

# Egyptian Competition Authority 2016





## Challenges for the Enforcement of Competition Law in Egypt

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## **IMPORTANT CHALLENGES FOR ECA TO ADDRESS**

- **Challenges related to the lack of financial and administrative independence**
- **Challenges related to the lack of competition culture**
- **Challenges related to the administration of work and decision making**
- **Enforcement and deterrence challenges**

## Challenges related to the lack of financial and administrative independence

- Although the ECA enjoys theoretically a budgetary independence (i.e. can set its expenditures in accordance to its perceived priorities), the ECA must answer to some very strict and burdensome procedures imposed by the ministry of finance.
- This limits the ECA's ability to set its human resources policies (i.e. the ability to offer competitive wages to attract higher calibers)
- It also restricts the ECA's ability to invest in the technical capacities of the staff members .

# Challenges related to the lack of competition culture and the organization of the economy

## 1- Absence of competitive neutrality framework

- The lack of general competition policy at the state level: governmental bodies do not take into account the anticompetitive impact of their actions on the market.
- The absence of a competitive neutrality framework that governs the work of public authorities led to a pattern of conflict of interests (i.e. the presence of undertakings that assume regulatory tasks while still competing with other firms)

# Challenges related to the lack of competition culture and the organization of the economy

## 2- Hurdles related to the way the economy is organized

- The presence of a large informal sector within the Egyptian economy, making it difficult to acquire the necessary data and information for studies and research conducted by the authority.
- The overlapping jurisdiction with other sector regulators leads to a process of interagency squabbling.
- The vague legal scope in relation to certain State activities and the extent to which they are subject to the provisions of the law adds further doubts to ECA scope of work, especially in an economy in which the state is a main economic player.
- The outdated legal precedents in the area of public service laws add further limitation to the breadth of the law.

## Challenges related to the administration of work and decision making

- The Board of directors is the decision making body within the ECA. However, board members are not appointed on a full time capacity which may lead to difficulties in reaching the necessary quorum each time a decision needs to be made, thus unduly increasing the time of decision making.
- The board lacks the power to punish undertakings that refuse to cooperate with the authority in the course of its ongoing investigations.

# Enforcement and Deterrence Challenges

## 1- Limited powers of investigations

- The ECA does not enjoy the prerogatives of gathering evidence based on wiretapping and audio/ video records.
- This is because, in accordance to Egyptian laws, these powers can only be conferred in case of having an offence of minimum three months imprisonment. The Egyptian Competition Law does not provide for such type sanction and contraveners are only subject to financial fines.



## Enforcement and Deterrence Challenges

### 2- The absence of fining powers for the ECA

- To achieve deterrence, contraveners are only subject to criminal fines which can be imposed only by virtue of a criminal court order.
- The ECA does not enjoy any fining powers which significantly harm the deterrence effect sought from the law.
- Only criminal courts can impose fines if they uphold the findings of the public prosecutors which may take more than a year until courts reach a final decision in a case.
- This framework affects the public image of the ECA and attract lots of criticism to the ECA being a toothless authority vis-à-vis anticompetitive practices.

## Enforcement and Deterrence Challenges

### **3- The Criminal Nature of the Egyptian Competition Law**

- The criminal nature of the law adds further complications to the work of ECA as case handlers are required to meet the prohibitively high threshold of the criminal evidential burden of proof which does not conform with the economic nature of the violations in question as well as the regulatory role entrusted to the ECA.
- Moreover, the ECA findings do not compel the investigation conducted by public prosecutors which effectively duplicate the investigation process and lead in many cases to contradicting results due to the lack of competition expertise at the level of public prosecutors.
- In addition, further delays may occur as a result of prosecutors work rotation meaning that each case can be handled by different prosecutors who may hold different views in relation to the findings of the case in question.

## Enforcement and Deterrence Challenges

- Over the period from 2012 to 2016, the authority established 24 decisions of breach. It decided to refer 9 cases out of them for criminal proceedings. Yet, only 2 cases made their way to criminal trials. The rest of the cases either were withheld at the prosecution or still pending at the prosecution level.

Case	Violation type	Administrative decision	Transfer to prosecution	Court referral	Notes
1- Cases withheld at the prosecution					
Stamp	Horizontal agreement	Adjust status	Transferred to prosecutor		
School textbooks (request by prosecutor)	Abuse of dominance	Adjust status	Transferred to prosecutor		
Carpet	Abuse of Dominance	Adjust Status	Transferred to prosecutor		
2- Cases still in the possession of prosecution					
Poultry	Horizontal agreement - Non Co operation	Adjust status	Transferred to prosecutor		
Corn Starch	Horizontal agreement	Adjust status	Transferred to prosecutor		
Fertilizers Distribution Companies	Horizontal agreement - Non Co operation	Adjust status	Transferred to prosecutor		
ghalioungui	Non Co operation	Adjust status	Transferred to prosecutor		

- The ultimate result is absence of deterrence and a diminished role for the ECA.



Finally, I'd like to add that the authority, throughout ten years has accomplished much, yet we still face challenges that require a lot of effort for ECA to prove how beneficial and effective it can be to investors and consumers alike.



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# Thank You

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