.

In Egypt, the 2018 public procurement law does not cover SOEs and permits direct agency-to-agency contracting with proper approval. In Jordan, Qatar, and the UAE, preference is given based on local components or nationality. In Qatar, Qatar Petroleum is excluded from the tender law. In Jordan, each SOE has its own tender rules, and in Algeria SOEs are allowed to develop their own tender rules in accordance with freedom of access, equality and transparency principles.

Issues to be discussed

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Building blocks of a market economy

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Macro-economic impact of competition

2) **Is competition relevant in the Mena countries**

Challenges of competition in small economies

Competition as an import: competition and Islam

Soes and competitive neutrality in the Mena region

Competition and competitiveness in the Mena region

Competition laws in the Mena region

Relationship between Competition authorities and sectoral regulators

Regional cooperation on competition

Competition law as an evolutionary process

Making MENA Markets Competitive

Economies in the Middle East and North Africa (MENA) have two faces.

One is the concentrated and sclerotic formal sector, often dominated by state-owned enterprises (SOEs) and politically connected private companies. **That economy keeps out competitors, misallocates resources, and generates excessive profits for participants.**

The official economy coexists with **an informal economy in which most of the population toils in relatively small operations at low wages and with few social protections.**

A powerful way to **invigorate MENA economies** would be **to inject more competition**. That would create a more efficient official economy and reduce informality.

Making MENA Markets Competitive

Market entry by new firms and the exit of inefficient companies are potent sources of competition. But in the MENA region there are often sizeable barriers that prevent new firms from entering existing markets and protections for inefficient ones.

Ease of entry and exit is what determines contestability, and it is the result of the interplay between the available production technology and the regulatory framework in place

Moreover, **when state-owned enterprises (SOEs) are present, it is fundamental that they do not benefit from any type of advantage over their private competitors—whether by obtaining specific inputs (physical or financial) or by receiving easier market access.** In brief, the institutional framework must be geared towards the principle of competitive neutrality—that all enterprises face the same set of rules whether they are public or private and that government involvement or ownership of a firm confers no special advantage.

Competition laws in the Mena region

In the MENA region, **four countries lack antitrust legislation—Iran, Lebanon, Libya and West Bank and Gaza—while Bahrain and Iraq have no competition authority to enforce their law .**

Extensive information exists about the competition frameworks of seven MENA countries—Algeria, Egypt, Jordan, Kuwait, Morocco, Oman, and Tunisia.

The evidence shows that they lack key elements of effective regimes, placing substantial costs on their economies. In addition, weak enforcement is a major problem.

Making MENA Markets Competitive

For countries in the Middle East and North Africa (MENA), **export-led development strategies have had little success, although instruments of the earlier import-substitution strategy—such as state-owned enterprises, high tariffs, and subsidies—have survived.**

Instead of fostering domestic production as Prebisch envisioned, however, these legacies have created a crony-capitalistic monopolization of imports that has limited the level of competition in many sectors of the economy and furthered the dependence on imports.

Episodes of liberalization ended up transferring ownership from state to private monopolies. What is more, competition authorities—still in their infancy in MENA—have had little space to level the playing field among private sector actors and stop collusion among companies, including foreign and state-owned ones.

Besides tariffs, which are taxes on imports, restrictions can include quotas (limits on import quantities) and constraints on the purchase and sale of foreign currency. In MENA countries, these barriers have had the detrimental effects of fostering an import lobby that distorts market incentives, of reinforcing an inefficient subsidy-based private sector, and of causing higher prices for tradable goods. Several issues emerge from exclusive import licenses:

Making MENA Markets Competitive

Lack of contestability in MENA is arguably a main culprit in the slow pace of technology adoption that has historically characterized the region, which significantly hurt its growth performance. Without substantial reforms to encourage competition, MENA countries risk missing the opportunities offered by digitization and the so-called Fourth Industrial Revolution.

Unfortunately, **MENA is not well positioned to adopt new technologies and innovate.** Arezki and others (2019) used empirical evidence on past and current adoption of general-purpose technologies (GPT), to show that MENA does not perform well in technology adoption. **Based on seven measures of technology, new and old, MENA's pace of adoption is always slower than the other countries with similar incomes.** (...)

The **relatively slow pace of technology adoption in MENA could be explained by barriers to entry** (or lack of contestability) in the region's telecom and finance sectors, the two key general-purpose sectors. With lower contestability there are fewer newcomers to challenge incumbents and push technology adoption.

According to the World Bank's Doing Business 2019 data MENA countries are generally ranked very low in starting a business—for example, Egypt is 109 out of 190; Saudi Arabia, 141; Algeria, 150; Iraq, 155.

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Competition law as an evolutionary process

Competition laws in the Mena Region

| Table | MENA | Competition Laws and | Competition | Agencies | |
|----------------------|------|----------------------|-------------------|---------------------------------------|-------------------------------------------|
| Country | | | Date of enactment | Amendments | Date of creation of Competition Authority |
| Algeria | | Yes | 1995 | 2003, 2008 and 2010 | 1995; no activity 2003–13 |
| Bahrain | | Yes | 2018 | - | no authority |
| Djibouti | | Yes | 2008 | - | 2008 |
| Egypt | | Yes | 2005 | 2010 and 2014 | 2005 |
| Iran | | No | - | - | - |
| Iraq | | Yes | 2010 | - | no authority |
| Jordan | | Yes | 2002 | 2011 | 2002 |
| Kuwait | | Yes | 2007 | 2012 | 2012 |
| Lebanon | | No | - | - | - |
| Libya | | No | - | - | - |
| Malta | | Yes | 1994 | 2000, 2003, 2004, 2011, 2012 and 2017 | n.a. |
| Morocco | | Yes | 2000 | 2014 | 2008; no activity 2014–18 |
| Oman | | Yes | 2014 | 2018 | 2018 |
| Qatar | | Yes | 2006 | - | Yes |
| Saudi Arabia | | Yes | 2004 | 2014, 2019 | 2004 |
| Syria | | Yes | 2008 | - | 2008 |
| Tunisia | | Yes | 1991 | 1995, 2003, 2005 and 2015 | 1995 |
| United Arab Emirates | | Yes | 2012 | - | n.a. |
| West Bank and Gaza | | No | - | - | - |
| Yemen | | Yes | 1999 | - | 2007 |

The independence of competition authorities

In almost all the seven MENA countries, the antitrust agency is separate from any line Ministry. The exception is Jordan, where a Competition Directorate is inside the Ministry of Industry Trade and Supply.

Still there are **many ways competition bodies are weakened**.

In all cases **the President and the board members are nominated by the executive branch and in many countries some seats are designated for specific categories**: high magistrates in Algeria, Morocco and Tunisia; **representatives from the government** in Egypt, Jordan and Morocco; individuals from industry associations in Egypt, Jordan, Morocco, and Tunisia; and from consumer bodies in Egypt and Jordan. The presence of these designees weakens the level of independence of the authorities in MENA.

The **length of appointment varies from two to five years and board members can be renewed at least once** (apart from the industry representatives and the two experts in Tunisia). **In most cases there are no safeguards against politically motivated dismissals, except in Egypt**. Moreover, there are **few restrictions on what board members can do during or after their term ends**. Only in Algeria and Kuwait are board members prohibited from holding other private or public positions, while Egypt is the only country that bars board members from working for companies that were under investigation during their tenure. The cooling-off period in Egypt is two years. Any failure to restrict post-service employment likely reduces de facto independence.

The independence of competition authorities

In Morocco, the government can review merger applications from a “general interest” angle in parallel with the review performed by the Council on the competition impact of proposed mergers.

Government reviews can overturn Council decisions.

In addition, a **subtler form of influence can be exercised through funding decisions**. The executive branch oversees spending, except in Morocco, where Parliament approves the budget.

Independence and accountability and transparency

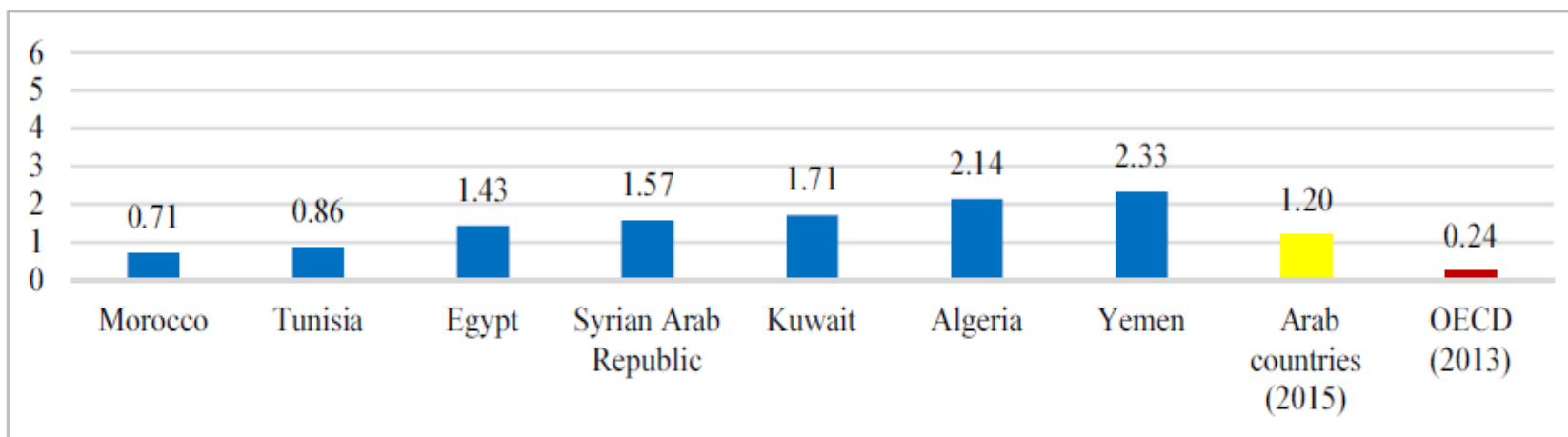
In the MENA region, **procedural safeguards are sometimes incomplete**. For example, in Jordan there are no clear provisions concerning oral hearings and access to the entire case files. Similar issues seem to exist in Oman. Nevertheless, the right of appeal is present in all countries. This means that the final outcome will rest on the quality of the judiciary.

In the MENA countries considered, openness is limited.

Although the publication of decisions and of an annual report is required in all countries, the information is often not made readily available (such as on institutional websites) and when it is, details are so sketchy that the analysis and the motivation underpinning the intervention are unclear. With respect to broader engagement with stakeholders, only Egypt, Jordan, and Morocco have published policy guidelines on topics of interest for antitrust enforcement.

Scope of competition laws in the Mena region

Figure 3. CLP indicator - Scope of action



Source: ESCWA calculations, OECD figures from (Alemani and others, 2013).

Notes: (a) Scale: 0 to 6 from most to least conducive to competition; (b) The result for Yemen is based ONLY on the responses to three out of the four sections of the survey questionnaire: “Competences”, “Powers to investigate” and “Powers to remedy/sanction”; with no responses to the questions in the section on “Private enforcement”.

UAE: Scope of competition law

The actions of **federal and local governments and any state controlled establishments** are **excluded from the application of the competition law**.

-**Small and Medium Establishments (SME)** are **excluded from competition law** as well.

-**Sectors** that are exempted from the scope of competition law include, **telecommunications, financial services, cultural activities (readable, audio and visual), pharmaceuticals, utilities, waste disposal, transportation, oil and gas, and postal service**.

In 2009 the oil and gas sector comprised more than 85% of UAE' economy and with improved diversification, it still constitutes more than 50% of exports. The financial sector comprises 65% of the non-oil sector and telecommunications sector maintains a state controlled duopoly. With major industries and sectors exempted from competition law, the law is rendered insignificant to play a major role in shaping the business environment and the economic future of the country. The benefits of competition law will not be visible, until and unless, the main restriction are lifted and law is allowed to cover the main sectors of the UAE' economy

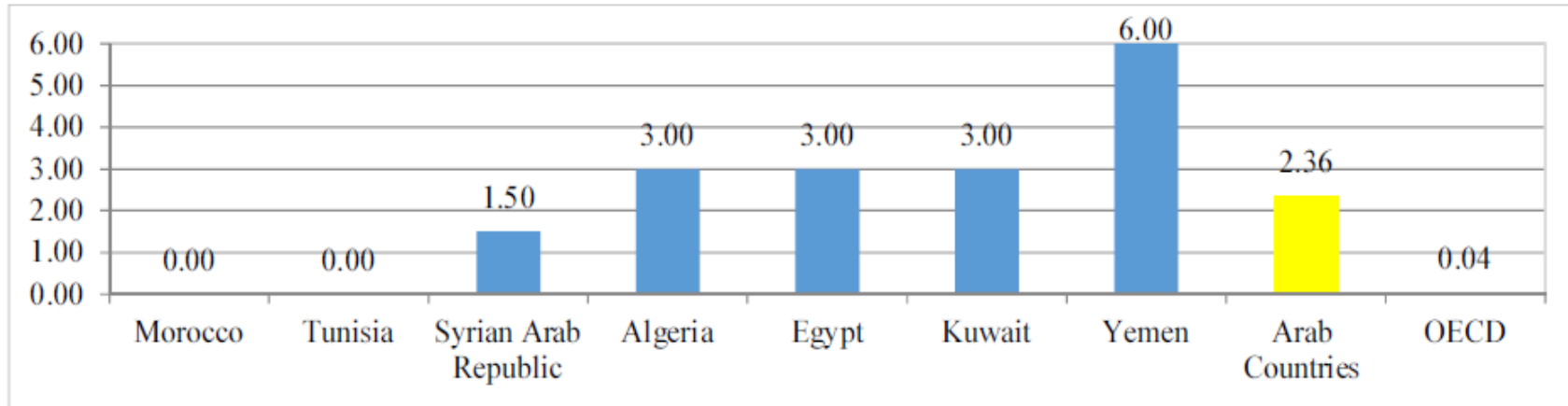
Exemptions from competition law in Jordan

The 2004 competition law exempted the following practices from being considered anticompetitive or abusive to dominant position:

- practices resulting from the implementation of an enforceable law;
- **practices falling within the ambit of temporary measures instituted by the Council of Ministers to deal with exceptional circumstances**, emergency situations or natural disasters;
- **practices exempted by the minister of industry and trade, based on their positive outcomes and the public interest**; and
- exemptions granted to achieve positive outcomes that are in the public interest and which may not be achieved without such exemptions (relevant enterprises should request to be granted this exemption in accordance with a designated form).

Competence of competition authorities in the Mena region

Figure 4. CLP indicator - Competences



Source: ESCWA calculations, OECD figures from (Alemani Alemani and others, 2013).

Notes: Scale: 0 to 6 from most to least conducive to competition.

Authority in charge of enforcement not independent from the executive : the example of Jordan

The Competition Directorate at the Ministry of Industry, Trade and Supply is the Jordanian authority entitled to implement the Competition Law.

The Directorate, in coordination with the concerned authorities, has the following duties and powers:

- contributing to the setting of the competition general plan and legislation and studies relating thereto;
- working to promote, protect and encourage the culture of competition;
- **gathering information to uncover practices that violate the rules of competition;**
- **conducting investigations into those practices it uncovers, or on the basis of complaints and claims that it receives, or those assigned to it by the competent courts; and preparing reports on its findings and presenting recommendations or reports to the minister or the Court, as the case may be;**
- receiving and following up requests for mergers and acquisitions.
- receiving and following up requests for exemption;
- issuing clarifying opinions on matters relating to its activities, either unilaterally or upon the request of the enterprises; and
- cooperating with similar bodies outside the Kingdom

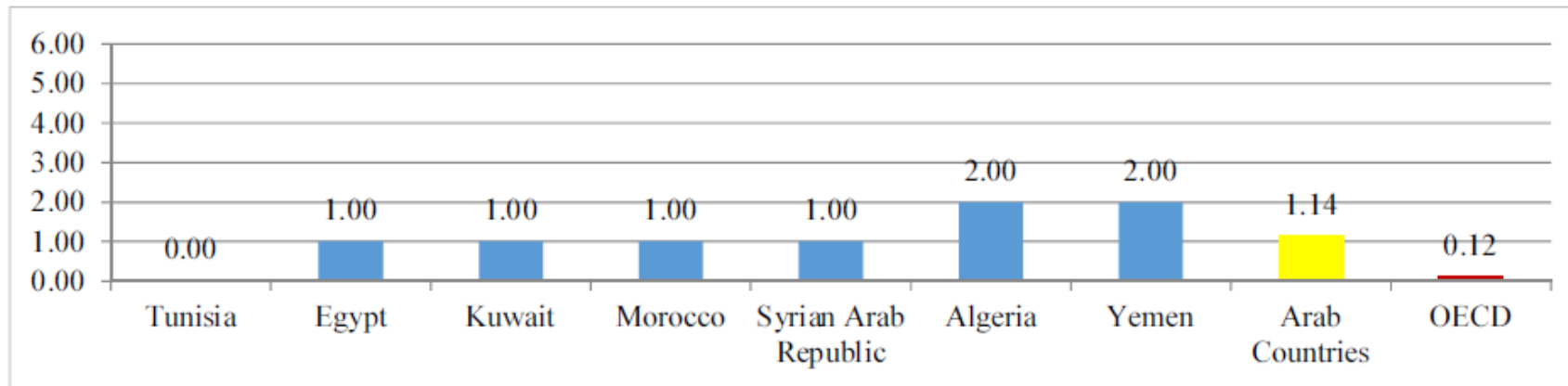
Judicial enforcement of competition law : Jordan

In all instances, the Ministry shall be a party in all competition cases and may submit any studies or comments to the court, and request to continue hearing such cases even where the parties have dropped their case or have settled their dispute, and it may also contest any decisions issued in these cases.

The **Court of First instance may assign the Competition Directorate to carry out the necessary investigations of the statements it has received from the parties, and the Directorate shall submit to it a report thereon within a set period of time.**

Investigatory powers of competition authorities in the Mena region

Figure 5. CLP indicator - Powers to investigate

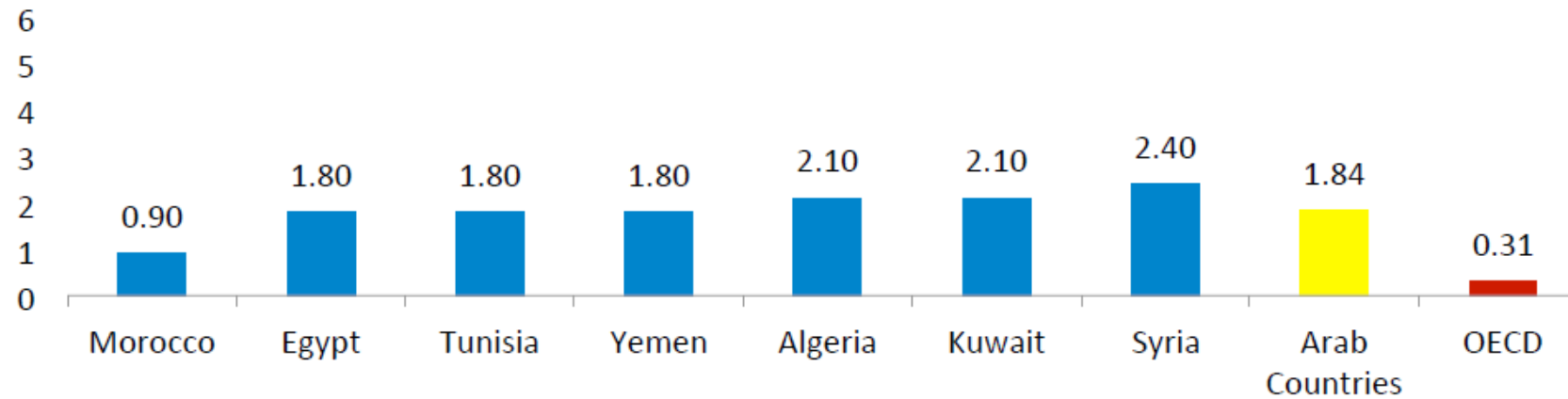


Source: ESCWA calculations; OECD figures from (Alemani and others, 2013).

Note: Scale: 0 to 6 from most to least conducive to competition.

Power to sanction/Remedies in the Mena region

Figure 6: CLP Indicator - Sanctions/Remedies

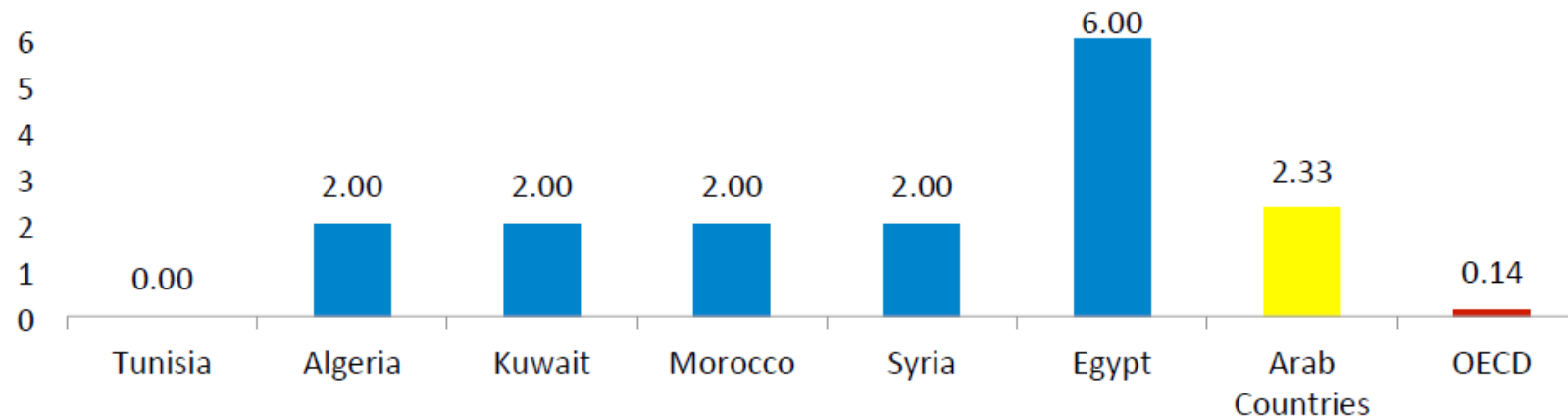


Source: ESCWA calculations; OECD figures from (Alemani et al., 2013)

Notes: (a) Scale: 0 to 6 from most to least conducive to competition

Merger control in the Mena region

Figure 9: CLP indicator– Mergers



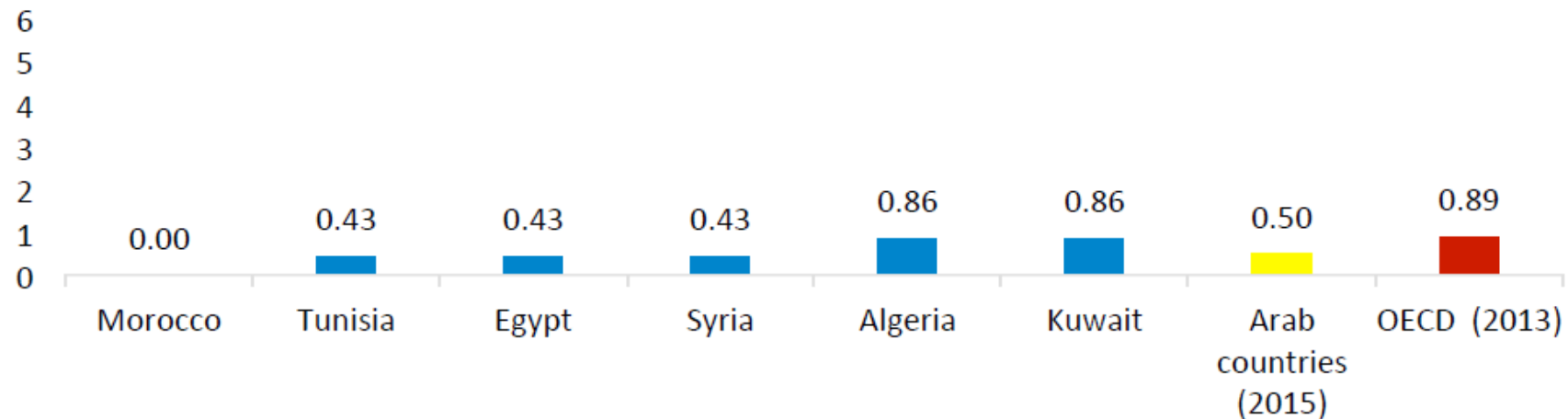
Source: ESCWA calculations; OECD figures from (Alemani et al., 2013)

Notes: (a) Scale: 0 to 6 from most to least conducive to competition

Denise Sumpf, Vladimir Isaila “The Strength of Competition Policy and Regulation in the Arab Region – Application of OECD Indicators to selected Arab Countries in 2015”, UN Economic and Social Commission for Western Asia

Advocacy in the Mena region

Figure 17: CLP Indicator – Advocacy



Source: ESCWA calculations; OECD figures from (Alemani et al., 2013)

Notes: (a) Scale: 0 to 6 from most to least conducive to competition; (b) Yemen did not respond to the questions under “Advocacy”, hence it is not included

Denise Sumpf, Vladimir Isaila “The Strength of Competition Policy and Regulation in the Arab Region – Application of OECD Indicators to selected Arab Countries in 2015”, UN Economic and Social Commission for Western Asia

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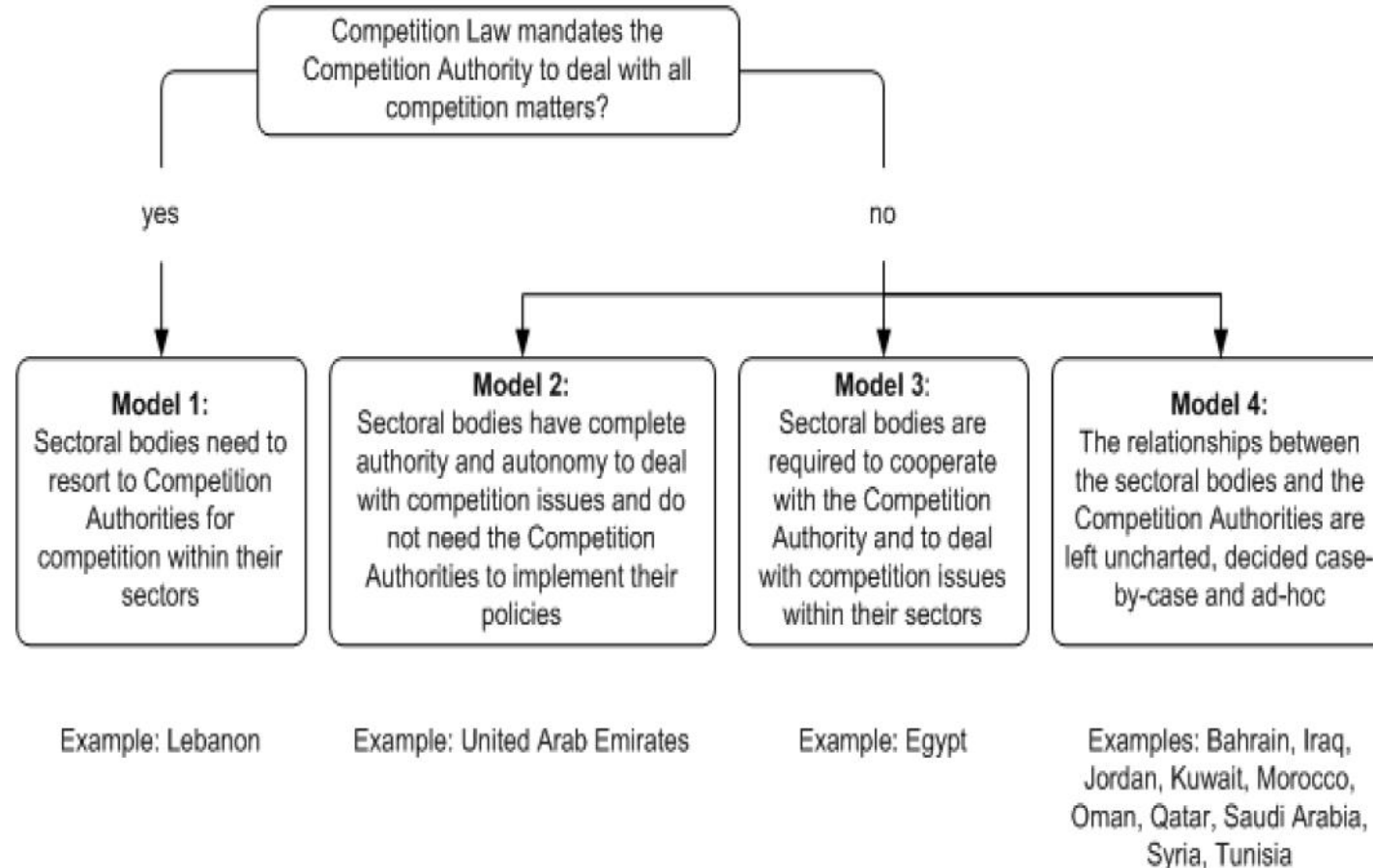
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Competition law as an evolutionary process

Relationships between competition authorities and sectoral regulators



Relationship between the competition authority and sectoral regulators: the case of Saudi Arabia

In the Kingdom of Saudi Arabia, **both the Communications and Information Technology Commission (CITC) and the Competition Council have jurisdiction to regulate and enforce competition related matters concerning the telecommunications sector**, including anti-competitive agreements, abuse of dominant positions and merger control procedures (in particular, under Chapter 6 of the Telecommunications Law 2001).

Regulatory advocacy : the example of Egypt

Strengthening efforts to promote regulations that support competition is a necessary complement to ECA's enforcement strategy. Addressing government regulations and practices that restrict market competition or weaken the enforcement of competition policies are as important to making markets work as are detecting and prosecuting anticompetitive violations. Thus, coordinating policy efforts to generate a competitive business environment and promote contestable and open markets is vital to creating incentives for entrepreneurship and increasing pressures to innovate.

The contribution of the Egyptian Competition Authority in formulating pro-competition regulations can be substantial, particularly on matters such as regulated sectors, state involvement in commercial activities and price controls. To achieve an effective competition policy, collaboration between the Competition Authority, sector regulators and other policy makers is necessary. For instance, the inclusion of an ECA representative in the Board of the Egyptian Electric Utility and Consumer Protection Regulatory Agency (EgyptERA) has allowed ECA to take an active role in the efforts of the Egyptian government to embed competition in the electricity sector. This type of cooperation is a practical example of how connecting competition policy and other public policies can elevate competition in Egypt's economic agenda.

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Market integration and cooperation on competition

The MENA region is the least integrated in the world, so domestic companies are forced to inefficiently serve relatively small markets. Much like what happened during the European integration process, **the reduction of trade barriers in the area could help firms expand production by exporting to their neighbors, allowing better exploitation of both economies of scale and scope.**

Each country could find its comparative advantage and take full benefit of the region's growing population, which is projected to almost double by 2050. **But incumbent firms would surely fight this, requiring that a pan-MENA antitrust enforcer would have to be part of any economic integration.**

In this respect, Egypt, Libya and Tunisia are already members of COMESA, the Common Market of Eastern and Southern Africa, while the GCC countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates) have had a common market since 2008. Both regional groups have begun to consider developing a cross-country competition framework.

Regional cooperation

Agadir's agreement (Competition authorities of Egypt, Tunisia, Morocco and Jordan): The main purpose of the agreement is to **strengthen the cooperation between all authorities and to improve the benefits of competition policy**.

Competition Experts Committee at the Arab League: The main purpose is to ensure the **harmonization of national legislations** (to the largest extent) on competition and to **disseminate a competition** culture among various stakeholders.

Supreme Council of the Gulf Cooperation Council 's specialised committee (Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Bahrain, and Oman): The main purpose is to **discuss and prepare a draft unified competition law for the GCC** helpful for dealing with cross border issues.

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Moving forward: Amendments to the Egyptian competition law

The 2005 Competition Law in Egypt created key elements to foster competitive markets, including the Egyptian Competition Authority (ECA). The law covers both private and public operators, prohibits anticompetitive agreements, concerted practices, and abuses of dominant or monopolistic positions.

The law was amended in 2008 and revised in 2014, as part of a constitutional reform that stressed the role of competition policy for the Egyptian economy.

The 2014 amendments not only reinforced ECA's independence and advocacy powers but also strengthened its enforcement tools through higher fines, enhanced settlement powers and a leniency program.

As a result, ECA's decisions against anticompetitive practices increased significantly—covering a wide range of markets, including anticompetitive agreements in insurance, pharmaceuticals, fertilizers and poultry and abuses of dominance in telecommunications, electricity, media, and sports.

Egypt: the 2014 amendments

- Prepared by the Egyptian Competition Authority
- Based on consideration of past difficulties of the ECA
- International best practices
- Egyptian legal system
- Economic and social realities
- Consultation with Business community, Academics, the Judiciary
- Support from the Ministry of Industry and Foreign Trade

Egypt: the 2014 amendments

Content of the amendments

- Independence of the competition authority:
- Endowing ECA Board with the power to initiate criminal lawsuits and to settle with violators
- Introducing the inviolability of ECA Board members (ECA's Board members cannot be revoked except for the case of resignation or conviction of a crime or serious misdemeanor by virtue of a final judgment.
- Reducing the number of Government representatives in ECA Board
- Hiring the Executive Director by ECA Chair

Egypt: the 2014 amendments

-Effectiveness (Markets & ECA):

- Introducing a **revenue/sales value based fine for anticompetitive practices** (deterrence & fairness)
- Adopting full and **mandatory leniency for the first applicant** who comes forward to ECA
- Imposing **a prior consultation of ECA on draft laws and draft regulations that are likely to harm competition** (Mandatory)
- Exempting Co-operation agreements among competitors that tend to be pro-competitive
- Endowing ECA **with more Enforcement powers (dawn raids- Interim measures)**
- Adopting harsher sanctions for the lack of co-operation with ECA
- Relaxing the settlement system to be more attractive for violators.
- Widening the scope of the Law to be applied on every contract instead of certain types of contracts.

Conclusion

Thank you very much for your attention

