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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN EGYPT

-- 2009 --

This report is submitted by Egypt to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 16-17 June 2010.

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1. Executive Summary

1.1 *Changes to competition laws and policies, proposed or adopted*

1.1.1 *Proposed Changes to the Law*

- To change the financial penalty from a maximum of \$2 Million to a percent of the total sales of the product for the company in violation.
- Guarantee full leniency to whistle blowers for horizontal agreements and bid rigging based on certain conditions
- Other amendments to reinforce the powers of the Authority with regard to obtaining correct data, adherence to Authority decisions, as well as for failing to notify mergers and acquisitions

1. The proposals were prepared at the Authority. The Minister of Trade and Industry submitted the proposal to the People Assembly and discussed the need and importance for such amendments.

1.1.2 *Adopted Changes*

- Financial penalty ceiling increased to \$55 Million from \$2 Million and minimum increased to \$10 thousand from \$5 thousand
- The Court may exempt crimes under articles 6 (Cartels) and article 7 (vertical agreements) for up to 50% of the penalty for those who take the violators who take the initiative to report the crime and submit the supporting evidence or whomever the Court considers that the person has contributed to disclosing and establishing the elements of the crime at any stage of the inquiry, the search, the inspection, the investigation or trial
- Imposed a fine of up to \$20 thousand for not notifying the Authority of mergers and acquisitions with annual turnover combined exceeding \$20 Million
- Imposing a fine of up to \$20 thousand on the person(s) refraining from providing the Authority with data and documents on specific target dates. The fine is doubled in case false information is provided

2. Comments: The leniency programme was debated very strongly. The issue was around acquitting a guilty party and the fear from alleged accusations that would put companies at risk without enough evidence.

1.1.3 *Relevant Measures taken by the Government at the recommendation of the Authority*

- Approving new licenses for new Cement companies as well as integrated Steel companies
- Removing custom duties on the importation of Cement and Steel and reviewed the bureaucracy involved in clearing the goods from the ports (major hindrance to imports)
- A complete review of goods specifications to ensure quality as well as conformity to international specifications

- Cases recommended by the Authority for prosecution were referred to prosecution by the Minister. When settlement agreement was requested, the Minister took the opinion of the Authority
- Prior to a privatization decision, the Ministry of Investment or the holding entity would request our opinion as to the market position of the company

2. Advocacy Efforts

- Meeting with the Economic committee of the Peoples Assembly to advocate the required amendments of the law
- Opening channels of communication with the prosecutors and judges through workshops presenting our work processes and methodology

3. Enforcement of Competition Law and Policies: Complaints, Studies, and Advisory opinions

3.1 Complaints

3.1.1 *Complaint by Delta Plast Company against Cronis Company and Lasheen Plast Company. Date 17th March 2008*

- **Subject of the complaint.** The complaint indicated that Delta Plast Company, specialized in plastic industries, is prevented from manufacturing “Jumbo bags one loop” due to the warning letter sent to it by Cronis Company in its capacity as patent owner. The letter stated that Delta Plast does not have the right to manufacture such “bags”, as Lasheen Plast Company is the only licensed company to manufacture these such “bags” in Egypt. The complainant clarified that it has all the required equipments, tools, and capabilities to manufacture these “bags”, a matter which will enhance competition in the market instead of being monopolized by Lasheen Plast Company which has a market share of up to 80% of the Egyptian market. The Complainant added that Cronis Company prevents any other company to enter the market by virtue of its patent registered in Norway and Egypt.
- **Results.** ECA reported the following:
 - Lasheen Plast Company position does not meet all dominance elements that is required to proceed with the complaint. In spite of the fulfilment of the first element of dominance “market share”, the Company can not effectively control the price of the product or the volume of supplied products in the relevant market due to the possibility of importation.
 - Practices of the Company do not violate provisions of Egyptian Competition Law.
- **Decision of ECA.** The BOD of ECA decided to notify the parties of the findings and close the file.

3.1.2 *Complaint by Hewalah Misr Company for Glass Products against Egyptian Glass Company and a group of traders representing sole distributors of the Egyptian Glass Company’s products. Date 12 November 2007*

- **Subject of the complaint.** The complaint indicated that since 1998, the Egyptian Glass Company concluded a contract with a group that consists of 6 persons, under which it

sells its product of clear flat glass (relevant product) used in mirror manufacturing to this group only. This contract is renewed automatically every year.

According to the contract, the Egyptian Glass Company refuses to sell its product directly to plants converting glass into mirrors. In return, the group also refuses to sell the relevant product to other plants because there are three glass converting plants within the group. They agree to sell occasionally at excessive prices. The complainant claims that the sole distributor's control over prices and quantity is hurting its capacity utilization and results in 20% higher cost of production which will drive the company out of the market.

- **Results.** ECA reported the following:
 - The 6 persons are not in violation of article 6 (horizontal agreements)
 - The Egyptian Glass Company is dominant according to article (4)
 - Clauses no. (9, 10, 12, and 13) of the contract are violating items (A, C, D) of article 8 of Competition Law.
- **ECA decision.** BOD decided in March 2009 to refer the report to the Minister to bring the case to prosecution. ECA notified Egyptian Glass Company to eliminate the violation through cancellation of clauses 9, 10, 12, and 13 of the said contract. The Egyptian Glass Company requested settlement out of court according to article 21 of Competition Law. The Competent Minister approved on the request after taking the opinion of ECA.

3.1.3 *Complaint by The General Company for Ceramic and Porcelain Products (Sheeni) against The Egyptian German Porcelain Company (EGPC) dated 20 May 2008*

- **Subject of the complaint.** General Co. for Ceramic and Porcelain Products (Sheeni) complained that EGPC tries to monopolize the market to drive Sheeni out of the market through selling porcelain tableware at prices less than the cost.
- **Results.** After conducting the economic and legal analysis of the collected data and information, the Authority concluded that EGPC does not enjoy dominance of the relevant market. Although the market share of EGPC exceeds 25%, the Company has no control over the price of the product or the volume of supplied products in the relevant market, which means that the second element of dominance is absent.
- **ECA Decision.** The BOD decided in August 2009 to close the file and notify the concerned persons with the decision.

3.1.4 *Complaint by Seniorita Snacks Company against Americana Group for Food & Tourism Projects dated 19th May 2008*

- **Subject of the complaint.** Chairperson of Board of Directors of Seniorita Snacks Company complained against the “Non-competition clause” stipulated in Share Sale Contract concluded between him, in his capacity as a shareholder, and Americana Group. Such clause prevents the complainant from engaging in food industry activity.

- **Results.** ECA concluded that:
 - “Non-competition clause” stipulated in the contract does not violate provisions of article 6 of Egyptian Competition Law because the two parties are not competitors;
 - The practices of Americana Group do not violate article 8 of the Law, as the Group does not enjoy dominant position in the relevant market.
- **ECA decision.** The BOD decided to close the file and notifying the concerned persons with the decision.

3.1.5 Compliant submitted by Dr. Hassan Mohamed Raouf against Ghazal Photography shop dated 21 July 2008

- **Subject of the complaint.** The complaint indicated that the Ghazal Photoshop enjoys a dominant position in the wedding services in luxurious hotels specially Green Plaza Hotel, Renaissance Hotel, Sheraton Montazah Hotel, Salamlek Hotel, Four Seasons Hotel, and Palestine Hotel. It added that the photography shop/studio enjoys this dominant position due to a clause in wedding contracts with hotels which obliges the client to contract with the shop/studio for renting preparations and equipments of sound, light, video, photography, and all other related equipments.
- **Results.** After considering practices of photography shop in the light of Competition Law, ECA reported that the contract, concluded by and between the photography shop and such hotels, violates provisions of article 7 of the Competition Law.
- **ECA Decision.** BOD assigned the shop and hotels to eliminate this violation as of the expiration date of each contract in addition to notifying the Authority with this elimination. If hotels and photo shop do not abide by the decision, ECA would pursue legal action.

3.1.6 Complaint by International Biomedical Group (IBG) against Siemens AG (Aktiengesellschaft), Siemens Technology, and Siemens Trading, Ltd dated 3 November 2008

- **Subject of the complaint.** ECA received a complaint filed by International Biomedical Group (IBG) against Siemens AG (Aktiengesellschaft), Siemens Technology, and Siemens Trading, Ltd.

IBG complained against dominance of these companies in the market of some biomedical devices. This dominance, according to IBG, is representing market allocation, bid rigging between Siemens Technology and Siemens Trading, allocating distribution operations exclusively to the Second and the Third defendants, and restriction of dealings between these companies and IBG, a matter which constitutes barriers to entry against IBG.

- **Results.** After considering practices of the defendants in the light of Competition Law, ECA concluded that:
 - Article (6) of the Law does not apply on agreements made by and between the complained against companies because they are not competitors in the same relevant market.
 - Siemens Technology does not enjoy dominant position in biomedical market in Egypt as its market share does not exceed 25% of the relevant market during study period.

- **ECA Decision.** BOD decided in September 2009 not to proceed with the complaint and to notify the concerned persons with the decision.

3.1.7 *Complaint by a factory working in tobacco waste recycling sector against Mr. Mohamed Elsayed Ibrahim Hamad and his sons & Eastern Company S.A.E dated 28 December 2008*

- **Subject of the complaint.** The owner of tobacco waste recycling factory complained that Mr. Mohamed Elsayed Ibrahim Hamad and his sons who trade with the Eastern Company in wastes such as cuttings and damaged filters, and the Eastern Company S.A.E which engages in the activity of manufacturing and trade of tobacco.

The Complainant indicated that the aforementioned trader monopolizes Eastern Company tobacco wastes which results in excessive prices. The complainant dealt once directly with Eastern Company which supplied wastes for only two months. After these two months, the complainant did not receive the raw materials (wastes) due to obstacles imposed by Eastern Company, which caused them to stop the production process in their Factory.

- **Results.** After studying the market and practices of the trader and Eastern Company, the Authority concluded that the agreements or practices by market players, with regard to production or distribution operations, do not violate the provisions of article 8 of the Competition Law.
- **ECA Decision.** BOD decided on 13 October 2009 to notify the concerned persons with the results of the investigation and close the file.

3.1.8 *Complaint by International Company for Trading against Sinai Manganese Company (SMC) and Sina Gips Company (Gipsina) dated 16 April 2009*

- **Subject of the complaint.** The complainant reported an abuse of dominance by these companies through distributing their production of calcite gypsum exclusively to few agents in addition to rejecting to list the complainant company as an agent in spite of production surplus in these companies and large capacity of the complainant company to distribute gypsum all over Egypt, especially in Great Cairo region.
- **Results.** After examination, the Authority found that the market share of SMC does not exceed 12.3% during research period, which means that the first element of dominance is absent. Moreover, the market share of Gipsina exceeded 25% during 2007 and 2008 but the remaining elements of dominance were absent, as the company does not have the ability to affect prices or volumes in the market.
- **ECA Decision .** BOD decided on December 2009 to notify the concerned parties with the results of the investigation and close the file.

3.1.9 *Complaint by National Company for Food Industry (SONAT) against Coca-Cola Egypt Company dated 25 June 2009*

- **Subject of the complaint.** ECA received complaint filed by National Company for Food Industry (SONAT) against Coca-cola Egypt Company concerning trademark dispute in which judgment was received by the court in favour of National Company for Food Industry.

- **Examination and decision.** After due examination, ECA notified the company that the subject of the complaint is not subject to the Competition Law.

3.1.10 Complaint submitted by Shotmed Paper Industries against National Electricity Technology Company dated 20 July 2009

- **Subject of the complaint.** Shotmed Paper Industries claimed harm caused by the National Electricity Technology Company due to disconnecting electricity constantly in order to obtain extra payments on no contractual ground.
- **Examination and decision.** After examination, ECA notified the complainant that the complaint is not subject to Competition Law.

3.2 Market Studies/Research/Opinion

3.2.1 Market study on imported and processed red meat in Egypt at the request of the Minister of Trade and Industry dated 26 September 2007

- **Subject of the study.** The Egyptian Competition Authority (ECA) received a request submitted by the Minister of Trade and Industry to conduct necessary studies and research – according to provisions of Competition Law promulgated under law no. 3/2005 – on imported and processed red meat in the Egyptian market to detect any anticompetitive practices in such vital sector.
- **Study procedures.** ECA proceeded to determine the Relevant Market and its two elements; **1- Relevant Product:** frozen and boneless red meat (beef or buffalo) **2- The geographic area:** The Arab Republic of Egypt and other geographic areas from which frozen meat can be imported. Study time frame is from January 2005 to the end of December 2007.

ECA examined practices of all market players in the light of Egyptian Competition Law to detect any anticompetitive practices during the period indicated. Accordingly, ECA considered violations stipulated in articles (6, 7, & 8) of the Law, then conducted the required economic and legal analysis of the collected data and information to ensure compliance of market players' practices with the Egyptian Competition Law.

- **ECA Decision.** Board concluded in July 2009 the following:
 - The competing persons did not conclude any agreements or contracts in violation of article (6).
 - There is no contract or agreement between importers and the foreign suppliers or between importers and their clients or distributors in Egypt in violation of article (7).
 - As for abuse of dominance, the study indicated that none of the market players enjoys dominance elements, as the market share of each market player does not exceed 25% of the relevant market. Accordingly, there is no need to examine practices of companies in the light of article (8).

3.2.2 *Advisory opinion request submitted by Ministry of investment on 2/7/2007*

- **Subject of the request.** Opinion on the impact of offering public equity stake, amounting to 55% of National Maize Company capital, on the local market and the dominance power of the firm in light of provisions of Competition Law.
- **Examination procedures.** Study time frame started as of the implementation date of the law on 16th May 2005 to the date the opinion was requested.

The authority studied products of the Company to determine the relevant market and its two elements; relevant product and geographical area. The relevant market has been divided into several markets due to the nature of the different products of the Company. All products are extracted from maize.

The market power of the company was determined according to the following classification:

Relevant product	Industry	Geographical area	Company position
Fructose 55 and Sucrose	Soft drinks (soda)	Egypt & countries to import from	No dominance
Fructose 42	Soft candies / bakery	Egypt	Dominant position
Glucose	Cohesive sweets	Egypt & countries to import from	No dominance
Glucose (high maltose)	Cohesive sweets	Egypt & countries to import from	No dominance
Fahd	Halvah	Egypt	Dominant position
Feed protein	Feed	Egypt & countries to import from	No dominance
Dry maize starch	Food industries	Egypt	Dominant position
Maize crude oil	Maize oil	Egypt & countries to import from	No dominance

- **ECA Opinion.** BOD recommended in December 2009 that the selling of public equity stake may transfer dominance elements to the purchaser in relation to Fructose 42, Fahd, and Dry maize starch. Consequently, it may affect the price and the volume of such products. Moreover, in case of selling public equity stake to a company which has dominance elements in sugar market, it will enhance the dominance of the buyer.

3.2.3 *Advisory opinion request submitted by Metallurgical Industries Company (E.JS.C) (Ministry of Investment) dated 16 September 2007*

- **Subject of the request.** The Metallurgical Industries Company (E.JS.C) requested the study of the market position of the Arab Company for Special Steel (Arcosteel) in the Egyptian market in light of the provisions of the Egyptian Competition Law.
- **Examination procedures.** The Authority proceeded to determine the relevant market and its two elements; **1- Relevant product:** rolled products including surface hardening steel, complete hardening steel, free cut steel, spring steel, stainless steel, wire steel. Sizes are from 20 to 140 millimetres having round bars shapes. **2- Geographical area:** the Arab Republic of Egypt. Study time frame started as of 16th May 2005 (application date of Competitions Law) to 16th September 2007 (date request received). Periods from January to May 2005 and from September to December 2007 were considered as guiding periods. ECA gathered all available data and

information from governmental and non-governmental entities, addressed and held meetings with market players.

- **ECA opinion.** BOD concluded on 12 May 2009 that Arab Company for Special Steel (Arcosteel) enjoys a dominant position in the market.

2009 Decisions - Case summary

Decision	Number	Date	Case
Violation	2	March October	Complaint against glass product manufacturer Complaint against Ghazal photography shop
No violation	7	July July August July September October December	Market study on imported and processed red meat in Egypt Complaint against Cronis Company and Lasheen Plast Company Complaint against Egyptian German Porcelain Company (EGPC) Complaint against Americana Group for Food & Tourism Projects Complaint against Siemens Complaint against Eastern Company S.A.E Complaint against Sinai Manganese Company and Sina Gips Company (Gipsina)
Advisory opinions	2	December May	National Maize Company (dominant position) Arcosteel company (dominant position)
Non-jurisdiction	2	June July	Complaint against Egyptian Soda drinks Company Complaint against company operating in electric technology

Papers initiated by the Authority:

- Informal sector study
- State Aid
- Tie-in agreements

ECA statistics and Board decisions since start of accepting complaints in April 2006

Year	2006	2007	2008	2009	Total	May 2010
Infringements	0	3	0	2	5	0
No Infringements	0	4	2	7	13	1
Initiated studies	2	4	0	5	11	6
Opinion	4	3	1	0	8	1
Total decisions	3	7	4	12	28	2
# of Complaints	3	8	8	4	23	12

* 10 complaints were outside the Competition Law Jurisdiction

4. Resources

Financials - July 1st, 2008 - June 30th 2009 (US \$ Thousands)

Item	Budget	Actual Expenses	Percentage of actual expenses
Salaries	862	827	96%
Grants	364	5	1%
Expenses	909	420	46%
Assets Purchase	1091	1310	120%
Total	3226	2562	79%

4.1 Human resources

Number of Employees at ECA

Year	2005	2006	2007	2008	2009
Total Number	9	21	32	38	54
Technical Staff	2	7	12	18	25
IT & Communication	0	2	4	5	9
Support	7	12	16	15	20

5. Papers initiated by the Authority:

- Informal sector study
- State Aid
- Tie-in agreements

6. Communication Activities, Projects and programmes

- Assessing awareness of the Public and business society
- Public outreach campaign
- Business outreach campaign
- Support groups outreach campaign
- Coordination with other foreign authorities
- Coordination with donors for capacity building and advocacy assistance
- Establish an education programme with local universities
- Internal training courses