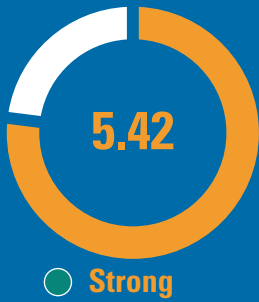




ARAB BUSINESS LEGISLATIVE FRAMEWORKS

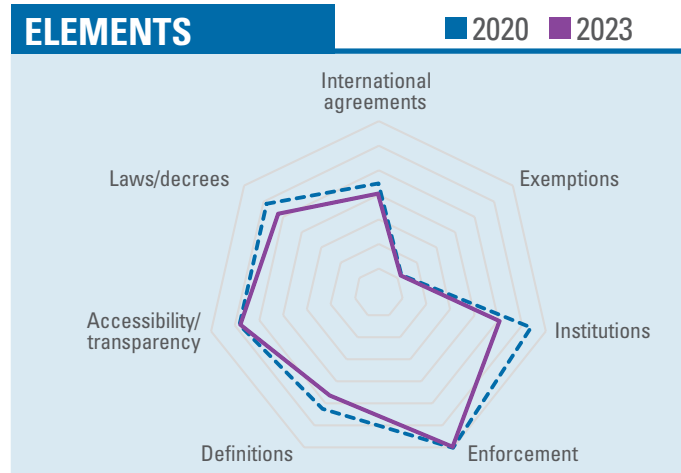
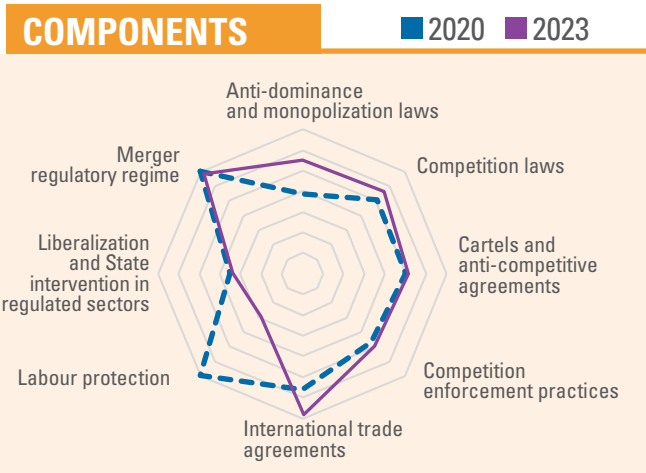


COMPETITION



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

COMPONENTS	2020	2023
Anti-dominance and monopolization laws	● 3.89	● 5.60 ▲
Competition laws	● 5.09	● 5.73 ▲
Cartels and anti-competitive agreements	● 5.00	● 5.25 ▲
Competition enforcement practices	● 4.67	● 5.09 ▲
International trade agreements	● 5.60	● 7.00 ▲
Labour protection	● 3.00	● 3.00 ▶
Liberalization and State intervention in regulated sectors	● 3.50	● 3.50 ▶
Merger regulatory regime	● 7.00	● 7.00 ▶



The competition regime in Morocco is still managed by Law No. 12.104 concerning price freedom and competition, enacted by Decree No. 1.14.116 on June 30, 2014, and amended by Law No. 40.21, which was changed and complemented by Royal Decree No. 1.22.67 on 25 November 2022. As for the Competition Council, it is managed by Law No. 20.13, enacted by Decree No. 11.4.117 on 30 June 2014, and amended by Royal Decree No. 1.22.68 on 25 November 2022. The Competition Council has been active over the past two years, and has flagged practices in several sectors, namely the automotive industry; hotels and catering; and transport.¹ Moreover, the Council published several decisions and reports.



Competition laws

Article 2 of the Competition Law emphasized the principles of free prices and the freedom of doing business in the market unless the prices are fixed by regulation. However, article 9 allows for exceptions from the provisions of the Competition Law upon request. Applicants for exemptions must demonstrate that the activities will contribute to economic and/or technical progress, including creating jobs. Moreover, agreements that may enhance the management of small and medium enterprises (SMEs) as well as the marketing of agriculture products may constitute cases

for exceptions. Also, agreements between SMEs that do not restrain competition are exempted. The competition regime in Morocco includes restrictions on the exempted companies with the aim of guaranteeing fair competition between market players.

The law does not provide definitions for a number of concepts that relate to competition, such as collusion, monopoly (although the law states that monopolistic practices are prohibited), and cartel.



Anti-dominance and monopolization laws

Article 7 prohibits the abuse of dominance. Moreover, the law lists some abuse of dominance practices, such as refusal to sell whether in tied selling or in discriminatory conditions, of sale as well as in the termination of established commercial relations.

Although the law has no definition of monopoly, it indirectly refers to some monopolistic practices, such as anti-competitive agreements (article 6).



Cartels and anti-competitive agreements

Article 6 of the Competition Law prohibits, directly or indirectly, anti-competitive agreements, such as concentrations, conventions, understandings and coalitions. Some anti-competitive practices are listed, and they include barriers to market entry, fixing prices, and limiting and controlling production. Pursuant to article 10, any

commitment, agreement, or contractual clause relating to a prohibited practice under articles 6 and 7 is deemed null and void.

Cartels are neither defined nor referred to in the Competition Law.

¹ Africa Competition Guide (Morocco).



Competition enforcement practices

In reference to the provisions of article 166 of the Constitution and Law No. 13.20, an independent competition council is established. Articles 2 to 8 and article 35 clarify the functions of the Council, such as investigating competition cases, advising on competition matters, assessing concentration practices, taking precautionary measures based on a request and hearing third parties. Also, the Competition Council examines whether the referred practices constitute violations of the provisions of articles 6, 7 and 8 of the law or may be justified by the application of article 9. Pursuant to article 106, the recognized consumer associations entities can act as civil parties or seek compensation for damages suffered by consumers by filing for independent civil lawsuits.

Articles 23 and 31 empower the Council to investigate on its own (*ex officio*) and guarantee the confidentiality of all shared information and data. Article 25 of the Law states that when the facts of the case before the Council justify the application of article 75 of this law (sanction regime), the Council can refer the case to the public prosecutor (court of first instance) for the purposes of prosecution. Articles 75 to 90 cover the sanction regime against violations.

Activities of the Competition Council included, in addition to reports and market studies, making decisions on economic transactions. Two of these decisions are highlighted in box 1.

Box 1 Enforcement practices

1. Decision rendered on 10/1/2022: Dislog Industries and Kosmo Pharm SA (economic concentration – acquisition).

In its decision, the Competition Council approved the transaction because it considered that the economic concentration in question (following the acquisition) will not affect the competition in the relevant market. This is justified by the fact that the two parties do not operate in the exact same market, and so no vertical or horizontal agreement occurred.

2. Decision taken on 4/5/2022: Sika AG and Dry Mix Solutions (economic concentration – acquisition).

In its decision, the Council stated that according to the Competition Law, the merger and acquisition control regime is mandatory and suspensory (articles 12 and 14). Once the transaction meets the set thresholds, notification becomes a duty. The company, Sika AG, was sanctioned for failing to notify about the transaction.



International trade agreements

Morocco has preferential trade agreements with 62 countries. For instance, in its trade agreement with the United States of America, commitments were made by Morocco to make its business environment more transparent and open to international companies.²

Furthermore, one of the objectives of the free trade agreement between Morocco and Türkiye is to provide fair conditions of competition for trade (article 2). It is worth noting that this trade agreement mentions a special section to manage disputes due to the enforcement of its provisions.

² [Morocco – Country Commercial Guide.](#)



Merger regulatory regime

Title 4 of the Moroccan Competition Law manages the economic concentration regime. Article 11 clearly defines economic concentration and lists several practices that lead to a change in control in companies.

Articles 12 and 13 put in place a mandatory and suspensory notification regime for companies fulfilling an economic transaction. Specific conditions and thresholds are adopted for notifying the Competition Council and by virtue of article 14, the parties may not complete the economic transaction before receiving the Council's approval. Pursuant to article

15, the Competition Council has a specific deadline (90 days) to take the appropriate decision regarding the transaction.

Articles 16 and 17 cover the assessment that the Competition Council performs on economic concentration transactions. The assessment of the transaction is completed by examining whether it is likely to harm competition, by creating or strengthening a dominant position or by creating or strengthening a buyer's power which will make suppliers in a situation of economic dependence.



Labour protection

Employee interests, particularly in mergers and acquisitions transactions, are protected in article 19 of the Labour Law, which states clearly that in the event of any modification in the employer's legal status or the legal structure of the company, such as inheritance, sale, merger or privatization, all existing contracts up to the date of the change shall continue to be binding between

the employer, the employees and the new employer who assumes the responsibilities owed to the employees from the previous employer.

However, several shortcomings in labour protection still stand. 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).
- 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.
- 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.

