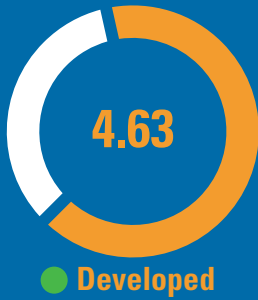




ARAB BUSINESS LEGISLATIVE FRAMEWORKS

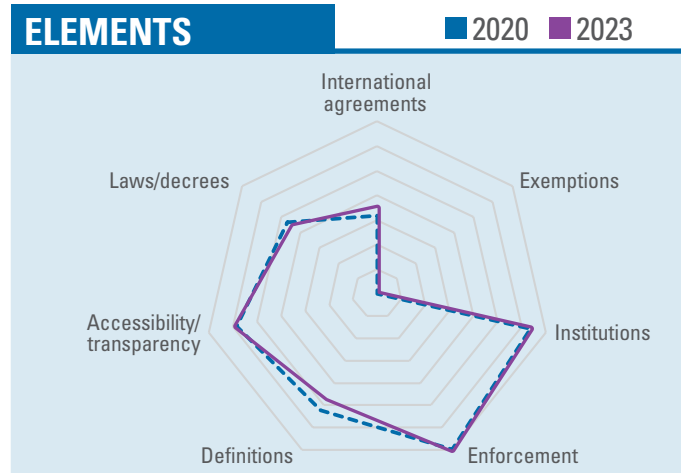
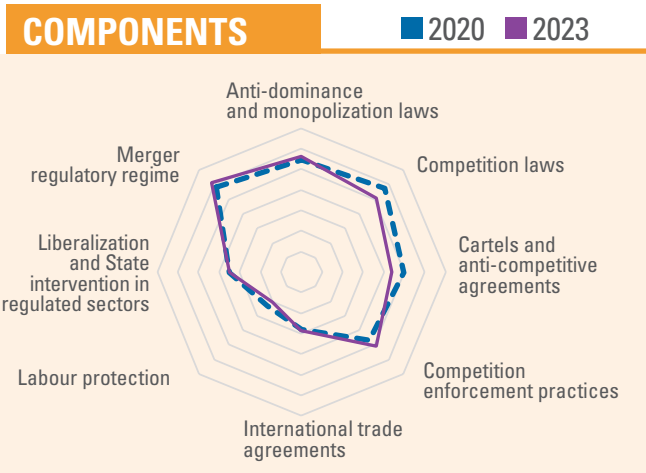


COMPETITION



● Very strong ● Strong ● Developed ● Moderate ● Basic ● Weak ● Very weak

COMPONENTS	2020	2023
Anti-dominance and monopolization laws	5.44	5.60 ▲
Competition laws	5.73	5.09 ▼
Cartels and anti-competitive agreements	5.00	4.38 ▼
Competition enforcement practices	4.67	5.09 ▲
International trade agreements	2.80	2.80 ▶
Labour protection	2.33	2.00 ▼
Liberalization and State intervention in regulated sectors	3.50	3.50 ▶
Merger regulatory regime	5.83	6.13 ▲



The competition regime in Algeria is still managed by Law no. 95-06 of 1995, which was amended by Law no. 03-03 of 2003. Further amendments were then made in 2008 and then in 2010. No other amendments were made since then, although the first draft of a new law is under review. The Competition Council has stepped up its activity over the past two years, expressing particular concern with regards to the pharmaceutical sector.¹



Competition laws

Pursuant to articles 1 and 4 of the Competition Law of Algeria, policymakers emphasized that the objective is to improve economic efficiency and consumer welfare while safeguarding the freedom to determine prices based on competition rules. Article 5, however, allows for government regulation of the market, and consequently,

for controlling prices under specific conditions/ circumstances such as disruptions.

It is worth noting that the law does not provide definitions for several competition concepts, such as collusion, crowding out and vertical/horizontal agreements.



Anti-dominance and monopolization laws

Monopolies and the abuse of dominance are prohibited under the provisions of articles 7, 11 and 12 of the Competition Law. The law also enumerates other practices, such as market barriers, controlling production, fixing prices and exploiting abusively the relation of dependence between a company and its supplier. Also, to strengthen the protection of small business players (such as small and medium-sized enterprises (SMEs)) against monopolistic practices, article 10 prohibits any contract that confers on its beneficiary exclusivity in this

aspect. Moreover, article 38 allows courts to refer to the Competition Council for an opinion.

As for exceptions, according to article 9 of the Competition Law, provisions of articles 6 and 7 do not apply to agreements that aim to ensure economic or technical progress, or contribute to improving employment, or to allowing SMEs to reinforce their competitive position on the market. These exceptions need the approval of the Competition Council.



Cartels and anti-competitive agreements

Article 6 prohibits direct and indirect anti-competitive agreements, such as concentrations, conventions, understandings and coalitions. Some anti-competitive practices are enumerated, such as barriers to market entry, fixing prices and limiting and controlling production. Also, pursuant to article 13 of the Competition

Law, any commitment, agreement, or contractual clause relating to a prohibited practice pursuant to articles 6, 7, 10, 11 and 12 is null and void.

It is worth noting that the Competition Law does not define or even mention cartels.



Competition enforcement practices

In reference to the provisions of article 23 of the Competition Law, an independent competition council is established. Also, article 2 mentions that the provisions are to be enforced on operations of production and

distribution as well as on public procurement contracts.

It is worth noting that the law does not mention the enforcement on the activities carried out outside of Algeria and affects the internal market.

¹ [Africa Competition Guide](#) (Algeria).

Next, articles 34 to 49 state the prerogatives of the council, such as investigating competition cases, advising on competition matters, assessing concentration practices, taking interim measures to suspend presumed restrictive practices under investigation and advising on regulatory draft provisions in relation to competition. Also, the Competition Council examines whether the referred practices constitute violations of the provisions of articles 6, 7 and 10 of this Law (anti-competitive agreement/abuse of dominance) or may be justified by the application of article 9 of this Law (exemptions). Moreover, the scope of protection is large since article 35 allows local authorities, economic and financial institutions, companies, professional associations, and trade unions, as well as consumer associations, to consult the Competition Council when they have interests.

Last, pursuant to articles 29 and 44 of the Competition Law, the privacy of all information and data shared must be respected, and the council may investigate cases on its own (*ex officio*). These two articles will ensure cooperation between private businesses and the council, while guaranteeing that their data won't be shared publicly and that there is a strong enforcement and control of the market. Finally, articles 56 to 62 determine sanctions for restrictive practices and abuse in economic concentrations.

As stated above, the Competition Council in Algeria has been active for the past two years. In addition to monitoring and highlighting its concerns, the council has also issued decisions regarding economic transactions, as illustrated in the following box:

Box 1 Enforcement practices

In reference to article 15 of the Competition Law, the Competition Council approved a concentration between Sanofi and Cheplapharm. On the merits:

“Sanofi had asked the Competition Council in 2020 to approve a sale of assets to Cheplapharm whereby the global distribution rights on a drug, including distribution within Algeria, were transferred to Cheplapharm. The Competition Council ruled that it had the necessary jurisdiction to review the concentration based on the fact that Cheplapharm **would have direct control of the drug in Algeria as a result of the transfer (i.e., through clientele, trademarks, orders, AMM, know-how, inventory, etc.)** and that Cheplapharm would replace Sanofi in its position of dominance in the Algerian market, with a 60 per cent market share for the drug. The concentration was approved on the basis that the concentration **would have no impact on the relevant market or on competition, and that Cheplapharm provided a written commitment that the transaction would not impact clients, trigger unjustified price increases or cause shortages, and that the current market situation would be maintained.**”

Source: Sanofi and Cheplapharm decision.



International trade agreements

Competition provisions in trade agreements have become one of the basic components. Algeria has ratified the Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part.

Chapter 2 of the agreement outlines competition provisions that prohibit countries from making agreements or undertakings that aim to prevent, restrict, or distort competition. Furthermore, this trade agreement includes a special section for managing disputes that arise from the enforcement of its provisions.



Merger regulatory regime

Chapter 3 of the Algerian Competition Law addresses the economic concentration regime. In reference to the provisions of articles 15 and 16, it can be inferred that economic concentration is well defined and there are several practices that lead to a change in control in companies, especially the mention of exercising a decisive influence on the activity of a company.

According to articles 17 to 20, the merger notification regime is voluntary if the transaction does not affect competition. If it will affect (shares in the market exceeding 40 per cent), the notification becomes mandatory and

suspensory. Also, parties are unable to completely fulfil the economic transaction before receiving the council's approval. Pursuant to article 17, the Competition Council has 3 months to take the appropriate decision regarding the transaction. To guarantee fairness, and with respect to the due process principle, if transactions are rejected, parties can appeal it before the Council of the State (article 19).

Chapter 4 (articles 56 to 62) also covers the enforcement and sanction regime adopted to deter anti-competitive agreements/behaviours, including any breach of the economic concentration regime.



Labour protection

The Competition Law has several shortcomings regarding labour protection. Policymakers failed to include any labour protection provisions, such as

the non-compete clause, even though it would have provided protection for employees particularly during mergers and acquisitions.

RECOMMENDATIONS

- The Competition Law should include definitions for several basic anti-competition practices, such as monopoly, cartel, transparency, veto power (in mergers and acquisitions), etc.
- The Competition Council should be independent of ministers and/or political figures.
- Further cooperation is needed, including the development of a memorandum of understanding with other competition authorities (regional and international).
- Markets should be liberalized for some vital sectors, (especially where State-owned enterprises operate), and State interventions should be based on specific conditions/circumstances.
- Stricter conditions for allowing exemptions should be introduced, with sanctions for non-compliance.
- A clear economic concentration regime must be established. Studies on the market (the impact of economic concentration) should include clear criteria and conditions (effect on prices, investments, veto power, etc.). Also, a clear definition for vertical and horizontal agreements should be included.
- Labour protection provisions should be added, such as the non-compete clause.

