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Regional Economic Integration through the Adoption
of Competition and Consumer Protection Policies,
Gender Equality, Anticorruption and Good Governance

Good Governance Guidelines: Independence and Transparency



UNITED NATIONS

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Executive summary

Sound policy outcomes are better assured when decisions by the competition authority are not politicized, discriminatory or implemented on the basis of narrow goals of interest groups. Hence, it is widely accepted that competition authorities should be insulated from undue political interference. Thus, the independence of competition authorities is often defined as their distinct legal personality and structural separateness from Government. In addition to defining the authority's structure, enabling legislation usually prescribes functions, powers, the manner in which members of management and staff are to be appointed, their tenure and removal, and how the authority is to be financed, often providing financial autonomy. This also includes its obligations with respect to transparency, confidentiality and the possibility of recourse. Even when the law is quite explicit, "de-facto" practice may deviate from the "de-jure" letter of the law. Independence should, therefore, be considered in terms of degrees of independence rather than as absolute independence. This publication examines the degree of independence and transparency which the MENA Project countries, which have competition laws, have inscribed within their legislation and to a certain extent, how this is implemented in actual enforcement practice, taking into consideration the general trends of this particular subject, as observed worldwide.

1. INTRODUCTION¹

The UNCTAD Model Law on Competition is formulated on the assumption that the most efficient type of administrative authority for competition enforcement is likely to be one that:

- (a) is quasi-autonomous or independent of the Government, with strong judicial and administrative powers for conducting investigations and applying sanctions, and
- (b) provides the possibility of recourse to a higher judicial body.

There is growing acceptance that decisions by competition authorities should be based on objective evidence, and that the decision-making process should be neutral and transparent. The reasoning behind this view is that sound policy outcomes are assured only when decisions by the competition authority are not politicized, discriminatory or implemented on the basis of the narrow goals of interest groups. This reasoning is typically translated as a requirement for competition authorities to be insulated from undue political interference.

In practical terms, this necessitates a separation of policy implementation from policymaking and a departure from the traditional structure of the machinery of Government. Thus, Government, or a related ministry, like the ministry of trade and industry, should cede control over day-to-day functions and decision-making to the competition authority. As a direct consequence, private interest groups would be less in a position to lobby ministers in order to gain favourable treatment.

Thus, the independence of competition authorities is often defined as their distinct legal personality and structural separateness from Government. Accordingly, competition authorities are often statutory bodies established by a specific Law of a legislature to fulfill prescribed responsibilities.

In addition to prescribing the authority's structure, enabling legislation generally gives legal meaning to the authorities' operational (or functional) independence by prescribing functions, powers, the manner in which members of management and staff are to be appointed, their tenure and removal, and how the body is to be financed, often providing financial autonomy.

The legal protection regarding the independence of competition authorities is common and there is some evidence of convergence, although there are numerous organizational formats across different countries. For example, as can be seen below, the independence of the Moroccan Competition Council has recently been inscribed in Morocco's Constitution.

It should be noted that, even when the law is quite explicit, *de-facto* practice may deviate from the *de-jure* letter of the law. Factors such as administrative traditions or the personalities of high officials often shape the actual level of independence, resulting in either enhancing or diminishing the level of independence.

Independence is variable and it is often more useful to speak in terms of degrees of independence rather than absolute independence. Consequently, there is no single standard of independence which countries must adopt and independence does not connote that competition authorities do not answer to anyone. Therefore, it is clear that no competition authority can be completely independent from the Government structure of which it is an integral part.

This publication examines the degree of independence and transparency by which the MENA Project countries which have competition law inscribed within their legislation, and to a certain extent how this is implemented into actual enforcement practice, while also taking into consideration how these general trends are observed worldwide. In doing so, this document has been closely inspired by general considerations found in other UNCTAD documents, in particular *Independence and Accountability of Competition Authorities*, (Document TD/B/COM.2/CLP/67) of 14 May 2008.

In order to contribute to setting good governance guidelines for the benefit of MENA Project countries, this document will pay close attention to:

- a) General aspects of competition law impinging on the degree of independence of a competition authority, including the object of competition law, how issues other than competition are dealt with and the statutes of the competition authority;
- b) The structure of the competition enforcement system, including the case of separation of the investigatory arm from the decision-making authority in some

- jurisdictions, the physical location and the degree of budget independence of the competition authority, how and who appoints the officials of the competition authority and for how long, and what are the qualification requirements of such officials, if stipulated in the law;
- c) The powers of the competition authority, including the scope of application of the law and its exemptions, cases where anti-competitive laws are prescribed after a few years and cannot be challenged, the effects on independence of scarcity of adequate skills and possible tensions that may occur between the competition authority and its related ministry, the degree of discretion the competition authority is afforded to set its priorities of work, its powers to advise on any new laws or regulations which might adversely affect competition, and its relations with sectoral regulators, which usually have exclusive control over their sector;
- d) The obligations of transparency and accountability of the competition authority, including its obligations to publish all relevant information on its activities and report to higher authorities, while maintaining confidentiality with respect to its internal deliberations and non-disclosure of legal business interests, and finally the extent of judicial review of its decisions and sanctions.

2. GENERAL ASPECTS OF COMPETITION LAW

2.1. Object of the Law²

The unhindered exercise of competition enforcement is often also interpreted in relation to how countries choose to articulate the objectives of their national competition laws. Views differ widely on what are appropriate competition law objectives. Competition purists eschew all non-efficiency objectives because of the attendant risk of exposing the competition authority's decisions to undue influence and necessitating trade-offs between efficiency and non-efficient goals.

The developmental perspective, while accepting that efficient objectives are a primary goal of competition enforcement, takes the view that the acute social and economic challenges that confront the developing world oblige Governments to use all policy tools to address these ills.

In the MENA Project countries having competition laws, the actual object of the law is only spelt out in Algerian and Tunisian laws. In Algeria, the law (Ordinance No. 03-03 of 19 July 2003 on competition) defines the objectives as determining the conditions of application of competition in the market, preventing any practices restricting competition and controlling economic concentrations in order to stimulate economic efficiency and to improve consumer welfare. Similarly, the new Tunisian law (Law No. 36 of 15 September 2015 on the reorganization of competition and prices) cites the main objectives of the law, which are economic efficiency and consumer welfare.

The other laws (of Egypt, Jordan and Morocco) do not stipulate their objectives in the text.

Algeria	Ordinance No. 03-03 of 19 July 2003 on Competition	Article 1: This Order is intended to establish the conditions for the exercise of market competition, prevent anti-competitive practice, control economic concentrations, stimulate economic efficiency and improve the well-being of consumers.
Egypt		Not Found
Jordan		Not Found
Lebanon	No Competition Law	
Morocco	Law No. 104-12 on Freedom of Prices and Competition	Not Found
Palestine	No Competition Law	
Tunisia	Law No. 36 of 15 September 2015 on the Reorganization of Competition and Prices	Article 1: This Law aims to define the provisions governing freedom of prices, establish the rules governing free competition to ensure general market equilibrium, economic efficiency and consumer welfare. Its purpose is to enact the obligations placed on producers, traders, service providers and intermediaries seeking to ensure price transparency, to curb speculative practices and illicit price increases, and prevent anti-competitive behaviour including practices and agreements set abroad which have effects on the internal market. It is also designed to control the economic concentrations of operations.

2.2. Dealing with criteria other than competition³

A number of jurisdictions have devised different procedures to outsource decisions relating to non-efficiency considerations, usually in the form of judicial, as in the United States, or ministerial powers to designate exemptions.

Alternatively, other jurisdictions have procedures to import non-efficiency considerations provided in the competition law as public interest provisions that oblige the competition authority to either apply a specific public interest test, such as found in the European Union and South Africa, or grant the related minister specific circumscribed powers, as is done in Italy, Jamaica, Singapore and the United Kingdom, frequently in respect of the review of mergers and acquisitions.

In many cases, public interest provisions exist in some form or another, but the competition authority or the minister refrains completely from applying them, in the example of Italy, or they are seldom activated.

2.3. Statutes of the competition authority

In all MENA Project countries which have competition legislation, except for Jordan, the competition authority has a juridical personality

and is given financial autonomy, but it is placed next to, or affiliated with, a parent ministry.

In Algeria, the Competition Council has a juridical personality and financial autonomy, and it is situated within the Ministry of Commerce.

In Egypt, the Authority for the Protection of Competition and the Prohibition of Monopolistic Practices has public juridical personality and is affiliated to the Ministry of Trade and Industry.

In Jordan, The Competition Directorate is an administrative body established within the Ministry of Industry and Trade with its budget being part of the Ministry's financial allocation.

In Morocco, the Competition Council's independent status is inscribed in Article 166 of the Constitution, is endowed with moral personality and has financial independence.

In Tunisia, the Competition Council has moral personality and financial independence.

As a sign of relative independence from the parent ministry, the physical location of the Competition Authority, such as that of Egypt, Morocco and Tunisia, is found in distinct buildings, away from the related ministry. On the other hand, the Competition Council of Algeria and the Competition Directorate of Jordan are located at the Ministry.

Algeria	Ordinance No. 03-03 of 19 July 2003 on Competition Law No. 08-12 of 25 June 2008 Amendment to and Supplemental Ordinance No.03-03 19 July 2003	Title III - The Competition Council * - Article 23: (amended by Article 9 of the Law 08-12) There shall be an independent administrative authority, hereinafter referred to as "the Competition Council", having legal personality and financial autonomy, under the authority of the Minister of Trade.
Egypt	Law No.3 of 2005 on Protection of Competition and Prohibition of Monopolistic Practices + Amendments to Laws 190 /2008 and 193/2008	Article 11: There shall be established an authority called the "Authority" for the Protection of Competition and the Prohibition of Monopolistic Practices. The Authority shall (...) and shall have public juridical personality. The Authority shall be affiliated to the competent Minister (...)
Jordan	Competition Law No.33 of 2004 + Amendment to Law No. (18) of 2011	The Competition Directorate is an administrative body established within the Ministry of Industry and Trade to practice the tasks and powers entrusted to it in

		accordance with provisions of Article (12) of the Law.
Lebanon	No Competition Law	
Morocco	Law No. 104-12 on Freedom of Prices and Competition + Law No. 20-13 of August 7, 2014 *	Article 1*: In accordance with Article 166 of the Constitution, the Competition Council, called the "Board" in this Law, is an independent institution in charge of ensuring transparency and fairness in economic relations, in the context of the organisation of free and fair competition, notably through the analysis and regulation of market competition, the control of anti-competitive practices, unfair trade practices and economic concentrations and monopoly. The board has legal personality and financial autonomy.
Palestine	No Competition Law	
Tunisia	Law No. 36 of 15 September 2015 on the Reorganization of the Competition and Prices	Article 11: Hereby is established an authority called the "Competition Council" which enjoys legal personality and financial autonomy and whose budget is linked to the budget of the Ministry in charge of Commerce. The headquarters of the Board are in Tunis. The Board can optionally hold its meetings at any place in the territory of the Republic.

3. STRUCTURE OF THE COMPETITION ENFORCEMENT SYSTEM

The structure of the competition enforcement system has an important bearing on the competition authority's independence or at least on its "perceived independence" by its constituencies (Government, the judiciary, enterprises, consumers, academics, media and the public at large).

3.1. Separation of investigatory arm from adjudicating decision-making body

There are major differences in the structure of enforcement systems in that, in some countries, the investigative arm of the competition authority is established as a department within a ministry, and the adjudicative arm of the authority is constituted either as a separate, collegiate body in the form of a board of commissioners or a council. It might be that certain jurisdictions differ in terms of the degree of importance they attach to awarding independence across specific functions in competition enforcement.

It is often argued that structures of decision-making in which the investigative and adjudicative processes are not strictly separated, fail to pass muster from the perspective of judicial review. This was one of the main reasons why many competition authorities have a "two-headed" structure. The investigatory one is an integral part of the related ministry, in the form of a directorate-general on competition, including "fair competition", consumer protection and repression of fraud. This is separate from the decision-making, adjudicatory body of competition (focused on cartels, abuse of dominance and merger review or control of concentrations), in the form of a competition commission or council.

The "two-headed" structure was for many years applied in France, and many other countries adopting competition systems enacted similar structures. This has obviously been the case in Algeria, Morocco and Tunisia, three French-speaking countries of the MENA Project region. It is, however, noteworthy that France has recently revised its structure, creating a unified competition authority, the "French Competition Authority" where, like at the German and broader EU

Commission system under DG Competition, both the investigatory and the adjudicative arms of the authority now form part of a single competition authority.

3.2. Physical location away from the Ministry building

A competition authority that has formal independence is usually established as an independent institution not physically located in a Government ministry. The trend across most jurisdictions in both developed and developing regions is to establish competition enforcement regimes comprising separate institutions that have substantial administrative autonomy from traditionally vertically-integrated ministries. This is the case in most developed economies as well as in the majority of developing countries and economies in transition.

3.3. Budget independence⁴

The use of budgetary restrictions can be an important way of curtailing or penalizing enforcement. It is therefore important, if the competition authority's independence from political interference is to be assured, to allocate the authority with a budget which is as autonomous as possible.

A process whereby the legislature allocates an annual budget to the competition authority, giving it the discretion to apportion it to various uses, is perceived to grant a high degree of budgetary autonomy to the authority. In many cases, competition authorities fall under the portfolio of parent ministries for financial, administrative and reporting purposes, such that the authority's budget request is routed through the parent ministry for approval by the finance ministry and Parliament. In other cases, the authority submits its budget request directly to the finance ministry or treasury.

In most cases, the authority's budget is part and parcel of the parent ministry's allocation and is released at the ministry's discretion. Alternative sources such as user fees or the creation of a fund through the imposition of a levy on new company registrations, such as Turkey, are also possible in some jurisdictions. In some countries, like INDECOPI in Peru, the competition authority is constituted as a multi-function institution that has other regulatory responsibilities, such as intellectual property, from which it can derive

revenue. While a few countries award their competition authority a portion of the fines they collect in enforcement action, this is considered with suspicion in most countries, as this could give the competition authority incentive to take inappropriate actions to impose heavy fines in order to increase its budget. It is also important to prevent the use of funding as a vehicle for capture by other interests.

Transparent funding of the competition authority helps avoid corruption and thwart the hijacking of competition enforcement by other interests.

Competition authorities are also subject to the built-in financial reporting traditions of their countries' public sectors. In this context, the role of the parent ministry and/or the ministry of finance, treasury and/or the auditor general, and ultimately Parliament, is especially important when it comes to accountability in the budgetary process. Accountability mechanisms may be present throughout the budgetary process or at key intervals (i.e. at the point of the submission of the budget request, at each point when a disbursement of funds is made, or at the end of the budget year, when a mandatory report on expenditure is required). In some countries, a detailed operational strategy is an additional requirement tied to the authority's budget allocation.

In Algeria, the Competition Council is endowed with legal personality and financial autonomy. However, the budget of the Council is inscribed within the budget of the Ministry of Commerce, in conformity with established rules and procedures.

According to the law, the President of the Competition Council is the "ordonnateur" or "organizer" of the budget, which is placed under the general rules of application and control of the State budget.

In Egypt, the Egyptian Competition Authority (ECA) has an independent budget following the model of the public services authorities. Any surplus in the budget is forwarded from one fiscal year to another. The resources of the ECA consist of: Appropriations designated to the Authority in the State General Budget, grants, donations and any other resources accepted by the Board which do not contradict with its goals, and revenues from the fees provided for in the Law.

In Jordan, the Competition Directorate and the Competition Affairs Committee (CAC) are part of the Ministry of Industry and Commerce, and therefore do not have independent juridical personality nor an independent budget from the Ministry.

In Morocco, the Competition Council is endowed with juridical personality and financial autonomy. Moreover, the independence of the Competition Council is inscribed into the Constitution.

In Tunisia, the Competition Council is endowed with moral personality and financial autonomy. Its budget is related to the budget of the Ministry in charge of Commerce. The modalities of the Council's administrative and financial functions are fixed by Government decree taken upon proposal of the Minister in charge of Commerce.

Algeria	Ordinance No. 03-03 of 19 July 2003 on Competition + Law No. 08-12 of 25 June 2008 Amendment to and Supplemental Ordinance No.03-03, 19 July 2003	Title III of the Council on Competition Article 23 (...), with legal personality and financial autonomy. Article 33*: The budget of the Competition Council is registered as indicative of the budget of the Ministry of Commerce and in accordance with the legislative procedures and regulations in force. The Chairman of the Competition Council is the authorising officer of the budget. The budget of the Competition Council is subject to the general rules of operation and control applicable to the budget of the State.
Egypt	Law No.3 of 2005 on Protection of Competition and Prohibition of Monopolistic Practices	Article 14: The Authority shall have an independent budget following the model of the Public Services 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

	+ Amendments to Laws 190 /2008 and 193/2008	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; and (3) Revenues from the fees provided for in this Law.
Jordan	The Competition Law No.33 of 2004 + Amendment to Law No. (18) of 2011	Budget allocation from the Ministry of Industry and Trade.
Lebanon	No Competition Law	
Morocco	Law No. 104-12 on Freedom of Prices and Competition + Law No. 20-13 of August 7, 2014 *	Article 1*: (...) The Council is endowed with legal personality and financial autonomy.
Palestine	No Competition Law	
Tunisia	Law no. 36 of 15 September 2015 on the Reorganization of the Competition and Prices	Article 11: An authority called the “Competition Council” is instituted. It enjoys legal personality and financial autonomy and its budget is attached to the budget of the Ministry of Commerce. Article 14: The modalities of financial and administrative organization and functioning of the Competition Council are laid down by a Government decree taken on the proposal of the Minister responsible for Trade. (...).

3.4. Appointment of officials of the competition authority⁵

It is generally said that the appointment of competition officials by a minister is less conducive to independence than appointment procedures that provide for the participation of representatives of more than one Government branch. In addition, it is assumed that competition officials whose terms are not renewable and cannot be removed from office except by legal procedure have less of an incentive to please those who appointed them.

Actual practice is varied. In some jurisdictions, the minister whose portfolio includes competition policy appoints the chief executive of the authority and the members of the commission. In others, the minister appoints the board of commissioners with or without endorsement from a higher authority, and the commissioners appoint the chief executive. In others, the minister submits nominations for

appointment by the country’s president, prime minister, cabinet of ministers or Parliament.

3.5. Qualifications of members of the competition authority⁶

Increasingly, competition laws establish:

- Qualifications (e.g. a degree in law, economics or accounting) and other criteria which members should have, including in some cases minimum age requirements,
- The requirement that consumer groups and professional associations be represented on the board,
- Obligation for members to disclose their personal assets and possibilities of conflict of interest, and
- Prohibitions on affiliations to associations of any kind, etc.

As can be seen below, the MENA Project countries with competition law specify the composition of

their competition authority, their attributes and/or qualifications, specifics of their nomination and the duration of their tenure.

In Algeria, the law specifies that the 12 members of the Competition Council are fully employed for a period of 4 years and are nominated by presidential decree. Of the 12 members, six have university degrees and a minimum of 8 years professional experience in law or economics encompassing the fields of competition, distribution, consumption or intellectual property. Four members must have a university degree and a minimum of 5 years of professional experience in manufacturing, distribution, services or liberal professions while 2 members must be official representatives of consumer protection organizations.

In Egypt, the Board of Directors of the Egyptian Competition Authority (ECA) is composed of 15 members, (although the 2014 amendments to the law have reduced this number) including a full-time Chairperson, a counsellor from the State Council, as vice-president, four members representing the concerned ministries to be nominated by the related Minister, three specialists and expert members. Six members must represent the General Federation of the Chambers of Commerce, the Egyptian Federation of Industries, the Banking Foundation, the General Federation of Civil Associations, the General Federation of Consumer Protection and the Egyptian General Union of Labour, appointed for 5 years, with a one time renewable opportunity. In addition, the ECA has a full-time Executive Director, whose appointment is decided by the Chairperson of the ECA.

In Jordan, the Director of the Competition Directorate (CD) at the Ministry of Industry and Trade is appointed by the Minister. The CD is managed by the Competition Affairs Committee (CAC), which is chaired by the Minister of Industry and Trade and composed of 10 members - the Undersecretary of the Ministry, acting as vice-chairman, the DG of the Insurance Commission, the CEO of the Telecommunications Regulatory Commission, the DG of the Transportation Regulatory Board, the President of the Union of Chambers of Commerce, the President of one of the chambers of industry named by the Minister, the President of a consumer protection association and three persons with expertise, both named by

the Minister. The tenure of the members is of 2 years with a one time renewable opportunity.

In Morocco, the Competition Council is composed of one Chairman, four vice-chairmen, and eight members. Among the vice-chairpersons, two are magistrates, one is chosen by virtue of his/her competence in economic and competition matters, and one for his/her competence in law. The other members include three members chosen on account of their experience in economics or competition, one expert in law, three actually working in, or having worked in manufacturing, distribution or services sectors, and one member experienced in consumer protection. The Chairman and the members are nominated for 5 year tenure, renewable once. The Chairman is nominated by dahir and the members by decree, upon proposal by the "Conseil Supérieur du Pouvoir Judiciaire" (High Council of Judges) for the magistrates and the competent Government authority for the other members.

In Tunisia, the Competition Council is composed of 15 members, including a full-time Chairperson, having at least 20 years of experience with competencies in the fields of economics, competition or consumption, two full-time vice-chairpersons, a first vice-chair having at least 10 years of experience as counsellor at the Civil Court or Administrative Tribunal and a second vice-chair with at least 10 years of experience as counsellor at the Court of Audit (Cour des comptes), four magistrates having at least 5 years of experience in commercial litigation, four personalities chosen on behalf of their experience in economics, law, competition or consumption, and four persons presently active or having been active in industry and commerce, services, agriculture or consumer protection.

The Chair, vice-chairs and magistrates are nominated for a non-renewable tenure of 5 years while the other personalities are nominated for a 4 year non-renewable term. All nominations are by Governmental Decree issued at the proposal of the Minister in charge of Commerce.

3.6. Delays in nominating the members

It should be noted that the Competition authority may be paralysed simply by the long-term delays in nominating new members to the managing Board or Council. This was the case in Algeria, where the Council was inoperative for ten years,

between 2003 and 2013, after the tenure of the previous members of the Competition Council had lapsed. In 2013 the Council was reactivated, with the nomination of a council of 12 members, including a Secretary-General and a team of 6 investigators (rapporteurs) including a Rapporteur général.

A similar situation occurred in Morocco where implementation of the new law was delayed because of lack of members of the Competition

Council, whereby only the Chairman was still in office. The 5 year tenure of the other members lapsed in October 2013, and at the time of this writing, the new members had not been nominated as of yet. As a result, the Competition Council was in a "standby mode" for more than 16 months. Once the new members will be nominated, the Council will be able to perform with increased powers.

Algeria	N.03-03 Order of 19 July 2003 on Competition + Law No. 08-12 of 25 June 2008 Amendment to and Supplemental Ordinance No.03-03 19 July 2003	<p>Title III - The Competition Council</p> <p>Article 24* - (Amended by Article10 of the Act 08-12):</p> <p>The Competition Council consists of 12 members under the categories below:</p> <p>(1) 6 members chosen among the personalities and experts holding at least a bachelor degree or an equivalent university degree and professional experience of a minimum of 8 years in the legal field and/or competence in the economic field as well as an expertise in the areas of competition, distribution, consumption and intellectual property;</p> <p>(2) 4 members chosen among qualified professionals with a university degree and holding or having held management positions and who have professional experience/are professionals with at least five years in areas of production, distribution, arts and crafts, services; and</p> <p>(3) 2 qualified members representing associations of consumer protection.</p> <p>The members of the Competition Council shall serve full-time.</p> <p>Article 25*: The President, the Vice President and the other members of the Competition Council are appointed by presidential decree. Their functions shall terminate in the same manner.</p> <p>(...) The renewal of the membership of the Competition Council takes place every four 4 years, with half of the members of each class (...).</p>
Egypt	Law No.3 of 2005 on Protection of Competition and Prohibition of Monopolistic Practices + Amendments to Laws 190 /2008 and 193/2008 and 2014 Amendments*	<p>Article 12: The Authority shall be managed by a Board of Directors, the composition of which shall be formulated by virtue of a decree of the Competent Minister as follows: (1) a full-time Chairperson with distinguished experience; (2) A counsellor from the State Council, holding a vice-presidential rank, to be chosen by the President of the State Council; (3) 4 members* representing the concerned ministries to be nominated by the Competent Minister ; (4) 3 specialists and expert members; (5) 6 members representing the General Federation of the Chambers of Commerce, the Egyptian Federation of Industries, the Banking Foundation, the General Federation of Civil Associations, the General</p>

		<p>Federation of Consumer Protection and the Egyptian General Union of Labour. Each Federation Union shall appoint its own representative. The Board shall be appointed for 4 years which may be renewed for another term.</p> <p>*2014 Amendments reduce the number of Government representatives on the Board of ECA, introduce the inviolability of the ECA Board members and relaxes the quorum of vote for some types of decisions.</p> <p>Article 15: The Authority shall have a full-time Executive Director whose appointment**, remuneration and competences shall be decided by the Competent Minister upon the recommendation of the Chairperson of the Authority. (...)</p> <p>**2014 Amendments give the power to appoint the Executive Director to the Chairperson of the ECA.</p>
Jordan	The Competition Law No.33 of 2004 + Amendment to Law No. (18) of 2011	<p>The Director of the Competition Directorate at the Ministry of Industry and Trade is appointed by the Minister.</p> <p>The Competition Affairs Committee (CAC) is established by Resolution No.1 of 2003 issued by the Minister of Industry and Trade, pursuant to provisions of Article 14 A of the Competition Law. The CAC is chaired by the Minister and composed of 10 persons (the Undersecretary of the Ministry, acting as vice-chairman, the DG of the Insurance Commission, the CEO of the Telecommunications Regulatory Commission, the DG of the Transportation Regulatory Board, the President of one of the chambers of industry named by the Minister, the President of a consumer protection association named by the Minister and three persons with expertise named by the Minister. The tenure of the members is of 2 years, renewable once. (See Competition Directorate 10th Annual Report, 2012).</p>
Lebanon	No Competition Law	
Morocco	Law No. 20-13 of 7 August 2014 concerning the Competition Council	<p>Chapter II of the composition and organization of the Competition Council- Article 10: The Council is composed of the President, 4 Vice-Presidents and 8 Advising Members.</p> <p>The Council includes, in addition to the President, the competent members: 2 members of the judiciary, vice-presidents; 4 members are chosen on the basis of their competence in economic matters or in competition, including a vice-chairman; 2 members are chosen based on their competence in legal matters, including a vice-chairman; 3 members exercising or having exercised their activities in the sectors of production, distribution or services; A member is chosen because of his/her</p>

		jurisdiction in matters of consumer protection. The President is appointed by dahir for the duration of 5 years, renewable once. The other members of the Council are appointed for a term of 5 years, renewable only once by decree, on a proposal of the Higher Council of the judiciary power, regarding the members of the judiciary power; other members are appointed by the competent governmental authority.
Palestine	No Competition Law	
Tunisia	Law No. 36 of 15 September 2015 on the Reorganization of Competition and Prices	<p>1) Article 13: The Competition Council is composed of 15 members as follows:</p> <p>1) A President who will operate full-time, appointed among magistrates or persons chosen for their competence in economic matters, in competition or in consumption and with at least 20 years of seniority.</p> <p>2) 2 Vice Presidents: - An adviser to the tribunal with seniority of at least ten years as senior vice president exercising his/her duties full time. - An adviser to the court of auditors with seniority of at least ten years as second vice president exercising his/her duties full time.</p> <p>3) 4 judges of the Judiciary Board of the second level, with at least 5 years of experience in commercial disputes.</p> <p>4) 4 persons chosen for their expertise in the following areas:</p> <ul style="list-style-type: none"> • Economy • Law • Competition • Consumption <p>5) 4 persons having experience or engaged in:</p> <ul style="list-style-type: none"> • The Industry and Commerce sector • The Service Sector • The Agriculture Sector • The Field of Consumer Protection <p>The members of the Competition Council referred to in paragraphs 1, 2 and 3 are appointed for a 5 year non-renewable term. Council members referred to in paragraphs 4 and 5 are appointed for a 4 year, non-renewable term. These designations are made by a Government decree proposed by the Minister of Trade.</p> <p>The compensation plan of the Chairman and his/her two Vice Presidents are set by a Government decree proposed by the Minister of Trade</p>

		<p>Before exercising their duties, Board members take the following oath: "I swear by God to faithfully perform my duties, to maintain neutrality and not disclose the secrecy of deliberations." The oath is taken before the full Council meeting, the minutes thereof. Board members undertake to declare their assets in accordance with the regulations in force. Members must inform the Chairman of any potential conflict of interest in order to make necessary arrangements.</p>
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4. POWERS OF THE COMPETITION AUTHORITY

Despite the apparent prevalence of autonomous agencies in many developing countries, the less favourable economic and fiscal conditions have exacerbated tensions and brought to light a number of pitfalls related to the creation of independent public sector bodies in the context of a wide gap between resource requirements and availability. The pitfalls are mainly linked to shortages of skills, low public sector pay, risks of corruption and capture by interest groups and lobbies, tensions between the minister responsible for the competition policy domain and the competition authority, and weak accountability.

4.1. Scope of application and exemptions

Virtually every jurisdiction contains exemptions from anti-competitive agreement prohibitions. As various jurisdictions have different forms of regimes, however, they have differing exemption and authorization systems. While in many countries national authorities are granted discretionary powers to authorize notified agreements, other legislations only provide for legal exemptions for specific types of agreements without conferring upon the competition authority a margin of discretion. For instance, US antitrust law does not envisage any possibility of exemption or authorization by the US Competition Authorities, and therefore does not provide for a notification system for anti-competitive agreements. However, there exist statutory and Court related exemptions to the United States Antitrust laws⁷.

Many jurisdictions provide systems for block and/or individual exemptions. With a block exemption granted, a certain category of agreements benefits from an exemption without any individual assessment. Specified categories of agreements can be assumed to satisfy the criteria for exemptions. An example is the case of R&D and the specialization block exemptions, where the combination of complementary skills or assets can produce substantial efficiencies.

On the other hand, a specific exemption can be granted for individual cases of agreements. In order to obtain authorization, firms intending to enter into potentially anti- competitive agreements

would accordingly need to notify the competition authority of all the relevant facts of the agreement.

In the elaboration of criteria for exemptions, Article 101 (3) TFEU of the European Union can provide a good yardstick, which has inspired a number of MENA competition laws. The provision sets four conditions for an agreement to be authorized:

- (a) The agreement must contribute to improving the production or distribution of goods or to promoting technical or economic progress – so called *efficiency gains*;
- (b) At the same time it must allow consumers a (fair share) of the resulting benefit;
- (c) The agreement must not impose on the undertakings concerned restrictions which are not indispensable to the attainment of the objectives; and
- (d) Nor give the members of the agreement the possibility of eliminating competition in respect of a "substantial part" of the products in question.

In MENA Project countries listed below, other similar exemptions exist or can be obtained from the competition authority or the Minister in charge of Commerce.

In Algeria, the Competition Council can authorize certain anti-competitive practices, upon notification or request for authorization in accordance with modalities determined by Decree. Exemptions may also be provided under other laws and regulations, as far as such agreements can be demonstrated to provide economic or technical progress, to benefit employment, or to allow SMEs to strengthen their competitive position on the market (Article 9).

Moreover, concerning M&As, a concentration which has been prohibited by the Competition Council may be authorized by the Government, upon advice from the Minister of Commerce and the Minister in charge of the sector concerned (Article 21).

In Egypt, public utilities managed by the State are exempted from the application of competition law. As for public utilities managed by private interests, they may obtain an exemption upon request, provided they comply with conditions set by the Executive regulation of the Competition Law (Article 9).

In Jordan, the Competition Law provides for temporary exemptions in emergency situations, but

also more permanent exemptions, if the parties can demonstrate that the agreement leads to positive results, including the improvement of the competitiveness of Enterprises, or production/distribution systems, or providing certain benefits to the consumer (Article 7 A and B). Also, a general de-minimis rule exempts agreements affecting less than 10% of the domestic market.

In Morocco, Article 9 of the competition Law provides for exemption of practices resulting from the application of other laws and regulations. Also, practices which can be demonstrated to provide economic or technical assistance, to benefit employment, or to allow SMEs to strengthen their competitive position on the market, while providing part of the benefits to consumers and not eliminating competition in respect of a substantial part of the products in question, can be authorized.

Article 9 also provides for a "de-minimis" exemption by the Competition Council, of agreements "of minor importance" among SMEs or farmers.

Finally, **in Tunisia**, essential goods and services are exempted from Competition Law, as well as monopolies and regulated sectors (Article 3). The list and prices of regulated goods and services are fixed by Decree. In addition, temporary measures can be taken, in case of emergency situations resulting in price peaks (Article 4). Exemptions may also be granted by the Minister in charge of Commerce, after advice of the Competition Council, provided such agreements contribute to economic or technical progress while affording customers a fair share of the resulting benefits (Article 6).

Algeria	Ordinance No. 03-03 of 19 July 2003 on Competition	<p>Article 8: The Competition Council may find, upon request of interested companies, that there is no need for, according to the elements in its possession, its intervention in respect to an agreement, concerted action, agreement or practice as defined in Articles 6 and 7 above. The procedures for introducing the application benefit from the provisions of the preceding paragraph are determined by decree.</p> <p>Article 9: The agreements and practices that result from the application of a statute or a statutory instrument made hereunder are not subject to the provisions of Articles 6 and 7. The agreements and practices whose authors can prove that they have the effect of ensuring an economic or technical progress, or that they contribute to improving employment, or that they allow small businesses to consolidate their competitive market position are authorized. The agreements and practices that have been authorized by the Competition Council may not benefit from this provision</p> <p>Article 21: When the public interest so warrants, the Government may, upon report of the Minister of Trade and Minister responsible for the sector concerned by the concentration, allow motion or at the request of the parties concerned, the achievement of a concentration rejected by the Competition Council.</p>
Egypt	Law No.3 of 2005 on Protection of Competition and Prohibition of Monopolistic Practices + Amendments to Laws 190/2008	Article 9: The provisions of this Law shall not apply to public utilities managed by the State. The Authority may, upon the request of the concerted 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

	and 193/2008	Regulation of this Law.
Jordan	The Competition Law No.33 of 2004 + Amendment to Law No.18 of 2011	Article 7: (A) Practices arising out of the application of a Law and practices falling within the ambit of temporary measures instituted by the Council of Ministers to deal with exceptional circumstances, emergency situations or natural disasters shall not be considered anti-competitive in the sense intended in Articles 5 and 6 of this Law, provided that such measures be reviewed within a period not exceeding six months after the beginning of the application thereof. (B) Practices and arrangements exempted by the Minister from the application of Articles 5 and 6 of this Law by a reasoned decision on the basis of a recommendation of the Director shall not be considered anti-competitive if they lead to positive results, with a common benefit that cannot be achieved without this exemption, including the improvement of the competitiveness of Enterprises, or production or distribution systems, or providing certain benefits to the consumer. (C) (...)
Lebanon	No Competition Law	
Morocco	Law no. 104-12 on Freedom of Prices and Competition	Article 9: Not subject to the provisions of Articles 6 and 7 mentioned above, the following practices: 1) resulting from the application of a statute or a statutory instrument made hereunder; 2) whose authors can prove that they have the effect of contributing to economic progress and/or technique, including creating or maintaining jobs, allowing consumers a fair share of the resulting benefit without giving the undertakings concerned the possibility of eliminating competition in a substantial part of the goods, products and services in question. These practices must not impose restrictions on competition in so far as they are necessary to achieve this progress. Certain categories of agreements and certain agreements, particularly when they are intended to improve the management of small and medium enterprises or marketing by farmers for their products, may be recognized as satisfying the conditions laid down in the first paragraph above by the administration after approval of the competition Council are also not subject to the provisions of Articles 6 and 7 above the agreements of minor importance which do not appreciably restrict competition, in particular agreements between SMEs. The criteria describing what is not an appreciable restriction of competition shall be fixed by regulation.
Palestine	No Competition Law	
Tunisia	Law No. 2015-36 of 15-09-2015 on the Reorganization of Competition and Prices	Article 3: Are excluded from the regime of free prices referred to in Article 2 above, essential goods, products and services or related sectors or areas where price competition is restricted in terms of a monopoly or lasting difficulties of market supply or by operation of law or regulations.

		<p>The list of these goods, products and services, and the terms and conditions for establishing their cost and selling prices are set by Government decree.</p> <p>Article 4: Notwithstanding the provisions of section 2 of this Law, and in order to deal with excessive increases or a price collapse, temporary measures motivated by a crisis or calamity by exceptional circumstances or a situation manifestly abnormal in the market within a particular sector, may be taken by order of the Minister of Trade and whose application period may not exceed six months.</p> <p>Article 6: Are exempt from the provisions of Article 5 of this Act, agreements, practices or classes of contracts whose authors warrant that they are essential for ensuring technical or economic progress, and they provide users with a fair share of the resulting benefit, provided they do not result in:</p> <ol style="list-style-type: none"> 1) Imposing restrictions which are not indispensable to achieve the objectives; and 2) Completely eliminating competition in the relevant market or in a substantial part of that market. <p>This exemption is granted by order of the Minister of Trade after consultation with the Competition Council and published in the Official Journal of the Tunisian Republic.</p> <p>The Minister for Trade may determine the duration of the exemption or submit to a periodic review. It may withdraw the exemption in case of non-compliance by the parties concerned of the conditions for granting it.</p> <p>The procedures for submitting applications for exemption and the duration thereof are determined by governmental decree on proposal of the Minister of Trade after consulting the Competition Council.</p>
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4.2. Prescription of anti-competitive laws

The shorter the prescription of the anti-competitive laws, the lesser the powers of the competition authority to be able to take action against them once they have ceased.

Of the MENA countries having competition law, only Morocco and Tunisia were found to provide for prescription of anti-competitive laws. In both countries, such practices are not actionable after a legal period of 5 years. It is interesting to note that in Tunisia, the law which has been superseded by the 2015 law had a three-year prescription limit,

which has proven to be too short. It is also noteworthy that the Moroccan law adds that the prescription is absolute only after 10 years have passed after the anti-competitive practice was abandoned and the Competition Council did not take action.

Algeria		Not Found
Egypt		Not Found
Jordan	The Competition Law No.33 of 2004 + Amendment to Law No. (18) of 2011	Not Found
Lebanon	No Competition Law	
Morocco	Law No. 104-12 on Freedom of Prices and Competition + Law No. 20-13 of 7 August 2014 Concerning the Competition Council*	Article 23: The Competition Council may seize or be referred to facts dating back more than 5 years if it during this period any act tending to their research, their findings or their sanction were done. (...) However, there shall be a prescription in any case where a period of 10 years from the termination of the anti-competitive practice has elapsed without the Competition Council having ruled on it.
Palestine	No Competition Law	
Tunisia	Law No. 2015-36 of 15-09-2015 on the Reorganization of the Competition and Prices	Article 15 (...): are prescribed measures relating to anti-competitive practices dating back more than 5 years.

4.3. Scarcity of adequate skills⁸

One of the key short-to-medium term challenges in setting up independent competition authorities in developing countries is attracting staff with adequate skills or the potential to rapidly acquire required skills. Fiscal constraints and competing developmental priorities often mean that Governments do not have the necessary flexibility to address the underlying causes (such as problems in the educational system) from the limited pool of human resources in a systematic and sustainable manner.

In addition, under structural adjustment programmes, and other public sector reforms, many developing country Governments were preoccupied with the need to streamline public expenditures and reduce the size of the public sector as a means of managing fiscal deficits and complying with IMF and other requirements. Under these circumstances, creating competition authorities within Government ministries was often seen as the more affordable option allowing Governments to make use of skills already available in the public sector and in which the Government had already invested, while maintaining central levels of employment protection.

The general shortage of skills affects not only the competition authority but also the judiciary and legislature. Since competition enforcement is not undertaken in a vacuum, this renders competition advocacy by the authority a critical factor in gaining credibility. For instance, it is sometimes argued that the competition authority is better able to position itself and exert optimal influence on competition policy if it shares a close relationship with Government rather than remaining at arm's length with a high degree of independence.

A related problem is the dearth of independent local expertise that developing country competition authorities can call upon from time to time to supplement in-house skills, which might be particularly relevant when undertaking, for example, market inquiries or complex investigations. Resource constraints seldom permit the buying-in of international consultants. Also, academic professors sufficiently versed in competition economics and law are few and the majority of experts in the legal community are often those who act on behalf of defendants in a competition case, and which get much higher remuneration for their work from companies in the private sector, which might easily influence their point of view.

The possibilities of recruiting and retaining highly qualified personnel in the public service, and especially in specialized areas such as competition enforcement, is thus negatively affected. Capable civil servants will tend to exit the public sector when their training and qualifications make them attractive to potential private sector employers. In order to find a way around these problems, independent bodies such as competition authorities are sometimes given exceptions from the civil service regime to offer higher salary scales as well as other attractive benefits. However, this may not be a sustainable strategy given that these special privileges are still funded through fiscal revenues.

It is often possible for independent competition authorities to supplement their budgets by levying fees for their services, such as filing fees and service fees for control of mergers. For various reasons – such as inadequate accounting and control measures, risk of fraud and corruption or a general reluctance to introduce what might constitute a differential tax on segments of society for public services, some Governments are cautious of permitting independent bodies to raise funds from alternative sources.

Competition authorities in developing countries are often caught in a vicious cycle whereby funding shortfalls affect not only their ability to carry out enforcement activities but also their ability to monitor the impact of their activities, and thus marshal the necessary proof of their worth and raise their credibility, facilitate accountability and provide justification for increased funding.

The onus is often entirely on the competition authority to establish credibility, not only with the general public but also with the Government. In this context, initial direct political backing for competition enforcement often sets the tone for the development of future relations between the competition authority and the authorizing environment.

The empirical evidence as to whether low public sector pay fosters corruption is mixed and theory does not predict that higher pay will always reduce corruption. Competition enforcement, particularly in jurisdictions that draw members of the board of commissioners from the private sector on a part-time basis, raises some tricky issues relating to members' impartiality and independence.

Concerns revolve around the ability of part-time board members holding senior positions in private companies to attain and maintain desirable levels of objectivity and the Government–industry revolving door. This is a problem also for developed countries, but in smaller and poorer economies these concerns take on a particular significance because there is a relatively smaller pool of individuals of sufficiently high standing to choose from.

There is also a greater probability of the appointment of individuals from large companies that are dominant in the economy and as such, are potentially more likely to fall foul of competition law. The omnipresence of large multinationals in this group adds a further wrinkle to the problem. Even where there are no incidences of impropriety, in the absence of ministerial oversight and effective accountability mechanisms, it can be difficult to manage public perceptions. For obvious reasons, competition policy in developing countries can sometimes be an emotive issue and questions of “fairness” often arise. Some things may be judged “unfair” by the public even if they are economically efficient.

4.4. Possible tensions between the related Ministry and the Competition Authority⁹

Tensions may arise from time to time as a result of insufficient clarity on the respective roles and responsibilities of the minister and the management of the competition authority, on how the competition authority is to be responsive to political direction, and on issues related to the streamlining of public expenditures for which the minister or another Government department may be held accountable.

In addition, the exceptions afforded to an independent competition authority from the usual civil service pay scales can create resentment between staff on the public payroll of the ministry as opposed to those of the competition authority. Such disparities can foment discontent and can be upsetting to relations between the management of the competition authority and senior ministry officials.

4.5. Discretion to set priorities¹⁰

The degree of freedom with which the competition authority has in its daily business of enforcing competition law and taking decisions is usually

interpreted to mean that the competition authority is not subject to routine direct supervision by Government and has been granted all the necessary power to fulfill its tasks. Such an authority would thus have the discretion to set its own priorities as to the identification and investigation of competition cases and the pursuit of competition complaints. It would also have the discretion to decline to investigate cases where it considers the motives of the complainant to be suspect. In this context, ministerial departments are constrained because they would be subject to ministerial priorities and political interference.

MENA Project countries having competition law offer highly differing degrees of *de-jure* independence in their day to day work. As can be seen below:

In Algeria, the law provides that the Competition Council has decision-making powers, including the possibility to make proposals and advise at its own initiative or upon request by the Minister in charge of commerce or of any other interested party, to regulate efficient competition on the market.

In Egypt, the 2014 Amendments to the Law have endowed the ECA Board with the power to initiate criminal lawsuits and to settle with violators.

In Jordan, the Competition Directorate is part of the Ministry of Industry and Trade, and the Competition Affairs Committee is chaired by the Minister. Hence, the actual day to day independence of the competition authority is very limited.

In Morocco, the Competition Council has strong decision-making power with respect to anti-competitive practices and the control of economic concentrations. Its independence is guaranteed by the Constitution. It may also give advice on competition-related matters upon request by the Minister, sector regulators and other constituencies, and can undertake studies on the general climate of competition in the country, or in specific sectors of the economy.

In Tunisia, the new law has considerably strengthened the independence of the Competition Council, as the Minister is no longer authorized to exempt anti-competitive practices without prior consultation with the Council. Another important development is the fact that now the Competition Council will mandatorily have to be consulted on all draft legislation which might restrain competition or entry into a market or a profession.

Algeria	Ordinance No. 03-03 of 19 July 2003 on Competition + Law No. 08-12 of 25 June 2008 Amendment to and Supplemental Ordinance No.03-03 19 July 2003	*Article 34 (amended by Law 08-12): The Competition Council has power of decision, proposal and opinion that it exercises on its own initiative or at the request of the Minister of Trade or any other interested parties, to promote and ensure by all appropriate means, the efficient regulation of the market and to stop any action or disposition such ensuring the proper functioning of competition (...).
Egypt	Law No.3 of 2005 on Protection of Competition and Prohibition of Monopolistic Practices + Amendments to Laws 190 /2008 and 193/2008 and 2014 Amendments	Article 21: Criminal lawsuits or any procedure taken therein shall not be initiated in relation to acts violating the provisions of this Law, unless a request of the Competent Minister or the person delegated by them is presented.* The Competent Minister or the person delegated by them may settle with regard to any violation, before a final judgement is rendered, in return for the payment of an amount not less than double the minimum fine and not exceeding double its maximum. The settlement shall be considered a waiver of the criminal lawsuit filing request (...). * The 2014 Amendments to the Law have endowed the ECA Board with the power to initiate criminal lawsuits and

		to settle with violators.
Jordan	The Competition Law No.33 of 2004 + Amending Law No. (18) of 2011	All powers rest with the Ministry of Industry and Trade (See Competition Directorate, 10 th Annual Report, 2012).
Lebanon	No Competition Law	
Morocco	Law No. 104-12 on Freedom of Prices and Competition + Law No. 20-13 of 7 August 2014 Concerning the Competition Council *	<p>Chapter 1*: The responsibilities of the Council- Article 2: The Council has a decision-making authority in the field in the fight against anticompetitive practices and operations control of economic concentration, such as defined in the Law on the freedom of prices and competition.</p> <p>It is also called upon to give its opinion on the requests for consultation, such as provided by this Law and by the Law on the freedom of prices and competition and to publish studies on the general climate of competition on the national and sectoral levels.</p>
Palestine	No Competition Law	
Tunisia	Law no. 36 of 15 September 2015 on the Reorganization of Competition and Prices	<p>Article 8: The Minister for Trade may, optionally together with the Minister responsible for the sector concerned, take any precautionary measure to ensure or restore the conditions for acceptable competition, and after consultation with the Competition Council, which must communicate its notice within three days.</p> <p>Article10: Following the notice of the Competition Council, the Minister for Trade may by reasoned decision: 1) Allow the merger under the conditions proposed by the undertakings concerned; 2) Allow the merger and impose on the undertakings concerning the implementation of commitments to rebalance the expected economic progress and harm to competition: and 3) Reject the operation. (...).</p> <p>Article 11: (...) The Competition Council is called to understand the related queries on anticompetitive practices as provided for by Article 5 of this law and to provide notices on consultation requests. The Council must be consulted on laws and regulations project to directly impose special conditions for the exercise of an economic activity or profession or to establish restrictions that impede access to a given market.</p> <p>The procedures and conditions of the mandatory consultation are set by Government decree.</p> <p>Parliamentary committees, Minister of Trade and sectoral regulatory authorities may consult the Competition</p>

		<p>Council on issues related to the field of competition.</p> <p>Professional and trade union organizations, consumer organizations legally established and chambers of commerce and industry may also require the Council's notice on competition issues in the areas under their jurisdiction. A copy of the consultation request and the notice of the Competition Board thereon are necessarily reported to the Minister of Trade.</p> <p>The Minister of Trade shall submit any proposed concentration or any concentration referred to in Article 7 of this Law of the Competition Council which must give its notice within sixty days from the date of receipt of the request for a notice. After this period, and in case the Board does not give its notice on the projects or mergers referred to in Article 7 of this Law, the Minister of Trade is entitled to exercise his/her prerogative as referred to in section 10 of this Act.</p>
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4.6. Prior consultation of the competition authority on draft laws and regulations¹¹

In addition to enforcement functions, competition authorities have advocacy responsibilities. Other than business and the general public, Government as a whole (including other regulatory bodies) is a key target of competition advocacy, particularly as it relates to the shaping of competition policy and bringing about market-friendly reforms throughout the economy. Accordingly, the ability of a competition authority to freely comment on and recommend improvements in public policy, regulation and legislation is another attribute by which the operational independence of competition authorities is assessed.

Many laws give competition authorities the responsibility to advise the Government on the impact on competition of proposed new laws and regulations. For example, in India, the Government has the option to seek the Commission's notice when considering competition policy matters. However, the notices of the Commission are not binding on the Minister.

In Algeria, Law No.08-12 of 25 June 2008 Article 36 provides that the Competition Council must be

consulted on any draft law or regulation related to competition, or having effected restrictions on access to markets or professions.

In Egypt, 2014 Amendments impose a mandatory obligation for prior-consultation of ECA (the Egyptian Competition Authority) on draft laws and draft regulations that are likely to harm competition.

In Jordan, the Competition Directorate may be requested by the Minister to give a notice on draft laws, regulations, and agreements related to economic matters in general, and competition in particular. The advisory role of the Competition Directorate has direct impact on insuring non-conflict of new legislation with competition law and policy and taking into account the effects on competition in the market when governmental decisions and procedures are taken.

In Morocco, the Competition Council is mandatorily consulted (Law No 20-13 of 7 August 2014).

In Tunisia, new Law No.35 of 15 September 2015, makes it mandatory that the Minister must consult the Competition Council on all new proposals for legislation that might restrict entry to a market or to a profession, or which in any manner, could restrain competition.

Algeria	Ordinance No. 03-03 of 19 July 2003 on Competition + Law No. 08-12 of 25 June 2008	Article 36*: The Competition Council is consulted on all legislative and regulatory text projects that link with competition or introductory measures that might particularly make the exercise of a profession or activity,
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	Amendment to and Supplemental Ordinance No.03-03 19 July 2003	or access to a market with quantitative restrictions; Establish exclusive rights in certain areas or activities; Establish specific conditions for the exercise of production, distribution and services; Establish uniform practices in terms of sale. Article 37*: The Competition Council may undertake all necessary actions within its field of competence including any investigation, study and expertise. (...) When the inquiries made concerning the applicability of the laws and regulations that link to competition reveal that the implementation of these texts give rise to restrictions on competition, the Competition Council urges all adequate actions to end these restrictions.
Egypt	2014 Amendment to Law No.3 of 2005 on Protection of Competition and Prohibition of Monopolistic Practices + Amendments to Laws 190 /2008 and 193/2008	2014 Amendments impose a mandatory obligation for prior-consultation of ECA (the Authority) on draft laws and draft regulations that are likely to harm competition.
Jordan	Law No. 33 of 2004 on Competition + Amendment to Law no. 18 of 2011	The advisory role of the Competition Directorate has direct impact on ensuring non-conflict of new legislation with Competition law and policy and taking into account the effects on competition in the market when governmental decisions and procedures are taken. (See Competition Directorate, 10th Annual Report, 2012).
Lebanon	No Competition Law	
Morocco	Law 104-12 on Freedom of Prices and Competition + Law No. 20-13 of 7 August 2014 Concerning the Competition Council *	Article 7*: The board must be consulted by the Government on legislation or regulation projects establishing a new plan or changing a regime that has the following direct effects: 1) to submit the exercise of a profession or its access to a market to quantitative restrictions; 2) to establish monopolies or other proprietary specialized in the territory of Morocco or in a substantial part thereof; 3) to impose uniform practices on prices or conditions of sale; and 4) to grant state aid to local authorities in accordance with the relevant legislation.
Palestine	No Competition Law	
Tunisia	Law no. 36 of 15 September 2015 on the Reorganization of the Competition and Prices	Article 11: (...) The Council must be consulted on the laws and regulations projects to directly impose special conditions for the exercise of an economic activity, profession, or to establish restrictions that hinder access to a market. The procedures and conditions of the mandatory consultation are set by Government decree. (...).

4.7. Relations with sectoral regulators

Competition authorities and sector regulators coexist under various conditions. In developing countries, the sectoral regulator is usually pre-existing to the competition authority. In addition, among its powers, the sectoral regulator is in charge of ensuring "fair and equitable" competition within its sector. Hence, in most cases, the sectoral regulator is not keen to share any of its powers with the competition authority. The best that can be expected is that the two authorities sign MOUs and information-exchange agreements, relating to cases under investigation.

In Algeria, Morocco and Tunisia, the law stipulates that the Sectoral regulator may approach the Competition authority for advice. In reverse, when the Competition Council of Algeria investigates a sector which is regulated, it has 30 days to inform the sectoral regulator (Algeria, Law No. 08-12 of 25 June 2008 amending Ordinance No.03-03 of 19 July 2003 on competition).

In practice, however, this is rarely the case. In Morocco, for example, the Telecommunications regulator and the Port Authority are reported to have declined the Competition Council's MoU proposal. The Central Bank and the Press (ARCA) on the other hand, have accepted to sign a cooperation agreement, but the MoU has not been implemented thus far.

The Egyptian Competition Authority (ECA) concluded an MoU with the National Telecom Regulatory Authority (NTRA) in June 2011 with regard to the sectoral overlap that exists between the two regulators.¹² This MOU aims at tracing the boundaries between the two agencies where carrying out a competition investigation in the telecommunication sector. Furthermore, the said MOU tends to coordinate the enforcement efforts undertaken by each Agency in the aforementioned sector and to ensure consistency in the analysis performed by each agency.

In Jordan, for the purpose of guaranteeing the freedom of competition, government authorities and sectoral regulatory bodies were vested with monitoring any economic concentration operations and are requested to obtain the notice of the Ministry in writing.

The new Tunisian Law stipulates that, among those entitled to request the advice of the Competition Council, the sectoral regulators (autorités de régulation) have the possibility to approach the Council. On the other hand, when the Competition Council, on its own volition, launches an inquiry which relates to a regulated sector, it informs the regulator. The Competition Council must also request the technical advice of the sectoral regulator when the Council investigates that particular sector.

Algeria	Ordinance No. 03-03 of 19 July 2003 on Competition + Law No. 08-12 of 25 June 2008 + Amendment to and Supplemental Ordinance No.03-03 19 July 2003	*Article 39: When the Competition Council is referred to for a matter relevant to an industry under the jurisdiction of a regulatory authority; it shall forward a copy of the file to the authority of regulation concerned to formulate its opinion within a period not exceeding 30 days.
Egypt	2014 Amendment to Law No.3 of 2005 on Protection of Competition and Prohibition of Monopolistic Practices	Not Found
Jordan	Law No. 33 of 2004 on Competition + Amendment to Law no. 18 of 2011	Article 12: (...) C- For the purpose of guaranteeing the freedom of competition by virtue of the provisions of this Law, Government authorities and sectoral regulatory bodies vested with monitoring any economic concentration operations by virtue of legislation specific

		thereto shall obtain the notice of the Ministry in writing within the limits of its jurisdiction stipulated in the Law.
Lebanon	No Competition Law	
Morocco	Law No. 104-12 on Freedom of Prices and Competition + Law No. 20-13 of 7 August 2014 Concerning the Competition Council *	Article 5*: (...) (...) It may also give its opinion on any question of principle concerning competition, at the request of local authorities council (...), the sectoral regulatory authorities or consumer associations (...) within the limits of the interest their responsibilities.
Palestine	No Competition Law	
Tunisia	Law No. 36 of 15 September 2015 on the Reorganization of the Competition and Prices	<p>Article15: The queries are referred to the Competition Council by:</p> <ul style="list-style-type: none"> a) The Minister for Trade or any person delegated for this purpose; b) Economic enterprises; c) Professional and trade union organizations; d) Legally established consumer organizations; e) The Chambers of commerce and industry; f) Regulatory authorities; and g) Local authorities. <p>The Competition Council may, upon report of the General Rapporteur and after requesting written submissions of the Government Commissioner, be referred to for anti-competitive practices on the market. The Chairman shall inform the Minister of Commerce and, if applicable, the relevant regulatory authorities of the self-referral. The Minister for Trade informs the council of investigations underway by the department.</p> <p>The Competition Council should also request the technical opinion of the regulatory authorities during the examination of applications, before it, and that relating to the areas under their jurisdiction. (...).</p>

5. TRANSPARENCY AND ACCOUNTABILITY¹³

Beyond making their annual reports and final decisions available to the public, there are seldom means for competition authorities in developing countries to have direct consultation with or obtain feedback from citizens. Some competition authorities only recently have acquired the resources to construct and maintain up-to-date websites. In this context, developing countries are willing to undergo voluntary peer reviews of competition enforcement regimes, such as that of UNCTAD, the OECD and others, which serve not only as a mechanism for assessing enforcement impact and identifying areas for improvement, but also as an independent instrument of accountability.

On a day-to-day basis, the competition authority is accountable to its immediate constituencies – the private sector, including foreign investors and their customers and consumers. Moreover, as enforcement decisions of competition authorities have a widespread impact on the economy as a whole, competition authorities are also accountable to the Government and the general public, academic circles and other interested parties such as the media. Last but not least, competition authorities are subject to scrutiny for performance (outputs) from public auditors and donors. In this context, transparency is a key facet of accountability.

Access to information is a critical dimension to enabling various stakeholders to play their governance role effectively. To this end, it is common across all jurisdictions for competition authorities to make their final decisions – including the normative standards or guidelines that govern the investigative and decision-making functions of the authority – readily available to all stakeholders, usually through their websites and the press.

In the light of bilateral cooperation on enforcement activities and the emergence of international competition networks, competition authority peers reviews, increasingly constitute an additional layer of accountability, although this level of accountability can be viewed as “soft” accountability. Stakeholder surveys and peer reviews are examples of accountability instruments in this connection.

5.1. Publication of information

In all the MENA Project countries which have competition law, an effort is made to maximise transparency by requesting the competition authority or its related ministry to publish all decisions and advices rendered, as well as issuing and publishing an annual report on the activities of the competition authority.

In Algeria, the Competition Council submits its annual activity report to the judiciary, the Head of Government and to the Minister in charge of Commerce. The Annual report is published in the Official Bulletin of Competition as provided for by article 49 of Ordinance No 03-03 of 19 July 2003 on Competition. It may also be published in part or in full on any appropriate information support system. Moreover, amending legislation No 08-12 of 25 June 2008 provides that the decisions of the Competition Council, the Court of Algiers and the Council of State on competition matters are published by the Competition Council in the Official Bulletin for Competition. The law provides that extracts of decisions and other information can be published on any information support system.

In Egypt, Article 11 (9) of the competition law provides for publishing by the Egyptian Competition Authority (ECA) of periodicals containing decisions, recommendations, procedures and measures adopted and pursued by ECA, as well as other matters relating to its work. Article 11 (10) requests ECA to prepare an Annual Report on its activities and its future plans and recommendations, to be submitted to the Competent Minister upon its approval by the Board of Directors, and a copy of the annual report to be sent to the People’s Assembly and the Shura Council. Finally, Article 24 provides that final judgements of conviction regarding cartel agreements, vertical anti-competitive practices and abuses of dominant power be published in the Official Gazette and in two widespread daily newspapers, at the guilty party’s expenses.

In Jordan, with respect to concentrations, the Minister of Industry and Trade is requested to issue a reasoned decision within a maximum period of 100 days after issuing the notice evidencing the completion of a merger application. In all cases the decision or summary thereof must be published in at least two local daily newspapers. With respect to anti-competitive practices, the verdict of the Court or a summary thereof must be published at

the expense of the violator at least in two local newspapers. The text of the verdict must contain a statement of the facts and an analysis of the practices and their effect on the flow and balance of market mechanisms, and the extent of the risk thereof. Finally, the Minister is requested to present an annual report on the State of Competition to the Council of Ministers.

In Morocco, Law No 20-13 of 7 August 2014 provides that the Competition Council prepares each year by June 30th, its activity report and submits it to the King and the Head of Government (Article 23), before it is published in the Official Bulletin. The decisions and advice rendered by the Competition Council are annexed to the Council's Annual report.

In Tunisia, the new law increases transparency significantly, as the Competition Council is requested to publish its decisions and advice rendered on its official website, without having to wait for publication of its Annual Report. On the other hand, the Minister in charge of Commerce is

requested to obtain the Competition Council's advice before publishing a motivated exemption to the competition law in the Official Journal of the Tunisian Republic. Finally, with respect to concentrations, the decision of the Minister in charge of Commerce to authorize, reject or accept a merger under certain conditions must be publicized and motivated, after advice of the Competition Council. As can be seen below, an important effort to maximize transparency of all decisions and advice rendered by the Competition Council, decisions of the Minister in charge of Commerce and of the Courts is made in the new Tunisian Competition Law in Article 10 (mergers), Article 14 (Annual Report and data base on Competition to be exchanged with other State administrations), Article 27 (anti-competitive practices and concentrations), Article 45 (sanctions imposed by a Court), Article 50 (illicit price increases) and Article 58 (publication of decision of the Court).

Algeria	Ordinance No. 03-03 of 19 July 2003 on Competition + Law No. 08-12 of 25 June 2008 Amendment to and Supplemental Ordinance No.03-03 19 July 2003	Article 27: The Competition Council addresses an annual report of the activity to the legislative body, the Head of Government and the Minister for Trade. The annual report is published in the official bulletin of competition under Article 49 of this Ordinance. It may also be published in full or in excerpts on any other appropriate information media. *Article 49: The decisions of the Competition Council, the Court of Algiers, the Supreme Court and the State Council on competition are published by the Competition Council in the official bulletin of the competition. Extracts of the decisions and other information may also be published on any other information medium. (...).
Egypt	Law No.3 of 2005 on Protection of Competition and Prohibition of Monopolistic Practices + Amendments to Laws 190 /2008 and 193/2008	Article 11 (9) : Issuing periodicals containing decisions, recommendations, procedures and measures adopted and pursued by the Authority as well as other matters relating to the Authority. Articles 8 and 9: Preparing an Annual Report on the activities of the Authority and its future plans and recommendations to be submitted to the Competent Minister upon its approval by the Board of Directors. A copy thereof shall be sent to the People's Assembly and the Shura Council. Article 24: Final judgements of conviction regarding the actions stipulated in Article 22 of this Law shall be published in the Official Gazette and in two widespread daily newspapers, at the guilty party's expense.

Jordan	The Competition Law No.33 of 2004 + Amendment to Law No. (18) of 2011	<p>Article 11 C: The Minister shall issue his/her reasoned decision regarding the economic concentration operation within a period not exceeding 100 days starting on the date of issuing the notice evidencing the completion of the application.</p> <p>Article 11 B: (...) In all cases (...) the decision or a summary thereof shall be published in at least two local daily newspapers.</p> <p>Article 12: (...) B- The Minister shall present to the Council of Ministers an Annual Report on the state of competition.</p> <p>Article 18: (...) B- The Court may order its verdict or a summary thereof to be published at the expense of the violator in at least two local newspapers.</p> <p>Article 18 C- The text of the verdict must contain a statement of the facts and an analysis of the practices and their effect on the flow and balance of market mechanisms, and the extent of the risk thereof.</p>
Lebanon	No Competition Law	
Morocco	Law No. 104-12 on Freedom of Prices and Competition + Law No. 20-13 of 7 August 2014 concerning the Competition Council *	<p>Article 23*: The Board shall each year, before 30 June, establish a year's activity report that the past chairman of the board submits to His Majesty the King and addresses the Head of Government.</p> <p>The decisions and notices of the Board, except as provided in Article 41 of the aforementioned Law No. 104-12, is attached to this report. The annual report is published in the "Official Bulletin".</p>
Palestine	No Competition Law	
Tunisia	Law No. 36 of 15 September 2015 on the Reorganization of the Competition and Prices	<p>Article10: Following the notice of the Competition Council, the Minister for Trade may by reasoned decision:</p> <ol style="list-style-type: none"> 1) Allow concentration (...); 2) Allow the merger and impose on the undertakings concerned the implementation of commitments to rebalance the expected economic progress and harm to competition; 3) Reject the operation; and <p>In all cases described in the first paragraph the judgment or an extract of the decision is made public.</p> <p>Article 14: (...) The Competition Council must prepare a report on its annual activities to be submitted to the President of the Assembly of People's Representatives and the head of Government. The Board may include in this report recommendations for improving the competitive functioning of markets.</p> <p>In partnership with the competent services of the Ministry of Trade, the Board shall:</p> <ol style="list-style-type: none"> 1) The development of a database on the state of the

		<p>market and the information collected by the Board on the occasion of the inquiries and investigations and may be exchanged with the rest of the state services, and</p> <p>2) The implementation of programmes and plans of awareness and promotion of competition culture, The Competition Council shall publish its decisions and notices on its website.</p> <p>Article 27: The Competition Council may, where appropriate:</p> <ol style="list-style-type: none"> 1) Issue directions to the operators concerned to end anti-competitive practices within a specified period or impose special conditions in the exercise of their activity; 2) Order the temporary closure of the offending establishments or for a period not exceeding three months. However, the reopening of those particular institutions can only occur after they have terminated the practical purpose of sentencing; and 3) Forward the file to the prosecutor in order to initiate criminal proceedings. <p>The Competition Council may, in case of abuse of a dominant position resulting from a case of concentration of businesses, propose to the Minister responsible for trade to order if necessary in conjunction with the Minister whose sector is interested by reasoned decision, to the company or group of companies involved, alter, amend or terminate all agreements and all acts which enabled the concentration allowing the abuse, notwithstanding the procedures laid down in Articles 7 and 9 of this Act.</p> <p>The Competition Council may order the publication of its decisions or extract thereof in newspapers designated, and this at the expense of the convicted.</p> <p>Article 45: (...) Shall be punished by imprisonment of sixteen days to one year and a fine of 2,000 dinars to 100,000 dinars or one of these penalties, any person who, by devious means, has had a decisive role in the violation of the prohibitions imposed by Article 5 of this Law.</p> <p>The court may also order that its decision be published full or in part in the newspapers designated by the expense of the condemned. It can also order under the conditions defined in section 51 of this Law, the display and / or advertising by any other means, of its decision.</p> <p>Article 50: In cases of illegal price increase or practices of unlawful price as defined in Articles 39, 40 and 41 of this Law and without prejudice to the penalties imposed by the courts, the Minister for Trade may order the closure for a period up to one month or institutions subject of the offense.</p> <p>The Minister for Trade may, as provided by section 42 of this Law, decide to suspend or revision of the quota of subsidized products or revision of the subsidy regime or</p>
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		<p>closing or premises where offense was committed and for a maximum duration of one month.</p> <p>The Minister for Commerce may also order the display and insertion in newspapers designated or publication by any means of the decision pronouncing the sanctions provided for in paragraph 1 and 2 of this article.</p> <p>Article 58: The competent court may order that its decision be published full or in part in the newspapers designated and posted in conspicuous places in nature that implies, including the main gates of factories or workshops sentenced to storefront his/her store, all at the expense of the convicted.</p>
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5.2. Confidentiality

While the competition authority is encouraged to ensure maximum transparency and accountability of its activity and decisions, it is important that in so doing, licit business secrets are not leaked to interested parties of a case, who might then use such confidential information for their own professional advantage. It is therefore important for the members and employees of a competition authority to be bound by professional secrecy with respect to all insider and confidential information they may come across during their official duties, and in addition, in its publications, the authority should avoid publicizing confidential business secrets, such as, for example, market shares of competitors, their plans and projects of innovation, entering into potential markets, etc.

For these reasons, as can be seen below, most competition laws of MENA Project countries contain provisions dealing with these issues.

In Algeria, the law provides for an obligation for members of the Competition Council to ensure professional secrecy. Moreover, in order to protect business secrets, the president of the Competition Council may upon request, restrict confidential information, which are then withdrawn from the file. However, the subsequent decisions of the Competition Council cannot be based on information which has been withdrawn from the file.

In Egypt and Jordan, the laws concern confidentiality of deliberations and non-disclosure of insider information, while in Morocco and Tunisia, the Competition Council and officers are required to keep secret the discussions of cases and enquiries, but also, as in Algeria, the president of the Council may, upon request, withhold legitimate business secrets from public information.

<p>Algeria</p>	<p>Ordinance No. 03-03 of 19 July 2003 on Competition + Law No. 08-12 of 25 June 2008 Amendment to and Supplemental Ordinance No.03-03 19 July 2003</p>	<p>Article 29: No member of the Competition Council can deliberate in a case in which they have an interest or have a kinship up to the fourth degree with one of the parties or, represents or has represented one of the interested parties. The members of the Competition Council are bound by professional secrecy. (...).</p> <p>Article 30: (...) The interested parties and the minister's representative for Commerce are entitled to access to the file and obtain a copy. However, the president may refuse, on its own initiative or at the request of interested parties, the disclosure of parts or materials involving business secrets. In this case, these parts or documents are removed from the file. The decision of the Competition Council may not be based on the parts or materials withdrawn from the record.</p>
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Egypt	Law No.3 of 2005 on Protection of Competition and Prohibition of Monopolistic Practices + Amendments to Laws 190 /2008 and 193/2008 + Amendments Passed in 2014	<p>Article 13 (...): A Board member shall not be eligible to take part in the deliberations or voting with regard to a case under the consideration of the Board, if they have an interest in it, or if they are a relative to any of the parties up to the fourth degree, or if such member currently represents or has represented any of the parties. (...).</p> <p>Article 16: The employees of the Authority are prohibited to disclose any information, data or the sources thereof, in relation to cases falling under the scope of this law which are submitted or circulated during review, taking actions and issuing decisions in such cases. (...). Employees of the Authority are prohibited to work with Persons that were subject to examination or are in the process of examination, for a period of two years from the end of their employment.</p> <p>In addition, the 2014 amendments to the law have extended confidentiality obligations upon ECA officials and to Board members.</p>
Jordan	The Competition Law No.33 of 2004 + Amendment to Law No. (18) of 2011	<p>Article 13 (...) B: Officers of the Directorate and any person looking into its activities shall be required to maintain professional secrecy.</p> <p>Article 23: Any person who discloses any confidential information that they received from any source except if that was according to a court order shall be punishable by a fine of no less than 1000 Jordanian Dinar and not exceeding 10'000 JD.</p>
Lebanon	No Competition law	
Morocco	Law N. 104-12 on Freedom of Prices and Competition + Law No. 20-13 of 7 August 2014 Concerning the Competition Council *+ Decree No. 2-14-652 of 1 December 2014 taken for the application of Law No. 104-12**	<p>Article 21: When they ask third parties about the operation, about its effects and the commitments proposed by the parties and make their decision public in terms fixed by regulation, the Competition Council and the administration take into account the legitimate interests of the parties to the foregoing notification or to natural or legal persons mentioned that their business secrets should not be divulged.</p> <p>* Article 11: (...) Any member of the Board shall advise the President of the interest it holds or has acquired and its functions in an economic activity. No member of the Board may deliberate in a case where they have an interest, or if they represent or have represented one of the interested parties. Board members are bound to secrecy of deliberations and meetings. (...).</p> <p>** Article 6: (...) If companies feel that some of the documents included in this package PRESENT a confidential nature, they can include the words "business secret" to this document. In this case, the head of Government or governmental authority delegated by them asked for this to indicate the information that they do not want to be mentioned in their judgment and in the opinion of the Board</p>

		of competition.
Palestine	No Competition Law	
Tunisia	Law No. 36 of 15 September 2015 on the Reorganization of the Competition and Prices	<p>Article 13: (...) Before exercising their duties, Board members takes the following oath: "I swear by God to faithfully perform my duties, to maintain neutrality and not to disclose the secrecy of deliberations."</p> <p>Article 24: The parties in dispute or their representatives are entitled to obtain copies of documents or to become acquainted with in order to exercise their right to judicial and official institutions.</p> <p>The President of the Competition Council may refuse to disclose any documents involving trade secrets. In this case the parties or their representatives may be aware of a non-confidential version and a summary of the documents concerned.</p>

5.3. Conflict of interest and rules of ethics

In many countries, full-time members and staff of the competition authority are prohibited from exercising any other professional or business activity or holding public office, and part-time members are not prevented from exercising professional or business activities, but are required to inform the authority in case of conflict of interest. In the European Union, DG Competition has its own strict "Code of Ethics and Integrity"¹⁴ meant to protect not only the competition authority's interests but also its reputation. The overarching principles guiding staff behaviour in the EU competition authority are: independence, impartiality, objectivity, loyalty and dignity. To this end, the EU rules require not only that the conduct of members be in accordance with these principles, but also that its members and staff give the correct "external perception". In other words, this means "it is not enough that you are aware that you have no personal interest in an issue, it must be evident to others that you are completely objective".

Direct or indirect interest which may compromise or be perceived to impair a staff member's independence when performing their duties may derive for example from family ties, personal friendships, accepting gifts, favours and donations, external activities and remunerations, political and ideological affinities and national influences.

The most relevant situations in DG COMP's Code of Ethics and Integrity are "personal interests" derived from:

- a) Financial interests in companies involved in the competition investigation a staff member has been assigned to;
- b) Activities of a staff member's spouse/partner who might be involved in the competition case on behalf of the company concerned, a law firm, consultancy firm, government body deciding on aid, etc.; or
- c) Involvement in the competition case in a staff member's previous employment¹⁵.

This is also the case in most countries. In the MENA Project countries which have competition law, the laws of Algeria, Egypt, Morocco and Tunisia explicitly cover this issue, especially as these competition authorities are legally independent from the related ministry. In the case of Jordan, the Competition Directorate is part of the Ministry of Industry and Trade and therefore subject to staff rules by Government officials. This issue is not found in competition law.

In Algeria, the law stipulates that no member of the Competition Council can be involved in a case where they have a conflict of interest or if they have family ties with those concerned up to the fourth degree, or if they represent or has represented one of the concerted parties. Moreover, the function of member of the Competition Council is incompatible with any other professional activity.

In Egypt, Board members are not eligible to take part in deliberations or voting with regard to a case under consideration, if they have an interest in it, or

if they are relatives to any of the parties up to the fourth degree, or if they currently represent or have represented any of the parties. Moreover, employees of the ECA are prohibited to work with persons that have been subject to investigations or are in the process of examination, if they have been employed by them for less than two years.

In Morocco, the President and Vice-Presidents of the Competition Council, except for those who are magistrates, are obliged to stop any private sector professional or commercial activity during their full-time tenure, including any participation in executive or managerial functions in private or public profit-seeking undertakings. In addition, the members of the Council must inform the President of any interest they have had or have just acquired in any economic undertaking. Moreover, no Member of

the Council is authorized to take part in deliberations of a case where there is a conflict of interest, or where they represent or have represented the interests of one of the parties to the case.

In Tunisia, before being appointed, the Members of the Competition Council take an oath before the plenary session of the Council, and swear to be impartial and to keep secret all deliberations. This oath is duly noted by Verbal Process, or "procès-verbal". The Members proceed with the declaration of their personal assets in pursuance of the regulations in force. They are also obliged to inform the President of the Competition Council of any risk of conflict of interest, in order to take appropriate action.

Algeria	Ordinance No. 03-03 of 19 July 2003 on Competition	Article 29: No member of the Competition Council may deliberate in a case in which they have an interest or have a kinship to the fourth degree with one of the parties or, represent or have represented one of the interested parties. (...) Being member of the Competition Council is incompatible with any other professional activity.
Egypt	Law No.3 of 2005 on Protection of Competition and Prohibition of Monopolistic Practices + Amendments to Laws 190 /2008 and 193/2008	Article 13: (...) A Board member shall not be eligible to take part in the deliberations or voting with regard to a case under consideration by the Board, if they have an interest in it, or if they are a relative to any of the parties up to the fourth degree, or if such a member currently represents or has represented any of the parties. Article 16: (...) Employees of the Authority are prohibited from working with Persons that were subject to examination or are in the process of examination, for a period of two years from the end of their employment.
Jordan	The Competition Law No.33 of 2004 + Amendment to Law No. (18) of 2011	Not Found
Lebanon	No Competition Law	
Morocco	Law No. 104-12 on Freedom of Prices and Competition + Law No. 20-13 of 7 August 2014 Concerning the Competition Council *	*Article 11: The president and vice-president operate on a full-time basis. The President and Vice-Presidents other than judges shall suspend any professional or commercial activity in the private sector during the exercise of their office term. They must also suspend their participation in the governing bodies, management and administration of private or public companies operating for profit. (...) Every board member must inform the

		<p>president of interests that it holds or comes to acquire and its functions in an economic activity.</p> <p>No member of council may deliberate in a case where they an interest, or if they represent or have represented one of the interested parties.</p> <p>Board members are bound to secrecy of deliberations and meetings.</p> <p>Board members are required to make a written declaration of assets and the assets they hold directly or indirectly and under the conditions and in the manner prescribed by law in accordance with Article 15 of the Constitution.</p>
Palestine	No Competition Law	
Tunisia	Law No. 36 of 15 September 2015 on the Reorganization of the Competition and Prices	<p>Article 13:</p> <p>(...) Before exercising their duties, Board members shall take the following oath:</p> <p>"I swear by God to faithfully perform my duties, to maintain neutrality and not to disclose the secrecy of deliberations."</p> <p>The oath is taken before the plenary assembly, the minutes are recorded. Board members undertake to declare their assets in accordance with the regulations in force.</p> <p>Members must inform the Chairman of any potential conflict of interest in order to make arrangements.</p>

5.4. Judicial review of decisions and sanctions¹⁶

It is widely held that an independent judicial review of the decisions of competition authorities, whether through the regular courts or through administrative tribunals, is desirable for the sake of the fairness and integrity of the decision-making process. Most jurisdictions appear to favour a procedural review of competition cases, whereby the appeal body confines itself to consideration of the law, including a review of procedures adopted by competition authorities in the exercise of their investigative and decision-making functions, rather than a consideration *de novo* of both evidence and legal arguments¹⁷.

Accordingly, the intention is not for the courts to substitute their own acknowledgement appreciation, but to ascertain whether the competition authority has abused its discretionary powers. Grounds for review will often include lack of jurisdiction, procedural failure and error of law, defective reasons, manifest error of appreciation, and error of fact. In this context, judicial review is generally seen as an end-stage process where

judgment is passed on results or actions already taken – i.e. decisions already taken by the competition authority in line with whether decision-making powers are vested in the chief executive, a board of commissioners or a separate quasi-judicial body in the form of specialized competition. It should be noted that in some jurisdictions, specialized competition appeal courts have been constituted, like in Denmark, Singapore, South Africa and the United Kingdom.

In the MENA Project countries which have competition legislation, judicial review is either confined to administrative courts or the administrative court is the court of first instance.

In Algeria, the decisions of the Competition Council can be appealed before the Court of Algiers, by the parties concerned or by the Minister in charge of Commerce. The recourse to the Algiers Court is not suspensive of the case, but the President of the Court of Algiers can decide, within 15 days, to suspend application of the decision in question in case of urgency.

In Egypt, the Competition Law as such does not mention the appeals procedure. However, all breaches of Egyptian competition law are

considered criminal offences, and are therefore appealable to the Court of Appeals and the Court of Cassation, which represents the final stage of criminal appeals.

In Jordan, decisions of the Court in cases relating to competition are appealable before the Court of Appeal and the Court of Cassation.

In Morocco, decisions of the Competition Council with respect to concentrations can be appealed within 30 days before the Administrative Chamber of the Court of Cassation. Other decisions of the Competition Council can be appealed before the

Rabat Court of Appeal. The appeal is not suspensive of the decision, except where a decision might result in irreversible circumstances.

In Tunisia, the decisions of the Competition Council can be appealed before the Administrative Court, pursuant to Law N0.72-40 of 1 June 1972. The Administrative Court must deliver its decision within one year from the date of the appeal. During that period, the Competition Council can request its decision to be provisionally executed.

Alegria	Ordinance No. 03-03 of 19 July 2003 on Competition + Law No. 08-12 of 25 June 2008 Amendment to and Supplemental Ordinance No.03-03 19 July 2003	Chapter V - Procedure to appeal against decisions of the Competition Council Article 63: The decisions of the Competition Council may be appealed to the Court of Algiers, ruling in commercial matters, by the parties or by the Minister for Trade, within a period which shall not exceed a month (...). The appeal to the Court of Algiers is not suspensive (...) However, the President of the Court of Algiers may, within 15 days, stay the execution of the planned measures (...) when circumstances or serious facts require so. Article 70: The judgments of the Court of Algiers are forwarded to the Minister for Trade and President of the Competition Council.
Egypt	Law No.3 of 2005 on Protection of Competition and Prohibition of Monopolistic Practices + Amendments to Laws 190 /2008 and 193/2008	The Competition Law as such does not mention the appeals procedure. However, all breaches of Egyptian Competition Law are considered criminal offences, and are therefore appealable to the Court of Appeals and the Court of Cassation, which represents the final stage of criminal appeals.
Jordan	The Competition Law No.33 of 2004 + Amendment to Law No. (18) of 2011	Article 18: (...) E- Decisions of the Court in cases relating to Competition shall be appealable before the Court of Appeals and the Court of Cassation.
Lebanon	No Competition Law	
Morocco	Law No. 104-12 on freedom of prices and competition + Law No. 20-13 of 7 August 2014 Concerning the Competition Council*	Chapter II - Section II Appeals - Article 44: Appeals against decisions of the Competition Council (concentrations ...) are brought within 30 days (...) before the Administrative Chamber of the Supreme Court. Appeals against other decisions of the Competition Council are heard by the Court of Appeal in Rabat. Article 53: The appeal is not suspensive. However, the appeal court may order a stay (...) if the provisional measures and decisions issued by the Competition Council could cause

		irreparable consequences for the companies concerned.
Palestine	No Competition Law	
Tunisia	Law No. 36 of 15 September 2015 on the Reorganization of the Competition and Prices	<p>Article 28: (...) The decisions of the Competition Council may appeal to the administrative court in accordance with Law No. 72-40 of 1 June 1972 relating to the administrative court. The court in charge of such appeals must render its judgments within a period not exceeding one year from the date of the appeal.</p> <p>The Competition Council may, if necessary, order the provisional execution of these decisions.</p> <p>The President of the Competition Council or, as appropriate, one of its vice presidents, takes for enforcement board decisions that have become non-appealable or bonds with the provisional execution in accordance with the code of civil and commercial procedure.</p>

6. CONCLUSION

In its efforts to contribute to setting good governance guidelines for the benefit of MENA Project countries in the field of independence and transparency of the competition authority, this document has explored the general approaches to competition law and their implementation in the world, and the main provisions related to independence and transparency found in competition laws of MENA project countries.

As a result, it confirms the opinion expressed in the introduction, namely that there is no single standard of independence which countries must adopt and no competition authority can be completely independent from the related Government structure. Obviously, there are large differences in this field among the MENA Project countries examined. First, there are those who have draft legislation which so far has not been adopted, namely in Lebanon and Palestine. Second, for those countries which utilize competition law, there is a wide spectrum of degree of independence that can be noted, from the Jordanian Competition Directorate, which is part of the Ministry of Industry and Commerce, to other countries, such as Algeria, Egypt, Morocco and Tunisia, which have established competition authorities or competition councils having distinct legal personality, with varying degrees of independence and transparency mechanisms inscribed into the law. It is interesting in this respect, to note that the independence of the Moroccan Competition Council has been enshrined in that country's Constitution.

All MENA Project countries having competition law, except for Jordan, for reasons noted above, have financial autonomy inscribed within the law. However, it is difficult to evaluate the actual extent of budget autonomy, given the fact that all are attached in one way or another to the budget of the related ministry. Only the Egyptian authority depends on appropriations designated to ECA in the State General Budget.

Another measure of independence of competition authorities is by examining the way the heads of the authority are nominated and the length of term. In the MENA Project countries, nominations of heads and vice-chairpersons are often by presidential (Algeria) or royal (Morocco) decree, Government decree (Tunisia), or the related minister (Egypt), in most other cases upon

proposal by the related ministry or by the judiciary as far as magistrates are concerned. The tenure is between 4 and 5 years, usually renewable once, except for Tunisia, where the new law states non-renewable terms. In short, the related ministry has an important role to play in appointments, and it is interesting to note that in Algeria and Morocco, nominations sometimes have been slow after the tenure of the members has lapsed, leading to periods of inactivity, or standby of the competition authority for lack of nominated members. It should also be noted that increasingly the laws of MENA countries prescribe the minimal qualifications required for heads and members of competition authorities, a factor which should somewhat limit the discretion of those in charge of nominating officials to competition authorities.

The powers of the competition authority, hence its independence, can also be restrained by limiting the scope of application to the law. Many exemptions can be obtained, for example, for reasons pertaining to, economic or technical progress, employment, or strengthening the competitive position of SMEs in the domestic market, upon decision by the related minister. In most developing countries, and in the MENA countries under review, a general exemption for essential necessities for which prices are regulated by the State is very common, for example in Algeria, Morocco and Tunisia, include temporary exemptions in situations of crisis or emergency. In addition, certain sectors may be regulated as State monopolies or controlled by sectoral regulators who seldom share their powers with the competition authority. In some countries, like Morocco and Tunisia, the law provides for prescription of anti-competitive acts, after 5 or 10 years. This might also limit the scope of action of the competition authority.

Another limitative factor is the scarcity of adequate skills, and the fact that in many countries introducing competition law, the related ministry provides most of the new competition authority's staff by re-assigning their staff who had been previously dedicated to price regulations. Budgetary restraints also limit the scope of hiring highly skilled staff, appropriate to the work of modern competition authorities. This situation is also aggravated by the extensive differences between private and public sector wages. Competition officials are being drawn away from

the authority once they have acquired needed skills, to be employed by the private sector.

The degree of freedom and discretion afforded to the competition authority in its daily business of enforcing competition law can be seen as a factor favouring independence. In Algeria, Egypt, Morocco and Tunisia, the competition authority is now fully empowered to initiate investigations of anti-competitive cases on its own, without having to be requested to do so by the related ministry. In addition, the ministries, sectoral regulators and collectivities, including consumer protection organizations are empowered to ask the Council to provide advice on competition related issues or practices.

It is increasingly the case, for example, that the competition authority is mandatorily consulted before any draft law can be adopted to ensure that it has no negative effects on competition, or at least that such effects may be limited or eliminated if not indispensable. The competition authority also has to be consulted for advice with respect to economic concentrations.

The review of MENA region competition laws has confirmed the extent to which transparency is being enhanced in the region. While all laws provide for publication of an annual report of the activities on the competition authority, increasingly all decisions, advice and recommendations of the competition authorities have to be published on a regular basis on the website of the authority, and Courts may oblige violators to publish the judgement and motivations of the decisions in the daily press at their own expense.

Another important issue related to transparency and accountability is how the competition authority is perceived by the general public and by other Government bodies. In this connexion, it is essential that issues of conflict of interest and corruption should not hamper the reputation of the competition authority.

Finally, the judicial review and possible appeals against decisions and sanctions need to be made transparent and easily affordable for all those involved in such cases. Most MENA countries' competition laws provide for recourse procedures before an administrative court of appeal and some can bring the case before the Court of Cassation. In any event, the decisions of appeals and the motivations behind them should also be largely publicized, both in local newspapers, at the expense of the guilty party, but also on the competition authority's bulletin or on its specific website.

While the competition laws of the MENA Project region are by no means harmonized, great progress towards more independence and transparency has been achieved in the past 10 years, and perhaps this is to a certain extent the result of the very useful process of peer reviews that have been taking place within some organizations, including the Competition and Consumer Policies Branch at UNCTAD. It is hoped that pursuance of this process and progress in regional projects such as the MENA Project, will provide useful results.

REFERENCES

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- 1) The general discussion throughout this document has been largely inspired by UNCTAD note on “Independence and Accountability of Competition Authorities”, Document TD/B/COM.2/CLP/67 of 14 May 2008.
 - 2) Ibid, paragraph 17
 - 3) Ibid, paragraph 18
 - 4) Ibid, paragraphs 25 & ss
 - 5) Ibid, paragraphs 21 & ss
 - 6) Ibid, paragraph 24
 - 7) Ibid, paragraph 18
 - 8) Ibid, paragraphs 39 & ss
 - 9) Ibid, paragraph 48
 - 10) Ibid, paragraph 16
 - 11) Ibid, paragraph 17
 - 12) ECA and NTRA sign cooperation protocol <http://www.mcit.gov.eg/Media Center/latest News/News/1949>
 - 13) UNCTAD TD/B/COM.2/CLP/67, op. cit., paragraphs 50,35 & 36.
 - 14) DG Comp Code on Ethics and Integrity. Full text can be found at :
<http://www.asktheeu.org/en/request/67/response/178/attach/2/Leaflet%20Ethics%20final.pdf>
 - 15) Ibid.
 - 16) Extracts from UNCTAD TD/B/COM.2/CLP/67, op. cit., paragraphs 28 & 29