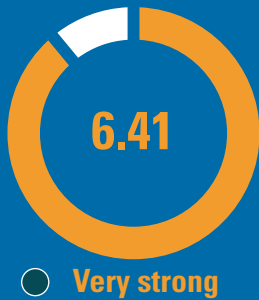
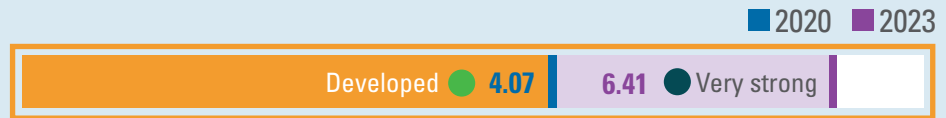




# ARAB BUSINESS LEGISLATIVE FRAMEWORKS

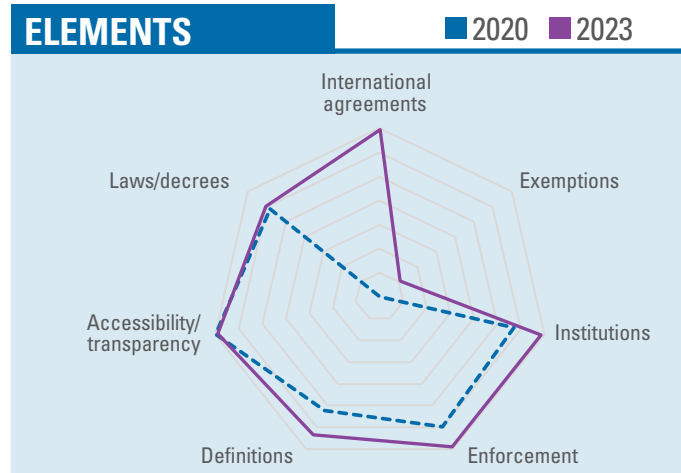
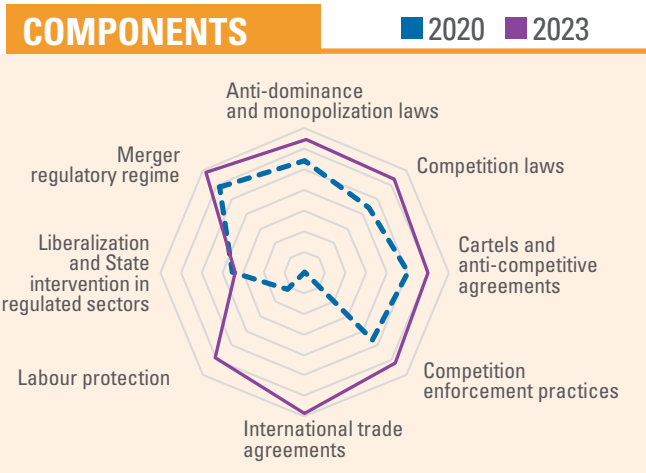


## COMPETITION



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

COMPONENTS	2020	2023
Anti-dominance and monopolization laws	5.44	6.30 ▲
Competition laws	4.45	6.36 ▲
Cartels and anti-competitive agreements	5.00	6.13 ▲
Competition enforcement practices	4.67	6.36 ▲
International trade agreements	0.00	7.00 ▲
Labour protection	1.17	5.50 ▲
Liberalization and State intervention in regulated sectors	3.50	3.50 ▶
Merger regulatory regime	5.83	7.00 ▲



The competition regime in Egypt is managed by Law No. 3 of 2005 on the Protection of Competition and the Prohibition of Monopolistic Practices and its Executive Regulation No. 1316/2005. On 29 December 2022, amendments to several provisions of the Competition Law were adopted by Law No. 175/2022. Also, a compliance toolkit was issued in 2022 that covers several competition concepts such as abuse of dominance, vertical and horizontal agreements, notification regime for economic concentration transactions, etc. In December 2022, the State Ownership Policy Framework Document was developed, through which the competitive neutrality policy was adopted.



## Competition laws

Pursuant to articles 1 of the Egyptian Competition Law (ECL) and 2 of the Executive Regulation (ER), it's clearly stated that the objective of the Law is to ensure that economic activities are undertaken in a manner that does not prevent, restrict or harm the freedom of competition and guarantees fair competition practices between all businesses. After the amendments made by Law No. 175/2022, the Competition Law in Egypt included more competition-related definitions in relation to economic concentrations such as: economic concentration, effective control, material influence, corrective measures, and behavioural measures. As for relevant markets and dominance, the competition Law No. 3/2005 defines these two terms in articles 3 and 4.

Article 5 of the Competition Law states that the law applies to activities inside the State or outside it if the activities impact the internal market. Moreover, the Egyptian Competition Authority (ECA) has adopted a strategy (2021-2025) with the following objectives: effective enforcement of the provisions of the Competition Law by combating monopolistic practices, limiting legislation/policies/decisions that restrict the freedom of competition, spreading a culture of competition and raising institutional efficiency. The compliance toolkit also emphasizes compliance with the provisions of the Competition Law, calling businesses to

build employee awareness of competition rules and of the repercussions of breaching the law.<sup>1</sup>

Article 9 of the Competition Law grants public utilities that are indirectly managed by the State the possibility of benefiting from an exemption from the prohibitions set forth in articles 6, 7, and 8 if this will serve a public interest or will benefit consumers so as to outweigh the effects of restricting the freedom of competition. The ER specify the conditions of application of this exemption. Additionally, it is worth mentioning that article 6(2) of the ECL grants all persons (private and SOEs) an exemption from the prohibition set forth in article 6(1) if the agreement in question would result in economic efficiencies that surpass the harm on competition. Also, according to article 16 of the ER, several procedural and assessment criteria are followed by ECA before rendering the decision of the temporary exemption. Moreover, ECA may require certain commitments and conditions from companies that benefit from exemptions, with a possibility of retracting the exemption in case of non-compliance. It is worth noting that ECA reported violations by several SOEs (box 1, case 1). Article 10 of the Competition Law allows the State to intervene by determining the selling price of "essential products" for a specific period after consulting with ECA.



## Anti-dominance and monopolization laws

Article 4 of the Competition Law defines dominance and article 8 enumerates and prohibits practices that may constitute an abuse of dominance such as undertaking an act that leads, fully or partially, to the non-manufacturing, or non-production or the non-distribution of a product,

for a certain period or certain periods of time, refraining to enter into agreements or contracts regarding a product with any person or ceasing to deal with him in a manner that results in restricting that person's freedom to access, continue or exit the market at any time, refusing to produce

<sup>1</sup> Compliance toolkit, Enhancing competition culture, p. 50.

or provide a product that is circumstantially scarce when its production or provision is economically possible, dictating on persons dealing with him not to permit a competing person to have access to their utilities or services, despite this being economically viable, selling products below their marginal cost or average variable cost, obliging a supplier not to deal with a competitor, etc.

The Law also specifies conditions to determine if a person has a dominant position in the market. Article 4 of the Competition Law qualifies an individual as dominant when:

1. Its shares in the market exceed 25 per cent.
2. Has the ability to induce effective changes in prices or the volume of supply in the relevant market.
3. The inability of competitors to limit the influence of the dominant player.

Article 8 of the ER sets criteria to assess the above points 2 and 3, such as the extent to which each person and their competitors are able to access the materials needed for production or the distribution channels, the person's share in the relevant market and his position in relation to the rest of the competitors, etc.<sup>2</sup>

Last, in reference to the provisions of articles 20 to 25, administrative measures and a categorized sanction regime are adopted in case of breach of articles 6, 7 and 8 of the Competition Law (abuse of dominance and anti-competitive agreements).<sup>3</sup> Also, the adopted amendments of the Competition Law (by Law No. 175/2022) added new sanctions for violating the economic concentration rules (particularly the notification regime).



## Cartels and anti-competitive agreements

According to article 6 of the Competition Law and article 11 of the ER, the following horizontal agreements are prohibited: agreements between competitors on prices, agreements to divide markets, colluding in/coordinating concerning public procurement contracts, conventions, restricting the production, manufacturing, distribution or marketing operation, and limiting or controlling the production. Also, pursuant to article 7 of the Competition Law and to article 12 of the ER, vertical agreements (agreements or contracts between a person and any of their suppliers or customers) are prohibited. The toolkit mentions examples of vertical agreements, such as: most-favoured-nation clauses, exclusive distribution, and passive sale restrictions.

Article 12 of the ER sets the factors that shall be considered when assessing vertical agreements, including: the impact of the agreements on the freedom of competition in the market, the existence of benefits from the agreements or contracts to consumers, and considerations of maintaining the product quality and reputation, along with meeting security and safety standards, all while ensuring that competition is not harmed.

It is worth noting that the first paragraph of article 6 of the Competition Law defines cartels as agreements or contracts between competing persons. Article 6 also provides an exhaustive list of agreements that constitute cartels, including:

1. Increasing, decreasing or fixing prices of products subject matter of dealings.
2. Dividing markets or allocating them on grounds of geographic areas, distribution centres, type of customers, type of goods, market shares, seasons, or time periods.
3. Coordinating with regard to proceeding or refraining from participating in tenders, auctions, negotiations and other calls for procurement.
4. Restricting the manufacturing, production, distribution or marketing of products, including restricting the type or size of the products or limiting their availability.

<sup>2</sup> Compliance toolkit, Abuse of dominance, p. 29.

<sup>3</sup> Articles 22 and 23 of the Competition Law (2005).



## Competition enforcement practices

Article 11 of the Competition Law and its amendments stipulate for the establishment of a financially and administratively independent competition authority. The prerogatives of the authority are listed, and include developing a comprehensive database relating to the economic activity, providing feedback on draft laws and regulations relating to competition, coordinating with similar entities in other countries, investigating competition cases, studying notifications of economic concentrations (before they are fully established) and assessing concentration practices, etc. Also, the Higher Committee for Competitive Neutrality was established by the Prime Minister's decision No. 2195 of 2022. The Committee shall be responsible for ensuring compliance with the competitive neutrality policy. Furthermore, for the purpose of enforcing the competitive neutrality policy, a special department was established within ECA with the role of receiving and investigating complaints from citizens/investors as well as giving opinions regarding legislations, regulations and decrees that can harm competition and negatively affect the competitive neutrality policy.

Pursuant to article 31 of the ER, any person can notify ECA about competition infringements based on specific procedural conditions. Also, according to articles 34 and 37 of the ER, ECA should investigate complaints and notifications regarding breaches of the Competition Law within a specific time limit and then reach an appropriate decision. Finally, according to article 21 of the Competition Law, ECA can initiate a criminal

lawsuit or take action with regard to acts violating the law through a written request from the Chairman of the Authority's Board of directors based on the approval of the majority of its members. Also, to ensure fairness and due process, decisions of ECA can be appealed before the administrative court.

Paragraph 3 of article 13 of the Competition Law covers conflict of interest. It states that a board member shall not be eligible to take part in deliberations or voting related to a case under the consideration of the Board, if he has an interest therein, is a relative to any of the parties up to the fourth degree, or if such member currently represents or has represented any of the parties. Also, according to Article 16 of the Competition Law, ECA officers must keep all information confidential. These articles ensure more transparency between private businesses and the Authority as well as strong enforcement and control of the market. Last, according to article 11 (1), ECA is allowed to investigate on its own (*ex officio*).

It is worth noting that ECA started to actively enforce the Competition Law in the past two years. In 2022, it has rendered 376 decisions. Moreover, several studies and conferences were organized to strengthen the culture of competition. Box 1 highlights four important cases through which ECA strongly proved that businesses, including SOEs, must take into consideration the Competition Law and regulations while operating and carrying out economic transactions in the Egyptian market.

### Box 1 Enforcement practices

#### 1. On 8/3/2016, ECA rendered a decision against Telecom Egypt (SOE) for breaching competition rules in the telecom sector.

According to ECA, Telecom Egypt took measures that partially prevented other Internet companies from operating. The SOE implemented a plan to replace copper cables with optical fibres without notifying or agreeing with other companies providing internet services. Moreover, Telecom Egypt imposed some arbitrary conditions on providing infrastructure during the period from September 2013 to October 2015. Based on those facts, ECA rendered a decision that Telecom Egypt was in breach of paragraphs a and b of article 8 of the Competition Law. It is worth noting that the Board of directors of ECA accepted the reconciliation request of Telecom Egypt after paying the reconciliation fees and presenting commitments to comply with administrative measures that ensure compliance with the provisions of the Competition Law. Furthermore, Telecom Egypt pledged to cooperate with ECA to ensure compliance with measures that guarantee fair competition in the activity of providing internet infrastructure services.

## **2. ECA confirmed that several companies operating in the market of lampposts were in collusion in procurement contracts.**

On 2/12/2021, ECA initiated an investigation concerning the tenders issued by the electricity distribution companies (9 companies) in Egypt in order to purchase galvanized steel lampposts. The initiation resulted in detecting anti-competitive practices by several market players. Specifically, ECA discovered that 10 of the companies operating in the lamppost market are colluding by offering identical price offers, besides dividing the quantities among them in some of the tenders.

The agreements were in violation of article 6(c) of the ECL, as the parties to the agreement were found to operate in the same market for manufacturing and sale of steel lampposts. Additionally, the parties to the agreement were found to be the same companies that always submit offers to the tenders issued by the electricity distribution companies.

Testimonies from the issuing companies' purchasing department personnel confirmed several signs of collusion, and testimonies from sales managers and representatives of the parties to the agreement established communication of confidential information, cartel and purpose. In addition to the testimonies, ECA established that all the parties to the agreements had submitted identical financial offers to the tenders in question, despite having drastically differentiated costs.

ECA's Board of directors concluded on 25/09/2022 that the parties of the agreement violated article 6(c) of the ECL.

## **3. On 26/5/2022, ECA issued a decision regarding the abuse of a market dominant position by an online food delivery platform.**

After investigating and studying the food online market, where several small and medium-sized enterprises (SMEs) operate, three anticompetitive practices by an online food delivery platform were exposed:

Exclusive dealing:

- The dominant firm included in the contracts concluded with the restaurants exclusivity clauses to oblige them to exclusively deal with it and exclude its competitors from the other platforms.

Tying:

- The dominant firm obliged the restaurants to deliver the orders through its drivers and didn't allow them to deliver through the restaurants' own drivers.
- The dominant firm tied the delivery service to the food ordering service.

Most-favoured-nation clauses:

- The dominant firm included MFN clauses in its contracts with the restaurants. There were both: wide MFN and narrow MFN. The restaurants were obliged to match their prices in the restaurant with those published on the platform. They were prohibited from offering better prices or discounts whether on their own websites or on competing platforms.

#### 4. On 29/7/2022, ECA issued a decision regarding a cartel.

After investigating infringements by four brokers working in the supply of eggs in the food market, it turned out that these brokers were coordinating and colluding to fix the prices. This increased prices and therefore negatively impacted consumers. Based on these findings, the Competition Authority decided that these practices constituted criminal behaviour and the colluders were qualified as a cartel, obstructing competition in the market.

**Note:** for decisions taken by ECA, see: <https://tinyurl.com/337vtnad>.



### International trade agreements

Egypt has ratified several trade agreements that include competition provisions such as the Common Market for Eastern and Southern Africa (COMESA), the EU-Egypt

Association Agreement, and the Agreement setting up a free trade area between the Arab Mediterranean countries (Egypt, Jordan, Morocco and Tunisia).



### Liberalization and State intervention in regulated sectors

The State is still the sole investor in strategic sectors relating to the population's daily needs and staple food products,<sup>4</sup> although it has been stated in the State Ownership Policy Framework Document that the Government will be working to pave the way for the private sector's participation at a later stage. Any company acting outside the scope of those strategic activities, including SOEs, must adhere to competition rules as well as the competitive neutrality policy.

Also, it is worth noting that policymakers in Egypt, through the State Ownership Policy Framework Document, are encouraging the private sector to participate in State owned assets through different types of contracts such as: public-private partnerships (PPPs), build-operate transfer (BOT) projects, design-build-operate (DBO) contracts, build-finance-operate-transfer (BFOT) projects, performance contracts, management contracts, the restructure and privatization of public institutions, etc.



### Merger regulatory regime

Law No. 175/2022, which amended several provisions of the Competition Law No. 3/2005 and the adoption of the compliance toolkit issued in 2022 included clarifications and explanations about vertical and horizontal agreements, as well as a pre-notification regime for economic concentration. According to article 2 of the law, economic concentration is the change in control or material influence which is the result of the following cases: mergers, acquisitions, or joint venture projects. The new law excluded the following practices from the definition of economic concentration: a merger or acquisition between

two entities belonging to the same legal person and the temporary acquisition of securities.

Article 22 lists sanctions for breach of articles 6, 7, and 8 of the Competition Law. Also, according to article 22(bis d) of Law No. 175/2022, companies that fail to notify ECA of any transaction prior to its completion may be subject to a fine ranging between 1 and 10 per cent of the total annual turnover, assets, or value of the operation for persons of economic concentration. Also, article 22 (bis d) states that in case of failure to calculate the mentioned thresholds,

<sup>4</sup> State Ownership Policy Framework Document – Appendix (1) Justifications for Maintaining / Increasing State's Investments in Some Economic Activities and Sectors (p. 21).



the fine will range between EGP 30 million and EGP 500 million.

As for the notification regime, pursuant to article 19 (bis) of Law No. 175/2022, the economic concentration is notifiable before the completion of the transaction if any of the following thresholds are met (the two levels of thresholds are not cumulative):

- The annual combined turnover or value of assets of the parties exceeds EGP 900 million provided that the turnover of each of at least two parties exceeds EGP 200 million.
- The global annual combined turnover or value of assets of the parties exceeds EGP 7.5 billion provided that one of the parties' turnovers in Egypt exceeds EGP 200 million.

Also, according to Law No. 175/2022, the investigation of economic concentration is now done through two phases:

- First, the Authority examines the application within 30 working days of the notification (the period can be extended to 15 working days if commitments are submitted). Also, the Authority establishes examination committees and can take the following decisions: the Authority is not competent, retaining, approving, conditionally approving or referring the complaint to phase 2 of the investigation.
- Second, the Authority further investigates within 60 working days from the referral (the period can be extended to 15 working days if commitments are submitted). The Authority can take either of the following decisions: retaining, approving, conditionally approving or rejecting the application.

It is worth noting that activities under the supervision of the Financial Regulatory Authority (FRA) have a special consideration. According to article 19 (bis e) of the Competition Law, the persons concerned must notify FRA of any economic concentration that takes place in any of the activities under the supervision of FRA before concluding the contract. FRA must consult ECA before approving the economic concentration according to article 19 (bis e) of the Competition Law. ECA shall issue its decision within 30 days starting from the following day of receiving a complete notification file from FRA according to article 19 (bis f) of the Competition Law. Also, any breach of article 19 (bis e) of the Competition Law is sanctioned by article 22 (bis d). Furthermore, the adopted amendments have expanded the controlling power of ECA, which now has the right to investigate, within 1 year, any economic concentration that is considered harmful to the freedom of competition. The investigations may take place even if the newly imposed thresholds do not apply, but only in the following cases: (i) if the economic concentration impedes technological development and innovation in the market; (ii) if it controls the market through the prices of the products; (iii) if it reduces the quality of the products offered to the consumers; or (iv) if it may create entry barriers or prevent the expansion of the market. Moreover, if a negative impact is established, the Competition Authority may impose behavioral measures/remedies that will limit that impact on competition. Also, pursuant to article 19 (a), economic concentration under the assessment of the Competition Authority cannot be implemented before obtaining the approval of ECA.



## Labour protection

Article 9 of the Labour Law in Egypt ensures protection for employee contracts in merger and acquisition transactions.

It is also worth noting that ECA has rendered a decision against anti-competitive practices through which it ensured the protection of more than 3000 employees. After investigation, it was proven that two delivery companies committed anti-competitive practices that constitute a violation of article 6 of the Competition Law, as they agreed to divide the markets in a manner that guarantees that no competition arises between them. This was accomplished by the acquisition of minority rights by a company through

access to the other company's confidential information, market strategies, and influence of its strategic decisions. The geographic division drove one of the companies out of the Egyptian market, and consequently, thousands of employees lost their jobs.

In light of the mentioned facts, ECA obligated the two delivery companies to immediately halt the concluded anti-competitive agreements and to restore the situation as it was before the conclusion of those agreements. The decision of ECA has ensured the maintenance of thousands of jobs.

## RECOMMENDATIONS

- The continuation of the implementation of the State Ownership Policy leading to changes, including the further liberalization of markets for vital sectors, particularly where State-owned enterprises operate. State interventions are now based on specific conditions or circumstances.
- Enhanced cooperation between ECA and the Central Bank of Egypt could be beneficial.
- More prerogatives must be granted to ECA, such as the power to issue fines against infringements.

