

Unclassified

DAF/COMP/AR(2012)45

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

08-Oct-2012

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2012)45
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN EGYPT

-- 2011 --

This report is submitted by Egypt to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 24-25 October 2012.

JT03328054

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Executive summary

1. From 1st January 2010¹ to 31st December 2011, the competition law and policy in Egypt was subject to various challenges and witnessed some successful stories.
2. In the course of 2010, the Executive Regulations of the Egyptian Competition Law was amended. Further, ECA applied for the OECD examination and paid more attention to the tenders of public procurement.
3. As for 2011, the changes occurred in the Egyptian political scene, especially after the January 25 revolution, gave the Egyptian Competition Authority (“ECA”) the opportunity to widen even further its advocacy scope. Therefore, ECA, in cooperation with the Government, started preparing a draft law ensuring its independency and efficiency in law enforcement. In addition, ECA designed the Political Parties Program which permitted ECA to establish a communication channel with prospective decision makers.
4. During this period (2010-2011), ECA investigated 16 cases and referred three of those cases to the ministry of trade and industry for violating the Egyptian Competition Law (“ECL”).
5. For additional information on ECA activities throughout 2010-2011, kindly visit ECA’s website on: <http://www.eca.org.eg/ECA/Default.aspx>.

1. Changes to Competition Law and Related Legislation

6. As illustrated above, the years 2010 and 2011 witnessed several developments in competition law and policy in Egypt, which can be outlined as follows:

1.1 Summary of New Legal Provisions of Competition Law and Related Legislation

7. Two main legal changes occurred in years 2010 and 2011; the most significant one consisted in granting ECA its independency in terms of initiation of criminal actions. In addition, some amendments were introduced to the Executive Regulations of ECL.

1.1.1 Executive Regulations Amendments

8. The Executive Regulations of ECL has been amended under the Prime Minister Decree No. 2957/2010 for two main reasons:

9. **First:** Assuring consistency with ECL amendments introduced under law no.190/2008², particularly in the following areas:

- Incriminating the market division between competitors in terms of “**Market Shares**”.

¹ Given the fact that the Egyptian Competition Authority did not send out its annual report on 2010 to the OECD, hence the Authority favored to merge 2010 and 2011 in one document in order for the OECD to keep full records of the recent developments on Competition Law and Policy in Egypt.

² Law no. 190/2008, official newspaper – issue no. 25 (bis), June 2008.

- Replacing the term “**similar commercial positions**” by “**similar contractual positions**” where dealing with secondary-line discrimination offences. The freshly introduced term should allow ECA to scrutinize the equivalent transactions criterion among competing firms.
- Enforcing the ex-post merger notification.

10. **Second:** Emphasizing on the fact that monopolistic practices undertaken by a dominant person will be prohibited even if the harmful effect thereof did not drive incumbent firms out of the market.³

1.1.2 *Independency*

11. ECA, by virtue of the Prime Minister Decree No.1410/2011, obtained its independency by delegating the right to initiate criminal actions and to settle its antitrust cases with violators to the ECA chairman. Before the said Decree, such actions were conferred to the Prime minister as stipulated in article 21 of ECL.⁴

12. Unfortunately, the delegation is currently frustrated on account of the then Chairperson’s resignation.

13. It is worth mentioning that ECA is preparing a draft Law covering various areas, inter alia, the independence of ECA in its decision making process. The draft law will be further discussed in more details in this section.

1.2 *Other measures*

1.2.1 *OECD Examination*

14. ECA, in order to stand on its weaknesses and strengths since its inception, applied for the OECD examination in 2010. Hence, a report covering different aspects of competition law and policy in Egypt was drafted by the OECD secretariat. The outcome of the aforementioned report was examined by the OECD in June 2011.

15. For more details, kindly consult the OECD report on competition and policy in Egypt on OLIS.⁵

³ Article (13-b): “Refraining from entry into sale or purchase transaction regarding a product with any Person or totally ceasing to deal with it in a manner that results in restricting that Person's freedom to access, **continue**, or exit the market at any time”.

Article (13-i): “Imposing an obligation on a supplier not to deal with a competitor. The non-dealing shall mean the refraining from dealing with a competing person, whether totally or reducing the size of dealing with him to the extent that would **threaten its existence in the market** or drive it out of the market or prevent or restrict the freedom of the potential competitors from entering the market”.

⁴ “Criminal lawsuits or any procedure taken therein shall not be initiated in relation to acts violating the provisions of this Law, unless a request is presented by the Competent Minister or the person delegated by him. The Competent Minister or the person delegated by him may settle with regard to any violation, before a final judgment 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 and shall result in the lapse of the criminal lawsuit relevant to the same case subject of suing.”

⁵ DAF/COMP/GF(2011)2/REV1

1.2.2 *Raw Milk Advocacy:*

16. In the Raw Milk Case (that will be discussed later in this report), ECA recommended that each Packed Milk Producers should adopt a fair pricing formula where dealing with farms. The “milk to feed ratio” formula might be a convenient one for the case at stake.

17. The rationale behind such recommendation is due for the reason that the prices of raw milk are, since 2007, equal 1,5 to the cost of animal feed (which is accountable for 60% of the total production cost of 1 kg of raw milk). As per the international standards, such ratio should be at least 2,5 to maintain the business. The milk to feed ratio should allow Egyptian farms to maintain their businesses and should prevent the output depression. Furthermore, ECA, in order to ensure that the price increase of raw milk will not significantly affect consumer price in Packed Drinking Milk, assigned a foreign expert to study the potential effects of raw milk price increase on selling price of packed drinking milk. The paper submitted by the expert, using a probit regression model, concluded that the potential 10% increase in the upstream market will trigger a potential average increase of 2,5% in the downstream market.

18. The main buyer power (approximately 65% market share) announced that he will apply the Milk to Feed Ratio Formula.

1.3 *Proposals for new legislation*

19. In the wake of the January 25 revolution, the Egyptian government, in cooperation with ECA, prepared a draft law to assure the following:

- Increasing the fines imposed by ECL.
- Adopting a sales value criterion when calculating the fines.
- Granting full and unconditional leniency to the first applicant.

20. Relatedly, ECA prepared, internally, a draft law to ensure the following:

- Independency:
 - Empowering the board (not the Competent Minister or the Chairman) to initiate criminal actions and to settle without prior approval of the Competent Minister.
 - Reducing the number of board members.
- Efficiency:
 - Heightening the fines related to ancillary violations (Non compliance with ECA decisions, proffering false data, non provision of requested data).
 - Granting full leniency through ECA Board (not through the Court as suggested by the Government's draft law).
 - Empowering ECA with the possibility to recourse to structural and behavioral remedies where settling with violators.

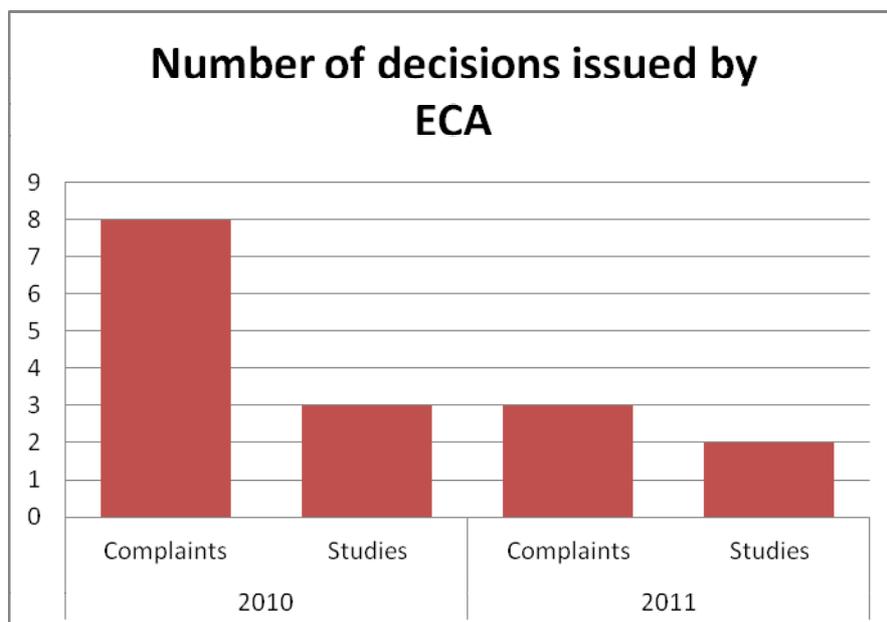
2. Enforcement of Competition Law

21. In this section, we will illustrate ECA's activities in respect of law enforcement (See 2.1) and merger and acquisitions (See 2.2).

2.1 *Actions against anticompetitive practices, including agreements and abuses of dominant positions*

2.1.1 *Summary of activities of competition Authority:*

22. During the period 2010-2011, ECA detected 3 violations out of 16 cases reviewed by ECA Board.



23. ECA's decisions covered the following sectors:

- Food industries
- Cinema industry
- Telecommunication industry
- Car services sector
- Infrastructure services
- Integrated industries
- Construction
- Glass
- Electronic services
- Civil aviation
- Lenses coloring

2.1.2 Description of significant cases:

24. In this sub-section, we will illustrate succinctly the three afore mentioned violations together with aviation market study which were conducted for advocacy purpose.

- **Milk Study**

ECA conducted a study on the milk sector upon the request of the Minister of Trade and Industry in December 2007 to detect any likely anticompetitive practices in the packaged milk.

Study procedures. ECA team took the necessary examination procedures and found that the breach of article 6 was occurring under the auspice of the government by enforcing a series of ministerial decrees. These decrees formed a Committee composed of both Farms and Packed Drinking Milk producers to agree on recommended pricing formula of raw milk.

ECA, after raiding the ministry of agriculture, found smoking gun evidence that proved that the packed drinking milk producers were agreeing on fixing purchase prices of raw milk provided by farms. Such agreements took place at their business association, before attending the committee's meetings. ECA concluded that the agreements, whether the ones that occurred during the committee's meeting or during a previous stage, were violating article 6-A of the Egyptian Competition Law. The examination also indicated that there were no violation of article 7 and 8 of the Competition Law.

ECA Decision. ECA Board referred the report to the Minister of Trade and Industry to request filing a criminal lawsuit against the producers in accordance with article (21) of the Law. The case is still pending before the public prosecutor.

Comment. This case covers two significant aspects: First one consists in incriminating all types of agreements that will take place under Governmental auspices in the event that it contradicts the mechanism provided for in article (10) of the Law.⁶ The other reflects ECA Board effort to remedy the shortcoming of the wording of article (6) of the Law. The said article does not really distinguish between hard-core cartels and non hard-core cartels. The reading of such article suggests that all agreements that lie thereunder will be treated as per se illegal. In order to mitigate such effect, the Board announced that it took a per se approach; meanwhile they added a story of harm, namely, that such agreements did harm consumers.

- **Cinema Case**

On the 19th of May 2010, ECA received a complaint filed by the Chairperson of the Egyptian Company for Media Investments, operating in the cinema sector, against the anticompetitive practices in the film distribution market. He claimed that he could not simultaneously deal with the two vertically integrated film distributors.

Accordingly, ECA team studied the relevant market from January 2007 to June 2010. The team examined practices of the seven market players.

Study procedure. After taking the necessary procedures for examination and investigation, ECA team concluded that there was an agreement between the two vertically integrated film

⁶ Article (10): *"The Cabinet of Ministers may, after taking the opinion of the Authority, issue a decree determining the selling price for one or more essential products for a specific period of time. Any agreement concluded by the Government for the purposes of the implementation of these prices shall not be considered an anti-competitive practice."*

distributors – whose combined market shares were accountable for more than 95% in the Egyptian film distribution market – to restrict the distribution of Egyptian films inside Egypt. The two vertically integrated firms agreed on not to deal with their respective clientele (who are the competitors of their affiliated companies in the downstream market) to favor their own/affiliated movie theatres.

This mutual (concerted) refusal to deal was passed under the umbrella of the Cinema Industry Chamber board (decision of Association). It follows that the afore mentioned clientele “Independent Movie Theatres” could not operate all screens.

ECA decision. ECA Board concluded that the film distribution companies are violating article (6-d) of Competition Law and accordingly referred the report to the Minister of Trade and Industry to request filing a criminal lawsuit against these companies in accordance with article (21) of the Law. In addition, ECA issued a “cease and desist” order compelling the companies to eliminate the violation no later than 30 days from ECA’s decision. It is worth noting that the case is still pending at the public prosecutor.

- **Study on the Transparent Flat Glass Sector in Egypt**

ECA conducted the study upon the request of Public Funds Prosecution to find out whether the violation committed previously by the Egyptian Glass Company is still ongoing.

Study procedures. ECA team determined the relevant market as transparent flat glass in the Arab Republic of Egypt. After taking the required procedures and examinations, the team concluded that the Company was still enjoying a dominant position according to article 4 of Competition Law. ECA concluded that the contract made by and between the Company and the “Sole Distributor” remained effective albeit the fact that such contract was supposed to be frustrated by virtue of ECA board’s decision in the former flat glass case.

ECA decision. The board referred the report to the Minister of Trade and Industry to request filing a criminal lawsuit against these companies in accordance with article (21) of the Law.

The Minister of Trade and Industry chose, however, in July 2012 to settle with the violator in exchange for 200 thousand EGP⁷. It should be noted that the said Minister requested ECA’s opinion on the amount of settlement during the negotiation with the infringer.

- **Study on the Regular Domestic Aviation Sector in Egypt**

On 4/5/2009, ECA initiated a study on the Regular Domestic Aviation Sector to evaluate the competition climate in this sector and to propose some recommendations that may encourage companies to engage and invest in the market. Promoting competition in this sector will contribute to its improvement and will serve in the favor of the industry, consumer and Egyptian economy.

Study Procedures . ECA proceeded to determine the Relevant Market as the ‘Service of Regular Domestic Aviation in the Arab Republic of Egypt’. The time frame of the study was from January 2002 to July 2009.

The examination indicated that Egypt Air Holding Company was the sole player in the relevant market during the specified time frame. It was operating through two subsidiaries: Egypt Air Company and Egypt Air Express Company. The dominant position of the Company was enhanced by barriers to entry and barriers related to the nature of the industry. As a state owned

⁷ 1 USD= 6,06 in July 2012 on www.exchange-rates.org

company, Egypt Air was enjoying several advantages; such as having the priority concerning route assignments and operation timings in airports. In addition, Egypt Air was purchasing the main element of operation cost of this industry (Fuel) against preferential prices. Accordingly, such advantages created a market structure that was not suitable for competition.

ECA found out that there are similar cases in other countries. However, such countries succeeded to liberalize/deregulate the market allowing several private companies to enter the market effectively.

Upon reviewing liberalization/deregulation experiences of three countries (United Kingdom, Japan and Turkey), ECA concluded the following:

- Liberalization/deregulation requires a policy that targets the interest of the consumer only.
- Liberalization/deregulation requires allowing equal competition opportunities on the same domestic routes
- Liberalization/deregulation requires elimination of all legal and regulatory barriers especially barriers which favor any company (particularly the state owned company).
- Elimination of barriers shall be followed by monitoring competition in the market to prevent barriers which might result due to market concentration and anticompetitive practices of market players.
- Competition serves in favor of the industry, the consumer and the economy as a whole.

ECA decision. ECA Board proposed the following recommendations:

- Considering the elimination of regulatory barriers mentioned in the report and stipulated in article 122 of Executive Regulations of Civil Aviation Law which requires for granting route permission/assignment the following condition: “the project shall not contradict with operation of the licensed Egyptian companies and establishments. The Civil Aviation Sector shall coordinate and facilitate cooperation between both of them in the operation field”. Moreover, the new system shall observe the following:
 - Existence of competition on the same routes
 - Developing clear policy based on non-discriminatory standards
 - Route permission/assignment shall be based on the interest of the end consumer
- Considering the elimination of operation timing barrier mentioned in decree no. 934/2001 which stipulates that regular domestic or international flights shall not be operated in the same operating time of Egypt Air. The new system shall observe the following:
 - Promote competition between companies
 - Distribute operation times in airports based on available times
- Considering the elimination of preference granted to Egypt Air when dealing with other governmental authorities, such as preferential prices of fuel offered by Misr Petroleum

Company, taking into account that fuel is a major element of operation cost, as it represents 40% of the total operation cost.

- Not to provide subsidies or governmental aid to any company working in any routes (whether economic or non economic routes). On the other hand, subsidies will be allocated to non economic routes provided the following:
 - Subsidy shall be directed to the route only (Not to the company itself).
 - This system shall not be associated with the grant of licenses for economic routes.
- Considering the enforcement of article 9 Para 2 of ECL, on domestic air carriers, which stipulates that “The Authority may, upon the request of the concerned parties, exempt some or all the acts provided for in articles 6, 7 and 8 regarding public utilities that are managed by companies subject to the Private Law where this is in the public interest or for attaining benefits to the consumers that exceed the effects of restricting the freedom of competition. This shall be done in accordance with the regulations and procedures set out by the Executive Regulation of this Law”.

2.2 Mergers and acquisition

25. The ECL did not include any ex-anti merger control, but article (19) thereof stipulates that any “Persons whose annual turnover of the last balance sheet exceeded one hundred million pounds shall notify the Authority (ECA) upon their acquisition of assets, proprietary or usufruct rights, shares, establishment of unions, mergers, amalgamations, appropriations, or joint management of two or more persons according to the rules and procedures set forth in the Executive Regulations of the current Law.”

26. Moreover, any person who fails to notify the Authority within 30 days from the consummation date, will be subject to a fine not less than ten thousands EGP and no more than one hundred thousand EGP.

27. During the year 2010, a total of eighteen transactions were notified to ECA. This number, however, decreased to the half in 2011 as only nine transactions were notified to the Authority.

28. ECA believes that such decrease was due to the political and economic turmoil that the country has encountered after the January 25 revolution.

3. The role of competition authorities in formulation and implementation of other policies

29. ECA, during 2010/2011, widened its advocacy scope with the intention of strengthening the competition law enforcement and policy in Egypt. Accordingly, ECA initiated several forms of cooperation with other governmental bodies and Political Parties with the purpose of introducing/developing the concept of competition policy into their programs. Consequently, several projects were set up to attain the aforementioned goals.

3.1 Bid Rigging Project

30. As of May 2009, ECA has set the public procurement market as a priority; hence the following steps were taken:

31. A team of two economists have conducted a brief internship of five working days in the Dutch Competition Authority (NMA) to encounter a general exposure on the history of the authority in combating

bid rigging practices especially in the field of public procurement of local municipalities in the construction sector .

32. In the wake of this internship, the Bid rigging project is set up and is run by the Policy & Advocacy Department. Such project aims at enhancing the design of Public procurement procedures and encouraging whistle blowing among procurers.

33. As such, the Department launched an awareness Program to introduce the concept of collusive tendering and the methods of prevention and detection of bid rigging in the public procurement process. This program is largely based on the guidelines of the OECD for bid rigging detection and prevention in the year 2009.

34. The Department is striving to advocate the idea that bid rigging violates simultaneously article 24 of the Law no. 89 for the year 1998 with regard to tenders and auctions together with article 6 of the Competition Law. Therefore, a robust coordination and cooperation should take place between public procurers and ECA enforcers.

35. As at December 2011, ECA participated in more than 25 training courses organized by General Authority for Governmental Services (GAGS) Training Centre (GAGS is the regulator whom oversees all bids organized by public bodies) for purchasing procurers (seniors & juniors). Further, ECA organized two customized workshops for the three construction regulators.

36. ECA Established a communication channel with the Anti Corruption Authority in order to report ECA with any collusive tendering that might occur in relation to bribery cases investigated by the aforementioned Authority.

3.2 Political Parties Program

37. In September 2011, ECA launched a cardinal Advocacy Program by virtue of which ECA is approaching a spectrum of political parties from the very right to the very left. The aim of this project is inducing such political parties to introduce the concept of competition policy within their programs and to support ECA to be more independent and efficient.

38. ECA met with key representatives of several Parties. The purpose of such meetings is to shed light on the benefits of competition and the challenges of designing and implementing an effective competition policy in Egypt.

39. As a direct result of this Program, the Majority Party submitted a draft law aiming at amending the Competition Law in order to warrant ECA independency and effectiveness.

3.3 MOU with National Telecom Regulatory Authority

40. ECA concluded an MOU with the National Telecom Regulatory Authority (NTRA) in June 2011 with regard to the sectoral overlap that does exist between the two regulators. 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.

4. Resources of competition authority

4.1 Annual Budget

Fiscal year ⁸	Budget expenditure (EGP Million)	Exchange rate ⁹	Budget expenditure in USD
2010/2011	16,300,000	5.81	2,805,508
2009/2010	10,400,000	5.51	1,887,477

4.2 Number of employee:

Number of employees/ Year	2010	2011
Technical Staff (lawyers & economists)	29	26
IT & Communications	13	9
Support Staff	26	30

⁸ The fiscal year in Egypt starts on the 1st of July and ends on the 31st of June.

⁹ www.mof.gov.eg.