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Competition and Regulation in the Arab Region

Economic and Social Commission for Western Asia (ESCWA)

Economic Governance Series

Competition and Regulation in the Arab Region



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Introduction

On 12 and 13 June 2014, the Economic and Social Commission for Western Asia (ESCWA) convened an expert group meeting on the theme “Measuring economic governance in the context of national development planning”,¹ which resulted in the idea for a substantive publication on the topic. The meeting was also an opportunity for the ESCWA Economic Governance and Planning Section to validate its proposed work programme and seek advice on topics that warrant policy analysis for the benefit of member States.

Participants discussed the importance of antitrust and competition laws in the Middle East and North Africa (MENA) region and the need for competent market regulators dedicated to enhancing business environments, favouring investment, improving economic performance and driving growth. Competition and regulation are linked to challenges associated with inefficient market structures and governance systems, which have led to heavily concentrated and inefficient economies over time, through collusion, centralization of economic power among a few elites and general rent-seeking behaviour in Arab countries.

To address antitrust and competition challenges, ESCWA member States, excluding Bahrain, Lebanon and Oman, have implemented various regulations and policy measures to address competition issues. In general, the adoption of antitrust measures and competition legislation is linked to development, growth and trade. It also positively influences employment and private sector independence and reduces corrupt practices.

In addition, ‘pioneering’ countries, such as Egypt, Jordan and the United Arab Emirates, have established water, energy and telecommunication regulation authorities, which have played an important role in regulating their respective markets to allow for enhanced transparency, competition and efficiency.

Enforcement of competition and antitrust legislation remains key, especially as a tool for development and growth. Globally, many developing countries have adopted competition laws, either because of pressure from international bodies to liberalize their economies as a prerequisite in trade agreements, or as a condition to get loans. The challenges associated with adopting these laws include related reforms, the scarcity of financial and human resources, and the fear of losing foreign investments during the transition period. The latter concern does not take into account that a well-functioning competition regime would create a more favourable investment environment in the medium- to long-term. Developing countries often replicate Western models, using existing foreign competition laws as a template, from contexts that are arguably not suitable to their national challenges and development stage.

The efficiency of antitrust measures depends on whether competition laws are enforced. The objectives behind enforcement are two-fold: efficiency based (e.g. consumer or producer welfare) to enhance economic efficiency; or non-efficiency based (e.g. reducing poverty, fairness) to protect small businesses. A recent study² confirmed

the following expected results of enforcing competition laws:

- (a) Economic development and economy size are positively related to enforcement intensity;
- (b) Corruption affects enforcement, both in terms of will and capacity;
- (c) Agency independence and regional trade agreement membership have a positive impact on enforcement intensity;
- (d) Pursuing industrial policies is contrary to competition enforcement, as they often involve a protection element for infant industries.

It also yielded new findings:

- (a) Trade complements enforcement;
- (b) Net exporters spend more on enforcement;
- (c) Countries with higher sectoral concentration levels spend more on enforcement;
- (d) Comprehensiveness of competition law is not significantly related to any enforcement variable.

Innovation and growth represent key policy objectives for antitrust enforcement; they are also the benchmark for examining the efficiency of enforcement. Speakers at the expert group meeting agreed that “antitrust enforcement is efficient if it promotes innovation and growth”.³ However, while healthy levels of competition are important for sound economic growth and efficiency, some sectors may benefit from higher levels of firm concentration; for example, sectors with high fixed costs and a large scope for specialization. Corruption and agency dependence must be reduced in parallel with efforts to strengthen competition and antitrust legislation. Current examples of multilateral cooperation,

including from the United Nations Conference of Trade and Development (UNCTAD), the International Monetary Fund (IMF) and the Organization for Economic Co-operation and Development (OECD), indicate significant potential positive developments, but overall political decisions need to put in place an appropriate legal framework for economic development goals.

Market regulation can play a key role in the economic development of the Arab region. Business environment and investment climate are critical to a country’s ability to attract, retain and increase investments. However, less than half of ESCWA member States rank among the first 100 countries in the Doing Business indicators, including starting a business, securing credit and protecting investors. To improve the situation, regulatory bodies responsible for oversight of the business and investment climate should be tasked with devising and delivering programmes and initiatives to promote foreign and domestic investment; support the provision of accessible, standardized and developed services for investors in an environment well suited for business; and develop supportive policies for investment.

The development of transparent and clear regulatory frameworks is vital for dealing effectively with good governance challenges in the Arab region. There is strong evidence of a tight relationship between regulatory policies and economic growth, where the ability of the State to provide effective regulatory institutions can determine how well markets and the economy perform. For example, independent regulators can play a key role in monitoring the price and quality of services provided to consumers, while strengthening investor confidence, isolating political risk and resolving disputes independently.

Discussing competition and regulatory policies and institutions in the Arab region requires a closer look at the delayed implementation of competition and regulatory policies, the reasons for market failure, the overall benefits of competition policy and regulation, and the development concerns specific to the region, including the following:

- (a) Establishing credible strong and independent institutions;
- (b) Imposing a code of conduct;
- (c) Ensuring proper implementation mechanisms and adequate training;
- (d) Formulating related advocacy policies aimed at improving visibility;
- (e) Fighting anticompetitive behaviour.

Several key points requiring further investigation have emerged following a careful review of the various legal framework for competition and sectoral regulatory bodies in the region. They are addressed in the present report in the following manner:

- Instead of 'perfect' or 'pure' competition, an 'efficient level of competition' can be established, which takes into account the need for maintaining natural monopolies and other protection measures, for example, to enable market entry for innovative firms. To find an efficient level of competition, this report assesses the current legislative landscape on competition policy in the Arab region as a benchmark for future analysis;
- Few countries, such as Indonesia and South Africa, have unique competition laws with customized enforcement mechanisms; however, this does not apply to Arab countries. This

report examines the legal approaches of Arab countries to set a baseline for future analysis;

- Customized competition laws with large discretionary degrees of enforcement flexibility may be utilized as a political tool by dominant parties. This report examines the risks of this in the Arab region and how they can be remedied. It also considers whether there is a need for regional regulatory body networks that strengthen cooperation and integration between national market regulators;
- To strengthen the role of regulatory agencies, it is crucial to dismantle the rentier State mentality in the Arab region. This may be achieved through transparent and comprehensive pricing methodologies implemented by effective and independent regulators in various sectors. This report studies to what extent the scope of competition law influences effective regulatory institutions.

To address competition policy challenges from a development perspective, this report is structured as follows. Chapter I summarizes the current state of competition policy paradigms in Arab States and discusses the main antitrust-relevant practices. It also provides a brief case study of the Gulf airlines to illustrate how participation in a global industry is affected by the national and regional competition of Arab firms.

Chapter II continues the discussion, using international and regional examples, with an analysis of legislative and institutional designs, and of the relationship between competition and sectoral regulations. It also delineates the exemptions of public sector firms from competition laws and the resulting consequences. A case study on MobilNil Egypt outlines the

practical and legal consequences of competition cases brought to national courts.

Chapter III links the influence of competition and antitrust measures to regulatory bodies by taking a critical look at challenges that impact the effectiveness of competition and antitrust and market regulator regimes. The sub-chapters address international trade and liberalization, the political economy, development concerns, public awareness and enforcement, so as to highlight flaws related to the design of legislation types, implementation challenges and the issue of effective institutions as key stakeholders.

Chapter IV contains policy recommendations that address the need to improve the relationship between competition concerns and effective sectoral regulations. In addition, recommendations are made for enhancing the effectiveness of competition enforcement and institutional designs of antitrust and market regulators and their regimes. The chapter also includes an overview of current initiatives addressing competition and antitrust reform for the Arab region, including multilateral efforts and regional efforts to clarify possible institutional partners for policy reforms. The chapter closes with an evaluation of gaps and implementation – related recommendations to prioritize policy measures and enforcement strategies.

I. Current State of Competition Policy and Regulation in the Arab Region

A. Competitive environment

Competition occurs in all areas of political, economic and social life. When adhering to principles of reason and solidarity, competition is a beneficial organizing principle that allows for coordination and control of the relationship between individuals and groups (e.g. corporations) that aspire to the same goal. Competition in markets and across business sectors is deemed crucial for economic growth and social development, as well as for consumer choice in the interest of better quality and efficiency.⁴ The expansion of general welfare through healthy competition is also linked to the general idea of freedom (e.g. freedom of choice, freedom of profession). An increase in general welfare levels through healthy levels of competition is linked to enhancing degrees of freedom and choice (e.g. employment options) within the system of society and economy. Efficient levels of competition are directly linked to increases in productivity levels, due to incentives for product and process innovations (i.e. per capita growth), which can, in turn, lead to a rise in employment opportunities and incomes. In the long run, domestic competition improves an economy's global competitiveness and ability to participate in international trade.⁵ Lack of competition within the private sector and between the private and public sectors in the Arab region is cited as a major development challenge. For example, in terms of broadband competition, it contributes to a lagging technological infrastructure (e.g. weaker telecommunication networks), higher

unemployment rates (particularly among women and young people) and sub-optimal public services and employment.⁶

The issue of competition is linked to inefficient market structures and governance systems. All of the essential elements of a competitive environment, including orientation towards a shared objective (e.g. profit maximization, vote maximization), presence of an attractive market for firms to compete in, and performance incentives and outcome uncertainty of competition processes, allow for the emergence of anticompetitive practices. Through collusion, centralization of economic power among elites and rent-seeking behaviour, they can lead to heavily—concentrated sectors, if not whole economies, over time. To address antitrust and competition challenges, ESCWA member States, excluding Bahrain, Lebanon and Oman, have implemented various regulations and policy measures.

In general, the adoption of competition laws (see table 1.1) has been linked to economic development, in particular through the attraction of foreign direct investment, the efficient distribution of resources and an increase in the benefits of effective privatization.⁷ Several studies⁸ have shown that competition laws enhance markets, sustain an effective legal system, efficiently distribute goods and services, lower corruption in economies in transition, and decrease the negative effects of rent-seeking during market reforms.

There is room for improvement in the Arab region; given the diverse economic profiles across the region (e.g. middle-income countries, least developed countries (LDCs)), it could be argued that small developing economies should focus more on the cost-effective policy of trade liberalization. Nonetheless, in terms of equitable growth within a country, improved governance and competition regulation within markets are a useful tool for ensuring that economic development gives rise to effective and efficient distribution of resources.⁹

One way to highlight the benefits of effective competition legislation and regulation is to compare international rankings. The World Economic Forum publishes the Global Competitive Index (GCI), which determines the competitiveness of world economies and their comparative ranking. It is defined as “the set of institutions, factors and policies that determine the level of productivity of a country, taking into account its level of development”.¹⁰ One of the major pillars of GCI is quality of competition within each country’s economy (for an overview of the global and the regional ranking of ESCWA member States, see tables 1.2 and 1.3). The competition ranking is a composite measure of the intensity of competition and market dominance within a country, as well as the effects of antimonopoly policy, taxes and tariffs, and business registration processes/costs on competitive markets. Poor rankings of currently non-conflict countries or non-LDCs, such as Egypt, indicate an overall feeling that markets are both weakly competitive and unsupported by existing institutions, while higher rankings (mostly for GCC countries) indicate the opposite. The competitive environment also varies markedly across ESCWA member States. Table 1.2 evaluates the environment conducive to starting or running a business, as a measure of institutional

effectiveness and ease of competing with incumbents or with informal competitors (i.e. market entry barriers). Saudi Arabia and the United Arab Emirates rank the highest in the region, followed by Bahrain, Morocco and Oman. In contrast, Iraq, Libya, the Sudan and the Syrian Arab Republic have the least business-friendly climate.

Table 1.3 considers countries’ competitive environment. Across different measures of competitive environment, such as presence of entry barriers, intensity of local competition and extent of market dominance, the rankings are consistent. Bahrain, Jordan, Qatar and the United Arab Emirates score well on all counts, while Egypt and Yemen score most poorly. Lastly, in terms of the effectiveness of countries’ competition regulation, there are significant differences in formal institutions governing competition. Jordan and the United Arab Emirates have the most effective arrangements, while Lebanon, Morocco, Oman and Saudi Arabia have the least effective. Most notably, Iraq has no arrangements in place. Unfortunately, because detailed ratings of competitive environments are missing for a number of countries, a comprehensive comparison cannot be made across the region.

Moreover, the Bertelsmann Transformations Index (BTI) rates countries on quality of democracy, market economy and political management. It grants the highest ratings to Egypt, Qatar, Jordan and United Arab Emirates, and the lowest rating to the Syrian Arab Republic.¹¹ From a different angle and in terms of policy effectiveness, the Global Competitiveness Report¹² assigns the best scores to Qatar, Saudi Arabia and the United Arab Emirates, and the worst to Egypt, Libya and Yemen.

Table 1.1 ESCWA member States: ranking of antitrust/competition laws

Country	Law and implementation year	Anti-monopoly policy rating	Effectiveness of anti-monopoly policy rating	Effectiveness of anti-monopoly policy: global ranking	Effectiveness of anti-monopoly policy: member States' ranking
Bahrain	No specific competition/antitrust law ^a	5	4.62	35	5
Egypt	2005 Competition Law; COMESA 2013	7	3.22	132	11
Iraq	2010 Competition and Monopoly Law	3	N/A	N/A	N/A
Jordan	2004 Competition Law	6	4.46	45	6
Kuwait	2007 Protection of Competition Law	5	3.47	119	10
Lebanon	No competition/antitrust law ^b	5	3.55	115	9
Libya	No domestic law; COMESA 2013	3	3.45	144	13
Morocco	2000 Competition Law ^c	4	4.18	65	7
Oman	No specific competition/antitrust law ^d	3	4.75	19	3
Palestine	Draft form of competition law	N/A	N/A	N/A	N/A
Qatar	2006 Competition and Monopoly Law	7	5.27	2	1
Saudi Arabia	2004 Competition Law	4	5.07	21	4
Sudan	No domestic law; COMESA 2013	3	N/A	N/A	N/A
Syrian Arab Republic	2008 Competition and Anti-Trust Law	2	N/A	N/A	N/A
Tunisia	1991 Competition Law	5	N/A	74	8
United Arab Emirates	2012 Federal Competition Law ^e				
Yemen	1999 Competition Promotion Law	3	2.92	135	12

Sources: Policy rating: Bertelsmann Stiftung, 2015. Year 2014: 1=Lowest numerical rating, 10=Highest numerical rating. Effectiveness: World Economic Forum, 2014b.

^a Certain laws refer to the concept of competition. For details see <http://us.practicallaw.com/9-500-6281#a862183>.

^b As part of its strategy aimed at integrating Lebanon into the global economy and modernizing the domestic economy, the Ministry of Economy and Trade has been revamping its competition policy in-line with international practices. It has developed an action plan that calls for a new modern competition law, the establishment of a competition authority and the creation of a new enabling environment to ensure the proper implementation of the law. See www.economy.gov.lb/index.php/subCatInfo/2/15/5/1; and www.economy.gov.lb/public/uploads/files/8404_8262_8333.pdf.

^c Morocco has recently reviewed its competition regulation. For more information, see www.meda-comp.net/wp-content/uploads/2014/02/MCB_09-Extra_2014.pdf; Maroc Loi No. 104-12 relative à la liberté des prix et de la concurrence; and Maroc Loi No. 20-13 relative au Conseil de la concurrence (published in the Bulletin Officiel No. 6280 – 10 chaoual 1435 (7-8-2014)).

^d The Oman Law Digest 2009 – Monopolies, restraint of trade and competition states that Law of Commerce [RD 55/90] and Law of Commercial Trademark, Data, Trade Secrets and Protection Against Unfair Competition Law [RD 38/00] prohibits dissemination of misleading information or information inconsistent with facts in relation to the origin or nature of goods or any other trade matter, with intention to draw away the clientele of a competitor. Other sector specific laws have related provisions on restraint of trade and competition. Consumer Protection Law [RD 81/02] requires the Government to curtail monopolies or over-dominance in the market but does not specify what action must be taken, and vests discretion in the relevant Minister to formulate rules. The Law also requires the issuance of rules for controlling excessive price increases and prohibits suppliers from hoarding commodities which would result in an artificial price rise. Although there is no separate competition authority in Oman, the Law is implemented by the Ministry of Commerce and Industry. Available from <http://omanlawblog.curtis.com/2008/06/oman-law-digest-2008-monopolies.html>.

^e Competition Law (Federal Law No. 4 of 2012) came into force in February 2013: the implementing regulations are expected to set out the detail on the regulation of anticompetitive agreements, abuse of a dominant position and economic concentrations, including the thresholds at which an offence will be committed. Companies regulated by the Competition Law have a grace period until August 2013 to ensure their practices are compliant. (Source: GCC Quarterly Review, 2014).

The ranking and ratings for Arab countries leave room for interpretation, not just in terms of the drafting and adoption process of competition and antitrust regulatory frameworks, but also regarding their effective implementation and enforcement. Previous research¹³ acknowledges that the enactment of antitrust laws in developing countries can be perceived as ‘window dressing’ (e.g. to attract foreign investors) and that countries do not

plan to effectively implement such laws, but to preserve a privileged status for favoured firms. However, empirical research¹⁴ has shown that adopting antitrust/competition laws correlates highly with their future enforcement, thus casting doubt on the window-dressing theory and giving credence to calls for the development of a broader, stricter competition policy.

Table 1.2 ESCWA member States: ease of doing business ranking

Country	Doing business: global	Doing business: member States	Startup ease: global	Startup ease: member States
Bahrain	46	3	99	7
Egypt	128	11	50	3
Iraq	151	14	169	15
Jordan	119	10	117	10
Kuwait	104	8	152	14
Lebanon	111	9	120	11
Libya	187	16	171	16
Morocco	87	7	39	2
Oman	47	4	77	5
Palestine	N/A	N/A	N/A	N/A
Qatar	48	5	112	8
Saudi Arabia	26	2	84	6
Sudan	149	13	131	12
Syrian Arab Republic	165	15	135	13
Tunisia	51	6	70	4
United Arab Emirates	23	1	37	1
Yemen	133	12	114	9

Source: World Bank, 2013a.

B. Anti-competitive practices and market structure

The region faces numerous competition policy related challenges. To protect against corruption and cronyism, the independence of a regulatory body is key for effective regulatory governance of competition. Although measures have been taken, such as the introduction of anticorruption agencies

in the early 2000s, the region has yet to improve compared with sub-Saharan Africa, for example, on issues of voice and government accountability.¹⁵

The scope for greater transparency and government control of key industries remains large across both GCC countries and other Arab subregions. Some of the major challenges facing Arab countries in that regard are outlined below.

Table 1.3 Selected market-based ratings related to competition for ESCWA member States

Country	Market-based competition rating (2014)	Barriers to market entry	Intensity of local competition	Extent of market dominance	Competition regulation effectiveness
Bahrain	8	2.0	5.35	3.88	2
Egypt	4	3.0	4.05	3.13	2
Iraq	4	2.5	N/A	N/A	0
Jordan	5	1.0	5.20	4.34	3
Kuwait	7	3.5	4.51	3.39	2
Lebanon	6	2.5	5.52	3.66	1
Libya	5	2.5	3.69	2.74	N/A
Morocco	6	2.5	5.34	4.04	1
Oman	7	3.0	5.00	3.58	1
Palestine	N/A	N/A	N/A	N/A	N/A
Qatar	7	1.5	5.73	5.22	N/A
Saudi Arabia	6	1.0	5.41	4.34	1
Sudan	3	2.0	N/A	N/A	2
Syrian Arab Republic	2	2.0	N/A	N/A	2
Tunisia	6	3.0	4.78	3.66	2
United Arab Emirates	7	1.0	5.96	5.19	3
Yemen	4	2.0	4.27	2.87	N/A

Sources: Rating: Bertelsmann Stiftung, 2015. Year 2014: 1=Lowest rating, 10=Highest rating.

Barriers: CEPII, 2012. Year 2012: 0=No barriers, 4=Major barriers.

Local competition: World Economic Forum, 2014a, 2014b. Years 2014-2015: 1=Worst, 7=Best.

Market dominance: World Economic Forum, 2014a; 2014b. Years 2014-2015: 1=Worst, 7=Best.

Regulation effectiveness: CEPII, 2012. Year 2012: 0 = no arrangements. If arrangements exist, f1=Not very effective, 4=Very effective.

1. Collusion

Collusion, or illegal cooperation among and between economic and political actors, is an established hindrance to development, which can result in large concentrations of economic wealth and reduced competition. This behaviour can offer unfair advantages to favoured firms, such as access to grants or subsidised loans, and preferential treatment from government or institutional authorities. In turn, this further reduces competition within the market and exacerbates development delays. Collusive practices can be divided into vertical agreements (i.e. between firms at different stages of the supply chain) and horizontal collusion (e.g. a price cartel among competitors in the same sector), with the former considered a type of corruption and the latter requiring a more differentiated view in terms of possible positive welfare effects.¹⁶

2. Crowding out

Crowding out of private sector investment through public sector expansion, including government agencies and State-owned enterprises, goes hand-in-hand with low levels of entrepreneurship in the Arab region. While crowding out is not a classic antitrust issue, the end result is detrimental to the labour market given that a lack of employment opportunities in the private sector together with low attraction further reduce economic contribution. "Employment in the public sector ranges from 22 per cent in Tunisia to around 33-35 per cent in Syria, Jordan, and Egypt. Worse, if only non-agricultural employment is considered, the share of the public sector reaches 42 per cent in Jordan and 70 per cent in Egypt".¹⁷ In the United Arab Emirates, 91.7 per cent of nationals work in

the public sector, but 78.4 per cent of expatriates work in the formal private sector.¹⁸

Enhancing the private sector means easing the startup processes for businesses and reducing barriers to entry (e.g. facilitating access to startup funding and credit, increasing availability of human capital). This could include the following measures:

- (a) Reducing the number of steps needed to register a business;
- (b) Clustering all bureaucratic entities responsible for registration to streamline administrative practices;
- (c) Internally streamlining and reducing waiting times;
- (d) Reducing the costs of registration and required capital for startups.

Table 1.2 summarizes the global and regional rankings related to the 'ease of doing business', in general, and creating a startup, in particular. The United Arab Emirates leads the region and ranks thirty-seventh in the global startup ranking. Notably, the United Arab Emirates does not require capital inputs, while the cost of registrations is only 6.4 per cent of per capita income and the registration process is quick. Other than Egypt and Morocco, who join the United Arab Emirates in the top 50 countries affording 'ease of doing business globally', the region significantly lags behind the rest of the world.

3. Monopolies

Monopolies, along with a lack of restrictions against abuse of dominance or monopoly power, are prevalent in the Arab region. In particular, there are State-owned monopolies in the energy sector

(natural/strategic monopolies), telecommunications and media, among others. Recent privatizations have favoured replacing public monopolies with private monopolies, or oligarchies, run by individuals with close ties to the political establishment. The widespread perception of failure of privatization processes has made privatization a less desirable policy choice.¹⁹

Arab firms' behaviour, depending on firm size and market scope, in terms of compliance with competition policy and regulation, has national, regional and international consequences. Within a challenging economic environment affected by varying political stability across the Arab region, the six Gulf Cooperation Council (GCC) countries have succeeded in offering ample opportunities for investment in support of both regional and global integration across various industrial sectors. Nonetheless, the requirements of the World Trade Organisation (WTO)²⁰ vis-à-vis competition as a free market requirement prove a challenge across the region and its industries. The current case of the Gulf airlines involving Arab Governments and a mixture of State-ownership (often linked to family-ownership) serves as a vivid example of market challenges (see subsection 4 below). In this context, the drafting of a unified competition law for GCC is one measure to protect and promote competition at the national and regional levels (see annex III to the present report for the complete draft text of the law); however, implementation has not yet been completed.

In practice, national antitrust laws have been drafted and implemented across the region to varying degrees, according to whether and how restrictive agreements and practices are regulated by competition law; whether unilateral (or single-firm) conduct is regulated by competition law; and

whether mergers and acquisitions are subject to control mechanisms (see annex I to the present report).

4. Case study: Gulf airlines

It is important to note that, in globalized economies, one country's national perception of what is anticompetitive may not be congruent with other countries' approaches, or regional and international practices.

Since the publication of a report entitled "Restoring open skies: the need to address subsidized competition from State-owned airlines in Qatar and the UAE",²¹ the Gulf airlines case has generated significant media attention. The United States airlines American Airlines, Delta and United are involved. If the case reaches international arbitration, a ruling may have far-reaching consequences for the airline market. Furthermore, it will inform other sectors in terms of future competition policy and regulation. The title of the report captions two major competition-related issues in the Arab region: State-ownership and allocation of direct and indirect subsidies (i.e. competitive neutrality). Box 1.1 summarizes the main points of the case, providing a reference frame for discussions in chapters II and III.

One of the questions raised by the case is whether State-owned enterprises have an unfair advantage in difficult times if they are backed by wealthy sovereigns that facilitate deferral of debt payments, compared with firms in countries that do not provide such support. Moreover, the case highlights how competitiveness is influenced by national and regional regulation, which may affect firms beyond national and regional boundaries. Recognizing national interests, national

competition legislation often exempts
State-owned companies from such regulations.
As a result, private and public businesses do not

face a level playing field given different
service obligations, expectations
and opportunities.

Box 1.1 Gulf airlines case: effects of national competition policy

Citing market liberalization and removal of government influence as priorities for promoting competition and consumer choice in airline markets, the United States Open Skies agreements fundamental principles require closer evaluation. Firstly, persuading foreign Governments to sign the United States model Open Skies agreement and, secondly, ensuring that bilateral agreements negotiated under the policy are consistent with United States' interests. It appears that the agreements are skewed towards United States companies' business interests and the recent report on Gulf carriers specifically asks for government support on behalf of the American airlines. Moreover, Open Skies agreements between the United States and Gulf carriers date back to the 1990s and market conditions have significantly evolved since then.

The report describes State-owned enterprises, in this case Qatar Airways of Qatar, and Etihad Airways and Emirates Airlines of the United Arab Emirates as instruments of national development strategies, which benefit from substantial subsidies and other protectionist measures ("government-conferred advantages", such as guarantees). From a perceived economically superior position than their global competitors in the United States and Europe,^a the named airlines are able to expand routes and services above and beyond their competitors. Consequently, the United States airlines accuse Qatar and the United Arab Emirates of deliberately distorting market conditions at the global level. The issue has become divisive^b not only in the United States, with arguments ranging from an unjustified position of American airlines (since geography shielded them thus far from little direct competition and a sizeable domestic market) over seemingly balanced views (What some consider to be subsidies, others consider to be legitimate business practices) to full support for re-examining the premises of Open Skies agreements.^c For examples, Forbes magazine states:

Having been the recipients of billions of dollars of government aid and support, the [American] airlines are trying to have it both ways. Delta and other airlines lobbied for and received \$18.6 billion in bailouts from the federal government in 2001. Delta and Northwest lobbied for and received a pension bailout from the Pension Guarantee Benefit Corporation, a federal agency, when Delta underfunded its pension plan by \$3 billion and filed for bankruptcy. Delta Airlines received an \$84.8 million loan guarantee from the Export-Import Bank in April 2012.

In rebuttal,^d the Gulf airlines respond to these allegations by highlighting their independence and how large-scale investments into business development and fleet management sets them apart from the United States and, potentially, from the European airlines:

Sir Tim Clark (President of Emirates Airlines) emphasized "that all cash losses incurred by the airline as a result of its fuel trades in place between 2008 and 2009 were settled in full from its own cash reserves and not paid for by the government of Dubai. [And], from its first day of operations, Dubai's government made it clear that the airline would have to wipe its own nose free from subsidies. There will be no support for the operation. You will be required to make money, to make your own way";

Qatar Airways Chief Executive Akbar al-Baker reportedly said: "I am delighted that Richard Anderson of Delta is not here. First of all, we don't fly crap airplanes that are 35 years old", adding that "the issue is that they cannot stand the progress the Gulf carriers are making".

In 2012, Emirates Airlines issued a position paper entitled "Airlines and subsidy: our position" concerning the accusation of being heavily subsidized and, in a comparative analysis, shows that airlines across the world benefit at one time or another from government support. Pointing out that airlines qualify as being "industries of national interest", the paper concludes:

Subsidy is an unpalatable reality. Whether state sanctioned or permitted under another label, governments around the world have often been ready and able to intervene in establishing industries of national importance. This is especially so in this time of global economic crisis, when financial bailouts and state intervention by governments are employed to prop up economies. Emirates' view is that subsidies are an affront to what we stand for and what we strive to build for our company. We unequivocally disapprove of subsidies, but recognize they do happen in our industry. We reaffirm our commitment to open and transparent operations, free of subsidy. Emirates welcomes a fact based debate on state aid and hopes this applies to all industry participants. Vocal rival carriers, which themselves have benefitted from governmental support, are peddling self-serving falsehoods when they allege that Emirates is somehow at an advantage.^e

The notion of "open skies" suggests that airline companies operate in a competitive environment and to the benefit of the consumer. However, the fact that patronage, protectionisms, bail-outs and hand-outs are accepted competition tools across the world needs to be addressed urgently:

Instead of using its carriers' complaints as justification for more protection, America would do more for its citizens by ending its restrictions on foreign ownership of airlines and offering complete freedom to operate internal flights. American consumers would gain regardless of whether governments, in the Gulf and elsewhere, reciprocated, just as American taxpayers would gain if government subsidies were to come to a stop. If Etihad or Ryanair or whoever wants to run services from Dallas to Los Angeles, they should be able to. Antitrust regulators should force American airports to open up slots and check-in counters to allow in fresh competitors. The same logic is true for Europe – and also for the Gulf States.^f

Source: ESCWA compilation, based on referenced sources.

^a Gazzar, 2015.

^b Mouawad, 2015.

^c Versace, 2015.

^d Critchlow, 2015.

^e Emirates Airlines, 2012, p. 27.

^f The Economist, 2015.

C. Regulatory environment in the Arab region

The adoption of appropriate and effective regulations is a main tenet of growth and diversification, and should be included as a tool in the development plans of Arab countries to support employment creation. Countries should adopt smart policies that govern the drafting, implementation and review of regulations, particularly those affecting economic activity, the private sector and competition. Regulatory policy should address a variety of issues, including but not limited to political support for reform; adequate resources for regulation, monitoring and evaluation; cross-

institutional coordination; and apex-level and executive-branch support.²²

OECD²³ defines regulatory policy as the process through which Governments decide whether to use regulation as a policy instrument to reach specific national development objectives, and hence proceed to draft and adopt regulation through evidence-based decision-making. The International Finance Corporation (IFC) refers to regulatory governance as "the systematic implementation of government-wide policies to promote a regulatory system that is effective, efficient, transparent, and accessible".²⁴ The following four pillars of regulatory governance are examined in this study: policy, institutions, quality

tools and processes, and policy instruments and outputs. The goals of reform are to help make governance systems more effective, efficient, transparent and accessible, which can be achieved through the following three regulation phases: development of new regulations, revision of existing regulation, and implementation of regulations.²⁵

The objective of regulations is improving the economic, social and environmental frameworks within which citizens and businesses operate. The key questions that legislators must address before acting include the following: are the envisaged regulations needed and will they target specific market failures; will they fill a real gap towards enhancing business transactions; and will their application improve the living conditions of beneficiaries or will they present an additional burden? The critical public policy challenge is to make sure that the expected benefits from regulatory policies are proportionally higher than any costs imposed by implementing them.

Regulations sometimes viewed as an impediment to business due to the creation of market distortions. However, economic theory justifies State regulation “where there are appreciable externalities, missing or incomplete markets, information asymmetries or public good attributes in economic transactions”.²⁶ Regulation can therefore play an important role in boosting economic growth and efficiency in cases of market failure.

Regulations become necessary when free markets result in socially unacceptable income and wealth distributions, or a lack of provision of certain vital public goods. In general, studies mainly focus on the costs of regulation, taking a naturally anti-regulation stance; hence there is insufficient analysis of and focus on the subsequent benefits of

regulation.²⁷ If a regulatory policy can ensure economic, social and environmental benefits, it is important to balance these with the cost associated with regulation. Regulations, such as property rights, company laws and licensing, can have a positive effect on private sector development. It is also true that the main related business complaints are: damaging regulations and excessive regulatory red tape. Policies, such as administrative simplification, reduction of regulatory burdens, opening one-stop shops, shortening the time for opening a business, and lowering business entry costs and regulatory burdens, can improve national economic performance.²⁸

Constant monitoring and evaluation of regulations is necessary to pinpoint out-of-date, ineffective and overlapping laws and regulations. In turn, these should be replaced with more streamlined and efficient policies. There are a number of constraints facing regulatory governance in developing countries, in particular, relevance, capacities, insufficient implementation and the oft-held view that regulations may slow growth and development trajectories.²⁹ In addressing this last point, Governments must provide simplified but strong regulations that allow for fast adaptation, particularly vital in high-growth developing markets,³⁰ such as principle-based instead of rule-based regulation. Technology can play a role in enhancing transparency and accountability in institutions that are inefficient in implementation owing to corruption, lack of skills, or lack of monitoring and accountability tools.

Rather than developing a larger absolute number of regulations, specifically regulations that limit certain economic activities, Governments should focus on better and more effective regulations that promote economic activities, specific sectors and investments. In determining effectiveness,

however, there are methodological difficulties in conducting monitoring and evaluation of regulations, and it is often difficult to draw robust conclusions on whether a regulation leads to a specific economic outcome.³¹

Importantly, regulation and governance reforms have to be targeted to generate long-term and systemic change. Too often, regulatory reforms aim for ad hoc short-term and low-cost solutions, which do not address structural issues in governance systems.³² While the benefits of such forward-thinking reforms may be slow to materialize, they will eventually yield systems with greater trust and accountability, which are important for stable and strong economic growth. Many regulatory reforms have centred on creating independent regulators and decentralized systems of governance.

While these developments can be beneficial, Governments must closely analyse the reasons for and potential gains of such reforms. Many developing countries, following the Washington Consensus advice of decentralization and deregulation, have not yet developed adequately capable and competent bureaucracies. Consequently, premature deregulation has gutted these institutions of their regulatory capabilities. Although reform and the cutting of red tape are important, these should be assessed to see whether they make regulation more effective, rather than becoming goals in themselves.

Different studies underline that recent social uprisings in the region called for stronger economic governance, characterized by increased transparency, accountability and better public services. An important question is whether social pressure, paired with private sector lobbying

activities, influences regulatory policies. OECD³³ identifies the following three elements that constitute regulatory policies: core policies; systems, processes and tools; and actors and institutions. While this report focuses on institutions and, in particular, on their relationship with competition concerns, it is interesting to highlight how and if regional Governments are setting regulatory core policies and providing regulatory processes and tools. The Jordanian and Egyptian examples of national regulatory reforms are two of these ongoing initiatives (boxes 1.2 and 1.3).

While the importance of reforms for effective regulatory governance has been detailed extensively in the literature on this subject, the state of regulation and goals of reform in the Arab region are diverse and face varying challenges. According to OECD,³⁴ “regulatory policy is still a new concept and approach within Arab countries”. In part, this may help explain why, rather than implementing high-level regulatory policies, Arab countries opt to regulate individual sectors.

As Arab States seek to incorporate regulation and governance into policy reform, there is difficulty contextualizing these concepts in the local political environment. Despite various challenges, many countries have initiated reforms and succeeded in enhancing governance and reinforcing institutions, with competitiveness and attracting foreign direct investment as major goals. “Many MENA countries are implementing programmes and initiatives to support core policies in the pursuit of greater regulatory transparency”.³⁵ A number of countries, such as Jordan, Saudi Arabia and the United Arab Emirates, have enacted competition and antitrust legislation. However, despite the adoption of regulatory reforms and regulations aimed at improving the ease of doing business, countries continue to face implementation difficulties owing to

limited resources and a lack of political will. Further reforms are needed to cement the issue of regulatory governance consistently in all offices and branches of Government, since Arab countries have yet to pursue governance reforms with a 'whole-of-government' approach.³⁶

In response to stagnating levels of economic growth and job creation across the Arab region, new growth

stimulus and economic development strategies must be accompanied by appropriate oversight, regulation and accountability. In this regard, regulatory governance and reform is of utmost importance for Arab countries. The following chapters will discuss the challenges for effective competition policy and regulatory reform in the Arab region to draw recommendations for gradual improvements.

Box 1.2 Jordanian regulatory reform approach

The Jordanian National Agenda 2007-2017 on political, social and economic reforms focuses on the creation of a favourable business environment and aims to increase regulation quality to make them more transparent, accountable and competitive. The Jordanian Government has also made important progress in implementing infrastructure reforms. Jordan has undertaken many initiatives in recent years to enhance infrastructure performance, including the development of public-private partnerships in the areas of water, energy and transportation. Market-oriented reforms have been implemented to achieve competitiveness through good regulation and adequate separation between policy, regulation and service provision. Since the introduction of market-oriented reforms, such as the privatization of the Jordan Telecommunications Company, Royal Jordanian Airlines and other large state enterprises, the Jordanian debt-to-GDP ratio shrank from 105 per cent in 2000 to 57.1 per cent in 2009. Despite these measures, demographic trends and sustained economic growth are increasing demand for infrastructure services, putting pressure on existing infrastructure stocks and natural resource endowments.

Sources: Aubin and Verhoest, 2014; His Majesty King Abdullah II Ibn Al Hussein, 2007.

Box 1.3 Egyptian initiative on regulatory reform and development activity

The Initiative on Regulatory Reform and Development Activity (ERRADA) in Egypt focuses on regulatory measures aimed at enhancing the business environment through better regulations. First established in 2008, it was reactivated in March 2014. The Initiative involves a plurality of stakeholders given that it is based on a dialogue between public and private institutions and civil society, aimed at increasing economic efficiency, competitiveness and creating more job opportunities. The starting point in this Initiative is the business environment and business-related regulations that have to be reviewed to ensure private sector growth. ERRADA aims to avoid overlapping regulations, and to establish authorities tasked with regulation issuance and clarity and with designing specific studies on the economic impact of regulations. Activities implemented include an inventory of all business-related regulation; the creation of an electronic registry to make regulations easily accessible to the public; and the introduction of a regulatory impact assessment. The main success of ERRADA seems to be the engagement of different stakeholders. The Inventory was reviewed with the support of companies and civil society representatives. Key procedures have been identified against the standard cost model system to avoid extra burdens for investors. The introduction of e-registry has increased legislation compliance among businesses. Despite limited political support and general scepticism, the Initiative is proving successful.

Source: Government of Egypt, 2015.

II. Competition and Sectoral Regulations

A. Challenges of effective application of competition legislation

As a relatively new branch of law in the Arab region, competition legislation is facing several application challenges. Given that most Arab countries are emerging economies, many of these challenges are related to the following: a lack of 'competition culture'; high market concentrations; nascent industries in need of protection; cronyism, nepotism and corruption; and a failure to integrate adopted competition into a broader set of development policies.³⁷

In general, competition laws are adopted to secure free-market operations. Yet, the policies necessary to foster such legislation are often misunderstood or simply ignored. A clearly defined scope of application is vital to assure effective implementation of competition law, but many Arab countries have yet to set one. Consequently, this causes confusion, corruption and misguided policy outcomes. This chapter focuses on the scope of competition law application vis-à-vis regulatory bodies. The interplay between competition law enforcement and sectoral regulatory enforcement in ESCWA members States is analysed to illustrate current problems and introduce policy recommendations regarding the scope of competition law applicability.

Most Arab countries have introduced competition law as an economic progress tool to avoid lagging behind in a competition-driven global economy.³⁸ Competition law has therefore been introduced as an added component to an already existing legal

framework, raising various compatibility questions. Consequently, several problems arise following the adoption of such laws, including clashes between the scopes of competition laws and regulations specific to certain sectors (sectoral regulations).³⁹ Usually, sectoral regulations and the bodies applying them are established long before the adoption of competition legislation. As a result, there have been instances when competition law has conflicted with well-established bodies applying regulations.

These instances have led to an antagonistic relationship between competition law and sectoral regulation, since their application sometimes leads to different outcomes.⁴⁰ Their perceived differences can be described as follows: competition law is designed to be applied uniformly across all sectors to promote a more competitive environment; conversely, sectoral regulations are confined, by definition, to only one sector.

Sectoral regulators are often responsible for competition within their sector, which may not align with the overall competition policy set by a country's competition authority. Since sectoral regulation has a specific focus, it can be perceived as more adapted to a sector, and as such can be construed as having priority over competition law. Nonetheless, sectoral regulation is by default only interested in its respective sector, without due regard for other competition ramifications across a country. Sectoral regulators might also be interested in promoting their specific sector, while competition authorities aim to promote all sectors equally without bias.

Agency conflicts start to appear when the scope of competition law excludes sectoral regulations.⁴¹ Here, sectors might pursue policies that are in direct conflict with the overall competition policy framework of a country. However, more conflicts arise when the reach of competition law and sectoral regulation is not clearly defined. When competition finds itself restricted by sectoral regulation, the question whether to apply the latter or to prioritize competition law has few concrete answers.

These potential conflicts can be harmful on small and large scales. Two parallel sets of regulations that coexist and, at times, overlap, may cause legal inconsistencies if they lead to different legal solutions for a given situation. Such inconsistencies result in a general climate of legal uncertainty, thus hindering the overall performance and efficiency of a legal framework and facilitating corruption.

It is important to keep in mind that, because competition law is a young field in Arab countries, authorities are focusing on applying basic competition rules and principles,⁴² thus sidelining sectoral bodies. However, competition law still does not apply to all economic actors: the public sector remains exempt in a large majority of cases across Arab countries. In practice, a lack of properly defined jurisdictions and relationships leads to blurred applicability scopes.

The role competition plays within an all-encompassing economic, political and legal system has yet to be fully clarified from a legal standpoint. No legal system has yet perfected an ideal relationship between competition law and the bodies applying it, on the one hand, and specific sectoral regulations and bodies involved in implementation, on the other. However, countries

with longer-standing competition legislation have found solutions to managing relations between both types of legislative instruments and have fostered relationships between relevant implementing bodies.⁴³ However, these solutions are not meant to serve as ready-made applicable models to be imported, but rather highlight the significant efforts made in the field of competition law and sectoral regulation to ensure that they accommodate each other.

A full spectrum exists between formal rigidity and flexibility, and the merits of each system depend on legal subtleties and factors such as the following: openness to competition, independence of concerned bodies from Government, the sectors involved, and the economic policies in place.

Nevertheless, it is important to note that each solution is to be interpreted in the light of a country's economic, political and legal infrastructure. Hence, solutions that may be effective for one country may be inapplicable in another owing to certain specificities. Context is crucial; no model exists for an ideal relationship.

These concerns are addressed in the following parts of this chapter. Section B details the range of models available to design the relationship between competition and sectoral legislation and institutions. The aim is to illustrate the varying possible rules, regulations and organizational structures that countries have chosen to follow. It serves to highlight that no single model has proven its superiority and a range of possibilities are available to choose from. It also presents an overview of competition legislation in Arab countries pertaining to the scope and reach of its applicability. It delineates the set up within these competition legislations that govern the interplay between

competition law, its enforcing authorities and sectoral bodies. The majority of Arab countries have yet to clearly define the relationship between competition and sectoral legislations and institutions. This might mean that room for flexibility is expanded, but this comes at the price of certainty and clarity. Section C covers exemptions from competition law. Discussion in section D addresses the telecommunications sectors across member States, focusing on a relevant case study from Egypt, where the reach of sectoral and competition legislation and institutions has been put on trial. It illustrates the severity and ramifications of the lack of clearly defined jurisdictions for competition and sectoral implementations, not only in Egypt but throughout the Arab region. Section E introduces regional sectoral regulatory regimes and how they might affect Arab countries with regard to the relationship between competition and sectoral reach.

B. Legislative and institutional designs: modelling the relationship between competition and sectoral regulations in the Arab region

Designing an effective interface between competition law and specific sectoral regulation is not an easy task. In many instances, competition enforcement authorities have found themselves having to apply competition law provisions to regulated sectors. In other instances, regulatory bodies have taken responsibility for competition issues within their sectors. There is no defined setup in place to modulate competition law enforcement between competition authorities and sectoral regulatory bodies. How the relationship is defined relates to legal and institutional setups: the interface between competition laws and sectoral

legislation, on the one hand, and the relationship between competition authorities and regulatory bodies, on the other.⁴⁴

When legal and institutional relationships are not clearly defined, conflicts can arise with regard to institutional bodies applying competition matters within specifically regulated sectors.

Another question is which legal regime takes precedence for competition issues: the general competition law or relevant competition provisions codified in specific sectoral regulations and legislation. There is no textbook response to this question, since many factors, such as legal and economic contexts, are taken into consideration. Some of the issues that this conflict raises include the following pertinent questions:

- Is there a clear-cut, expressly mentioned competency for any of the bodies, or is the law silent?
- Does the sector play a central role in the country's economy?
- How recent is the competition law?

Looking at these issues through a competition law lens, these relationships organize into the following four distinct models:

- (1) The first model dictates that the competition authority, as per national competition law, resolves all competition matters. Here, sectoral bodies are required to resort to competition bodies to decide upon competition issues within their sector.
- (2) The second model allows sectoral bodies to solely decide on competition matters within their sector without resorting to competition authorities.

(3) The third model delineates a requisite cooperation between sectoral bodies and competition regulatory authorities. This cooperation is either clearly mandated under competition law, specific sectoral laws or under a mandatory memorandum of understanding enacted between competition authorities and sectoral bodies.

(4) The fourth model leaves the relationship uncharted, in the sense that, when a conflict arises between sectoral bodies and competition authorities, an ad hoc process is initiated to decide on competition matters.

The following paragraphs illustrate these models using some country examples, before turning specifically to Arab countries (figure 2.1) for a summary of possible organizational relationships between competition authorities and sectoral bodies. The adoption of competition laws by Arab countries means they also face the challenge of potential conflict between competition and sectoral regulations. The novelty of competition law, accompanied by the absence of competition culture, often means that such conflicts are certain to take place. Furthermore, without clearly defined legal and institutional boundaries between different regulatory authorities and their legislation, there is significant potential for jurisdictional conflict.

The following subsections will introduce two broad limitations of competition law reach across Arab countries. By identifying these limitations, this report will show that the legislative and institutional design of the relationship between competition and sectoral bodies needs clearer delineation. Compared with the above models, most Arab countries are consistent with the above-mentioned fourth model where the relationship between sectoral and competition bodies is decided in an

ad hoc fashion. However, a few exceptions do exist, such as Egypt, Lebanon and the United Arab Emirates. Figure 3.1 categorizes Arab countries' institutional and legislative designs of competition and sectoral regulations in terms of these four models. In addition, the following classifications provide some context to help explain the chosen national approach.

1. First model: competition authority decides on all competition-related issues

If the Lebanese competition law is passed, its provisions will state that competition authorities should resolve all competition matters. Here, sectoral bodies are required to resort to competition bodies to decide on competition issues within their sector. In Lebanon, competition principles are applied to both the private and public sectors with no differentiation.⁴⁵

2. Second model: sectoral bodies apply competition issues

The United Arab Emirates has established autonomous authorities to deal with competition issues (box 2.1) and sectoral bodies can decide on competition matters within their sector without resorting to competition authorities. The Emirati Competition Law gives power to the sectoral regulatory bodies to organize their own competition rules applicable to their sector, unless they request the Government to fully or partially deal with such issues.

This means that competition authorities are completely sidelined with regards to competition issues at the sectoral level in the following sectors: the telecommunications sector; the financial sector, cultural activities (print, audio, visual); the oil and

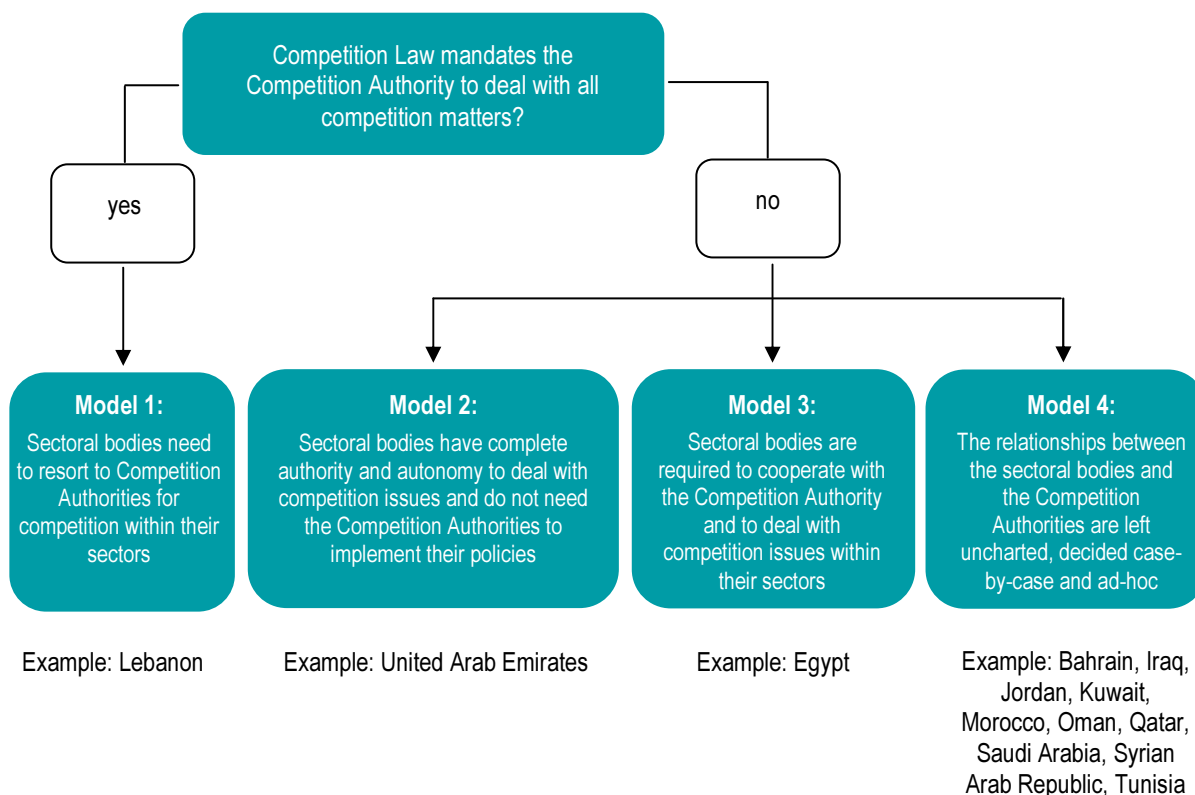
gas sector; the production and distribution of pharmaceutical products; postal services including courier services; activities related to the production, distribution and transmission of electricity and water; sanitation activities, hygiene and garbage disposal; and land, sea and air transport sectors and transport by rail and related services.⁴⁶

3. Third model: mandatory cooperation

Egypt is attempting to deal with possible conflicts between sectoral and competition regulations and institutions (box 2.2). A proposed amendment to the

Egyptian competition law, if enacted, would require sectoral bodies, among others, to seek the opinion of competition authorities regarding draft laws and regulations concerning the organization of competition.⁴⁷ Involving competition authorities in all competition matters is a positive step towards unifying all sectors and industries under one common competition policy and framework. The Egyptian Competition Authority has signed several cooperation protocols with sectoral regulatory bodies, such as the National Telecommunications Regulatory Authority, to ensure bilateral sharing of information and expertise.

Figure 2.1 Modelling the relationship between competition and sectoral bodies across the Arab region



Source: ESCWA compilation.

Box 2.1 United Arab Emirates: inequality, competition law and State-owned enterprises

The United Arab Emirates, one of six GCC countries, is one of the wealthiest nations within GCC and the Arab region as a whole. However, there is limited competitiveness with its marketplace. For example, in terms of State-owned enterprises among the top 10 firms by country, the United Arab Emirates comes second only to China, with 88 per cent. The new 2012 Competition Law does not reduce these levels and enhance competition, as all publicly owned companies or related entities are not covered by this Law. All firms operating in the industries of oil and gas, electricity and water, financial services, pharmaceuticals, transportation, telecommunications and waste management are also exempt. The Law does not penalize entities with a dominant market share (it only punishes those who take advantage of their large market share; i.e. predatory pricing) and leaves large discretion to the Ministry of Economy. The result is a failure to address issues of collusion and concentration of economic resources among the country's elite, particularly those with political power and connections who have the capacity and ability to foster change.

Sources: Hausmann, 2013; Kowalski and others, 2013.

Box 2.2 Egypt: collusion among the elite

It took Egypt from 2000 until 2005 to pass an antitrust and competition law for the following reasons:

1. Government ministries were unwilling to relinquish power, thus delaying adoption.
2. A fear by firms that competitors with political connections would be able to abuse the law and charge them with anti-competition practices.
3. Corruption and profiteering may have played a role.

After the fall of the Mubarak regime, it was hoped that corruption within the Egyptian Government would decline. However, reports of corruption have begun to abound again. The Egyptian military, which diversified its holdings during privatization in 1990s, has obtained top executive posts at public and private firms throughout the country. During corruption crackdown campaigns in 2011 and 2012, businessmen with military connections were not targeted.

This type of corruption casts doubt over the enforcement of the 2005 Competition Law and other governance measures meant to ensure a free market competitive economy. This highlights the need for better analysis of implementation and enforcement by the ECA, which failed in 2012 to prove any violations and has a history of leniency on repeat offenders, such as Ezz Steel.

Sources: Gerardin, 2004; Marshall and Stacher, 2012.

4. Fourth model: uncharted relationship

The majority of Arab countries leave the relationship between competition authorities and sectoral bodies uncharted. When a conflict arises between sectoral bodies and competition authorities, an ad hoc process determines competition matters (see the examples of Bahrain in box 2.3 and Jordan in box 2.4).

C. Exemptions from competition law

With few exceptions, the reach of competition law in Arab countries is limited owing to the following two main reasons: competition laws include exemptions for the public sector; and other specific exemptions exist, such as those relating to necessity products.

Box 2.3 Bahrain: integration of the 'competition' concept in other legislation

Bahrain is ranked highly in terms of its effective antimonopoly policy. It does not have specific antitrust regulation, but explicitly references the concepts of 'competition' and 'antitrust' in other legislation, including the following:

- Article 117 of the Constitution stipulates that a monopoly can only be awarded by law and for a limited time;
- The Civil Code provides that a contract which is assumed either for no consideration or for consideration, which is contrary to public order or morality, is void;
- Articles 59 to 64 of the Law of Commerce apply to traders and to all commercial activities undertaken by any person, even if an individual is not a trader. The Law has a section on unfair competition which includes the following provisions:
 - The owner of a trade name and trade mark is protected. A trader is prohibited from fraud and cheating when marketing his goods and prohibited from disseminating false or misleading information, or using methods with regard to the origin/description of his goods or importance of his trade or credentials, which might have damaging effects on his competitors or might attract the customers of a competitor;
 - A trader is prohibited from inducing the workers or employees of a competitor to assist him in attracting his rival's customers or to leave their employment with a view to learning the secrets of his competitor;
 - A person engaged in the business of supplying information to commercial houses about conditions of traders is prohibited from supplying untrue statements about the behaviour or financial standing of a trader;
- The Telecommunications Law (Decree 48 of 2002) contains competition law provisions that only apply to the telecommunications industry.

Sources: Practical Law, January 2015.

Box 2.4 Jordanian competition law

Jordan has a lower development level than the United Arab Emirates and much more pressing economic issues. Overall, unemployment hovers at around 12 per cent, but sits above 20 per cent for young people and above 40 per cent for women. Moreover, GDP growth has stagnated to just over 2 per cent over the past few years. However, Jordan is also ranked fortieth in the world and best outside the GCC in the Arab region for enabling trade. Through good governance and encouraging competition, Jordan could seize these opportunities to work towards resolving its growth, unemployment and inequality issues. Jordan instituted its Competition Law in 2004, establishing a wide-reaching, detailed law to encourage free prices, free competition and a market economy. This comprehensive Law applies to activities both within and outside Jordan, affecting the Jordanian economy by creating a Directorate of Competition to oversee implementation and ensuring consumer protection. Without looking at implementation and enforcement, this Law, similar to European antitrust regulations, addresses a broad range of issues with the potential to positively affect competition and markets in Jordan.

Sources: Gerardin, 2004; Lawrence and others, 2014.

These exemptions from the application of competition laws open the door for possible conflicting relationships between sectoral bodies in charge of operating and managing exempted sectors and activities. For example, sectoral bodies managing and operating public utilities appear to have the upper hand with regard to competition within their sectors. They appear to be allowed, according to a literal reading of competition laws, to manage their sector in a way that might conflict with national competition policy. This might not be the intention of the legislator, but a possible ramification of such broad exemptions. The following presents these issues using regional country examples.

1. Exempting the public sector from competition laws

The quasi-uniform exemption of the public sector from competition laws across Arab countries has exacerbated regulatory conflicts. The wording employed in competition laws often excludes the public sector in the broadest manner possible; here are a few examples:

- Article 3 of the Saudi Competition Law states: “provisions of this Law shall apply to all firms working in Saudi markets except public establishments and wholly-owned State companies”;
- Article 9 of the Egyptian Competition Law states: “the provisions of this Law shall not apply to public utilities managed by the State”;
- Article 6 of the Qatari Competition Law provides: “the provisions of this Law shall not apply to the sovereign acts of the State, the work of institutions, bodies, companies and entities subject to State direction and supervision”.

Other broad public sector exemptions are present in the law of Kuwait,⁴⁸ Oman,⁴⁹ the Syrian Arab Republic,⁵⁰ the United Arab Emirates⁵¹ and Yemen.⁵² These examples clearly show that the public sector is exempt in the broadest sense possible. Anything affiliated to it is also exempt, such as concession agreements, contracts and State monopolies. Egypt goes so far as to exempt private sector companies managing public utilities upon request to the Competition Authority.⁵³ Since most sectoral regulatory bodies are created to supervise the work of public utilities, these exemptions are bound to lead to conflicting relationships. Given that national competition law does not govern public utilities, one can assume that sectoral regulations in charge of these public

utilities deal with competition issues within their sectors independently from national competition law and without reporting to competition authorities. This means that, when competition issues arise within their sectors, they might appear to have the last word regarding how to deal with competition issue. Nevertheless, competition laws are silent with regard to what the jurisdictional competences of these sectoral bodies are, which means that, despite these exceptions, bodies governing these public utilities might have to succumb to competition authorities after all.

One can assume that, when a sector conflicts with national competition policy and orientation, a clear legislative conflict will arise. Moreover, given these broad exceptions, there is no charted way to solve these emerging conflicts. The law is in most countries silent on possible models for cooperation and interaction between competition and sectoral regulatory legislations and institutions. This might give rise to a higher degree of flexibility; however, given nascent competition laws, it also weakens the national competition environment and overall competition culture, giving way to uncertainty, lack of clarity and potential room for corruption and nepotism.

Lebanon⁵⁴ would be the only Arab country that accepts the application of competition principles in the public sector. Unfortunately, these competition principles are yet to be adopted in one comprehensive competition law, which is currently only in draft format. It will be interesting to study how Lebanon achieves this, as its experience could serve neighboring countries. By extending the reach of competition law to the public sector, one can assume that it does not carve out an exception from the competition law to the public sector. By doing that, it is in clear contrast with other Arab countries' limitation on the reach of competition law

to the public sector. The public sector in Lebanon would be subject to competition dispositions and principles for two reasons:

- To effectively eliminate “barriers to entry, to trade and to investment”, most of which originate in the public sector;⁵⁵
- To establish an institutional model that actively promotes competition.⁵⁶

It is interesting to note that competition law applies even to public aid, no matter its source or nature, given that aid can affect free competition. Significantly, it appears that applying competition law to the public sector promotes transparency and a healthy economic climate.⁵⁷

2. Other exemptions from competition laws

Importantly, there are further limitations to the scope of competition law in Arab countries. For example, the availability of ‘exceptions of application’ significantly limit the reach of competition laws across the region. These exceptions necessarily give way to a dual regime of jurisdiction, whereby the exempted sectors or activities are not bound by general competition legislation and the enforcing competition authority. This creates a potential for conflict between their exempted status and the competition enforcement regime.

Exceptions of application are, theoretically, the only limits to the broad scope allocated to competition law. Their existence and consequences should not be underestimated, as they are tools to understand the legal and economic policy advocated by a country. As such, countries where competition legislation contains many exceptions are countries where the Government is still actively vested in the

economy and where the potential for concurrent jurisdictions and regulatory conflict is highest.

Common exceptions to the application of the law are as follows. Firstly, many competition laws contain broad exceptions applicable to essential goods and services. Egypt,⁵⁸ Jordan,⁵⁹ Morocco,⁶⁰ the Syrian Arab Republic⁶¹ and Tunisia⁶² have clear exceptions in their respective competition laws regarding essential goods and services, without distinguishing between those that pertain to the public or private sectors. Hence, a product’s price could be fixed, subsidized or regulated without necessarily being a public sector product. Examples of private sector industries that could be deemed essential are certain foods and cement, among others.

Secondly, some competition laws allow limited competition when the market structure is difficult and unfit for a healthy competition climate. An example is when a monopoly (natural, State, etc.) exists or when a product is scarce, and the application of competition law would exacerbate the situation. Legislation in Morocco,⁶³ the Syrian Arab Republic⁶⁴ and Tunisia⁶⁵ provides such dispositions.

Thirdly, certain countries allow for the limited reach of their competition laws in exceptional circumstances. Similar to the force majeure exemption, exceptional circumstances could be defined as circumstances where no proper competition can take place. Some laws have added details as to what constitutes exceptional circumstances, including those of Jordan,⁶⁶ Morocco⁶⁷ and the Syrian Arab Republic,⁶⁸ where emergencies and natural disasters can lead to a temporary exemption from competition law. While precisely defined in Syrian and Jordanian laws,

Moroccan law remains rather ambiguous and broad, citing 'a public crisis' amongst other abnormal situations that warrant the temporary waiving of competition law. In the three cited countries, the temporary suspension of competition law application shall not exceed a period of six months, which may be extended once under Moroccan law.

The above exceptions may or may not be fixed by governmental decree or by law for a fixed renewable period. There are two notable uncommon exemptions from the application of competition law in some Arab countries. Firstly, foreign commodities franchised to be produced locally by a principal producer are exempt from competition laws in Yemen.⁶⁹ Secondly, small and medium enterprises are exempt from competition laws in the United Arab Emirates.⁷⁰ These exemptions could stem from specific economic climates in these countries.

Having such a wide range of possible activities and sectors exempt from competition laws is bound to lead to uncertainty. It also allows for instances of conflicting outcomes when the regulatory bodies in charge of managing exempted sectors and activities have different policy goals than the national competition framework. This might arise when a sectoral regulatory body wants to promote its sector at the expense of overall competition, for example, by allowing for cartelized behaviour within its sector. It might also waste precious resources in an attempt to clarify the blurry jurisdictional reaches of sectoral and competition legislation and institutions. This will become evident in the following telecommunications case study from Egypt.

D. Telecommunications in the Arab region: an Egyptian case study on competition and sectoral reach

The issue of which regulations (sectoral or competition) are to be applied is new in most Arab countries. The difficulties facing legal systems trying to balance between both types of regulations can be highlighted in the most recent antitrust telecom case that took place in Egypt. The following introduces the Egyptian case study and draws similarities to the situation in other Arab countries.

1. Background: the Egyptian National Telecommunications Regulatory Authority versus the Egyptian Competition Authority

The Egyptian telecommunications sector has an independent regulatory body, namely the National Telecommunications Regulatory Authority (NTRA). NTRA, pursuant to Law No.10 of 2003, is in charge of monitoring and protecting competition policy in the telecom market. It sets the limits for free competition; decides in cases of abuse of the dominant status of a licensee; approves interconnection agreements among operators; audits subsidization data that might harm competition; and approves cost-based tariffs.

In 2011, the Egyptian Competition Authority (ECA) signed a cooperation protocol with NTRA, aimed at boosting competition levels in the telecom sector and improving communication between both bodies, by way of bilateral exchange of information and expertise.⁷¹ In March 2012, the three Egyptian mobile companies decided simultaneously to stop absorbing stamp tax and transfer the cost to consumers.⁷² In October 2012, ECA received a complaint against the three companies and started

an investigation to find out whether an illegal horizontal agreement had taken place. ECA decided to refer the three companies to the courts for forming and partaking in an illegal horizontal agreement.

In the course of the investigation, ECA requested the companies to provide certain data and documents pertinent to the investigation. Mobinil, one of the three telecom companies charged, refused to provide the requested data, claiming that it was not within the jurisdiction of ECA to investigate the telecom sector.⁷³ It argued that only NTRA could do so, in line with article 24 of the Egyptian Telecom Law,⁷⁴ which empowers NTRA to investigate competition law violations within the sector. Mobinil's refusal to cooperate with ECA led to it being referred to the courts in a separate case for failure to submit the requested data. In June 2014, the Economic Court found Mobinil guilty of not cooperating with ECA. In its decision, the Court stated that the jurisdiction of ECA superseded that of NTRA in matters of competition law. Thus, Mobinil should not have refused to provide the requested documents. The fine imposed on Mobinil was the highest prescribed for this offence under the Competition Law.⁷⁵ At present, the trial for the alleged horizontal agreement between the three telecommunication companies is still pending.

2. Remarks and lessons learned from the Egyptian case study

This case provides a number of noteworthy points (i.e. insignificance of the protocol on the facts and case, nature of the conflict as well as significance of the case and its consequences), given that it was a landmark ruling with regard to competition law application in regulated sectors and the bodies regulating them.

Despite having a signed protocol, ECA and NTRA had not specified their respective scopes of regulation in it. Instead, the focus was on potential cooperation rather than delineating responsibilities. In essence, the protocol was intended to install a channel of communication between both authorities and promote competition values in the sector.

The conflict was not between these bodies, since NTRA did not actively involve itself in the matter. Neither was it a conflict of legal texts nor their interpretation, since there are no conflicting dispositions between the Egyptian Competition Law and the Telecom Regulation Law. On the contrary, the latter cites the Competition Law and promotes its values within its texts. This was a conflict between antitrust regulation and sectoral regulation. The defending party was actively refusing the application of the Competition Law, citing that the sole authority capable of judging its actions was the regulating body of its sector, namely NTRA.

The significance of the ruling and the fine imposed on Mobinil is considerable. Given the case's background, it was expected to reach the courts. Had it been a lower profile case, it may have been settled more amicably. However, having a court declare the superiority of competition law above sectoral regulation set a precedent, putting in place a framework for future similar conflicts. This precedent might reach other sectors, where similar issues regarding the relationship between specific sectoral bodies and competition authorities could be disputed.

The Economic Court's ruling implies that antitrust regulation, and ECA, can be trusted to oversee violations even in highly technical and tightly regulated sectors such as telecommunication. The conclusion is that competition law is applicable to all

sectors without exemption. In the future, given this legal precedent, conflicts should not reach the judicial level. Thereby, precious resources could be saved.

Importantly, to avoid such conflicts, either competency and jurisdiction guidelines should be adopted, or the superseding nature of competition law should be expressly added to the Competition Law. By doing so, the relationship between sectoral and competition legislation and bodies becomes certain and clearly defined. In turn, this would ameliorate the overall competition framework and ensure that time and resources are not wasted in attempts to clarify blurred and concurrent jurisdictional matters.

3. Telecommunication legislation and institutions in other Arab countries

Similarly to the Egyptian situation, telecommunication legislation in other Arab countries could potentially lead to conflicts between national competition authorities and sectoral regulatory bodies. In many of these countries, telecommunication regulations allow sectoral bodies to deal with competition issues within their sectors, without clearly defining the relationship between these sectoral bodies, the competition authorities and the national competition regime. This is bound to create conflicts that might lead to a repetition of the Egyptian case. The following examples highlight the confusing language in some telecommunication regulatory texts.

In Lebanon, the Telecommunication Regulatory Authority is charged with promoting competition in telecommunications.⁷⁶ According to the law, it establishes an open, clear and transparent regulatory framework that is supposed to minimize legal, regulatory and other barriers to entry; “issues

licenses; identifies service providers with Significant Market Power (SMP); monitors and prevents abuses of SMP; monitor and prevent practices that would restrict competition; review any agreement or contractual relationship (e.g., interconnection), particularly involving service providers with SMP, to ensure that they will not restrict, undermine or distort competition; and take all necessary measures, whether preventive (i.e., before abuse of SMP) or remedial (i.e., after abuse of SMP), to protect competition and ensure a sustainable competitive market”.⁷⁷

Law 431 of 2002 sets out the duties of the Authority with a specific focus on encouraging competition, preventing non-competitive behaviour, formulating standards and issuing regulation and licenses. Article 36 of this Law is very clear in terms of facilitating competition. It requires existing service providers to make their infrastructure available to new entrant providers, recognizing that current operators’ existing infrastructure allows them to deploy their networks and services faster and cheaper than competitors who have to build their own networks.

In Bahrain, article 65 of Legislative Decree No. 48 of 2002 regulates the promotion of competition and anticompetitive conduct.⁷⁸ The Authority, after determining if an act or omission from an operator constitutes anticompetitive conduct, can issue a determination. This can take the form of either an administrative instruction to cease anticompetitive practices, remedial actions, or the imposition of a fine not exceeding 10 per cent of the operator’s annual revenues. The Authority may also “issue regulations in connection with the continuation and regulation of efficient competition in the Telecommunications market, and issue guideline

directions stating therein in detail the conducts that constitute in its opinion anti-competitive conduct".⁷⁹

In Saudi Arabia, chapter 4 of the Telecom Act Bylaws assigns a specific role to the Saudi Communication and Information Technology Commission in terms of competition. The Commission should promote efficient competition to the benefit of end users, minimize entry barriers for new operators, monitor and prevent dominant positions, and resolve disputes related to anticompetitive practices. The Commission can also issue decisions aimed at solving anticompetitive practices, including directing an operator to cease using abusive practices, to acknowledge and apologize for its conduct or to provide regular reports to demonstrate progress in resolving the situation. In extreme cases, it can divest an operator of service lines.

In Oman, competition is given great weight in the telecom sector; it is often cited in the law both as an ideal and as a means to increase economic welfare. Section II of chapter 5 of the Omani Telecommunications Regulatory Act deals with competition issues.⁸⁰ Article 40 cites classical offences, such as the abuse of dominant position, horizontal agreements and vertical restraints, and very lightly touches upon merger control. The Authority has the right to investigate these offences following approval from the Telecommunications Minister. No rules exist to organize shared competencies with the local competition authority. In article 41, the Authority is given the prerogative of investigating harm done to competition, and issuing enforceable decisions regarding competition matters. Notably, decisions issued are not subject to control by any other authority or ministry.

In some other cases, competition is completely overlooked in telecom laws and bylaws, such as in Jordan and the United Arab Emirates. This configuration is less likely to lead to conflicts, since competition seems to be an exclusive domain, in which telecom regulators do not interfere given that competition does not pertain to their domain.

Kuwait does not have a telecom regulatory authority,⁸¹ which, from a competition-oriented point of view, is a double-edged sword: on the one hand, the telecom sector needs tight technical regulation, a lack of which could lead to structural problems in the sector's market; on the other hand, the absence of a regulatory body removes the potential for conflict with the competition authority.

The Zain 2014 Report on Telecommunication in the Arab Region⁸² stresses that an independent authority, at the national level, should set a fair and transparent licensing regime. This should be done in the most favourable way for companies and independently from budgetary motivations, such as high licensing fees to support the Ministry of Finance budgets. Regarding licences, regulators should ensure high market competitiveness levels by easing the flexibility of tariffs and number portability to the advantage of consumers. The Report also calls for regulators to provide continuous updates on regulations that have anticompetitive implications. Different types of sectoral regulations exist, all designed around the particulars of the sectors they regulate.

Having presented the telecom sector, a highly technical market with low penetration, the present report now moves on to other market regulations and their interaction with competition law, such as merger control.

4. Sectoral regulation

In Kuwait, article 4 of the Capital Markets Law No. 7 of 2010 explicitly lists among the responsibilities of the Capital Markets Authority the regulation of the process of mergers and acquisitions and their supervision.⁸³ The Law requires that a request be submitted to the Authority preceding a merger, which is studied and approved or rejected, according to the dispositions of chapter 7 of the aforementioned Law. The phrasing of the chapter in question does not appear to cover the effect of the merger on free competition within the market. Instead, it seems to focus on the protection of minority rights' holders. The case is similar in Egypt, where an approved pre-merger notification is required for mergers whose parties are listed on the Egyptian Stock Exchange. The Egyptian Financial Supervisory Authority studies the effects of the merger on minority rights and the nominal value of shares, completely foregoing the competitive market structure element. A recent case is the acquisition of shares in EFG-Hermes by Beltone-Sawiris in June 2014.⁸⁴ Recognizing that these merger controls are sometimes the only instances of regulation or legislative control exercised, an important step forward would be to include the assessment of the effects of a merger on the general market by mandating that the competition authority exclusively, or in cooperation with capital markets authorities, oversees the merger.

A review of other sectoral legislations, such as those on water, would amount to more or less the same conclusions, namely that such sectoral legislation and bodies are granted an active role in the promotion of competition and the management of competition issues within their sectors. These roles are set out within legislation to safeguard independence and advance a competitive

environment. However, none include clear guidelines as to where the role of the sectoral body and relevant legislation ends and that of the competition authority and relevant legislation starts. Moreover, all these sectoral legislations are silent as to whether sectoral competition issues should be dealt with both at the sectoral level and under the overall competition authority regime. None indicate that the competition authority has a superior position with regard to competition issues. This could result in confusing jurisdictional regimes where there are no clear boundaries between different regulatory bodies. Undoubtedly, this creates potential for conflict, which could result in litigation to resolve such jurisdictional dilemmas.

E. Regional sectoral regulation: impact on the competition regulatory framework

In general, cooperation between Arab countries is challenging, given the many political debates that arise. Economic cooperation, which does exist, is much weaker than in other regions and could be expanded.

Firstly, there seems to be a complete absence of bilateral agreements aimed at competition regulation. However, given that bilateral investment treaties include clauses stating that a foreign company must be treated like a national one, there is a competition element. Nevertheless, despite the absence of formal bilateral agreements, informal exchange of information happens between the staff of the various competition enforcement authorities involved.

Secondly, cooperation can be based on regional subdivisions and on the status of economic development. There are organizations that focus

on subregional cooperation, such as GCC and the Arab Maghreb Union. However, competition policy is still not a field of cooperation, and there has yet to be formal advancement in this field.

Thirdly, several attempts at cooperation in the field of competition can be identified across the region. In the hope of establishing a free common market, the League of Arab States had made efforts towards establishing a common competition policy. A draft of Arab common competition policy regulations was prepared to put in place competition guidelines for League countries to follow when adopting competition policy. The regulations blend European Union rules, notable League legislation and UNCTAD guidelines.⁸⁵

However, no enforcement institution is created by the regulations, nor are they enforceable at the regional level. They are only enforceable at the national level by local competition authorities. Hence, they only serve to set a unified path in competition policy for League members. They do not mention how relationships with sectoral bodies should proceed. The Greater Arab Free Trade Area (GAFTA), founded by the League's Economic and Social Council, has called for the harmonization and application of the regulations. It has formed a working group that closely follows the development of competition law and enforcement within member countries.⁸⁶

Fourthly, there are some regional competition cooperation initiatives between countries in the Arab region and other regions. For example, competition policy was part of the Barcelona Process and the European Neighbourhood Policy (ENP), which were European Union initiatives. However, these have faced various challenges, including the following:

- The different interests and levels of involvement of Arab countries;
- The need for accrued efforts and commitment from both the European Union and Arab countries;
- The relatively broad subject-matter of the Barcelona Process and ENP may lead to a loss of interest in competition policy in favour of more pressing issues.

The Common Market for Eastern and Southern Africa (COMESA) is an international economic organization currently grouping 20 African countries, from Egypt to Zimbabwe. It aims to establish a free trade zone called the Common Market, and among its long-term goals is the implementation of a customs and tariff union, modelled on the early European Union.⁸⁷ To improve trade conditions and the general state of the market, COMESA created a specific body, namely the COMESA Competition Commission (CCC), in January 2013. This body applies the rules of the Competition Regulations adopted in 2004, studies anticompetitive practices and operates a comprehensive control of mergers that concern at least two COMESA member countries. Among ESCWA member States, only Egypt, Libya and the Sudan are members of this organization. It will become clear in due course whether CCC assists in creating a regional competition dimension across COMESA countries.

The evolution of the Arab regional dimension of competition policy is in its early stages compared with other regions. A possible explanation may be the relative novelty of competition policy in the region. Hopefully, as competition legislation and enforcement develops, regional competition regulation will flourish. Sectoral regulation appears to be following these steps and taking a regional dimension. Efforts in this area include the MENA

Regional Conference on Infrastructure Reform and Regulation, held in Amman in 2009.⁸⁸

Discussions focused on evaluating developments in infrastructure reforms in Arab countries and the potential establishment of a MENA forum of infrastructure regulators, covering multiple sectors. A resolution was adopted, urging the World Bank to

initiate a process to establish the forum. As yet, there have been no further developments. As regional competition and sectoral regulation develop, greater cooperation might emerge along with definitions of clear jurisdictional competencies that facilitate collaboration between different institutions with general and sectoral responsibilities.

III. Challenges to Competition Effectiveness, Antitrust Laws and Market Regulators

Most countries in the Arab region have adopted competition law as part of their legal and political systems. The adoption of these laws has been the result of many factors, including encouragement from international economic organizations and, in a large number of cases, the Barcelona Process; and of hopes that these laws will bring about much needed economic development. Drafting and adoption of competition law is a challenging endeavour; a further challenge is its effective enforcement. The following are the main challenges pertaining to effective competition enforcement.

Firstly, deciding which ideology to follow in competition law: many Arab countries have followed unclear and often conflicting goals, leading to a confusing, unattainable and often undesirable competition policy.

Secondly, the legislative design is often not developed in a way that facilitates effective enforcement. It requires complex analyses, such as those undertaken under a rule-of-reason scrutiny instead of simpler per se prohibitions. A rule-of-reason scrutiny necessitates a case-by-case analysis, whereas per se prohibitions condemn certain conduct regardless of the particularities of the case at hand. For young agencies, there is a value in per se rules, though simplification comes with a caveat: international best practice has somewhat moved away from per se prohibition (although it is easier to administer, it comes with the risk of negative pro-competitive conduct) towards

per-se/effects-based rules (although harder to administer, they are more precise).

Thirdly, when it comes to legislating merger law, sanctions and leniency programmes, many Arab countries have yet to harness the potential benefits of these issues. Instead, they find themselves facing further challenges posed by these topics.

Fourthly, Arab countries face enforcement challenges due to the problematic institutional designs of their competition commissions, which, although set up to enforce the law, often do not have sufficient independence, and face government intervention and resource shortages in terms of budgets and skilled staff.

Fifthly, political economy issues pose serious challenges for Arab countries' attempts towards effective competition enforcement. A lack of development, high levels of corruption, concentrated markets and a lack of public awareness of competition law and culture count among these challenges.

A. Adoption of competition law in Arab countries

The adoption of competition law in the Arab region is recent compared with other regions. Arab countries are facing internal and external pressures to adopt rules to regulate the interactions of market

players. The following reasons could be cited for the relatively recent adoption of competition law in the region:

- (a) A bumpy and incomplete transition of State monopolies to a freer economy;
- (b) The sidelining of economic reform owing to various geopolitical preoccupations;
- (c) Administrative and judicial challenges concerning the adoption of technical competition law,
- (d) The challenge of providing political leaders with a persuasive case and credible transition plan for fomenting change.

Basic competition rules are found in Islamic Sharia Law,⁸⁹ which influences legislation to varying degrees in the region. Fundamental aspects, such as the guarantee of free competition in the market, the freedom of market actors, the principle of freedom to engage in trade to earn an income and make a profit from the activity, and the unlawfulness of abuse of dominance and collusion between players, are well-rooted in Sharia and Islamic Fiqh.⁹⁰ Nowadays, most Arab countries have legislation principally dedicated to promoting competition and prohibiting anticompetitive market conduct. There are three factors underlying this: liberalization, international pressure and development hopes.⁹¹

1. Liberalization, privatization and free trade

Many Arab countries joined the wave of economic liberalization that swept across the developing world in the 1990s. They engaged in a series of changes that ended previous protectionist policies and opened up their economies to international and private sector investors. In addition, many joined

WTO to become global trading partners. These structural changes, open door policies and international relations meant that those countries needed to adopt and encourage competition laws and competitive markets.⁹²

In the context of a globalized free-market-oriented economy, Arab countries logically opened up to the current global market structure. Furthermore, as developing economies could not afford to be left out, it became essential to be part of global trade flows, especially if they targeted growth and development.⁹³ In many cases, required legislation was adopted to adjust market structures to become freer and more competition-driven; and to show good faith in economic reform.

WTO does not have a set of its own broad competition rules, nor does it set mandatory competition standards. Nevertheless, it has previously proposed focused solutions for certain sector-specific competition issues.⁹⁴ Competition policy and the promotion of competition culture remain among the top priorities for WTO, which encourages countries to adopt competition laws.⁹⁵

The World Bank and IMF have also contributed to the adoption of competition laws worldwide, including in the Arab region.⁹⁶ Many Arab countries have sought loans from these institutions, which were conditional upon the adoption of freer economic systems and liberalization policies that included competition. In the context of these liberalization policies, competition has been touted as an important concept, which has lead developing countries to adopt legislation aimed at promoting and protecting it. The first conditionality appeared in a World Bank industrial sector adjustment loan to Argentina in 1991.⁹⁷ A further example was Indonesia in 1994; the country was required by IMF

to adopt competition law in return for rescue money.⁹⁸

International organizations may be the cause or the effect of the current globalized free-economy climate, but it has become logical for countries to move with such economic trends. Direct and indirect international pressure has played a recognizable role in the spread of competition laws in the region.⁹⁹

2. International trade pressure

Along with the aforementioned pressure to adopt competition law stemming from WTO, the World Bank and IMF, international trading partners have played a crucial role in Arab countries adopting these laws. For example, the European Union has encouraged its new members and trading partners to adopt competition laws similar to European legislation.¹⁰⁰

The European Union has sought to engage the Arab region in agreements to bolster economies and systems in the short and long terms. In 1995, through the Barcelona Process, the Euro-Mediterranean Partnership was signed, marking the start of years of collaboration and cooperation in many fields: political dialogue, security matters, economic and financial partnerships, and social and cultural exchanges.

The Barcelona Process involved eight countries from the Mediterranean Basin, namely Algeria, Egypt, Jordan, Lebanon, Morocco, Palestine, the Syrian Arab Republic and Tunisia. One goal of the Process was to create a free trade zone among signatories, the European Union-Mediterranean Free Trade Area, through a network of bilateral free trade agreements.

Evidently, the creation of such a trade area requires that participating countries have similar economic climates. Hence, the adoption of competition legislation was turned into a prerequisite:

There are strong links between competition policy and numerous basic pillars of economic development. [...] There is persuasive evidence from all over the world confirming that rising levels of competition have been unambiguously associated with increased economic growth, productivity, investment and increased average living standards.¹⁰¹

The necessary push was given to participating southern Mediterranean countries through a series of agreed mandatory conditions to be fulfilled by set deadlines. Based on these external drivers, many have argued that the adopted competition laws are destined to fail because they were not developed bottom-up but were imposed top-down. Consequently, this may present the first real challenge with regards to effective competition enforcement; these laws do not address a local need or desire, but simply signal compliance to a trading partner. Overall, however, many countries support the idea and it is to some extent backed by empirical evidence,¹⁰² indicating that adopting and enforcing such laws is the missing link for development and economic progress.

B. Challenges to the effective enforcement of competition legislation

Effective enforcement of competition legislation means implementing competition law to achieve the following:

- (a) Identify and prosecute violating firms that engage in cartel-like behaviour through fixing prices, limiting outputs, dividing markets or engaging in bid rigging;
- (b) Identify and prosecute dominant firms that abuse their market positions by engaging in, among other things, predatory pricing, unilateral refusal to deal, price squeezes and excessive pricing;
- (c) Prohibit firms from engaging in vertical agreements that restrict dealing with rivals, such as those engaging in anticompetitive exclusive dealings, tying arrangements, and loyalty and bundled discounts;
- (d) Enforce a proper merger regulatory regime, where only pro-competitive mergers are allowed.

Enforcement is deemed effective when these competition issues, included in any given competition law, are implemented in a way to assure that anticompetitive conduct is identified and punished, while pro-competitive conduct is encouraged and fostered. The following sub-sections set out the challenges faced by Arab countries in realizing effective competition enforcement.

1. Lack of adequate competition policy drafting

One of the first challenges that Arab countries face towards effective competition enforcement is a lack of clearly predefined competition-guiding goals or policies. Ideally, these would guide enforcement strategy and tactics, and contribute to overall national development needs. The adopted competition laws of Arab countries have many exclusive, ill-defined and conflicting goals that direct their policy frameworks.

Table 3.1 provides an overview on the different competition goals in the Arab region. The first column highlights the competition law's implementation goal, and the second column summarizes the enforcement goals. Overall, almost all Arab countries' competition laws, with the exception of Jordan, have a dedicated article listing their competition law goals, such as the call for freedom of competition and elimination of restrictive anticompetitive business practices.

Three countries, namely Morocco, the United Arab Emirates and Yemen, have explicitly stated consumer interest as a guiding competition enforcement goal. It is important to note that in the case of the Moroccan Competition Law, this goal was clearly stated in the preambles, which were then removed during the Law's modification in 2014. It is surprising that such goals are not more widely adopted, because consumer welfare is usually the most important goal pursued by competition laws across the world.¹⁰³ Given the influence developed countries and international organizations have in the drafting and adoption of competition laws across the Arab region, one would expect to see consumer welfare as a central competition enforcement goal.

Kuwaiti and Qatari laws state that promotion of freedom of competition and economic activity shall not be carried out in a way that prejudices international treaties and agreements. This is quite peculiar, as it might mean that they are willing to prevent certain economic activities that conflict with international treaties. It is difficult to envisage what this means in practice. However, it illustrates the important status given to these international agreements.

Saudi Arabia chooses to protect ‘fair’ competition instead of ‘free’ competition. Fair competition depends on how fairness is interpreted. In one context, it might mean that fairness would allow special treatment for smaller or new firms to access the market place. In another context, it might consider such special treatment to smaller rivals,

such as small and medium enterprises, as unfair preferential treatment. Adding fairness as an objective to competition law is obviously complex and challenging, and could open the door to different interpretations. It also means that competition is to be enforced within a different framework other than a pure competition-driven free market.

Table 3.1 Goals and policies of competition law in Arab countries

Country	Competition law provisions	Enforcement goals
Tunisia	Article 1: This law aims to define the provisions governing the freedom of prices, establish the rules governing free competition, for this purpose to enact the obligations charged to producers, traders, service providers and other intermediaries, seeking to prevent anti-competitive practice, to ensure price transparency and prevent restrictive practices and illicit price increases. The law is also concerned with monitoring of economic concentration.	<ul style="list-style-type: none"> • Freedom of prices • Free competition • Prevent anti-competitive practices • Monitor economic concentration
Syrian Arab Republic	Article 1: This law aims to define the rules governing the freedom of competition and adjust to this end, the full substantive obligations of producers and traders, service providers and other intermediaries, and to prevent the exercise of all against the rules of competition and the elimination of monopolistic practices and to regulate the operations of economic concentration and control.	<ul style="list-style-type: none"> • Freedom of competition • Prevent anticompetitive practices • Eliminate monopolistic practices • Regulate economic concentration
Morocco	Preambles of the Law prior to modifications in 2014 (no longer present in the amended version): The object of this law is to specify provisions regulating freedom of prices and to promote free competition. The law specifies rules of protection of competition that shall stimulate economic efficiency and improve the well-being of consumers. It is also intended to ensure transparency and honesty in business relations.	<ul style="list-style-type: none"> • Freedom of prices • Free competition • Economic efficiency • Consumer welfare
Saudi Arabia	Article One: This Law aims to protect and promote fair competition and combat monopolistic practices that affect lawful competition.	<ul style="list-style-type: none"> • Fair competition • Combat anti-competitive monopolistic practices
Jordan	No goal set in law.	
Oman	Preambles: Law aims to regulate the free exercise of economic activity and the consolidation of market rules and the principle of freedom of price as that does not lead to a restriction of free competition or prevent it or damaging it.	<ul style="list-style-type: none"> • Freedom of competition • Freedom of prices

Egypt	Article One: This Law shall apply with regards to the protection of competition and the prohibition of monopolistic practices.	<ul style="list-style-type: none"> • Protection of competition • Prohibition of monopolistic practices
Kuwait	Article 2: The free exercise of economic activity is guaranteed for all, as that does not lead to a restriction of free competition or prevent it or damaging it and all this in accordance with the provisions of the Constitution and the law and without prejudice to the requirements of international treaties and agreements in force in Kuwait.	<ul style="list-style-type: none"> • Free economic activity • Exception: requirement of international treaties
Qatar	Article 2: Without detriment to provisions laid down by current international treaties and agreements, the practice of economic and commercial activity shall be such as not to lead to the prevention, restriction or impairment of competition, in accordance with the provisions of this Act.	<ul style="list-style-type: none"> • Freedom of competition • Exception: requirement of international treaties
Yemen	Article 3: The circulation of different commodities and goods shall be in a free competitive trade framework, in accordance with this law's provisions, so that no consumers' interests are harmed, nor monopolies are created.	<ul style="list-style-type: none"> • Free competition • Consumer welfare • Prohibition of monopolies
United Arab Emirates	<p>Article (2): This law aims to protect and promote competition and prevent anti- monopoly practices through the following:</p> <p>1. Provide a stimulating environment for enterprises in order to enhance the efficiency and competitiveness and consumer interest and achieve sustainable development in the state.</p> <p>2. Maintain a competitive market governed by market mechanisms in accordance with the principle of economic freedom by prohibiting restrictive agreements, and the prohibition of acts and behaviors that lead to the abuse of a dominant position, control of economic concentration operations, and avoid anything that might prejudice to the competition, limit or prevent it.</p>	<ul style="list-style-type: none"> • Promotion of competition • Elimination of anticompetitive behavior • Economic efficiency • Consumer welfare • Sustainable development • Prohibit restrictive practices • Control of economic concentration

Source: ESCWA compilation, quoted from laws of respective countries.

The earlier Moroccan Competition Law of 2000 and the United Arab Emirates law have included in their goals both the promotion of economic efficiency and the protection of consumer interest and welfare. However, in theory, these goals might conflict. For example, a merger might be approved from the standpoint of economic efficiency, even when consumers are harmed. This is the case when the gain to the merging firms outweighs the harm suffered by consumers.

However, applying a consumer welfare standard would block such a merger. Having both goals guide the enforcement process could lead to deadlock cases and instances of confusion for both the enforcing authorities and market participants. Hence, it might become more difficult to predict how the law would be enforced: would economic efficiency override consumer interest, or would consumer welfare dominate during the enforcement process? These are different policy

orientations with different enforcement strategies and outcomes.

Yemen is the only country that specifically prohibits monopolies. Other countries only prohibit anticompetitive behaviour by monopolies or dominant firms, but not the creation of monopolies, in line with international standards of competition law and its enforcement policies. Monopolies might be dangerous for freedom of competition, but it is understood that certain monopolies are bound to take place and are therefore not discouraged. For example, the risk taken in research and development towards innovation can be rewarded by a patent creating a dominant or monopolistic position. The norm is to prohibit abuses of such a position rather than to prohibit the establishment of a monopoly. In the context of Arab countries, some monopolies might actually be encouraged to invest in much-needed research and development and innovative technologies. Although, without proper market regulation, monopolies might seek monopoly rents, some natural monopolies manage to lower their prices even below competition market prices when they achieve economies of scale and lower their cost functions. Overall, banning of monopolies seems like an overly simplified goal for a country like Yemen that is struggling to develop.

The United Arab Emirates has chosen to list sustainable development as one of its guiding enforcement policies. This choice is commendable yet intriguing given that pursuing progress and development is a rather unorthodox competition goal that has no counterpart in more advanced countries. It is, however, quite important for developing countries to place their competition policy within a wider development framework. The fact that the United Arab Emirates states development as a competition goal highlights its aim to broaden the

scope of competition implementation to include pressing development needs. Formulating a competition policy that has development implications is rather complex but, once such a policy has been untangled, its positive impetus on growth and development would be extremely rewarding. It is, however, important to note that these goals can be double-edged: on the one hand, they could potentially be harmful by setting unrealistic expectations for the application and enforcement of competition law; on the other hand, they are usually developed to justify the existence of the law and present its potential benefits, such as communication clarity, prioritisation and transparency.¹⁰⁴ More widely, they embody the perception that competition is not an end in itself, but a tool to a more prosperous climate.

Despite the complexity of mapping competition policy that addresses development needs, and the high expectations this policy framework raises, more countries would benefit by adding this goal to policies that guide their enforcement process. This is in line with recommendations calling for goals that address local needs, given that development is a priority and a necessity across the Arab region.¹⁰⁵ The abundance of choices to be made with regards to policy frameworks surrounding competition law application complicates the enforcement process in Arab countries. There is a vast array of alternatives that might ensure flexibility, but lack clarity and cause confusion. Many Arab countries have several enforcement goals, which are often difficult to interpret and sometimes conflict. These countries are confronted with a serious challenge in the effective enforcement of competition law. Without such clarity, there are significant risks such as ineffective enforcement processes, lack of transparency and accountability, corruption and manipulation.

It is therefore essential for Arab countries to overcome this challenge by adhering to a clearly defined competition enforcement policy, which addresses their needs and allows them to channel their enforcement activities towards the realization of development and growth. They need to align this policy with their industrial policy, which protects national champions and infant industries. A literal enforcement of competition law to increase the number of market players and pursue the ideal of perfect competition is often not suitable for some countries' development status and industrial policy. Thus, instead of creating a competition policy that conflicts with national industrial policy, policymakers need to align these policies strategically to benefit from both. This would allow them to place competition enforcement within a wider development agenda that does not conflict with their industrial policy.

2. Legislative design

The legislative design of a competition law can pose certain challenges for effective competition enforcement, such as those outlined below.

(a) Complexity of competition law

In Arab countries, competition law deals with new concepts and operates a new analysis and implementation framework, including calculating dominance thresholds and market shares, establishing predatory pricing, and simple reasoning based on rule-of-reason or per se scrutiny.

To properly introduce these competition tenets and concepts, laws must be clear enough to be understood by economic actors and market participants.

Economic actors need to be aware of their rights and obligations under competition legislation, since they are the targets of the law. Furthermore, market participants are theoretically a main force in presenting complaints to competition enforcement agencies. In this context, if they do not know their rights and obligations, they cannot be expected to correctly participate in the enforcement process.

The competition laws of many Arab countries include provisions that may not be easily understood. For example, the Saudi Arabian choice of fair competition might give way to a number of different subjective interpretations. Furthermore, some provisions may not be detailed enough to guarantee clear understanding. For example, discerning illegal agreements from parallel conduct is often not addressed in detail. Moreover, how markets are defined is often not precise enough to allow market participants, economic actors and consumers to assess a market and determine matters such as firms' market shares.

Ideally, Arab countries should make sure competition laws are straightforward and stern. This should support the development of a competition culture and of economic and legal stability. Therefore, competition laws should mainly rely on per se prohibitions, where anticompetitive conduct is considered inherently anticompetitive without the need to assess the pro-competitive effects of specific activities. This simplifies the enforcement process enormously. The number of 'rule-of-reason prohibitions' that weigh pro-competitive and anticompetitive effects of an activity should be kept to a minimum. The enforcement of per se rules is easier, since only proof that a violation has occurred is needed for enforcement agencies to act. It would be expected that such a zero tolerance approach would lead to a progressive but systemic elimination

of specific anticompetitive behaviour in the long term, including persistent cartels.

(b) Merger law

Although most Arab countries have adopted competition legislation, several fields within it are still being shaped and moulded; merger control is one such field.

Merger control is still an uncertain area, with trial-and-error approaches used to develop effective legislation. Numerous countries still struggle to find a balance between not possessing sufficient tools to regulate mergers and over-regulation. Merger control represents one of the most essential aspects of competition law enforcement. It directly affects how market structures look, how much dominance and other forms of concentrations are tolerated, and how productive collaborations with positive spillover effects are encouraged.

Merger regulation varies widely between Arab countries, with some operating full merger control smoothly and others not having yet implemented ex-ante merger notification requirements. Table 3.2 describes the existing merger control systems in place across Arab countries and ranks these from most challenging to easiest. The large majority of Arab countries that have adopted competition law have included a merger control regime. Most of them have followed basic merger control models: an ex-ante notification requirement submitted by the merging parties, followed by a study conducted by a competition authority, which is the basis for an approval, a conditional approval or a rejection of the merger.

Nonetheless, some systems do maintain diversity in their technical details. The following will highlight some striking differences across Arab countries, which have varying thresholds for merger notification: 30 per cent in the Syrian Arab Republic and Tunisia; 35 per cent in Kuwait; 40 per cent in Morocco, Jordan and Saudi Arabia; and dominance in Qatar. Oman, the United Arab Emirates and Yemen have not set a notification threshold, meaning that all mergers need to be notified and await clearance. While the law in Oman gives no minimal notification threshold, mergers that would result in the concentration of above 50 per cent of the market share are, according to competition law, prohibited a-priori; it is the only country to set a maximum threshold for mergers. One could argue that this approach is not ideal, as a merger creating a 50 per cent market share might prove that pro-competitive effects outweigh its anticompetitive outcomes. Although this is arguable, a maximum merger threshold prevents the authority from investigating these mergers on efficiency grounds by simply prohibiting them outright. It could, however, be argued that this approach to merger clearance saves the authority unnecessary work as mergers resulting in a 50 per market share are not going to be approved.

It is important to note that international best practices, outlined by OECD and International Competition Network (ICN), argue against using market share thresholds for merger filings, as they are not sufficiently objective. The reason is that the definition of the market is always arguable and unclear. Hence, the preference is for thresholds based on companies' turnover or asset value instead of market shares.

Table 3.2 Merger control regimes in Arab countries

Country	Merger control (countries are ordered starting from the strictest merger control to the easiest merger control)
Yemen	According to article 9 of the competition legislation, economic concentrations through mergers are prohibited if they weaken or intend to weaken market competition. The law stays silent on any thresholds, timeframes and procedures, which could mean that merger control does not exist in practice, or that all mergers that may weaken market competition are going to be refused.
Oman	<p>According to Article 11, merger notification to the commission is required 90 days before the merger is set to occur. While no minimal threshold for notification is stated in the law (meaning that all mergers need to be notified), mergers that would result in the concentration of above 50 per cent of the market are prohibited.</p> <p>The commission disposes of 90 days to study the merger, with a silence surpassing these 90 days equivalent to approval. An approval can be retracted by the Authority in certain cases, notably fraud attempts and false information pertaining to the merger notification. If denied, a request to challenge it can be addressed to the President of the Authority within 60 days of the date of refusal; the President then has 30 days to issue a final decision.</p>
United Arab Emirates	<p>According to article 9 of the competition legislation, mergers are to be notified 30 days in advance, during which the Ministry of Economy investigates the demand. No threshold is specified in the law, nor in the implementing regulations. This means that all mergers need to be notified.</p> <p>The Ministry must render a decision in a time span of 90 days, extendable by 45 days. If the given period elapses and no explicit refusal has been given, the law considers this as a tacit approval. The approval may also be granted with certain conditions, and can be retracted in certain fraudulent cases.</p>
Syrian Arab Republic	According to article 9 of the competition legislation, a merger aiming to concentrate above 30 per cent of a market share needs to be notified to the Authority, which will give its written consent for the merger to proceed.
Tunisia	<p>Pre-notification is required for mergers deemed able to create dominant positions and that exceed a certain turnover (TND 20 million). The threshold for mergers to be notified is thus the same as the one for a dominant position (30 per cent). Indications for the calculation of the turnover are given.</p> <p>The notified merger has to be approved by the Minister of Commerce, not the Competition Authority, and no indications are given regarding timeframes of approval or refusal.</p>
Kuwait	Article 3 of the Executive Regulation for the Kuwaiti Competition Law states that mergers have to be notified to the Chairman of the Kuwaiti Competition Protection Board if the resulting entity surpasses the threshold of 35 per cent of transactions in the relevant market. The transaction notice will be studied by the Competition Protection Board, which may approve the merger with certain conditions. Approval or denial by the Competition Protection Board is notified to the applying entities. In case the Competition Protection Board rejects the notified merger, the applicants dispose of a period of 60 days to contest through an appeal.
Morocco	According to article 12 of the competition legislation, a pre-notification for merging operations whose companies have realized over 40 per cent of a market's total transactions is mandatory. The notification is addressed to the Competition Council, which either approves or rejects the merger. The Competition Council has 60 days to study the case; extendable for 20 days. Article 17 provides that some cases, notably those that may "create a dominant position" may be subjected to a "thorough examination" lasting 90 days. Tacit acceptance is only considered if the normal timeframes and extendable periods (both for the Competition Council and the Administration) have expired, totalling 140 days. A perplexing occurrence is the absence of a clear date to notify an impending merger; a merger must simply be notified before it takes place. The Law also provides solutions in case a merger has been completed without approval.

Saudi Arabia	<p>Mergers have to be notified 60 days before their date of intended completion if the merger causes them to be in a dominant position. Dominance is defined according to the executive regulation when sales reach at least 40 per cent of total sales in the market for a period of 12 months; or when an entity or group of entities are in a position to influence the prevailing price in the market.</p> <p>The merger can take place if: explicitly approved, implicitly approved after 60 days of silence with no objection from the Commission, or after 90 days of silence if the merger was being studied the Commission.</p>
Jordan	<p>Article 10 of the competition legislation states that a merger ought to be notified if it creates a market share of 40 per cent or more. Notification is given 30 days prior to when it is due to take place to the Commission, which is a department of the Ministry of Industry and Trade.</p> <p>Three outcomes are possible within a 100 days: the Minister approves the merger, the Minister approves the merger under certain conditions, or the Minister refuses the merger. The article further adds that the approval may be rescinded after being granted in certain cases, notably if terms and conditions imposed by the Ministry on the merger are broken. Appeal of a denial of a merger is possible to the Jordanian Supreme Court of Justice.</p> <p>Article 11 of the competition legislation states that the Minister may, upon recommendation of the Director of the Competition Directorate, approve the economic concentration operation if it does not negatively impact competition; and has positive economic benefits that outweigh any negative impact on competition, such as leading to a lowering of the price of services or products, providing employment opportunities, encouraging exports, attracting investment, and supporting the ability of national enterprises to compete internationally. ¶</p>
Qatar	<p>Article 10 of the competition legislation states that mergers are required to be notified ex-ante to the Qatari Competition Protection Committee in case the resulting merger controls or dominates the market position. No threshold for dominance is given in the law. The Committee examines the merger during a period that does not exceed 90 days, at the issue of which, if silent, approval is granted tacitly.</p>
Egypt	<p>According to article 19 of the competition legislation, only a post-merger notification is required. The concerned mergers have to be notified at the latest 30 days after their completion, with a fine for absence of notification.</p> <p>Not all mergers are to be notified to the Commission: only those of entities whose combined turnover during the last year exceeds 100 million Egyptian pounds.</p>

Source: ESCWA compilation.

According to Yemeni competition law, mergers will not be cleared if they weaken competition. Unfortunately, mergers, by default, reduce the competitive environment within a market. Therefore, it is quite unique to see Yemen choosing this as a guide for merger clearance. If it implements this clause literally, it would mean that no mergers can be approved, which is probably not the intention of the legislator. Competition law should therefore be understood within its implementation context before deciding on its ramifications.

In contrast, Jordanian competition law lists clearly the criteria upon which merger clearance is granted. Mergers are approved if they do not negatively impact competition, or have positive economic benefits that outweigh any negative impact on competition, such as leading to a lowering of the price of services or products; providing employment opportunities; encouraging exports; attracting investment; and supporting the ability of national enterprises to compete internationally.

Interestingly, Jordanian law focuses not only on prices, but also on employment, exports, investment and international competitiveness. This broad approach should be encouraged in other Arab countries, since it seeks to promote issues that have important ramifications on overall development and growth. Narrowly focusing on prices only, which is the mainstream approach in most developed countries, misses out on mergers that allow the realization of such broad development objectives.

Moroccan competition law requires merger notification to be given to the Competition Council, which approves or rejects mergers. However, several criteria must be fulfilled for notification to be required, including surpassing 40 per cent of a market's total transactions, a world-wide all-parties combined turnover surpassing 750 million dirhams before taxes, or a turnover in Morocco that exceeds 250 million dirhams by at least two of the merging entities before taxes. Merger control is fully operated by the Moroccan Competition Council, in very precise timeframes delineated by law.

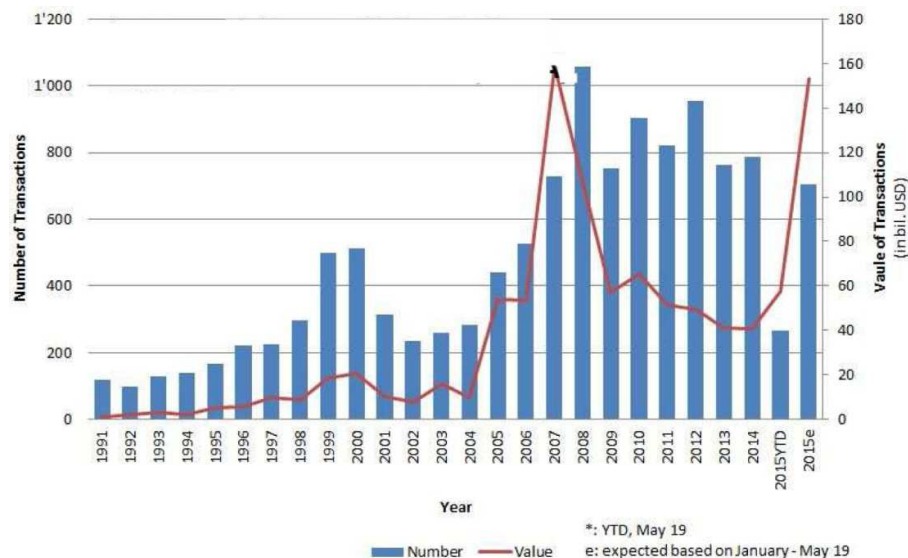
Despite having fully functional competition commissions, Jordan, Tunisia and the United Arab Emirates refer all merger control matters to relevant ministries, which then decide whether mergers will take place. Given that merger control is one of the pillars of competition policy, it is essential that competition commissions are able to decide matters relevant to their expertise and mission. If this responsibility falls elsewhere, there may well be further layers of bureaucratic procedures that delay the enforcement process and present opportunities for favouritism and corruption. Recourse for denied

merger requests is explicitly provided through an appeals mechanism in Jordan (judicial appeal), Oman and Kuwait.

Only Egypt still lacks a merger control regime similar to its neighbours, which prohibits it from playing an active role in shaping its market structure. The Egyptian Competition Authority only requires post-merger notification, according to article 19 of the Egyptian Competition Law.¹⁰⁶ Such a merger notification mechanism is bound to be futile and inefficient: once the merger is done, very little can be done *ex post* to undo a merger found to be anticompetitive. Given this ineffective merger control regime, merger regulations remain at the centre of discussions for competition law reform in Egypt. However, competition law amendments in 2014 have not included a merger control system, but hopes are high for the next round of amendments.

Empirical evidence has so far shown that most mergers reviewed across Arab countries are generally approved.¹⁰⁷ This might mean that all countries reviewing proposed mergers find them to be more pro-competitive than not. Other explanations might be that reviewing authorities may not have fully established merger control regimes and instead simply rubberstamp their approvals so as not to block international or local mergers. While actual merger enforcement in Arab countries and the merger control tools described in table 3.2 may have certain defects, their existence is valuable (see figure 3.1 for the trend in merger and acquisition activities by transaction value and number of transactions); these tools will hopefully be sharpened by time and experience.

Figure 3.1 Announced mergers and acquisitions in the MENA region, 1991-2015e



Source: Institute of Mergers, Acquisitions and Alliances, 2015.

(c) Sanctions

Sanctions are an integral part of the enforcement process with a two-fold mission: they serve to penalize harmful activities, on the one hand, and act as a mechanism for establishing deterrence, on the other.¹⁰⁸ Competition laws are often placed in a *sui generis* category, distinct from criminal sanctions, civil torts and administrative sanctions. Deciding upon sanctions and effectively implementing them presents challenges and affects the overall effectiveness of competition law enforcement.

To fully evaluate competition law enforcement in the Arab region, it is necessary to assess how competition law violations are sanctioned. While all countries that have adopted competition laws have devised sanction systems to reprimand anticompetitive behaviour, a multitude of aspects and variations of each exists. Looking at such sanction systems across the Arab region can help give an idea of the driving philosophy behind

competition law enforcement, as well as formulate recommendations to improve the deterring mechanism. Table 3.3 summarizes some of the most important characteristics of the sanctions utilized across Arab countries to punish and deter anticompetitive conduct, abuse of dominance position and other severe violations of competition law, such as horizontal agreements.

Competition violations are mainly sanctioned through fines, which have to be defined in law for them to be imposed by a judge or competition authority. However, there are two ways of defining the appropriate fine for a given violation. Firstly, fines can be explicitly defined in terms of a bracket of minimum and maximum monetary amounts, applied in Kuwait, Saudi Arabia and Yemen. This method of fining, while not faulty in nature, presents several drawbacks regarding competition law enforcement:¹⁰⁹ the amounts set in the law are often arbitrary, probably fixed in nominal terms and may not correspond to the gravity of the violations committed.

Table 3.3 Selected competition law sanctions

Country	Possible prison sentences and other sanctions
Syrian Arab Republic	Article 23 sets the fine at the rate of no less than 1 per cent and not more than 10 per cent of the total annual sales of the commodities/revenues of services for the breaching party. If sales or revenues are undetermined, a fine of no less than 100,000 Syrian pounds and no more than 1,000,000 Syrian pounds is imposed. There are also non-pecuniary sanctions, such as the prohibition of exercising commercial activities and imprisonment between 3 months and 3 years. A conviction also opens the right to compensation for those who can prove damage from competition law violations.
Tunisia	There are different sanctions corresponding to differing violations. They cover both administrative and judicial measures to halt distribution, as well as forced closure and confiscation of merchandise. Fines cannot surpass 5 per cent of total revenue, and have a fixed bracket (varying from 50 to 10,000 dinars). A prohibition from exercising the profession that leads to the violation is a possible sanction. Prison sentences also exist, and they range from 16 days to three months.
Oman	Sanctions exist in the form of fines and are calculated as a percentage of total revenue (between 5-10 per cent) and/or a fine equivalent to the achievements of profits from the sale of the subject of infringing products. Sanctions are applied to both natural and juristic persons. Imprisonment is a potential sanction, with sentences set between 3 months and 3 years. Ordering a prohibition of commercial activity exercise is a potential sanction, as is closure of the violating establishment. A daily fine until the removal of the violation can be imposed of no less than 100 Omani rial, and not more than 10,000 Omani rial. In the case of a repeat offence, penalties are doubled.
Yemen	According to article 22 of the competition legislation, sanctions exist mainly in the form of fines ranging from 10,000 to 100,000 Yemeni rial. Prison sentences exist in case of repeated violations but are not detailed in the law. Those found guilty of violating competition law are removed from the commercial registry, or any other similar registry they are enrolled in.
Morocco	Sanctions include imprisonment for two months to one year and a fine of 10,000 to 500,000 dirhams, or one of these two penalties. Sanctions can be raised in case of certain circumstances: <ul style="list-style-type: none"> • Imprisonment shall be from one to three years and the maximum fine shall be 800,000 dirhams in cases of artificial raising or lowering of prices involving staple foods, grains, wheat, wheat products, beverages, pharmaceutical products, combustibles, or commercial fertilizers; • Imprisonment may be extended to five years and the fine to 1,000,000 dirhams if speculation involving staple foods or merchandise is not a standard part of the offender's profession. Merchandise may be confiscated. In cases of condemnation for clandestine stockpiling, the court may impose temporary closure, for the duration of no longer than three months, of the offices or shops of the condemned person. The condemned person may also be temporary forbidden, for the duration of no longer than a year, to practise his profession or even to conduct any type of business.
Country	Sanctions are decided upon as a percentage of total revenue
Jordan	Fines are calculated using a percentage bracket (1-5 per cent) of total annual values realized by the violator. There is also a fixed amount bracket to calculate the fine in case calculation of total annual value is not possible, ranging from 1,000 to 50,000 dinars. Procedures for the calculation of fines are detailed in the competition legislation.

United Arab Emirates	Sanctions exist in the form of fines that are either a percentage of total revenue (2-5 per cent) or a fixed amount bracket that varies according to different violations, ranging from 500,000 dirhams and not more than 5 million dirhams. Closure of the violating establishment for a period ranging from three months to a year is also possible. Compensation is open for those harmed by competition violations against the violator.
Egypt	Sanctions range from 1-12 per cent of product revenue or from 100,000 to 300 million pounds.
Country	Sanctions are an amount from a fixed bracket
Saudi Arabia	Sanctions for competition violations in Saudi Arabia are decided by the competition commission and are mainly in the form of a daily fine for every day that the violation exists after being ordered to eliminate it, ranging from no less than 1,000 rials and not exceeding 10,000 rials. Compensation is available for those who have been subjected to damages from the violation.
Kuwait	Abuse of dominance is sanctioned with a fine not exceeding 100,000 dinars, or equivalent to the ill-gotten gains realized, whichever is higher. Agreements and contracts limiting competition are fined between 1,000 and 10,000 dinars. Sanctions are applicable to both natural and juristic persons. In case of repetition, the fine is doubled, goods may be confiscated and the offender may be sentenced to a maximum of three years imprisonment.
Qatar	Fines range between 100,000 and 5,000,000 Qatari rials. Added to the fine is the amount of profits gained through the violation. Compensation is open for those harmed by competition violations against the violator.

Source: ESCWA compilation.

Furthermore, given that fines constitute fixed sums of money, a large market player may have no problem violating the law and paying the fines if they are too small to be a deterrent. Fines therefore become a fixed cost of business instead of a deterrent.¹¹⁰ The alternative is to define the amounts in percentage terms (a minimum and a maximum) of the total sales revenue or turnover of a violating firm. This is the case in Egypt, Jordan, Morocco, Oman, the Syrian Arab Republic, Tunisia and the United Arab Emirates. The minimum percentages range from 1 per cent to 5 per cent of revenue, and the maximum from 5 per cent to 12 per cent. The percentage may

be applied to the total turnover of the violating firm or the revenue of the product in whose market the violation was committed. In these cases, the fine is always proportional to the size of the perpetrating entity, the gravity of the violation and its circumstances. Having the fine determined as a percentage of revenue or turnover is better for effective competition enforcement. Firstly, it can generate the desired deterrence level more than a fixed fine can. Secondly, its adjustability to the violating firm's revenue assures that the fine will be adequate – it will not force a small market player into liquidation nor will it be too small for a dominant firm.

Besides the main fines set for each competition law violation, there can be other accessory sanctions accompanying them. These can be non-pecuniary sanctions, such as certain prohibitions from exercising certain professions or commercial activities, forced resignation from managerial positions, confiscation of merchandise, 'stop now' orders, and removal from a commercial registry.

Imprisonment is a possible sanction for people in upper managerial positions found to have committed anticompetitive violations in Oman, Morocco, the Syrian Arab Republic, Tunisia and Yemen. Punishing competition law violations by a prison sentence turns certain anticompetitive behaviour into a form of serious white-collar crime; however, prison terms for such crimes are usually not as long as outside the Arab region. For example, in Tunisia, prison sentences range between 16 days and 3 months, while they can reach up to 10 years in the United States of America.¹¹¹

Harsh competition law sanctions, especially prison sentences, can seriously affect the outcome of enforcement and have undesirable counter-effects. When penalties are too strict, a competition authority might fail to enforce lengthy prison terms, and firms might regard them as too draconian and not take them seriously. For example, very strict penalties may stop being a deterrent if they are hardly applied and lose credibility. They might also lead to over-deterrence, where firms are discouraged from certain pro-competitive behaviour that they fear might be construed as anticompetitive. Both scenarios are quite possible in the context of young competition authorities and emerging markets with little competition awareness or case history.

Therefore, prison sentences should not be a punishment option. Instead, fines, set as

percentages of profits, are more adequate deterrents. This recommendation expands competition law compliance matters beyond senior management to owners and shareholders.

(d) Leniency programmes and clemency

Traditionally, cartels are notoriously difficult to detect. This stems from their nature and the will of participants not to leave evidence of their behaviour for either the authorities or consumers. Elements to prove the existence of a cartel include market shares, pricing strategies and concurrent decision-making. The collection of evidence is a long and often fruitless process, especially as companies will firmly attack the validity of evidence.

For example, a case against an Egyptian cement cartel, involving nine cement producers, was successful only because of testimony from a participant in the cartel's secret illegal meetings. The Egyptian Competition Authority concluded in October 2007 that the companies were in an illegal cartel, fixing cement prices and output from 15 May 2005 to July 2006. The Court of Madinit Nasr Awal found all the cement companies under investigation guilty of violating the Egyptian Competition Law. Specifically, they had breached article 6 (a) by concluding an agreement to fix and increase prices collectively. Moreover, they were also found to have violated article 6 (d) by collectively agreeing to restrict their sales in Egypt.

The ruling was affirmed upon appeal in 2008, making it the first court decision under competition law in Egyptian history. The Court fined 20 individuals (directors and chairmen) representing the management of nine cement companies, the maximum fine established under the Egyptian Competition Law at that time: 10 million Egyptian

pounds per person. Although the informant did not act under a leniency programme – at the time Egyptian competition law did not include one – his testimony on meetings to discuss pricing, output and market shares was considered hard evidence. The court ruling mainly relied on this hard evidence supported by evidence of stagnant market shares, simultaneous price increases and output reductions; this evidence supported the existence of the cartel but was heavily challenged and attacked by the parties and their lawyers.

Consequently, leniency programmes were introduced to shorten cartel investigations: participants themselves were asked to provide evidence of cartel conduct in exchange for reduced fines or even immunity from prosecution. Leniency programmes have proven effective in destabilizing cartels, easing their detection and promoting effective enforcement.

For example, many years of evidence gathering and investigation were necessary for the Egyptian Competition Authority to bring the cement cartel to court. This lengthy and difficult procedure is made easier when participants act as informants. Not only do they signal the existence of a cartel, which is very difficult to prove, but they also supply the necessary evidence to effectively build a case against remaining cartel members.

Among Arab countries, only Egypt,¹¹² Morocco¹¹³ and Tunisia¹¹⁴ have a leniency programme for the detection of national cartels. The effectiveness of leniency programmes is reinforced by their widespread use in most developed countries.¹¹⁵ Other Arab countries have yet to create such a powerful tool to better implement and ease the enforcement of their antitrust laws in fighting cartel activity, and to deter the formation of future cartels.

3. Institutional design: lack of competition commission independence

An important part of effective competition enforcement is the independence of competition commissions in charge of implementing competition law; their independence is a crucial issue stemming from theoretical and practical considerations.¹¹⁶ Independence is absolutely essential for competition commissions. Without it, a commission would lack three fundamental aspects necessary for proper functioning and for effective enforcement of the law: legitimacy, credibility and efficacy. A competition commission is likely to work with highly sensitive and confidential information, and to regulate the activities of all sorts of market players that may have conflicting interests. For this reason, it needs to present itself as trustworthy and transparent;¹¹⁷ a lack of independence will directly undermine the work of the institution. Nevertheless, there are no set standards that quantify or measure independence since it is not an exact science, but rather a result of complex interactions between the public and private sectors within the economic context of a country. In terms of setting standards, policymakers could draw on results from studies on the independence of regulatory authorities.¹¹⁸

While there may not be fixed criteria to measure the level of independence of commissions, there are certain indicators that can help determine whether a commission maintains a sufficient level of independence for it to adequately function. The following are important questions to consider when assessing independence. Firstly, is the commission's status independent of the Government (does the law refer to such an independent status)? Secondly, how is the commission funded? Thirdly, is its budget independent from the Government?

Table 3.4 assesses the independence of competition commissions and their budget as per competition laws in Arab countries. Syrian competition law is the only one that acknowledges the independence of a competition commission and its budget. Theoretically, this makes it the most independent authority in the region. Second in line is the Egyptian authority, where only its budgetary independence is formally acknowledged in law. Egypt and the Syrian Arab Republic are the only countries that have diligently addressed the budget independence of their competition commissions

by naming several sources of funding. Article 14¹¹⁹ of the Egyptian Competition Law unequivocally states that the budget of the Egyptian Competition Authority is independent, and names the following three sources for its funding: allocations by the State budget, donations and grants, and penalty fees envisioned in the law. The Syrian Arab Republic follows a similar model, where the existence of several funding sources consolidates independence, since the Commission can still function if one source is cut or interrupted due to political pressure.

Table 3.4 Independence of competition commissions in Arab countries

Level of independence	Country	Competition law
Independence explicitly stated	Syrian Arab Republic	Syrian competition law, in articles 11 and 22, explicitly guarantees both an independent status for the Commission and budgetary independence. This makes the Syrian Competition Commission the most theoretically independent in the Arab region.
	Morocco	Morocco has a new law dedicated to the organization of the Competition Council (Law No. 20-13 of 2014) where, in article 1, it grants the Council both an independent status and financial independence.
	Egypt	The law does not mention status independence; however, budgetary independence is clearly stated. The Authority's budget comes from the general national budget and other sources, which lessens the chance of financial pressure.
Not stated	Tunisia	Competition commission independent status is not formally stated in the law, nor is budgetary independence acknowledged.
	Saudi Arabia	
	Jordan	
	Oman	
Explicit dependence	Kuwait	The competition commission is attached to the Kuwaiti Ministry of Commerce and Industry.
	United Arab Emirates	The competition commission is attached to the Emirati Ministry of Economy; it is chaired by the Undersecretary of the Ministry of Economy and key positions are occupied by Ministry officials.
	Yemen	The competition commission is attached to the Yemeni Ministry of Supply and Trade and is chaired by the Minister who appoints its members.
	Qatar	The commission is attached to the Qatari Ministry of Economy and Commerce and it reports to the Minister.

Source: ESCWA compilation.

In several Arab countries, competition law neither covers independence of the commission nor its budget. This is the case in Jordan, Oman, Saudi Arabia and Tunisia. That said, the absence of explicitly stated independence may be preferable to formal acknowledgement that the commission is not independent. In Kuwait, Qatar, the United Arab Emirates and Yemen, the commissions are explicitly not independent. Competition laws in these countries include provisions that place their respective competition commissions under the auspices of a specific ministry (commerce, supply, industry, economy or trade), which presents an important constraint in creating independent authorities. It shows that many countries in the Arab region have chosen to retain their hierarchical patterns of oversight and have yet to transition to current and international best practices. There are also other challenges for independence and oversight. For example, article 8 of the Saudi Arabian Competition Law¹²⁰ states that an ‘independent’ competition council shall be established, but shall have its headquarters in the Ministry of Commerce and Industry. This instantly raises the question as to the ties between both institutions and casts doubt over the competition commission’s exact level of independence.

Laws rarely tackle budgetary questions, even though they are extremely important in establishing independence.¹²¹ In countries where a commission is organically tied to the Government through attachment to a ministry, its full budget is expected to be part of that ministry’s budget. In the remainder of cases, the budget and funding of a commission is rarely referred to. Unfortunately, this can leave competition institutions weak and vulnerable to external pressure when seeking continued funding. Therefore, any absence of budgetary and financial clarity needs to be

addressed swiftly to guarantee commissions’ functional independence.¹²²

Competition commissions across the Arab region also have staffing endowment challenges. Staffing levels and available skills are rarely adequate to handle the workload. Challenges include competition commissions being filled with government officials, and modest expertise of staff in competition matters. Since competition law is a new field in the region, there is a limited pool of persons qualified to ensure proper understanding and enforcement of competition law. Staff training can be costly, and the limited budgets of commissions sometimes do not allow for it.

C. Political economy

1. Development concerns

Addressing competition law enforcement in the region may not seem as important as the armed confrontations and security threats taking place; other reforms are also needed in the struggle towards sustainable and inclusive development. Having said that, competition law and its enforcement is an enabler for development with significant potential for being an effective empowerment tool to the benefit of average disadvantaged citizens in the Arab region. Globally, competition policy is deemed crucial for development.¹²³ Competition laws can be used to promote growth and development and reduce poverty, which is widespread in several parts of the region.¹²⁴ The proper enforcement of competition law empowers vulnerable citizens through a mechanism of trickle-down benefits. The overall price and quality of goods and services improves following prohibition of abuses by powerful firms.¹²⁵

Sustainable development that benefits all citizens and reduces poverty can be achieved through effective competition enforcement that pursues inclusive growth and redistribution to poor consumers.¹²⁶ Despite the potential benefits of an effectively enforced competition regime, it has yet to become a priority on the development agendas of many Arab countries. Often, as illustrated above, competition law is only adopted due to external pressure and as a signal of compliance to a donor institution's requirements. It is, therefore, not actively enforced, which raises the question of when, or if, it will be effectively enforced. Many Arab countries face high levels of vulnerability, if not poverty, and urgently need comprehensive reforms in the fields of health, education, judicial processes, administrative bureaucracy, transport and infrastructure, among others. In this context, addressing competition law, policy and enforcement may seem like a luxury that would waste limited resources. Consequently, countries may be less willing to deal with its technicality and the specifically tailored reforms needed to make it work, meaning that countries' state of development impedes effective enforcement. This challenge will only be overcome when the benefits of competition law enforcement are clearly manifested and comprehended, thus encouraging countries to use these laws as effective tools towards development, rather than enforcing these laws post-development.

2. Corruption

Many Arab countries suffer from political regimes that lack accountability and transparency. Unfortunately, corruption in its many forms has become a somewhat accepted part of political, social and economic life. It is undeniable that corruption effectively decays working institutions over time and undermines development aspirations

and concrete efforts. Corruption is extremely tough to combat, because the solution to ending corruption is often concentrated within the hands of corrupt perpetrating entities. It takes a considerable amount of effort and goodwill to effectively address corruption and achieve tangible results. It is of great importance to halt corruption and its derivatives, such as cronyism, bribery, nepotism and bid-rigging. Endemic corruption is affecting the region and presents severe challenges to the effective enforcement of competition law.

In the field of competition, corruption may be initiated by market players, such as bid-rigging cartels, other competition violations in public procurement, or market players bribing officials to not investigate/prosecute violations.¹²⁷ It may also stem from the authorities themselves, with attitudes such as turning a blind eye to violations, selective enforcement of the law as a means of pressure, and actively engaging in illegal anticompetitive behaviour. Consequently, corruption strongly hinders competition law enforcement; to improve competition law enforcement, the overall climate cannot be overlooked. Correct application of competition law and principles should lead to reduced corruption and improved competition law enforcement in the long term.¹²⁸

3. Market structure: dominance levels

A further challenge to competition enforcement faced by most Arab countries relates to their highly concentrated market structures.¹²⁹ Many markets have oligarchic and monopolistic structures, where a few strong players dominate most key industries. In many cases, this problematic structure stems from the transition from a State-controlled to a privatized economy, during which large previously State-owned entities become concentrated in the

hands of a few private players that have the resources to acquire former State-owned firms. It is also due to the high market penetration of family-owned businesses that grow in size over

generations while maintaining strong ties with the political elite. Figures 3.2 and 3.3 illustrate the dominance of family businesses in the Arab region.

Figure 3.2 Importance of family businesses in the Middle East

The importance of family businesses in the Middle East



of the companies in the Middle East are family-owned businesses.

Generate 80% of the region's GDP, approximately

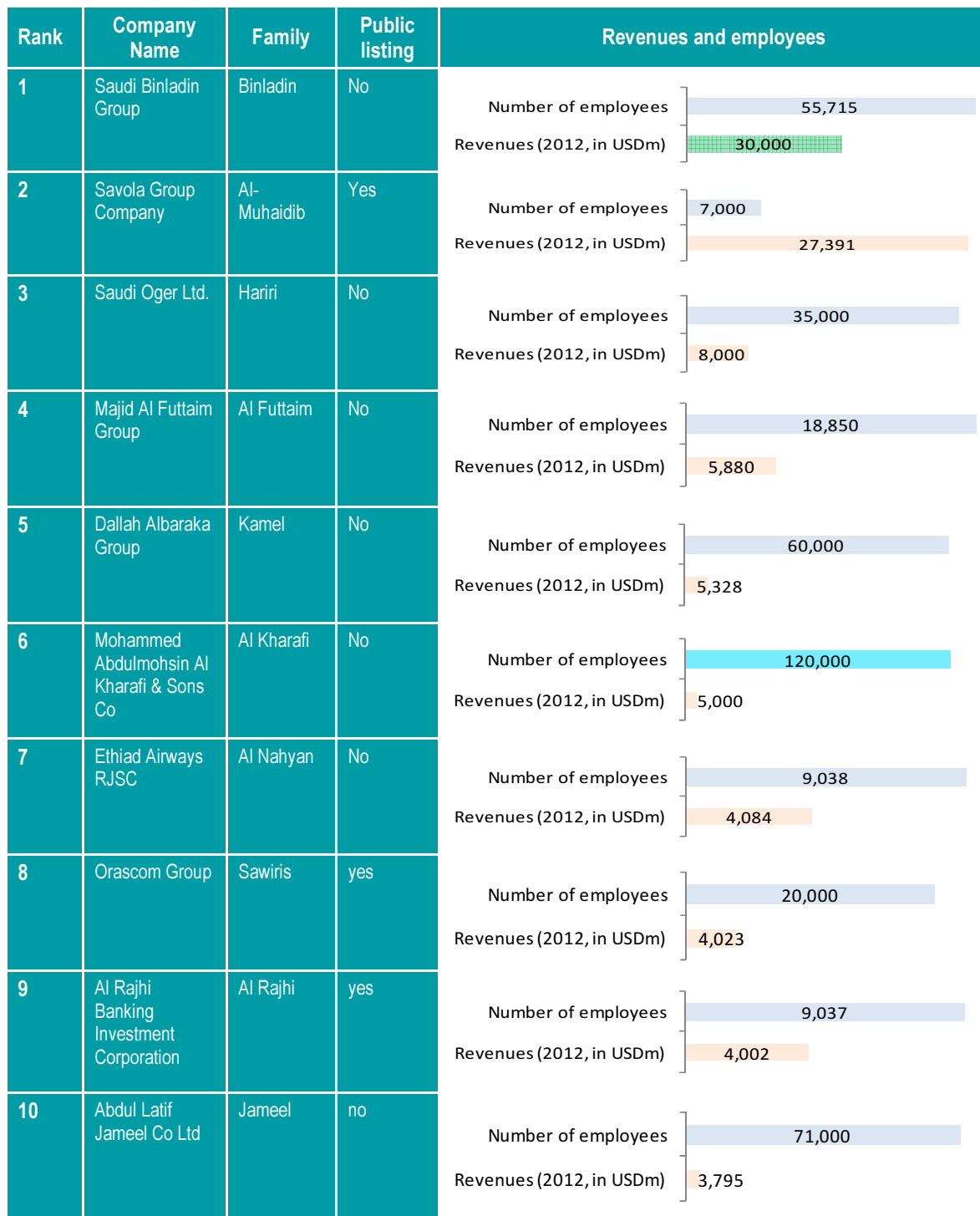
Constitute 75% of private sector economic activity

Employ 70% of the labor force in the Cooperation Council for the Arab States of the Gulf region — more than 67 million employees

Control 98% of the oil producing companies operating in the Gulf region

Company	Haji Abdullah Alireza and Co Ltd.	W J Towell & Co LLC	Khimji Ramdas LLC	El Rashidi El Mishan Confection	Yusuf Bin Ahmed Kanoo Holdings Co.
Founded	1845	1866	1870	1889	1890
Family	Alireza	Sultan	Khimji	El Rashid	Kanoo
Industry	Travel	Trading	Retail	Confectionary	Holding Companies
Head-quartered	Jeddah	Muscat	Muscat	Cairo	Manama
Country	Saudi Arabia	Oman	Oman	Egypt	Bahrain
Contact	www.alireza.com/	www.wjtowell.com/	http://khimji.com/	www.elrashidi-elmizan.net/doc/company.htm	www.kanoo.com/

Source: Ernst and Young Global Limited, 2015.

Figure 3.3 Largest family businesses in the Middle East

Source: Ernst and Young Global Limited, 2015.

In this context, it is relevant to outline the conflict of interest between powerful family companies and political influence (i.e. mixed networks where family members run businesses and have political roles, thereby creating a potential bias in developing and applying legislation).

Markets dominated by large market players are not only more likely to engage in anticompetitive behaviour, but also to form strong resistance against effective competition enforcement. These dominant players have a lot to lose when competition law is effectively enforced. In response, they tend to constitute strong lobbies that use their financial and political power to prevent effective enforcement. This is one of the reasons why they maintain strong ties to political decision-makers, so they can preserve their positions of power and dominance within markets.

The challenge for effective competition enforcement presented by the abuse and resistance of dominant market players is difficult to overcome. Only with effective competition enforcement can market structures be amended to avoid dominance by a few powerful market players. It is therefore essential for Arab competition authorities not to fall prey to these dominant players' political and economic pressure, by effectively implementing competition law. To overcome these challenges, competition authorities need to actively decide to not shy away from criminalizing the activities of these powerful players. This might seem like a difficult decision, especially at the early stages of competition enforcement, but it is the most effective way to surmount this challenge. It is particularly advisable at the early stages of enforcement to exhibit institutional strength, so that authorities are taken seriously and dominant players limit their abuse and resistance.

4. Public awareness and competition culture

Competition law is still an obscure field in the perception of many Arab citizens. They do not know that competition policies can have a very positive effect on their livelihood and choices as consumers, by prohibiting abuses of dominance, anticompetitive behaviour, cartelization and dominance mergers. Over the last few years in Arab countries, consumer advocacy groups have been established¹³⁰ that are more or less independent. The role of these organizations for effective competition policy and enforcement is indisputable, since they champion competition and bring market abuses to the attention of authorities on behalf of individual consumers. Unfortunately, competition law is often negatively perceived as interventionist or just another tool to promote capitalistic influence and continue the forced liberalization policies imposed by the West, stemming from loan conditions of the World Bank and other international institutions.¹³¹ These perceptions heavily affect the effective enforcement of competition law.

Owing to a lack of a competition culture, a further obstacle Arab countries face is that many hardcore competition violations are neither publicly known nor perceived to be particularly egregious in nature despite their negative economic, political and social impact. Many market players, especially small and medium enterprises, do not know their rights or the prohibitions stemming from competition law, which may facilitate their market position. If they do, they believe filing a complaint to the competition authority would be useless or would require undue financial commitments (e.g. lawyers fees). In this regard, it is up to competition commissions to advocate for competition awareness and thereby develop a competition culture that emphasizes how

free and fair competition positively affects quality of life for the average citizen. This will have several spillovers on the enforcement process through citizen voice and accountability measures, thus reducing the need for competition authorities to intervene and correct market failures and punish anticompetitive behaviour. In a way, this would reduce the costs and workload necessary for the effective enforcement of competition law. This

increased awareness can be achieved through advertisement campaigns, and information lectures and workshops targeting representatives of different market constitutes, such as consumer groups, labour unions or chambers of commerce. Awareness is also raised when a competition authority replies to queries sent by market participants requesting opinions and clarification regarding the application of the law.

IV. The Way Ahead: Conclusions and Recommendations

A. Leverage initiatives of international partners

Multiple initiatives, originating either from within the region or from multilateral organizations, are ongoing to encourage competition within the Arab region and with other regions.

1. United Nations Conference on Trade and Development

In April 2014, the United Nations Conference on Trade and Development (UNCTAD) announced the launch of a new competition and consumer protection programme for the Arab region, COMPAL MENA, to be implemented over the period 2014-2019.

COMPAL MENA will have the following main goals:

- (a) To enhance MENA countries' effective capacities to adopt and implement regional competition programmes, through the introduction of national competition policy and legal frameworks, institution building including the establishment of competition agencies, training of enforcers and regional cooperation initiatives;
- (b) To enhance MENA countries' effective capacities to adopt and implement regional consumer protection programmes, through the introduction of national consumer protection policy and legal frameworks, institution building including

the establishment of consumer protection agencies, training of enforcers and regional cooperation initiatives;

- (c) To help companies and business associations comply with competition and consumer protection laws and regulations, through advocacy for voluntary compliance, for integrating the informal sector into the formal economy and for eliminating unfair trade practices, as well as through workshops, and the publication of guidelines on the substantive application of competition and consumer protection laws and regulations and guidelines on leniency programmes;

- (d) To assist MENA countries in the establishment of an effective dialogue between policymakers for coherence between competition, consumer and other public policies, in the adoption of competition neutrality frameworks, and in the implementation of Regulatory Impact Analyses so to avoid unnecessary burdens to competition;

- (e) To enhance cooperation among MENA countries in competition and consumer protection issues through the establishment of an Advisory Group of Experts for COMPAL MENA and of a knowledge management platform to facilitate experience and knowledge sharing.¹³²

To assess the different needs of Arab beneficiary countries, namely Algeria, Egypt, Lebanon, Jordan, Morocco, Tunisia, Palestine and Yemen, UNCTAD started a first phase of needs assessment in March 2015. The fifteenth annual conference of the

International Competition Network, held in April 2015, especially addressed the issue of adopting competitive neutrality frameworks as one of the five central objectives of the COMPAL MENA programme.¹³³ Competitive neutrality refers to maintaining a level playing field between private sector and State-owned enterprises in the best interest of the consumer, growth and national development.¹³⁴

COMPAL MENA builds on the success of UNCTAD in implementing a competition and consumer protection programme (COMPAL) in Latin America, which has already been replicated by the West African Economic Monetary Union. COMPAL is highly regarded in Latin America, where it has been running for nearly 10 years. It began with five member countries, and now has 13, where the majority of new members were happy to join at their own expense. Two independent audits of the programme concluded that it had improved institutions in Latin America and had an overall positive impact.¹³⁵ The UNCTAD Intergovernmental Group of Experts on Competition Law and Policy, a standing body established under the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (UN Set), monitors the application and implementation of the UN Set.

The UN Set is a multilateral agreement on competition policy, which was negotiated and adopted pursuant to General Assembly resolution 35/63. It provides a framework for international operation and exchange of best practices; recognizes the development dimension of competition law and policy; and provides equitable rules for the control of anticompetitive practices. The challenges for developing countries and economies in transition lie in the discussion and

subsequent implementation of revised chapters III (on restrictive agreements and arrangements) and VIII (on aspects of consumer protection) of the UNCTAD Model Law on Competition Legislation, as well as in accepting tripartite peer reviews.

As such, the Intergovernmental Group of Experts could support ESCWA member States in the following areas: competition policy and public procurement; knowledge and human resource management for effective competition law enforcement; and cross-border anticompetitive practices.

2. International Monetary Fund

The International Monetary Fund (IMF) report on Arab countries in transition stipulates the need for “a more transparent and competitive environment for doing business through the new investment code, competition law, bankruptcy law, and trade facilitation measures”.¹³⁶ Competition is deemed particularly important to improve public procurement; IMF is continuing its work in the region on trade competitiveness and growth, and on financial sector improvement. Overall, IMF, in its analysis of transitioning countries, has stressed the need for quicker reforms to combat persistent weak growth, low levels of investment and high unemployment. A list of recommendations has been made, which identifies the need for multiple reforms to improve the competitive climate of target countries. As discussed earlier, business regulations and startup procedures need to be relaxed to encourage business creation and investment. This enabling environment should be coupled with strengthening of current antimonopoly regulations and institutions to open up markets to more competition, new business opportunities and integration into the global marketplace.¹³⁷

3. Organisation for Economic Co-operation and Development

The Organisation for Economic Co-operation and Development (OECD) has prepared a report entitled “OECD guidelines on corporate governance of State-owned enterprises”,¹³⁸ which stipulates that State-owned enterprises (SOEs) should not be subject to any preferential treatment, i.e. exemption from the application of laws. However, it is recognized that “in some countries SOEs may be exempt from a number of laws and regulations, especially where statutory corporations and other SOEs operating in a non-standard corporate form are concerned. Derogations from competition law sometimes occur, which is generally justified where natural and legal monopolies are concerned but which can become problematic if the same SOEs engage in competitive activities in other market segments. SOEs are also in some cases not covered by bankruptcy law and creditors sometimes have difficulties in enforcing their contracts and in obtaining payments. Such exemptions from the general legal provisions should be avoided to the fullest extent possible in order to avoid market distortions and underpin the accountability of management”.¹³⁹ While these draft guidelines are aimed at OECD member countries, they were drafted with input from the Task Force on Corporate Governance of State-Owned Enterprises in the MENA Region, in which ESCWA is an active member. With competition policies and institutions in the region being relatively new, the investigation of SOEs poses a specific challenge.¹⁴⁰ Countries would therefore benefit from improved collaboration on the issue.

4. Cooperation Council for the Arab States of the Gulf

The six members of the Cooperation Council for the Arab States of the Gulf (GCC) have agreed to

develop the Standard GCC Competition and Anti-Monopoly Law as an extension to the GCC Unified Commercial Policy Law (annex III to the present document). The recent law on antitrust and competition in the United Arab Emirates is considered a “positive development to the UAE’s regulatory environment and is part of a wider GCC antitrust legislative effort”.¹⁴¹ The overarching GCC legislation for comprehensive antimonopoly laws will be wider-reaching and cover all economic activity in the GCC. The scope of the law applies to all practices that affect competition within GCC countries. Although some GCC countries have expressed reservations about the law, it is currently under revision in the hopes of reaching a consensus.¹⁴²

B. Recommendations to improve sectoral regulations and effective competition enforcement

As discussed, competition legislation permeated into Arab countries juridical systems much less organically than in Western countries. Adoption of antitrust legislation was pushed, so as not to lag behind in a competition-driven world and, as in the case of some countries, through pressure from the European Union and other international organizations that made development aid contingent on such legislation. For this reason, legislation has sometimes been adopted hastily, without sufficient attention to the subtle complexities of more established competition legislations, which are, after all, the fruit of trial and error and experience.

The entry of competition law into Arab countries could almost be qualified as ‘artificial’, since a major problem encountered by market actors, competition authorities and regulatory bodies is a lack of competition culture. The following part

outlines some recommendations for effective competition enforcement.

1. Defining clear boundaries and competencies between competition authorities and regulatory bodies should be a priority, so as to enshrine competition law as a credible and enforceable legislation, rather than one that overlaps and conflicts with many other regulations. It is important not to fall into this caveat, which could lead to a false impression that competition legislation is auxiliary, unimportant and a bureaucratic nuisance. Given that a number of Arab countries are still constrained by weak institutions and political instability, it is even more important to set the legal and economic framework for effective competition enforcement in conjunction with sectoral regulations.

2. Arab countries need to ensure the independence of their competition authorities. Independent competition authorities are essential for unbiased enforcement that can properly assess the impact of legislative implementation on different stakeholders. The more competition authorities are subjected to government control, the more such independence is challenged, which may lead to an unfavourable competitive environment. It would also further complicate the institutional and legislative relationship between competition and sectoral enforcement activities.

3. Arab countries need to clearly predetermine the scope and reach of competition law as it is essential for its effective application, and also minimizes the potential for abusing the uncertainty and lack of clarity of jurisdictional reach through corruption and nepotism. Legal insecurity is bound to allow politically and economically powerful parties to exploit the situation to their benefit. As

such, to prevent corruption and the hindering of competition policies' effective performance, clear and transparent boundaries must be put in place between various bodies and the scopes of their respective legal texts. Moreover, to achieve effective competition enforcement, the substance of the law needs to become clear, comprehensive and easily enforceable through direct prohibitions.

4. Competition and sectoral legislation and enforcement should exist within a wider frame that engulfs developmental policies. Both competition enforcement and sectoral regulation activities need to be synchronized in a way that ensures that countries' overall goals for development and inclusive growth are achieved. Legislative texts and administrative bodies need to collaborate towards the realization of such goals. Cooperation between competition and sectoral bodies, following model 3, discussed in chapter II, appears to be the most promising relationship. According to model 3, cooperation between various competition and sectoral bodies is mandated by law to assure the realization of consistent policy.

5. It is of crucial importance not to get caught in the pitfall of oversimplifying relations between competition enforcement and sectoral regulation. While competition may have been the victor in the Egyptian legal debate in June 2014, this does not mean that, in general, competition should cripple or take over the role of regulation. A more positive and productive mindset would be fostering the growth and closeness of cooperation legally and institutionally. To achieve this, cooperation should be rendered mandatory by law, since it seldom happens spontaneously. Cooperation could take the form of agreements or memoranda of understanding between competition authorities and sectoral bodies. This cooperation should clearly

define these bodies' respective scopes, and clearly state the superiority of a competition authority regarding subject matters relative to competition based on the competencies of the institution. Once such a framework of cooperation is established, it can assure that enforcement by different administrative bodies is coordinated. It also offers a solution if conflicts arise, meaning that the national competition authority should be the deciding body in competition matters. Such clarity and cooperation would allow these bodies to handle their shared goals and conflicts in an effective manner that will have positive spillover effects

6. It is of utmost importance to educate the public on competition issues and frame competition law as a necessity rather than a product of capitalist bureaucracy. The issue of public awareness should be a process of evolving mentalities, competition advocacy and public policies. Competition commissions have a crucial role to advocate for themselves and the laws they apply to raise consumer awareness and communicate to stakeholders their value.

7. Practical enforcement of competition law will remain hindered until enforcement tools are sharpened to better suit the realities of violations and the markets in which they occur. Effective competition enforcement in the Arab region will not be straightforward, but in no way is it impossible. Simple competition laws, clear merger guidelines, adequate sanctions and introduction of leniency programmes are all tools that can aid effective competition enforcement.

8. It is necessary to develop competition policy that addresses country specificities and is placed within a wider development agenda.

9. The organizational arrangements of the enforcing authorities directly contribute to the effectiveness of the enforcement process. Thus, they need to guarantee independence, unbiased decision-making processes and adequate financial endowments and human skills. Distance from Government is key in ensuring independence. Competition authorities must be separated from ministries that oversee the economy, commerce, trade and industry. Furthermore, they require distinct budgets and multiple budget sources.

10. The surrounding political economy dynamics also play a significant role towards effective enforcement. The following issues affect the proper enforcement of competition laws: lack of development, poverty, high levels of corruption and concentrated markets in the hands of elites who are often subject to conflicts of interest.

Such concerns must be properly addressed in a comprehensive development framework and, using the recommendations set out above, within effective competition policy regimes to secure sustainable and effective enforcement levels.

Annex I

Competition legislation on restrictive agreements and practices regulated by competition law, single-firm conduct and merger control

Bahrain

Are restrictive agreements and practices regulated by competition law?

Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority: Currently, there is no competition law in force in Bahrain. However, Legislative Decree No. 7 (Law of Commerce) addresses unfair competition and provides prohibitions for certain acts. The Law of Commerce provides for a broad prohibition on activities that would have damaging effects on competition, and companies are forbidden from undertaking practices detrimental to their competitors or attracting the custom of their competitors. There is no official competition authority in Bahrain. However, a law is in place to ensure prohibition on the monopoly of the cement trade. Moreover, the Consumer Protection Directorate is responsible for ensuring that the law, with respect to determining prices and control, is implemented and violators are punished.

Restrictive agreements and practices: Legislative Decree No. 19 of 2001 (Civil Code) addresses restrictive agreements. A contract containing arbitrary conditions can be amended by a judge.

Unilateral conduct: a unilateral contract is prohibited in the cement trade and in relation to food commodities.

Are mergers and acquisitions subject to merger control?

The Takeovers, Mergers and Acquisitions Module, Volume 6, Rulebook (TMA Module), issued by the Central Bank of Bahrain, applies to takeovers, mergers and acquisitions affecting Bahrain domiciled publicly listed companies and overseas companies whose ordinary voting equity securities are listed on a licensed exchange in Bahrain. These include partial offers, offers by a parent company for shares in its subsidiary and certain other transactions where control of a company is to be obtained or consolidated. References to takeovers and offers include, where appropriate, all such transactions, including share repurchases by mandatory offer. Generally, the TMA Module is triggered when 30 per cent or more of company's voting rights are acquired.

Source: Practical Law by Thomson Reuters, January 2015.

Egypt

Are restrictive agreements and practices regulated by competition law?

Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority: Competition Law No. 3 of 2005 and its Executive Regulations establish the Egyptian Competition Authority to monitor compliance. The Competition Law prohibits, among other things: 1) agreements or contracts between competing persons that are likely to: increase, decrease or fix prices; divide product markets or allocate them on certain grounds (for example, geographical areas); result in concerted participation in tenders, auctions, negotiations and other calls for procurement; restrain production, distribution or marketing operations, or limit the service distribution; or restrict competition; 2) a person holding a dominant position from abusing that position; and 3) acts committed outside Egypt that may prohibit, restrict or impair free competition in the Egyptian market.

Single firm conduct: single firm conduct is likely to come under the abuse of a dominant position under the Competition Law. An entity holding at least 25 per cent of the market share enabling it to affect prices or what is on offer in the market is considered as having a dominant position if its competitors have unequal power in the market and are therefore unable to prevent this dominance (article 4, Competition Law). A person holding a dominant position in a market is prohibited from undertaking specific practices that are considered detrimental to competition (article 8, Competition Law). Such practices include: preventing the manufacture, production or distribution of a product for a certain period (or periods) of time; refraining from entering into transactions with any person or totally ceasing to deal with him in a manner that results in impairing that person's freedom to access or exit the market; limiting the distribution of a specific product, to, for example, certain geographic areas or to a type of customer base; discriminating between sellers or buyers having similar commercial positions in relation to sale or purchase prices or the terms of the transaction; refusing to produce or provide a product that is circumstantially scarce when its production or provision is economically possible; selling products at prices lower than their marginal cost or average variable cost; obliging a supplier in not dealing with a competitor; and imposing the acceptance of obligations or the purchase of products that are unrelated in their nature to the original transactions or agreements, or as opposed to relevant commercial custom.

Are mergers and acquisitions subject to merger control?

Under the Egyptian Companies Law, in a merger between Egyptian companies, prior approval is required from the Ministry of Investment. The approval is automatic and is not considered to be an impediment to the merger. Notification to the Egyptian Competition Authority is required where either an entity with a turnover exceeding EGP 100 million acquires assets or merges into another entity, or the sum of the annual turnover of the acquirer, the acquired party and all related parties in Egypt exceeds EGP 100 million. The law defines related parties as two or more separate legal entities, where the majority or the total of a related party's shares are owned by the other or an entity subject to the actual control of another entity. The law does not specify its application to foreign-to-foreign mergers, but it is likely that the notification requirement only applies where: the transaction will have an impact on the Egyptian market; the parties operate directly or indirectly in the Egyptian market; or one or more related parties of the acquirer or the acquired party are Egyptian entities. If the parties have no legal establishments (that is, subsidiaries or branches) in Egypt, and only sell through a distributor, no notification is required, even if the distributor's turnover was over EGP 100 million in the previous year. No other foreign exemptions exist.

Source: Practical Law by Thomson Reuters, February 2015b.

Iraq

Are restrictive agreements and practices regulated by competition law?

Is unilateral (or single-firm) conduct regulated by competition law?

Are mergers and acquisitions subject to merger control?

The Iraqi Council of Representatives (parliament) approved: the Consumer Protection Act No. 1 of 2010 and the Law on the Protection of Iraqi products No. 11 of 2010, which aims to provide fair conditions of competition for local products. Law No. 14 of 2010 aims at creating an incentive to reduce the cost, price and quality improvement of goods and services offered on the market, which leads to the promotion of private and mixed public and developed sectors, supporting the national economy and improving the flow of goods and services.

The Competition and Consumer Protection Law of 2010, part of the Iraqi Legislative Action Plan for the Implementation of WTO agreements, aims to level the playing field and is required for the country's accession to WTO. Although the Kurdistan Regional Government has implemented the law by passing Law No. 9 of 2010, the Government of Iraq has not yet established the commissions required to implement the law.

Sources: ILO NATLEX, 2010; Republic of Iraq-Presidency of the Council of Ministers – National Investment Commission, 2013.

Kuwait

Are restrictive agreements and practices regulated by competition law?

Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority: the Authority for Protection of Competition (Competition Authority) is affiliated to the Ministry of Commerce and Industry, and its powers include: endorsement of policies and necessary procedures to protect and support competition; receipt of competition notifications, applications, and complaints; investigations into agreements, contracts and practices; compiling market data, with the cooperation of relevant authorities; requiring disclosure by concerned persons; and ruling on notified agreements, contracts, practices, mergers, combinations of management, unions, and acquisitions of assets.

Restrictive agreements and practices: restrictive agreements and practices are regulated by the Commercial Law, which regulates illegal competition and monopolies in commercial transactions and trade agreements. Law No. 10 of 2007 (Competition Law) further regulates competition. It focuses on: restrictions on free trade and competition; abuse of a dominant position; and supervision of mergers and acquisitions. The Competition Authority investigates complaints about unfair trade practices and abuse of a dominant position. Any person has the right to inform the Competition Authority of any prohibited agreements or practices. The Competition Law applies to violations committed in Kuwait and also to violations committed abroad that restrict competition and free trade, or are detrimental to it in Kuwait (article 3, Competition Law). Criminal penalties for competition violations include: fines; confiscation of goods; a double fine for repeated offences; and suspension of products from the market for up to three years (articles 19 to 22, Competition Law).

Unilateral conduct: all agreements, contracts and practices that are detrimental to free trade or competition

are prohibited. Any natural or artificial person who is capable of influencing the market price of a product or service, through control of more than 35 per cent of the market share of business, is also prohibited from engaging in practices that limit competition (article 4, Competition Law). Prohibitive practices that can be regarded as single-firm conduct listed under article 4 are: limiting the free flow of goods or services by increasing, decreasing or fixing prices, or by other means harmful to competition; creating a sudden abundance of the product resulting in an artificial market price that affects other competitors; preventing or impeding a person from practising any commercial activity in the market or ceasing to do so; concealing goods and services available in the market; selling products at a price lower than their actual cost with the intention of causing harm to competing producers; and suspending (totally or partly) the manufacturing, distribution or marketing process.

Are mergers and acquisitions subject to merger control?

Merger control applies to mergers or acquisitions under which the merged entity acquires control over a market. Control is defined under the Competition Law as when a person (natural or artificial) or persons working together, directly or indirectly, become capable of controlling a market, by acquiring a combined market share or volume of business exceeding 35 per cent. If this threshold is met, notification must be sent by the potential buyer to the Competition Authority, at least 60 days before the intended date of the merger. Once notification is made, the notice must be published in the Official Gazette and four local daily newspapers (in Arabic). There is then a 15 day period for objections to the transaction to be lodged. If any objections are made, the transaction must be suspended until a decision is taken. Approval must be received from the Competition Authority before the transaction is completed.

Source: Practical Law by Thomson Reuters, November 2013.

Morocco

Are restrictive agreements and practices regulated by competition law?

Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority: under the Constitution, as amended in 2011, the Competition Council is an independent administrative authority responsible for controlling anti-competition practices and the prior control of concentrations in Morocco. Law No. 20-13, adopted on 7 August 2014, draws the consequences of the new constitutional provision and reforms the status and powers of the Competition Council. The Competition Council is now in charge of: making decisions on anti-competition practices and controlling concentrations, with broad powers of investigation and sanction; providing advice to official consultations by public authorities; and publishing reviews and general studies on the state of competition in specific sectors or at the national level.

Restrictive agreements and practices: Law No. 104-12 of 7 August 2014, complemented by decree No. 2-14-652, reformed competition law with effect from 5 December 2014. This law strictly regulates restrictive agreements and practices (including concerted practices). Agreements and practices whose object or effect is to prevent, restrict or distort competition are prohibited. Any moral or physical person, whether or not their main office or establishment is in Morocco, is subject to the Competition Law when its operations or

behaviour have an effect on the competition on the Moroccan market or on a substantial part of it. In cases of breaches of Competition law, the Competition Council can: order interim measures; issue court orders under financial compulsion; and impose financial penalties of up to 10 per cent of the global turnover. This maximum is doubled in the case of repeated offences.

Unilateral conduct: single firm conduct is regulated under competition law. Taking advantage of a market dominant position or of the economic dependence of another operator is prohibited when it aims to, or has the consequence of, preventing, restricting or distorting competition on a national market or a substantial part of it. The offering on the market of products at an abusively low price in comparison to the production, transformation and commercialisation costs are also prohibited if the practice aims at, or may have the effect of, excluding an operator from the market or preventing a competitor from entering it.

Are mergers and acquisitions subject to merger control?

Any concentration that could prevent, restrict or distort competition, including but not limited to the creation or the reinforcement of a dominant position, requires prior approval from the Competition Council. Following the reform adopted on 7 August 2014 and effective since 5 December 2014, concentrations must be notified to the Competition Council where any of the following applies: the combined worldwide turnover (tax free) of the companies or groups involved in the transaction exceeds MAD 750 million; the turnover (tax free) in Morocco of at least two companies or groups of natural or legal persons involved in the transaction exceeds MAD 250 million; or the parties to the transaction hold together a market share of 40 per cent of a national market or of a substantial part of it. The Competition has the power to: issue court orders under financial compulsion; and impose financial penalties on legal entities of up to 5 per cent of the turnover (tax free) achieved in Morocco in the previous year.

Source: Practical Law by Thomson Reuters, February 2015a.

Qatar

Are restrictive agreements and practices regulated by competition law?

Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority: a Committee for the Protection of Competition and Prevention of Monopolistic Practice was established within the Ministry of Economy and Commerce. The Committee objectives include: raising awareness of the importance of fair competition; preventing monopoly practices that negatively affects fair competition; creating an integrated and complete database of the economic activity of the state; building highly qualified and skilled cadres; and liaising with counterparts in other countries to contribute to developing legal frameworks to ensure fair competition. The Committee has also adopted a set of values, including non-bias, transparency and efficiency in work performance (see www.mec.gov.qa/ENGLISH/Pages/CPMP.aspx).

Restrictive agreements and practices: article 3 of the competition legislation outlines the following restrictions: manipulating the prices of the products being handled, either by raising, lowering or fixing those prices, or by any other means; limiting the freedom of products to enter or exit markets, either completely or partially, by concealing them, refusing to handle them despite the fact that they are available, or stockpiling

them without justification; deliberately provoking a sudden glut of products which causes them to circulate at a price that affects the economic performance of other competitors; preventing or hindering any person from practicing economic or commercial activity on the market; unjustifiably concealing from a particular individual, either completely or partially, the products available on the market; restricting production, manufacture, distribution or marketing of products; limiting the distribution, volume or kind of services, or placing conditions or restrictions on their supply; dividing or allocating product markets on the basis of geographical area, distribution centres, type of customers, seasons or time periods, or goods; coordination or agreement among competitors with regard to presenting, or failing to present, bids in public tenders, negotiations and calls for procurement (this does not include joint offers previously announced by the participating parties, as long as this is not in any way intended to prevent competition); and knowingly distributing false information about products or their prices.

Unilateral conduct: article 4 stipulates that persons who exercise control or domination shall not misuse it through unlawful practices, in particular the following: refraining from, limiting or hindering the handling of products, either for sale or purchase, in such a way as leads to the imposition of artificial prices; reducing or increasing the available quantities of a product so as to provoke an artificial lack or glut of the product; refraining, without lawful justification, from concluding product sale or purchase agreements with any person, selling the products being handled for less than their effective cost, or ceasing to handle them altogether in such a way as limits that person's freedom to enter or exit markets at any time; imposing the obligation not to manufacture, produce or distribute a product for a set period or set periods of time; imposing the obligation to limit the distribution or sale of a product or service, on the basis of geographical areas, distribution centres, clients, seasons or periods of time, among persons with a vertical relationship; making the conclusion of a sale or purchase contract or agreement for a product conditional on the acceptance of obligations or products unrelated by their nature or by commercial custom to the original transaction or agreement; relinquishing the principle of equality of opportunity among competitors, differentiating some competitors from others in the conditions of sale or purchase agreements, without lawful justification; failing to make a scarce product available when its availability is economically viable; obliging a supplier not to deal with a competitor; selling products below their marginal cost or average variable cost; and obliging one's associates not to allow a competitor access to utilities or services of theirs that the competitor may need, despite this being economically viable.

Are mergers and acquisitions subject to merger control?

Article 10 of the competition legislation: "Persons who wish to acquire assets or rights of ownership or use, to buy shares, to set up mergers or unite bodies run by two or more juridical persons, in such a way as to control or dominate the market, must notify the Committee. The Committee shall then examine the notification and issue a decision thereon within a period not exceeding ninety days from the date of receiving the notification. If that period elapses with no decision having been made, this shall be considered as acceptance. In all cases the proposed actions about which the Committee has been notified may not be implemented until either the Committee has issued its decision or the abovementioned period has elapsed without a decision having been made. Article 11: The provisions of the preceding article shall not apply to mergers or ownership which, in the Committee's view, assist economic development in a manner that compensates for any detriment to competition".

Source: Qatar, 2006; Qatar Legal Portal, 2008.

Saudi Arabia

Are restrictive agreements and practices regulated by competition law?

Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority: Saudi Arabian competition policies are based on free market principles. The Competition Law was enacted pursuant to Royal Decree No. M/25 of 4/5/1425H (22 June 2004). The Law contains prohibitions on cartel and monopoly-type practices, mergers and unfair commercial practices, among others. It prohibits all agreements and contracts between competing (or potentially competing) companies where the result of those arrangements is to restrict trade. The Competition Regulations further prohibit current market participants from: fixing prices; erecting barriers to entry; and manipulating the supply or prices of goods and services. There does not seem to be any differences in treatment between horizontal and vertical arrangements. In addition, Islamic law prohibits a number of anti-competitive practices under the general rule requiring fair dealing in all commercial exchanges. The law and principles apply generally to all businesses operating in Saudi Arabia, including foreign companies, except for public corporations and companies wholly owned by Saudi Arabia. Violations of competition law may be subject to criminal prosecution. However, competition law does not specify the possible penalties for violation of the law. In addition, some products, such as pharmaceutical products, are subject to price and profit regulation in Saudi Arabia. The Pharmacy Law, issued under Royal Decree No. M/18 of 18/3/1398H (25 February 1978), establishes rules for registration and pricing of pharmaceutical products and requires that drugs be priced before their sale in retail pharmacies.

Single firm conduct: Where a merger of competing companies or an acquisition of the assets or shares of a Saudi company will result in the establishment of a dominant position, the parties to the transaction must notify the Ministry of Commerce and Industry's Council of Competition Protection of the proposed transaction at least 60 days prior to completion. The term 'dominant position' is not defined in the law, however, entities able to act in restraint of trade (effectively blocking competitors from entering the market, setting prices or affecting the supply or availability of a commodity) would be seen as dominant. The Council of Competition Protection has broad discretion to review a proposed transaction to ensure that it will not restrict competition and free trade. It may impose penalties or require the parties to modify or abandon transactions that it deems anti-competitive. Abuse of a dominant position includes: selling commodities or services at a price below cost, with the intention of forcing competitors out of the market; imposing restrictions on the supply of a commodity or service with the intention of creating an artificial shortage and raising prices; imposing conditions in selling or purchasing to put a competitor in a weak competitive position; and refusing to deal with another firm without justification in order to restrict its entry into the market.

Are mergers and acquisitions subject to merger control?

The Competition Law applies to all companies operating in Saudi Arabia. Any merging company involved in a merger that puts them in a dominant position must notify the Council 60 days prior to completion. There are no specific rules for foreign-to-foreign mergers. However, the Competition Law has extra-territorial effect if a Saudi affiliate company engages in a foreign-to-foreign merger to control prices or services.

In addition, a person who increases his ownership of a class of listed equity securities to 10 per cent or more must file certain information about himself and other information as required by regulations issued by the Capital Markets Authority (Resolution No. 1-50-2007, dated 21/9/1428 H (3 October 2007)). These provisions are similar to early warning disclosures in other countries and can apply to foreign-to-foreign mergers in certain circumstances (see above). The Capital Markets Authority is authorised to adopt a range of substantive protections for the shareholders of the firm that is the target of a takeover.

Source: Practical Law by Thomson Reuters, May 2012.

Syrian Arab Republic

Are restrictive agreements and practices regulated by competition law?

Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority: Chapter 6: Commission and Council of Competition.

Article 11 of the competition legislation: Commission of the Protection of Competition and Monopoly Prevention.

Single firm conduct: (Full text available from <http://ip4all.com/legislation/law-no-7-of-2008-on-competition-protection-and-prevention-of-monopoly/>).

Are mergers and acquisitions subject to merger control?

Chapter 6, Article 14: "the Council's decisions concerning Economic Concentration" details the views on economic concentration and stipulates: "A) The Council may take a decision with respect to the applications submitted pursuant to Article/10/hereof as follows:

- 1) Approve the economic concentration process if it does not negatively affect competition, or if it has positive economic effects that would lead to the reduction of service, commodities prices, creation of job opportunities, encouragement of export, attraction of investment or support of the capability of national establishments on international competition or if they are necessary for a desirable technological progress, or to improve service and commodities quality or place new products on the market.
 - 2) Approve the economic concentration process, provided that the concerned establishments would undertake the implementation of the conditions determined by the Council for this purpose.
 - 3) Disapprove the economic concentration process and issue a resolution of their nullification and bring the situation back as it was".
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Source: President of the Syrian Republic, 2014.

United Arab Emirates

Are restrictive agreements and practices regulated by competition law?

Is unilateral (or single-firm) conduct regulated by competition law?

Are mergers and acquisitions subject to merger control?

The Competition Law applies to all entities in relation to: economic activities carried out within the United Arab Emirates; the utilization of intellectual property rights within and outside the United Arab Emirates; any economic activity outside of the United Arab Emirates that has an effect on competition inside the United Arab Emirates. The following entities and sectors have been expressly exempted from the application of the Competition Law: federal and local government entities and entities owned or controlled by federal and local government entities; small and medium size entities (not defined in the Competition Law or its regulations); and entities operating in the following sectors: telecommunications; financial; media (prints, audio, and visual); oil and gas sector; production and distribution of pharmaceutical products; postal services (including express mail, electricity and water production and distribution); sewage and waste disposal; land, sea and maritime transportation (including transportation by rail and related services).

The Competition Law prohibits restrictive agreements between entities that may contravene, limit or prevent competition. In addition, an entity with a dominant position in the local market or a significant part thereof is prohibited from any acts or dealings by abusing its dominant position in order to prevent, limit or weaken competition. The Competition Law requires that entities seek merger clearance from the Ministry of Economy if they are contemplating a transaction that: will result in the acquisition of a direct or indirect, total or partial interest or benefit in assets, equity, and/or obligations of another entity to which the Competition Law applies; will create or promote a dominant position; or may affect the level of competition in the relevant market.

The Competition Law allows for entities to seek an exemption to the Competition Law from the Ministry of Economy. The procedure for seeking an exemption is set out in the regulations (Cabinet Decision No. 37 of 2014) (Cabinet Decision) to the Competition Law. The Cabinet Decision also provides for issuance of implementing regulations by the Ministry of Economy that have not yet been declared. The Competition Law provides for the following penalties in the event of violation: fines of between AED 500,000 and AED 5 million for entering into restrictive agreements or abusing market dominance; and fines of between 2-5 per cent of the infringing entity's annual revenue derived from the sale of the relevant goods and services in the United Arab Emirates for a failure to notify a transaction that is required to be notified under the Competition Law. In addition, an entity violating the provisions of the Competition Law can be subject to possible criminal sanctions.

Source: Practical Law by Thomson Reuters, March 2015.

Annex II

Exemptions from competition law and public utilities and an overview of telecommunications regulation

Country	Exemptions from competition law	Public utilities mentioned in competition law
Bahrain	Has a law on unfair business practices, not competition.	
Egypt	<p>Article 9</p> <p>The provisions of this Law shall not apply to public utilities managed by the State.</p> <p>The Authority may, upon the request of the concerned parties, exempt some or all the acts provided for in articles 6, 7 and 8 regarding public utilities that are managed by companies subject to the Private Law where this is in the public interest or for attaining benefits to the consumers that exceed the effects of restricting the freedom of competition. This shall be done in accordance with the regulations and procedures set out by the Executive Regulation of this Law.</p> <p>Article 10</p> <p>The Cabinet of Ministers may, after taking the opinion of the Authority, issue a decree determining the selling price for one or more essential products for a specific period of time.</p> <p>Any agreement concluded by the Government for the purposes of the implementation of these prices shall not be considered an anti-competitive practice.</p>	<p>مادة 11</p> <p>6- إبداء الرأي في التشريعات أو السياسات أو القرارات التي من شأنها الإضرار بالمنافسة وذلك من تلقاء نفسه أو بناء على طلب مجلس الوزراء أو الوزارات والجهات المعنية، وتلتزم الجهات المعنية بأخذ رأي الجهاز في شأن مشروعات القوانين واللوائح المتعلقة بتنظيم المنافسة.</p>
Iraq	There exists a law adopted in 2010, however, the Competition Protection Commission described by the laws has yet to be formed. Without this Commission, firms do not have recourse against unfair business practices such as price-fixing by competitors, bid rigging, or abuse of dominant position in the market.	

Iraq	<p>المادة -3-</p> <p>ثانياً: تستثنى من حكم البند (أولاً) من هذه المادة القرارات التي تصدرها وزارة.</p> <p>الصناعة والمعادن ووزارة التجارة بناء على تحويل من مجلس الوزراء.</p> <p>في تحديد أسعار السلع والخدمات الأساسية بناء على قيام ظرف استثنائي.</p> <p>طارئ وللمدة التي يتطلبها الظرف المذكور.</p>	<p>المادة -7- مهام المجلس ولجانه يتولى مجلس شؤون المنافسة والاحتكار المهام الآتية:</p> <p>خامساً: إصدار توجيهات بالمسائل المتعلقة بعملها وذلك من تلقاء نفسها أو بناء على طلب من الجهات ذات العلاقة.</p>
Jordan	<p>Article 4</p> <p>Prices of products and services shall be set in accordance with the conditions of market rules and the principles of free competition, with the exception of the following:</p> <p>A- The prices of basic materials specified in accordance with the Industry and Trade Law or any other Law.</p> <p>B- Prices set by a resolution of the Council of Ministers through temporary measures to deal with exceptional circumstances or an emergency or a natural disaster, provided that such measures be reviewed within a period not exceeding six months after the beginning of the application thereof.</p>	
Kuwait	<p>المادة رقم 6</p> <p>لا تسري أحكام هذا القانون في الحالات التالية:</p> <p>1- المرافق والمشروعات التي تمتلكها أو تديرها الدولة.</p> <p>2- المشروعات وأوجه النشاط التي ينظمها قانون خاص.</p> <p>3- الأنشطة التي تستهدف تسهيل النشاط الاقتصادي كالتعاون بين الشركات في وضع المعايير القياسية وجمع وتبادل الإحصائيات والمعلومات عن نشاط معين.</p> <p>4- أنشطة البحوث والتطوير.</p>	

Lebanon		
Libya	In process of adopting a competition law, according to COMESA.	
Morocco	Article 3: In sectors of geographic zones where price competition is limited due to theoretical or actual monopoly, whether by reason of difficulty in distribution, or of legislative provisions or regulations, prices may be fixed by the administration after consultation with the Committee on Competition provided for in article 14 to follow. The details of this fixing shall be determined by regulatory action.	Article 5: At the request of professional organizations representing an area of activity or upon initiative of the administration, the prices of products and services that can be regulated under articles 3 and 4 shall be subject to approval of the administration after consultation with the said organizations.
	Article 4: The provisions of articles 2 and 3 above shall not stand in the way of temporary measures against excessive raising or lowering of prices, justified by exceptional circumstances, a public crisis, or a manifestly abnormal market situation in a given area, which may be taken by the administration, after consultation with the Committee on Competition. The duration of application of these measures may not exceed six (6) months, extendable only once.	The price of the good, product, or service concerned can also be fixed freely within the limitations specified by the agreement reached by the administration and the interested organizations. If the administration discovers a violation of the agreement reached, it shall fix the price of the good, product, or service concerned under the conditions set by regulatory action.
Oman	المادة (4) لا تسري أحكام هذا القانون على أنشطة المرافق العامة التي تمتلكها وتديرها الدولة بالكامل، كما لا تسري على أنشطة البحوث والتطوير التي تقوم بها جهات عامة أو خاصة.	المادة (5) يجوز للمجلس، وفق الضوابط التي تحددها اللائحة، استثناء أي شخص من أي اتفاق أو إجراء أو أعمال تتعلق بالمنتجات بصفة مؤقتة ولمدة محددة في الحالات التي تؤدي إلى التقليل من التكاليف الأولية وحماية ونفع المستهلك، وعلى الأخص إذا كان يهدف إلى:
	المادة (5) يجوز للمجلس، وفق الضوابط التي تحددها اللائحة، استثناء أي شخص من أي اتفاق أو إجراء أو أعمال تتعلق بالمنتجات بصفة مؤقتة ولمدة محددة في الحالات التي تؤدي إلى التقليل من التكاليف الأولية وحماية ونفع المستهلك، وعلى الأخص إذا كان يهدف إلى: أ- توخي ترشيد هيكل تنظيمي أو نطاق تجاري أو زيادة كفاءة المشروع تجارياً.	هـ- توحيد الشروط المتعلقة بالتجارة وتسليم السلع والسداد، على ألا تكون له صلة بالأسعار أو أي عوامل تسعير. و- تحقيق نفع عام مثل حفظ الطاقة، وحماية البيئة، وتوفير الإغاثة في حالات الطوارئ والكوارث.

Oman	<p>ب- تشجيع التقدم التقني أو التكنولوجي أو يحسن نوعية المنتجات.</p> <p>ج- زيادة قدرة المؤسسات العمانية الصغيرة والمتوسطة على المنافسة.</p> <p>د- تشجيع التطبيق الموحد لمعايير الجودة والتقدير التقني لأنواع المنتجات.</p>	
Palestine	Doesn't seem to have a competition law.	
Qatar	<p>المادة 6</p> <p>لا تسري أحكام هذا القانون على الأعمال السيادية للدولة، أو على أعمال المؤسسات والهيئات والشركات والكيانات الخاضعة لتوجيه الدولة وإشرافها.</p> <p>المادة 8</p> <p>تختص اللجنة المشار إليها في المادة السابقة بما يلي:</p> <p>3- التنسيق مع الأجهزة النظيرة في الدول الأخرى بالنسبة للأمور ذات الاهتمام المشترك.</p>	
Saudi Arabia	<p>Article Three:</p> <p>Provisions of this Law shall apply to all firms working in Saudi markets except public establishments and wholly-owned state companies.</p>	
Somalia	Doesn't have competition law.	
Sudan	Doesn't have competition law.	
Syrian Arab Republic	<p>Article 3</p> <p>Second: Exceptions to the application of this law:</p> <p>A – The sovereign acts of the state and includes all actions to be determined by the competent authorities and relating to the sovereignty of the State.</p>	

Syrian Arab Republic	<p>B – Public facilities owned or operated by the State in order to provide products or services to citizens, such as: drinking water – gas – electricity – oil – public transportation – mail and communications, and determine the decision of the President of the Council of Ministers shall not include exemption of such materials or some of which are provided by a person or company or any other economic effectiveness.</p> <p>Article 5</p> <p>The price of the goods and services in accordance with the rules and principles of market competition in accordance with Article V of the attitude of competition law and antitrust except:</p> <p>A – The prices of essential items and services where they are identifying these materials and service on the basis of a decree the proposals of the ministries concerned.</p> <p>B – The prices of materials and services sectors and areas where competition is limited by the prices either, because of the state monopoly of the market or the continuing difficulties in the process of supply or because of statutory or regulatory provisions governing and the decision of the Prime Minister on the proposal after consulting the concerned ministries of the Assembly of the competition and to prevent monopoly and sets the resolution of materials and services on the prices and terms of cost and sale.</p> <p>C – Sets the prices at which the decision of the Prime Minister under the temporary measures to cope with exceptional circumstances or an emergency or natural disaster that they should be considered in these procedures over a period of not more than six months of the entry application by the General Authority for competition and prevent monopoly and brought to the Council of Ministers With the proposals.</p>	
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Tunisia	<p>Art. 3 – Sont exclus du régime de la liberté des prix visé à l'article 2 cidessus, les biens, produits et services de première nécessité ou afférentes à des secteurs ou zones où la concurrence par les prix est limitée soit en raison d'une situation de monopole ou de difficultés durables d'approvisionnement soit par l'effet de disposition législatives ou réglementaires.</p> <p>La liste de ces biens, produits et services, ainsi que les conditions et modalités de fixation de leur prix de revient et de vente sont déterminés par décret.</p>	
United Arab Emirates	<p>المادة (4)</p> <p>يستثنى من تطبيق أحكام هذا القانون ما يأتي:</p> <p>1- القطاعات والأنشطة والأعمال المحددة في الملحق المرفق بهذا القانون، ولمجلس الوزراء حذف أو إضافة أية قطاعات أو أنشطة أو أعمال إلى تلك الاستثناءات.</p> <p>2- التصرفات التي تباشرها الحكومة الاتحادية أو إحدى حكومات الإمارات، والتصرفات الصادرة عن المنشآت بناء على قرار أو تفويض من الحكومة الاتحادية أو إحدى حكومات الإمارات أو تحت إشراف أي منهما بما في ذلك تصرفات المنشآت التي تملكها الحكومة الاتحادية أو إحدى حكومات الإمارات أو تتحكم فيها وذلك وفقاً للضوابط التي يحددها مجلس الوزراء.</p> <p>3- المنشآت الصغيرة والمتوسطة وفق الضوابط التي يحددها مجلس الوزراء.</p>	<p>ملحق</p> <p>بالقطاعات والأنشطة والأعمال المستثناة من تطبيق.</p> <p>أحكام القانون اتحادي رقم (4) لسنة 2012.</p> <p>في شأن تنظيم المنافسة.</p> <p>يستثنى من تطبيق أحكام هذا القانون أي اتفاق أو ممارسة أو عمل يتعلق بسلعة أو خدمة معينة يمنح قانون أو نظام آخر اختصاص تنظيم قواعد المنافسة الخاصة به إلى أجهزة تنظيمية قطاعية ما لم تطلب تلك الأجهزة التنظيمية القطاعية خطياً من الوزارة توليها لهذا الأمر بشكل كامل أو جزئي ووافقت الوزارة على ذلك، وتشمل هذه الاستثناءات القطاعات والأنشطة والخدمات الآتي:</p> <p>أ- قطاع الاتصالات.</p> <p>ب- القطاع المالي.</p> <p>ج- الأنشطة الثقافية (المقروءة، المسموعة، البصرية).</p> <p>د- قطاع النفط والغاز.</p> <p>هـ- إنتاج وتوزيع المنتجات الصيدلانية.</p> <p>و- الخدمات البريدية بما فيها خدمات البريد السريع.</p>

United Arab Emirates		<p>ز- الأنشطة المتعلقة بإنتاج وتوزيع ونقل الكهرباء والماء.</p> <p>ح- الأنشطة الخاصة بتدبير الصرف الصحي، وتصريف القمامة والنظافة الصحية وما يماثلها بالإضافة إلى الخدمات البيئية الداعمة لها.</p> <p>ط- قطاعات النقل البري والبحري والجوي والنقل عبر السكك الحديدية والخدمات المتصلة بها.</p>
Yemen	<p>Article 4:</p> <p>1. Commercial companies connected with the government through valid concession agreements.</p> <p>2. Temporary agreements made by the Council of Ministers in order to confront exceptional necessity in a sector, emergency or natural calamity. Only for a duration of 6 months, renewable once.</p> <p>State monopolized establishments that have agencies.</p> <p>Foreign commodities franchised to be produced locally by the principal producer.</p>	

Country	Telecom Law – Provisions on Competition
Egypt	Art 4, 25, 27 and 75 contain references to competition and the assurance of free and fair competition rules Full text: http://www.tra.gov.eg/uploads/law/law_en.pdf .
Jordan	Telecom law doesn't mention competition principles.
Kuwait	Kuwait does not have a telecom regulator. See www.reuters.com/article/2014/03/06/kuwait-telecom-regulator-idUSL6N0M32A720140306 .
Lebanon	Art. 18 evokes principle of equality and competition (Telecom Law 431/2002; Law 431, or the Telecommunications Law as it is often referred to, was issued in 2002 to provide the framework for governing the organization of the telecommunications services sector and to set the rules for its transfer to the private sector). Full text available from www.tra.gov.lb/Telecom-Law-431-2002#sthash.nH0mpL58.dpuf .
Morocco	Theoretically: competition is mentioned several times as a principle. No competition rules are defined. Article 8 bis: [...] L'ANRT informe le Conseil de la Concurrence des décisions prises en vertu du présent article. http://www.sgg.gov.ma/Portals/0/lois/Projet_loi_121.12_Fr.pdf , http://www.anrt.ma/sites/default/files/documentation/1997-1-97-162-24-96-loi-telecom-ver-consolidee-fr.pdf .
Qatar	Comprehensive competition policy, contained in Decree Law No. (34) of 2006 on the promulgation of the Telecommunications Law, Chapter 9. http://www.ictqatar.qa/en/file/documents/telecom-law-2006pdf .
Saudi Arabia	Chapter 6 of the Telecommunications Act provides specific competition rules. The Telecommunications Act was issued under the Council of Ministers resolution No. (74), dated 05/03/1422H (corresponding to 27/05/2001), and it was approved pursuant to the Royal Decree No. (M/12), dated 12/03/1422H (corresponding to 03/06/2001). Full text available from www.citc.gov.sa/English/RulesandSystems/CITCSyste/Documents/LA%20_001_E_%20Telecom%20Act%20English.pdf .
Syrian Arab Republic	Article 5, a) 7) Promote fair competition in the Telecommunications sector; and regulate it in a way to ensure the efficient provision of Telecommunications Services; prevent anti-competitive practices or any person's abuse of its dominant position in the market; and take all necessary measures to achieve these purposes, including by requiring the provision of the necessary disclosures. Article 39 Determination of Significant Market Power

Syrian Arab Republic	<p>The Authority shall identify and define the Telecommunications Markets subject to regulation in Syria, determine the Licensees who have Significant Market Power, and those who have a Dominant Position, in those Markets, and determine the special obligations to be imposed on such Licensees. The Executive Provisions shall set forth the conditions related thereto.</p> <p>Article 40 Competition and Consumer Protection Regulation</p> <p>(a) Subject to the provisions of Law No. 2 of 2008 regarding consumer protection, and Law No. 7 of 2008 regarding competition and antitrust, and their amendments, this Law shall apply to all matters that concern regulating competition and consumer protection in the Telecommunications Markets in Syria. The Authority shall have jurisdiction to review matters related thereto.</p> <p>(b) The Authority shall determine the practices, which it deems anti-competitive. Licensees are prohibited from engaging in any such practices, and generally any action that disrupts or limits competition. The Executive Provisions shall set out the conditions related thereto.</p> <p>(c) The Authority shall adopt the necessary procedures to counter anti-competitive practices in accordance with the provisions of this Law, the Executive Provisions and the relevant License provisions. These procedures may include:</p> <ol style="list-style-type: none"> 1) Instruct a Licensee to refrain from carrying out any anti-competitive practice. 2) Impose a fine on a Licensee, according to the provisions of this Law and its Executive Provisions. 3) Freeze or cancel the License, partially or totally, according to the provisions of this Law and its Executive Provisions.
Tunisia	<p>Article 26 bis:</p> <p>Les opérateurs des réseaux publics des télécommunications et des réseaux d'accès s'engagent à tenir une comptabilité analytique permettant de distinguer entre chaque réseau et chaque service et à renoncer à toute pratique anticoncurrentielle notamment les opérations de subvention croisée.</p> <p>Les conditions générales d'exploitation des réseaux publics des télécommunications et des réseaux d'accès sont fixées par décret.</p>
United Arab Emirates	<p>Has a regulatory body, but telecom law and executive regulations do not mention competition at all.</p>
Yemen	<p>Yemeni telecom regulation appears to be under the responsibility of the Ministry of Telecommunications and Information Technology</p>

Annex III

Draft GCC unified commercial policy law

Based on the Decision of the Supreme Council taken at the 23th session held in the city of Doha (Qatar) in December 2002 concerning "Unification of Commercial and Economical Laws and Policies" which stipulates the following, "The Commercial Cooperation Committee shall be assigned to set a unified commercial policy for the states of the Gulf Cooperation Council. Such a policy shall be submitted to the supreme Council in the coming session. The General Secretariat shall be entrusted with implementing the policy in consultation and coordination with the Member States, after being approved by the Supreme Council",

Pursuant to the Economical Agreement among the states of the Gulf Cooperation Council, which was signed at the session (22) held in the city of Muscat (Oman) in December 2001, providing the foundations of economic relations among the GCC states and between such states and the outside world, including the unification of the economic policy as well as the commercial and industrial legislations and the applicable customs regulations among the GCC states, and promotion of their economies in the light of global economic developments and the necessity of achieving integration among such states to strengthen the negotiating position and competitiveness in the international markets, in the light of the global trend towards the establishment of economic blocs and promotion of the existing markets. For these reasons, it was necessary to adopt a unified commercial policy among the GCC states to coordinate transactions with the other partners and economic blocs,

Corresponding to the provisions of Article (1) of the Economic Agreement concerning the Customs Union, as well as Article (2) concerning the International Economic Relations, and Article (5) concerning the Investment Environment, and based on the decision of the Gulf Cooperation Council concerning the importance of collective action towards the commercial partners of the GCC states and the adoption of a unified strategy in the economic relations with the other countries and the international economic organizations and blocs.

The GCC Unified Commercial Policy has been approved as follows:

First: The Unified Commercial Policy Objectives

The GCC Unified Commercial Policy aims at achieving the following objectives:

1. Unification of the foreign commercial policy of the GCC states to deal with the outside world as well as the World Trade Organization (WTO), and the other international and regional organizations as a single economic unit.
2. Activation of the commercial and investment exchange with the outside world and expansion of markets that export the products of the GCC states.
3. Promotion of the competitiveness of exports of the GCC states.

4. This includes the endeavor to promote the national products, defend them in the foreign markets, and protect the domestic markets in accordance with the requirements of the World Trade Organization and the international economic agreements.

5. Activation of the role of the private sector with regard to the development of the GCC's exports of goods and services.

6. Adoption of a domestic commercial policy by the GCC states to unify the commercial and economical laws and procedures applied by the Member States, facilitate the flow of citizens, goods, services, and transportation, and take into account the preservation of the environment and consumer protection.

Second: The Unified Commercial Policy Foundations

The GCC Unified Commercial Policy is based on the following principles and foundations:

1. The GCC states shall act as a single economic bloc before the outside world.
2. The commercial exchange between the GCC states and the outside world shall be conducted as stipulated in the provisions of the Economic Agreement, the decisions of the Supreme Council, the implementing regulations and decisions and as stipulated in the agreements of the World Trade Organization.
3. Revision and amendment of the commercial agreements concluded before the adoption of this policy by any of the Member States in accordance with their provisions.

4. The GCC states shall negotiate collectively with the other countries and economic blocs on the agreements and commercial facilitation, including the free trade agreements.

5. When proposing any commercial agreement between the GCC states and other economic blocs, the agreement must bear tangible benefits to the GCC states and not cause harm to their economies. The transaction must be also balanced among the parties of the agreement.

6. The priority in commercial agreements signed between the GCC states and the outside world shall be given to develop and expand the production and service bases in the GCC states, as well as developing their manpower and technical capacity, transferring and nationalizing technology therein, supporting the exports of such states, including the reduction of tariffs imposed on the products of the GCC states, and abolishing the tariff and non-tariff restrictions and procedures that restrict access of the exports to the foreign markets.

7. Development of the practical mechanisms needed to support the cooperation of the Chambers Of Commerce and Industry with their counterparts in the states and the other economic blocs.

8. Adherence to the principle of transparency in the application of the commercial policy among the GCC states and its implementing regulations thereof.

Third: The Unified Commercial Policy Application Mechanisms

1. The Commercial Cooperation Committee as well as the Industrial Cooperation Committee shall be assigned to reach a unified agreement to encourage the national products in the GCC states, defend them

collectively in the markets, and propose mandatory laws to achieve this purpose by the end of 2006 as maximum, including the following laws:

- (a) Unified law to encourage national industry in the GCC states.
- (b) Law for combating dumping and compensatory and preventive measures.
- (c) Unified law for illegal competition and protection of trade secrets.

2. The Member States shall adopt unified standards and specifications for all goods. The Member States shall act pursuant to the principle of "Mutual Recognition" with regard to the national specifications and standards and importation procedures applied in any Member State until such standards and specifications are unified.

3. The Commercial Cooperation Committee shall develop the practical mechanisms needed to support the cooperation of the Chambers of Commerce and Industry with their counterparts in the states and the other economic blocs.

4. The Member States shall, before the end of 2006, develop practical mechanisms to deal with foreign goods for which no Gulf or national specifications and standards are provided.

5. The bilateral commercial agreements that have been entered into prior to the adoption of this policy shall be re-negotiated, so that the other GCC states can be included.

6. Revision of laws (regulations) as well as commercial procedures applied to the Member States and guidance laws, with the aim of completing the drafting of unified commercial laws (regulations) to be

applied with each other according to a specific timetable.

7. Establishment of unified mechanisms for the application of laws (regulations) and business procedures in the Member States, and coordination between each other with the aim of development and standardization.

8. A Council's Committee called "Unified Commercial Policy Committee" shall be formed comprising representatives from the Ministry of Commerce, and Ministry of Finance. The Committee may seek the help of those seen as fit to perform its duties. In the framework of the implementation of this policy, the Committee shall be entrusted with the following:

(a) Proposing the necessary measures to unify the policies of commercial exchange with the outside world, as mentioned in Article (2) of the Economic Agreement, in the light of the objectives and principles referred to above, for approval within a period not exceeding the end of 2006.

(b) Proposing and reviewing the necessary measures to unify procedures and laws of import and export stipulated in Article (2) of the Economic Agreement in coordination with the relevant committees for approval within a period not exceeding the end of 2007.

(c) Proposing the necessary measures to apply the GCC Unified Commercial Policy.

(d) Developing the necessary mechanisms for the protection of the whole national products against dumping and dumping suits in other states.

(e) Studying the commercial agreements entered into by the Member States with commercial partners outside the Gulf Cooperation Council and submitting the results of these studies to the Commercial Cooperation Committee to take the relevant necessary decisions.

(f) Proposing the type and level of commercial agreements and facilitations as well as the agreements of establishing the required free trade zones with the other states and economic blocs, and submitting such proposals to the Commercial Cooperation Committee to take the necessary action in accordance with the procedures followed in the Gulf Cooperation Council.

(g) Studying the commercial exchange between the GCC states and any other commercial partner or bloc concerning the commercial agreements and facilitations entered into with the other states and economic blocs, and studying the expected effects of any commercial agreement proposed in this regard.

(h) Any other task related to the unified commercial policy or the other tasks submitted by the Commercial

Cooperation Committee or the Industrial Cooperation Committee or any other committee.

9. The Commercial Policy Committee shall submit its recommendations to the Commercial Cooperation Committee which shall be liable for following up the implementation of the unified commercial policy in accordance with the procedures followed in the GCC states, in coordination with both the Industrial Cooperation Committee and the Financial and Economic Cooperation Committee.

10. The General Secretariat in consultation with the "Unified Commercial Policy Committee" shall be entrusted with the implementation of the decisions of the unified commercial policy after being approved by the Commercial Cooperation Committee.

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Endnotes

- 1 For detailed information on the meeting, please refer to ESCWA (2014).
- 2 Waked, 2011b.
- 3 ESCWA, 2014.
- 4 Godfrey, 2008.
- 5 Nallari and Griffith, 2013.
- 6 Sutton, 2014.
- 7 World Trade Organisation, 1998b.
- 8 For a detailed overview, refer to Waked (2008).
- 9 Nallari and Griffith, 2013.
- 10 World Economic Forum, 2014a.
- 11 Bertelsmann Stiftung, 2015.
- 12 World Economic Forum, 2015.
- 13 Emmert, 2011; Gal and Fox, 2014.
- 14 Waked, 2011; 2015.
- 15 Beschel, 2006; Kaufmann and others, 2013; Sayan, 2009.
- 16 Fee and Thomas, 2004; Petit and Henry, 2010.
- 17 O'Sullivan and others, 2011.
- 18 Gatti and others, 2013.
- 19 Saidi and Ahmad, 2012.
- 20 Among ESCWA member States, 11 are WTO members (Bahrain, Egypt, Jordan, Kuwait, Morocco, Oman, Qatar, Saudi Arabia, Tunisia, United Arab Emirates and Yemen), five have WTO observer status (Iraq, Lebanon, Libya, Sudan, Syrian Arab Republic) and Palestine assumes WTO non-member status.
- 21 Partnership for Open and Fair Skies, 2015.
- 22 OECD, 2013a.
- 23 OECD, 2012b.
- 24 IFC, 2010, p. 9.
- 25 Ibid.
- 26 Parker and Kirkpatrick, 2012, p. 9.
- 27 Parker and Kirkpatrick, 2012.
- 28 OECD, 2012b.
- 29 IFC, 2010.
- 30 Ibid.
- 31 Parker and Kirkpatrick, 2012.
- 32 IFC, 2010.
- 33 OECD, 2012b.
- 34 OECD, 2013a, p. 12.
- 35 Ibid, p. 40.
- 36 Ibid.
- 37 OECD, 2012b; Waked, 2008.
- 38 Dabbah, 2007.
- 39 International Competition Network, 2004b.
- 40 Ibid.
- 41 Ibid.
- 42 International Competition Network, 2004a.
- 43 Ibid.
- 44 UNCTAD, 2010, p. 8.
- 45 Leon and others, n.a.
- 46 Appendix relative to sectors and activities exempted from the application of Emirati Federal Law No. 4 of 2012 on Competition: "Are exempted from the provisions of this law any agreement or practice that concern a particular product or service which are regulated by another law or regime that contains specific competition rules applicable by a sectoral regulatory body [...]. The sectors, activities and services are the following: a- The telecommunications sector, b- The financial sector, c- Cultural activities (visual, audio or written), d- The oil and gas sector, d- Production and distribution of pharmaceutical products, e- Postal services, including express post, f- Activities related to the production, distribution and transport of water and electricity, g- Activities related to sewage treatment, waste disposal, cleanliness maintenance and environmental services, h- The maritime, air and land transportation sector, as well as railway transportation and the services relevant to these".
- 47 Egypt Competition Law, article 11: "The [Egyptian Competition] Authority [...] shall have, in particular, the following powers: [...] 6 – Gives its opinion on draft laws, policies or decisions that have the potential to limit competition. This is done spontaneously, upon request from the Council of Ministers, or upon the request of particular ministries and bodies. The aforementioned parties should respect the opinions given by the ECA in matters that touch upon competition in draft laws or executive regulations".
- 48 Kuwait Competition Law Article 6: "the provisions of this Law are not applicable to utilities or projects that are owned or operated by the State".

- 49 Oman Competition Law Article 4: "the provisions of this Law are not applicable to the activities of public utilities that are fully owned and operated by the State".
- 50 Article 3- Second: Exceptions to the application of this law: A – The sovereign acts of the State and includes all actions to be determined by the competent authorities and relating to the sovereignty of the State. B – Public facilities owned or operated by the State in order to provide products or services to citizens, such as: drinking water – gas – electricity – oil – public transportation – mail and communications, and determine the decision of the President of the Council of Ministers shall not include exemption of such materials or some of which are provided by a person or company or any other economic effectiveness.
- 51 See for reference the United Arab Emirates Competition Law, article 4.
- 52 Article 4: Are exempted from the application of the law: 1. Commercial companies connected with the government through valid concession agreements. 2. Temporary agreements made by the Council of Ministers in order to confront exceptional necessity in a sector, emergency or natural calamity. Only for a duration of 6 months, renewable once. 3. State monopolized establishments that have agencies.
- 53 Egypt Competition Law, Article 9: [...] The Authority may, upon the request of the concerned parties, exempt some or all the acts provided for in articles 6, 7 and 8 regarding public utilities that are managed by companies subject to the Private Law where this is in the public interest or for attaining benefits to the consumers that exceed the effects of restricting the freedom of competition.
- 54 Lebanon does not yet have an established competition law. Some general legal provisions protect competition, but are limited in their scope and lack the necessary effectiveness, such as Law No. 73 of 1983 that applies to monopolistic practices and acts of unlawful competition. Article 14 of this Law is directed at behaviour and conduct limiting competition. In October 2004, the Lebanon Competition Act was drafted but has yet to be adopted as of 2015. If enacted, it will be the most comprehensive competition law in the Middle East.
- 55 Dabbah, 2007, p. 166.
- 56 Leon and others, n.a.
- 57 World Trade Organization, 2013.
- 58 Article 10, Egyptian Law No. 3 of 2005 of Protection of Competition and Prevention of Monopoly Practices: The Cabinet of Ministers may, after taking the opinion of the Authority, issue a decree determining the selling price for one or more essential products for a specific period of time. Any agreement concluded by the Government for the purposes of the implementation of these prices shall not be considered an anti-competitive practice.
- 59 Article 4, Jordanian Law No. 15 of 2000 on Unfair Competition and Trade Secrets: Prices of products and services shall be set in accordance with the conditions of market rules and the principles of free competition, with the exception of the following: A – The prices of basic materials specified in accordance with the Industry and Trade Law or any other Law. B – Prices set by a resolution of the Council of Ministers through temporary measures to deal with exceptional circumstances or an emergency or a natural disaster, provided that such measures be reviewed within a period not exceeding six months after the beginning of the application thereof.
- 60 Article 3, Moroccan Law No. 104-12 on Free Pricing and Competition (June 30, 2014): In sectors of geographic zones where price competition is limited due to theoretical or actual monopoly, whether by reason of difficulty in distribution, or of legislative provisions or regulations, prices may be fixed by the administration after consultation with the Committee on Competition. The details of this fixing shall be determined by regulatory action.
- 61 Article 5, Syrian Competition and Anti-Trust Law (Law No 7/2008): The price of the goods and services in accordance with the rules and principles of market competition in accordance with Article V of the attitude of competition law and antitrust except: A – The prices of essential items and services where they are identifying these materials and service on the basis of a decree the proposals of the ministries concerned. B – The prices of materials and services sectors and areas where competition is limited by the prices either, because of the state monopoly of the market or the continuing difficulties in the process of supply or because of statutory or regulatory provisions governing and the decision of the Prime Minister on the proposal after consulting the concerned ministries of the Assembly of the competition and to prevent monopoly and sets the resolution of materials and services on the prices and terms of cost and sale. C – Sets the prices at which the decision of the Prime Minister under the temporary measures to cope with exceptional circumstances or an emergency or natural disaster that they should be considered in these procedures over a period of not more than six months of the entry application by the General Authority for competition and prevent monopoly and brought to the Council of Ministers With the proposals.

- 62 Article 3, Tunisian Competition and Prices Act (No. 91-64) of 29 July 1991: Are excluded from free competition [...] the goods, products and services of essential necessity or pertaining to sectors or zones where competition is limited either because of a monopoly or longstanding difficulties in supply or by legislative or executive dispositions. The list of these goods, products and services, as well as the conditions of their price fixing and their price shall be fixed by decree.
- 63 Article 3, Morocco, *Op. cit.*
- 64 Article 5, Syria, *Op. cit.*
- 65 Article 3, Tunisia, *Op. cit.*
- 66 Article 4, Jordanian Law No. 15 of 2000 on Unfair Competition and Trade Secrets: Prices of products and services shall be set in accordance with the conditions of market rules and the principles of free competition, with the exception of the following: [...] B – Prices set by a resolution of the Council of Ministers through temporary measures to deal with exceptional circumstances or an emergency or a natural disaster, provided that such measures be reviewed within a period not exceeding six months after the beginning of the application thereof.
- 67 Article 4, Moroccan Law No. 104-12 on Free Pricing and Competition (June 30, 2014): The provisions of articles 2 and 3 above shall not stand in the way of temporary measures against excessive raising or lowering of prices, justified by exceptional circumstances, a public crisis, or a manifestly abnormal market situation in a given area, which may be taken by the administration, after consultation with the Committee on Competition. The duration of application of these measures may not exceed six (6) months, extendable only once.
- 68 Article 5, Syrian Competition and Anti-Trust Law (Law No 7/2008): The price of the goods and services in accordance with the rules and principles of market competition in accordance with Article V of the attitude of competition law and antitrust except: [...] C – Sets the prices at which the decision of the Prime Minister under the temporary measures to cope with exceptional circumstances or an emergency or natural disaster that they should be considered in these procedures over a period of not more than six months of the entry application by the General Authority for competition and prevent monopoly and brought to the Council of Ministers with the proposals.
- 69 Article 4, Law No. 19 of 1999 on Fair Competition, Prevention of Monopoly and Commercial Deception: The provisions of this law shall not apply to state monopolized establishments, which have agencies and foreign commodities franchised to be produced locally by the principal producer [...].
- 70 Article 4, Emirati Federal Law No. (4) of 2012 on Competition: Are exempted from the provisions of this law: [...] 3 – Small and Medium Enterprises according to conditions fixed by the Council of Ministers.
- 71 National Telecommunication Regulatory Authority, 2011.
- 72 Aggour, 2014.
- 73 Abaza, 2014.
- 74 Egypt Telecommunication Regulation Law, Article 24: The Board of Directors shall determine the limits which, if exceeded, shall result in the occurrence of monopolistic practices in any of the fields regulated by this Law. The Board of Directors shall set the rules that should be applied to confront such practices.
- 75 Abaza, 2014.
- 76 Telecommunications Law, article 5.1(C).
- 77 *Ibid.*
- 78 Telecommunications Regulatory Authority of Bahrain, 2009.
- 79 *Ibid.*
- 80 Sultanate of Oman, 2013.
- 81 Westall and Smith, 2014.
- 82 Zain Telecommunications, 2014.
- 83 Emirate of Kuwait, 2014.
- 84 Ahmed, 2014.
- 85 Dabbah, 2007.
- 86 Afifi, 2007.
- 87 Gerardin, 2004, pp. 55-56.
- 88 World Bank, 2010.
- 89 Dabbah, 2007, p. 23.
- 90 Hanafi, n.a., p. 252.
- 91 For a detailed account of why developing countries, MENA countries included, have adopted competition laws, see Waked (2008).
- 92 For additional information, refer to Khemani (2007): "The adoption of competition law-policy has been driven by a wide range of factors, including economic liberalization and deregulation, loan and policy conditions of the World Bank/IMF, regional and multilateral trade agreements, and aspirations to join the European Union".
- 93 Dabbah, 2007.
- 94 Taylor, 2006.
- 95 WTO, 1998.
- 96 Lahouel, 2011, pp. 2-3.
- 97 Gray and Davis, 1993.
- 98 Oloka-Onyango, 1995.
- 99 UNCTAD, 2014c.

- 100 See, for example, Euro-Mediterranean association agreements available from <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/regions/euromed/>; and the Euro-Mediterranean agreement establishing an association between the European communities and their Member States, of the one part, and the Arab Republic of Egypt, on the other part, available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0039:0208:EN:PDF>. Similar provisions are found in other Euro-Mediterranean association agreements concluded between the European Union and each of the following: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Tunisia and Turkey.
- 101 UNCTAD, 2000.
- 102 Evenett, 2003; Kronthaler, 2007.
- 103 Trebilcock and Iacobucci, 2010.
- 104 International Competition Network, 2010.
- 105 Waked, 2015. See especially the chapter entitled "Recommended enforcement policy framework".
- 106 Article 19 of Egyptian Law No. 3 of 2005 on Protection of Competition and Prevention of Monopoly Practices: persons whose annual turnover of the last balance sheet exceeded 100 million pounds shall notify the Authority upon their acquisition of assets, proprietary or usufructuary rights, shares, establishment of unions, mergers, amalgamations, appropriations, or joint management of two or more persons according to the rules and procedures set forth in the Executive Regulations of the current Law.
- 107 Waked, 2011.
- 108 Lianos, 2014.
- 109 International Competition Network, 2008.
- 110 Licetti, 2013.
- 111 International Competition Network, 2008.
- 112 Article 26, Egyptian Law No. 3 of 2005 on Protection of Competition and Prevention of Monopoly Practices.
- 113 Article 41, Moroccan Law No. 104-12 on Free Pricing and Competition of 30 June 2014.
- 114 Article 19, Tunisian Competition and Prices Act No. 91-64 of 29 July 1991.
- 115 Cauffmann, 2011; Competition Bureau – Government of Canada, 2015; European Commission, 2013; OECD, 2002.
- 116 Trebilcock and Iacobucci, 2010.
- 117 Ibid.
- 118 See, for example, Gilardi and Maggetti (2010).
- 119 Article 14 of Egyptian Law No. 3 of 2005 on Protection of Competition and Prevention of Monopoly Practices: the Authority shall have an independent budget following the model of public service authorities. Any surplus in the budget shall be forwarded from one fiscal year to another. The resources of the Authority consist of the following: (1) Appropriations designated to the Authority in the State General Budget. (2) Grants, donations and any other resources accepted by the Board and which do not contradict with its goals. (3) Revenues from the fees provided for in this Law.
- 120 Article 8 of Saudi Competition Law promulgated by Royal Decree No. M/25 of 04/05/1425H of 22 June 2004: an independent council named "Competition Protection Council" shall be established. It shall be located in the Ministry of Commerce and Industry.
- 121 International Competition Network, 2010.
- 122 Ibid.
- 123 Asian Development Bank, 2005; OECD, 2007; World Bank, 2012; UNCTAD, 2004.
- 124 Fox, 2006.
- 125 Hanafi, n.a.
- 126 Waked, 2015.
- 127 Business and Industry Advisory Committee to the OECD, 2013.
- 128 Terhechte, 2011.
- 129 The World Bank, 2013b; Zaher, 2007.
- 130 For an overview of Arab members of Consumers International (i.e. Jordan and Lebanon), please refer to www.consumersinternational.org/our-members/member-directory?search=®ion=2829&type=0&country=0&campaigns=#resultsAnchor.
- 131 Dreher, 2004; European Commission, 2012; Koeberle, 2003; Qobo, 2013.
- 132 UNCTAD, 2014a.
- 133 UNCTAD, 2014b.
- 134 For a detailed discussion and analysis, please refer to OECD (2012a).
- 135 See <http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=548>.
- 136 International Monetary Fund, 2014.
- 137 Ibid.
- 138 Draft available from www.oecd.org/daf/ca/public-consultation-guidelines-for-soes-2014.htm.
- 139 OECD, 2014, p. 23.
- 140 OECD, 2013b.
- 141 Momany, 2012.
- 142 Oman News Agency, 2013.

Shortcomings in the past have aggravated challenges associated with inefficient market structures and governance systems (e.g. heavily concentrated and inefficient economies, collusion, centralization of economic power among a few elites and general rent-seeking behaviour in Arab countries). Therefore, the present report focuses on the importance of effective antitrust and competition laws, and the need for well-functioning market regulators in the Arab region to enhance the business environment, foster investments, improve economic performance and growth. It takes into consideration that the issues of competition and regulation are linked. The report begins with a comprehensive review of the current state of competition policy and regulation in the Arab region. It identifies challenges associated not only with drafting, implementing and enforcing effective legislation, but also with the institutional structure (e.g. independence of competition authorities, relationship to sectoral regulators) and exemptions from competition law. Case studies, on telecommunications for example, are used to highlight the practical consequences of anticompetitive behaviour.

Competition policy and regulatory concerns are part of the broader context in economic systems at national, regional and global levels; for this reason, the report also touches upon adoption of competition laws as related to trade policy, political economy and development concerns. Based on its comprehensive analysis, the report closes with substantive policy recommendations taking into account existing initiatives of international partners and considering the different development stages of competition and regulation policy in the Arab countries.