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**THE RELATIONSHIP BETWEEN COMPETITION AUTHORITIES  
AND SECTORAL REGULATORS**

**Contribution by Mr. Joey Ghaleb (Lebanon)**

-- Session II --

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## THE RELATIONSHIP BETWEEN COMPETITION AUTHORITIES AND SECTORAL REGULATORS

*by Joey R. Ghaleb, Chief Economist  
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### 1. Current state of competition in Lebanon

1. From the time when the civil war drew to a close, Lebanon has been actively working on repositioning itself as a trade hub linking the Arab East with the European West by signing a free trade agreement with the EU, implementing the tariff dismantlement with Arab countries, and keenly pursuing WTO membership (expected end 2005). Domestically, a number of fiscal measures were also introduced in this regard, including the unilateral reduction in tariff rates in 2000. Concurrently, however, cumulated fiscal deficits related to post war reconstruction needs (infrastructure, institutions, political stability) have resulted in large debt-GDP ratio approaching 170% by end-2004.<sup>1</sup>

2. A recent study conducted by the Ministry of Economy and Trade in 2003, empirically assessed what was perceived for decades by observers of the Lebanese economy, namely that many sectors are shielded from competition. According to the study, about half of Lebanon's domestic markets are considered oligopolistic to monopolistic; and a third of them have a dominant firm with market share above 40 percent. The reasons for such high concentration indexes (and hence, little internal competition) are of different natures, but always relate in one way or another to the existence of barriers to entry and exit. Some of them are natural, in the presence of economies of scale for instance. Others are artificial, and stem from rules, regulations and norms that practically restrict entry at least to some enterprises. The study lists in this regard outdated commercial laws, long delays in commercial disputes settlements, business-unfriendly administrative regulations, corruption, and the existence of exclusive agencies as important artificial barriers to entry.

3. The lack of domestic competition is ultimately negatively affecting Lebanon's export competitiveness. But in addition to the imperfect market structures and the ensuing rent-seeking behaviour, there are other factors contributing to the reduced level of competitiveness namely the high cost of inputs (e.g., power & power outages, telecommunications), rigid labour markets, high lending rates due to crowding out, non-tariff barriers including technical barriers to trade imposed by EU, and lack of access to capital for a private sector mainly composed of Micro and Small and Medium Enterprises.

4. The competition legislative infrastructure is outdated and "dispersed" across several laws and decrees, most of which uncorrelated and enacted at different time periods. No modern competition law exists and competition culture *per se* does not exist. A number of sectors (e.g., banks, insurance) are regulated by their respective authorities and the government still provides protection to exclusive agents (vertical agreements).

5. As a final note, Lebanon has no history of an authority promoting and safeguarding competition, however, the economy of Lebanon is driven by market forces and is by and large liberal. The economy has always been characterised by having low taxation and little or no restrictions on investment, foreign ownership, or movement of factors of productions and capital. The increasing role of the government has been witnessed following the end of the conflict in 1990 where massive state intervention was required to reconnect segmented markets.

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1. Debt dynamics have, and for the first time since 1975 (start of Lebanese War) been reversed in 2004 and is expected to decrease in 2005 pending additional reforms

## 2. Relationship between the competition authority and sectoral regulators

6. The competition draft law<sup>2</sup> as it stands calls for an independent competition authority linked administratively to the Minister of Economy and Trade. The relationship between this authority and sectoral regulators and who “has the final say” depends on whether the case is about a concentration or an anticompetitive practice. If there is an anticompetitive practice, the draft law gives the regulator the powers of a “rapporteur” who is in charge of investigating the situation and submitting its opinion before the Competition Authority which is obliged to hear all arguments before giving its ruling. Mergers, on the other hand, will be reviewed by the regulator but a non-binding opinion of the Authority must be requested prior to any ruling by the regulator.

7. This proposed mechanism to govern the relationship between the authority and the regulator will be better defined in memorandums of understanding called for by the law. Such approach allows flexibility and takes into account the specificity of each sector.

8. *Awaiting the new law* and authority in charge of enforcing it, the few existing regulators are assuming both the technical and the competition control oversight role. Syndicates, orders, and even professional organisations are also regulating their practices and in many instances engaging or promoting competitive practices. The role and mandate of the Ministry of Economy and Trade is limited given the constraints imposed by existing laws and the overall policy of support private sector initiatives without assessing fully the impact on the economy as a whole or considering consumer welfare.

9. Below we will briefly expose the cases of two regulators:

- Banks: Lebanon has a vibrant banking sector with over 60 banks (4mn population) regulated by a strong Central Bank and a Banking Control Commission. Mergers, pricing, and other regulatory measures are overseen, and for decades now, by the sectoral regulator. Moreover, the Association of Banks is a powerful lobby, led by top 5 or 6 banks, and acts as an authority which influences interest rates and overall policy of commercial banks.
- Insurance: The insurance sector, relatively small compared to banks or to the region, is regulated by a young control commission linked directly to the Minister of Economy. And since the upcoming competition authority will be linked directly or indirectly to the same minister, we do not and we are not expecting an issue of cooperation between the two bodies.

## 3. Cooperation within regional agreements and among national authorities

10. The Association Agreement with the EU and soon the Wider Europe Initiative will govern Lebanon’s competition policy at the regional level. Lebanon is not yet a member of the WTO but assuming it will adhere in 2005, the country will thus play a role in the future round negotiation dealing with the Singapore Issues notably competition. It is envisaged that in the short to medium term, Lebanon will sign bilateral memorandums with other competition authorities and will work closely under the umbrella of the Association Agreement.

11. Lebanon stands to learn from joint intra-national authority cooperation and welcomes a greater dissemination of the best practices and closer collaboration between competition authorities either under the umbrella of regional agreements (e.g., Euro-med Process) or through a sponsorship/apprentice program whereby experienced authorities take on the responsibility of training new authorities leading to joint memorandum of understandings.

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2. expected to be sent to Parliament by June 2005

#### **4. Implementation of the competition law: technical assistance**

12. Lebanon is in the process of finalizing a draft law to be submitted to Parliament within the first half of 2005. Assuming the competition authority is designated in 2005 and the law ratified, the implementation and enforcement of the law remains a major challenge. Not only does Lebanon need to extensively train the authority staff and inspectors but technical assistance however is needed to a much larger audience and it is expected to encompass:

- capacity building of inspectors and authority staff;
- training and workshops for judicial authorities, lawyers, stakeholders;
- medium term twinning programs with other authorities;
- awareness raising to a variety of audiences.