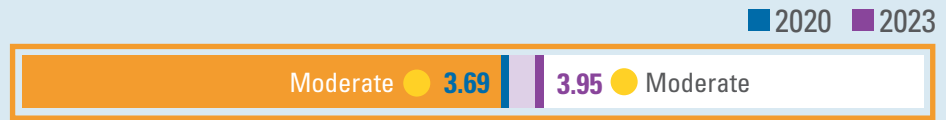




ARAB BUSINESS LEGISLATIVE FRAMEWORKS



COMPETITION

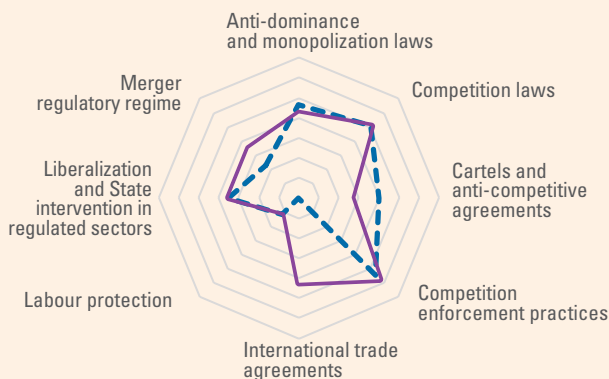


● Very strong ● Strong ● Developed ● Moderate ● Basic ● Weak ● Very weak

COMPONENTS	2020	2023
Anti-dominance and monopolization laws	4.67	4.20 ▼
Competition laws	5.09	5.09 ►
Cartels and anti-competitive agreements	4.00	2.63 ▼
Competition enforcement practices	5.44	5.73 ▲
International trade agreements	0.00	4.20 ▲
Labour protection	1.17	1.00 ▼
Liberalization and State intervention in regulated sectors	3.50	3.50 ►
Merger regulatory regime	2.33	3.50 ▲

COMPONENTS

2020 2023



ELEMENTS

2020 2023



Libya has not, to date, adopted a separate competition law. Competition is managed through provisions under title 11 (articles 1282 to 1307) of Commercial Code No. 23/2010. In 2021, the Council of Ministers issued the decision No. 632/2021 that established the Competition Council. Moreover, through decision No. 539/2021, the Ministry of Economy and Trade adopted the internal regulations for the Competition Council. In 2023, the Parliament amended some provisions of the Commercial Code targeting the role and functions of the Competition Council (through Law No. 7/2023).



Competition laws

Article 1282 of the Commercial Code states that the objectives of the law are to limit monopolies and to organize and protect competition. Objectives also include the development of business activities and guaranteeing the

transparency and integrity of transactions. However, there are several competition concepts that are not defined in any of the provisions, such as monopoly, cartel, transparency, and veto power in mergers and acquisitions.



Anti-dominance and monopolization laws

Article 1287 emphasizes that any business whose market share exceeds 30 per cent is considered in a dominant position. Article 1288 enumerates and prohibits dominant practices, such as: fixing prices, blocking the development and production of products, and market barriers.

The law, however, doesn't differentiate between dominance and abuse of dominance. Also, monopolies are not covered by any provision (although some monopolistic practices are mentioned indirectly).



Cartels and anti-competitive agreements

Article 1289 prohibits forming economic blocs when they reach the threshold of a 30 per cent market share. The same article also allows for exceptions under specific conditions, such as activities that contribute to obtaining economic and technological advancement and to enhancing competition for small and medium-sized enterprises (SMEs).

Article 1285 prohibits anti-competitive agreements. It lists practices that constitute anti-competitive agreements, such as: fixing prices, breaching the supply/demand mechanism, suspending buying operations and putting barriers for market entry.

The Commercial Code does not mention or define cartels.



Competition enforcement practices

Under article 1292 of the Commercial Code (amended by article 1 of Law No. 7/2023) as well as to decision No. 632/2021, an administratively and financially independent competition council is established and supervised by the parliament. The council has the authority to monitor private economic activity (products and services) in terms of competition and consumer protection.

According to the amended article 1294 (article 3 of Law No. 7/2023), the functions of the Competition Council include:

- Study complaints and anti-competitive practices and take the proper decisions to end these practices, including temporarily closing the entity that commits the infringement for a period of up to three months.

- Investigate the complaints about breaching or limiting competition in the market. Once evidence of a breach is established, complaints are to be referred by the Competition Council to the public prosecutor's office.
- Provide guidance and assistance on draft laws and decisions in connection with competition. The council is also charged with building international cooperation frameworks with similar entities/institutions.
- Ensure that the Minister of economy is taking the necessary decisions to address market concentration cases, including amending or annulling agreements/contracts that have led to the concentration. Also, the

council has the authority to order the separation of companies to prevent any control of markets.

Articles 1283 and 1299 stipulate that the law is enforced on business transactions inside and outside the country. The articles also allow businesses to file complaints about actions that infringe competition principles and empower the authority to investigate on its own (ex officio). Article 1306 of the Commercial Law guarantees the confidentiality of all data and information. Finally, articles 1301 to 1304 establish a categorized sanction regime for anti-competitive practices, the abuse of dominance and cartels.



International trade agreements

Libya has ratified the Common Market for Eastern and Southern Africa (COMESA). This trade agreement contains several competition provisions:

Article 52(1) of the agreement targets subsidies granted by Member States, mentioning that such subsidies distort (or threaten to distort) competition and affect trade between States. Also, article 54 includes provisions regarding cooperation in the investigation of dumping and subsidies. Article 55 prohibits agreements between companies that aim to prevent, restrict, or distort

competition. This trade agreement includes a special section on managing disputes due to the enforcement of its provisions.

Moreover, according to article 76, States must adopt harmonized monetary and fiscal policies that promote savings for investment and enhance competition and efficiency in the financial system. Despite the important provisions in the agreement, other competition provisions and definitions (especially in comparison with the European Trade Agreements) are missing.



Merger regulatory regime

The economic concentration regime is not well developed in Libya. Only article 1290 of the Commercial Code addresses merger and acquisition transactions by stating that concentration transactions that have the potential to

harm competition, by reinforcing a dominant position, must be assessed by the authority (without mentioning criteria, specific threshold, notification conditions, etc.).



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.

RECOMMENDATIONS

- The Competition Law should include definitions for several basic anti-competition practices, such as monopoly, cartel, transparency and veto power (in mergers and acquisitions).
- Further cooperation is needed, including the development of a memorandum of understanding with other competition authorities (regional and international).
- Stricter conditions for allowing exemptions should be introduced, with sanctions for non-compliance. Also, the role of the Competition Council in monitoring the entity that benefits from an exception must be stated.
- 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.
- A robust sanction regime, with a deterring effect, should be established.
- Markets should be liberalized for some vital sectors (especially where State-owned enterprises operate), and State interventions should be based on specific conditions/circumstances.

