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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN EGYPT

-- 2012 --

This report is submitted by Egypt to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 30-31 October 2013.

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Executive summary

1. This report covers the period from 1st of January 2012 to 31st of December 2012.
2. Throughout the afore mentioned period, numerous advocacy activities took place in order to introduce the concept of Competition Policy. Consequently, The Egyptian Competition Authority (ECA) succeeded in convincing several State Departments to aborting or reconsidering the adoption of policies that might harm competition.
3. Moreover, ECA was active on the international, regional and local levels; several protocols were signed together with the starting up of the preliminary phase of the EU-Egypt twining project.
4. On the other hand, ECA held poor enforcement record, as it couldn't prove any violation of the Law in 2012. Nonetheless, it is worth mentioning that ECA received several complaints related to regulated markets, especially in energy markets (Gas market, Electricity market).
5. For additional information on ECA activities throughout 2012, kindly visit ECA's website on: <http://www.eca.org.eg/ECA/Default.aspx>.

1. Changes to competition laws and policies, proposed or adopted

1.1 *Summary of new legal provisions of competition law and related legislation*

6. As discussed at the 2011 annual report, ECA is in the process of amending its law to create a more effective and independent authority and to ensure more deterrence among would-be violators. The initial draft is final and is forwarded to the Cabinet. Furthermore, the said draft is circulated to various stakeholders for commentary. The next annual report (i.e. 2013) will focus more on these consultations together with the suggested provisions and any updates in this regard.

1.2 *Other relevant measures, including new guidelines*

7. The ECA prepared an internal guidelines (not yet published) on setting the amounts of settlement¹, as the law provisions set a wide range (between 200 thousands and 600 million Egyptian pounds) without giving any further guidance. The paper is largely modeled on the other countries' experience namely United States, European Union, France, United Kingdom, South Africa and Turkey. In order to set the proper settlement's amounts, the sales value of the product in question for the years of the infringement is taken into consideration as the base point. The percentage of the base point (maximum 20%) is determined based on objective factors such as the nature of the infringement, the importance of the product, the cooperation of the company and its size in the market.

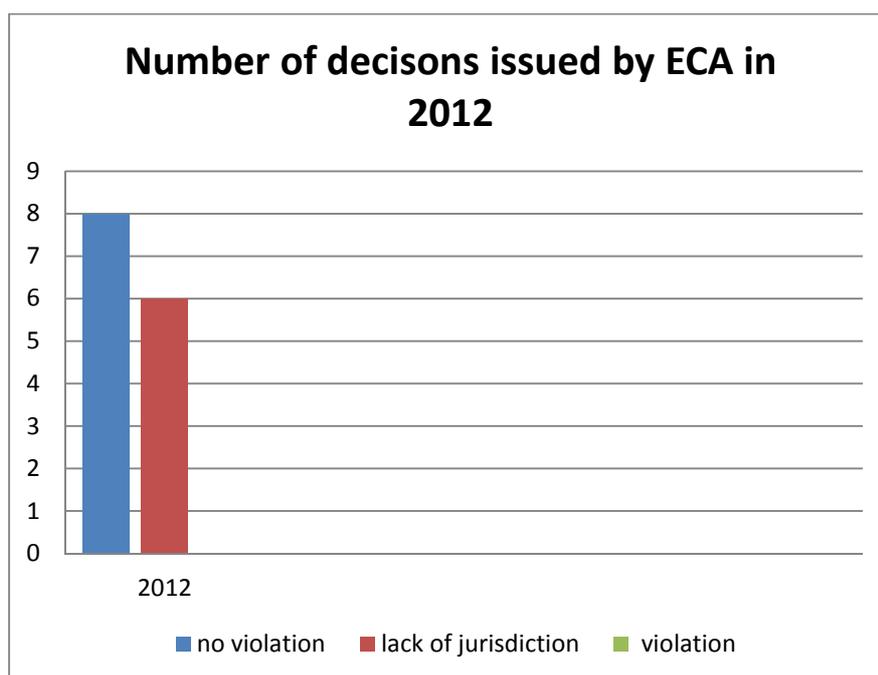
2. Enforcement of competition law and policies

2.1 *Enforcement against anti competitive practices including agreements and abuses of dominant positions*

2.1.1 *Summary of activities of competition authority*

8. During 2012, the ECA has examined 14 cases. Six out of these fourteen cases fall outside ECA's jurisdiction. As for the remainder, ECA didn't prove any violation as mentioned hereabove.

¹ It should be noted that settlement under the Competition Law is of criminal nature.



Lack of jurisdiction	6
violation	0
No violation	8

2.2 Description of significant cases

9. In this sub section, we will illustrate four of the important cases that ECA has examined during 2012 : the School Uniform case, the Water Service case, the Flat Glass case, and the steel study.

2.2.1 School uniform case

10. ECA received complaints filed by the parents of some students in governmental and private schools against the allegedly, widespread, anticompetitive practices undertaken by suppliers of school uniforms. The complainants argue that are compelled to deal with a specific supplier of school uniforms who charges excessive price on its products.

2.2.1.1 Case procedures

11. ECA team took the necessary examination procedures and found out the following:

- Most schools in Egypt are used to determine a specified uniform for their students due to behavioral and social reasons. This practice is considered, from schools viewpoint, as a be a “normal practice”;
- The term “school uniform “ means any distinctive mark (badge- color- or any other mark); that does refer to the school and makes its students differentiated comparing to other students;

12. Most schools choose a unique school uniform that only one supplier can produce. This guarantees for the supplier to produce the minimum amount of the product that is necessary to cover his

cost. This in addition to the school's intention to maximize its profits by charging a percentage from the profits share of the supplier.

13. Therefore the ECA team conducted a questionnaire with 74 school parents' chosen randomly. The results showed that 64 complained from excessive prices of the school uniforms along with the low quality of the same.

14. Despite the fact that ECA didn't detect any violation in this regard due to the fact that this act is considered to be a normal practice conducted by the school; ECA concluded that this act reduces the competition in the school uniform market as the other suppliers or manufacturers have some difficulties to enter the market (The school engaged in an (sometimes *de facto*) exclusive dealing with a supplier) which consequently affects the consumer welfare.

15. Accordingly, ECA addressed to the Minister of Education about modifying the *two ministerial resolutions no 113 and no 208* to force the schools not to oblige the parents to buy the school uniform from a given supplier or distributor. Schools have just to determine the school uniform without imposing any distinctive mark or colors that lead, in the end, to get the product from a given supplier. Parents should benefit from both price and non-price competition in this regard.

2.2.1.2 ECA decision

16. ECA found no violation in this case because there is no violation in the first complaint, and the parents withdrew the second and the third complaints.

17. Further, ECA coordinated with the Ministry of Education for the purpose of modifying the ministerial circular concerning the school uniform and giving instructions to all types of schools (private and governmental) to comply with the Competition law in this regard (*see infra*).

2.2.2 Water services case

18. In December 2010 ECA received a complaint from a travel agency, which owns an hotel in Sharm el Sheikh, against the company "Water Service Daya Egypt". The two parties have signed a contract to build, operate and ownership (BOO) in which the water company distributes water exclusively in the hotel. Article 11 of this contract stipulates that "*the company shall be the only and absolute source of desalinated water through desalinated plants located inside the hotel all the period of the contract (20 years)*". The said contract also stipulates that water price will increase every year together with the refusal to discuss the water price with the travel agency.

19. Further, the travel agency mentioned, in its complaint, that it received competitive offers from other companies that can provide the desalinated water with half the price of the defendant.

2.2.2.1 Case procedures

20. Accordingly, ECA team studied the relevant market "desalinated water" from 2001 to 2010. As for the geographical market, it was determined to be the afore mentioned hotel in Sharm el Sheikh in Egypt.

21. After taking the necessary procedures for examination and investigation, ECA concluded that there is no violation of the provisions of the Competition law, in particularly article 7 of the mentioned law and that for the following reasons:

- The contract does not harm the Competition in the relevant market as the exclusive contracts are deemed to be considered as a “normal business practice” in the relevant market and neighboring markets, especially that this market requires relatively large investments.
- The contract, subject matter of the complaint, was awarded to the defendant as a result of a competitive bid designed by the hotel in 2001.
- The safety and the security requirements for the desalinated water as well as the maintenance of its quality and reputation require some standards that can prevent the existence of water from a second water supplier in the same tank of water, which explains the importance of the exclusive dealing in that market.

2.2.2.2 ECA decision

22. ECA Board concluded that there is no violation of the provisions of the Competition Law.

2.2.3 *Flat Glass case*

23. On March 2011, ECA received a complaint filed by a group of companies, against the Egyptian Company for Flat Glass (the defendant), claiming that the latter deals exclusively with selected customers and refuses to deal with other customers (including but not limited to the complainants) to buy all the company’s products or even to buy limited shares during the periods 2000- 2001 and 2010-2011.

24. Also the complainants claimed that the defendant provided false statements to the Egyptian Customs Authority in order to increase the prices of the imported glass.

2.2.3.1 Case procedures

25. After taking the necessary procedures for examination and investigation, ECA team found out that the relevant market is “first sale of flat glass” in Egypt during the period of January 2011 to December 2011.

26. Concerning the said complaint, ECA team came up with the following:

- The allegedly refusal to deal might take place in 2000 and 2001. As such, it occurred before the effectiveness of the Law.
- In addition, ECA has previously given a decision in the same subject matter undertaken by the same undertaking in the same period (ECA found out that the defendant was abusing its then dominant position due to the fact it dealt exclusively with selected distributors and the case was settled afterwards). As such, ECA should abstain from reviewing the same conduct.
- As for the provision of false statements, such allegations do not fall under ECA mandate.
- As regards the refusal to sell to the complainants in 2010-2011, ECA found out that (besides the fact that the defendant is no more in a dominant position during the study period due the elimination of some entry barriers) the refusal to deal does not harm the freedom of the complainants to enter or stay in the market on account of the existence of other sources where customers can purchase the product.

2.2.3.2 ECA decision

27. ECA Board concluded that there is no violation of the provisions of the Competition Law.

2.2.4 *Steel study*

28. Upon a formal request from the Public Prosecution Office to ECA, the latter studied whether EZZ STEEL GROUP (hereinafter EZZ Group) has committed any anticompetitive infringement in the Steel market from January 2007 to December 2010.

2.2.4.1 Study procedures

29. ECA confined its investigations to the study of the compliance of EZZ Group's distribution policy with the Competition Law.

30. ECA team divided the study period into 2 periods due to the changes that occurred in the steel market from 2007 to 2010. Accordingly, the 2 periods are:

The first study period from 2007-2008: At the beginning of this period, ECA determined the relevant market as “steel rebar used in the construction of all sizes and measures.” As for the geographical market, it was limited to the Arab Republic of Egypt (due to the presence of several tariff and non tariff barriers preventing importation).

Based on legal and economic analysis, ECA team concluded that “Ezz Group” had had a dominant position due to the following reasons : a) its market shares exceeded 25% of the relevant market, b) had the ability to control the prices or the output ; c) without his competitors to be able to limit this influence.

Accordingly, ECA team performed its analysis to evaluate the influence of the dominance of “EZZ Group” in the relevant market.

The ECA concluded that the practices of EZZ Group during this period were found to be compatible with the ECL for the following reasons : a) EZZ Group did not apply the penalty related to the quota system included in the contracts with its selected distributors, b) Some selected distributors dealt exclusively with EZZ Group upon their proper will, c) during the exclusive period, the clients did not approach the selected distributors to buy products from other competing brands to EZZ Group, d) Stock availability from competing brands at the selected distributors that allow them to meet the demand of their respective clientele without the need to approach EZZ Group's competitors.

The second study period from 2009-2010: At the beginning of this period, ECA determined the relevant market as “steel rebar used in the construction of all sizes and measures.” As for the geographical market, it was limited to the Arab Republic of Egypt and countries of import.

During this period, the ECA concluded that EZZ Group is not in a dominant position, even though it had more than 25% of the relevant market, due to the following reasons: a) the governmental policy changed as it repealed many tariff and non tariff barriers on the steel imports and started to grant licenses for establishing new vertically integrated companies. This policy had a considerable effect on EZZ-GROUP's position in the relevant market as it was unable to limit the steel imports b) the existence of other importers and their ability to flood the market with imported products in case the prices increase by steel producers.

2.2.4.2 ECA decision

31. ECA decided that Ezz Group has not violated the Competition Law and referred such conclusions to the Public Prosecution Office.

2.3 Mergers and acquisitions:

32. 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.”

33. 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.

34. During the year 2012, a total of eighteen transactions were notified to ECA.

3. The role of competition authorities in the formulation and implementation of other policies, e.g regulatory reform, trade and industrial policies

35. During the year 2012, ECA increased its advocacy efforts targeting government’s general policies as well as market specific policies:

1. Regarding the government tendencies to regulate prices, ECA advocated at the Prime Minister office the importance to comply with article (10)² of the Law prior to fixing any prices by the Cabinet or any State Department. For this purpose, ECA started to prepare a Policy paper regarding excessive prices, targeting the government price fixing policies and introducing several remedies to minimize excessive prices without the use of price regulation.
2. ECA also addressed the Ministry of Industry and Foreign Trade regarding its intention to form a committee to fix the quantities that should be acquired by each market player in the crude leather market. ECA advised that the Ministry should take into account the following where the forming the said Committee:
 - Such committees should not fix prices, divide the market or restrict the volume of the product or its availability which violates article (6)³ of the ECL.

² 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.”

³ Article 6: “Agreements or contracts between competing Persons in any relevant market are prohibited if they cause any of the following:

- a) Increasing, decreasing or fixing prices of sale or purchase of products subject matter of dealings.
- b) Dividing product markets or allocating them on ground of geographical areas, distribution centers, type of customers, goods, market shares, or seasons or periods of time.

- The committee should take into account the effect of fixing the quantities on manufacturers of leather products.
 - The committee should hold hearing sessions to all stakeholders in the market, provided that such hearings should not include competitors in the same hearing session.
3. In addition, ECA responded to a request sent by the ministry of industry and foreign trade regarding the necessity that all advertisements effectuated by any public entity (including ECA) should be exclusively displayed by Sate Television. ECA advised that such request could harm competition in the market and if the ministry would like to proceed with this exclusivity, it has file an exemption request to the Egyptian competition Law according to article (9).2.⁴
4. Furthermore, and in response to an anticompetitive practice found in school uniform market, ECA approached the ministry of education to prevent schools from imposing given suppliers upon students where buying their school's uniform. After conducting an investigation, ECA found out that such practice resulted in high prices and bad quality. ECA also found that the appropriate remedy to alleviate the harmful effect of such practice is to cooperate with the ministry of education (MOE). The said cooperation brought about the release of a "periodic book" that states the following:
- Preventing schools from imposing a very specific uniform to the point where students are practically forced to buy the products from one supplier.
 - The MOE will impose administrative sanctions on schools that do not comply with the periodic book including the referral of the suspected practices to ECA.
 - The periodic book is circulated to all private schools and is effective as of the academic year 2013 – 2014.
5. In response to the Ministry of Transportation's request to scrutinizing whether the prospective legislative amendments concerning the shipping agency provisions in Maritime Law are complying with the Competition Law and rules, ECA advised the following:

The draft encompasses significant restrictions to the competition rules as it bans foreign companies from carrying on the shipping agency trade together with limiting and curbing private shipping agency companies. As such, SOEs will be immune from effective competition resulting in higher prices and lower quality and less variety.

ECA stated, however, that in the event that the Ministry believes that such policy is necessary to achieve goals wider than competition goal, the following should be taken into account:

-
- c) Coordinating with regard to proceeding or refraining from participating in tenders, auctions, negotiations and other calls for procurement.
 - d) Restricting processes of manufacturing, production, distribution, or marketing of goods or services. This includes restricting product type or volume or limiting the availability thereof."

⁴ Article 9.2: "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."

- The restrictions should be necessary to meet the public interest objectives;
 - The restrictions should be temporary in terms of time;
 - The restrictions should be proportional to the public interest objectives; and
 - The restrictions should not cover the whole market or a substantial part thereof.
6. ECA also approached the Ministry of Petroleum on the ground that the said Ministry had the intention to discriminate the selling price of natural gas between incumbent firms and new entrants in energy intensive markets.

ECA pointed out that such discrimination can harm competition especially when the new entrant and incumbent firms are competitors, resulting in bearing the disadvantaged party unduly additional cost.

36. In light of the above, the Prime Minister issued a circular addressed to all ministries and governmental entities inducing them to comply with the Competition Law and rules where crafting draft laws, decrees or policies.

37. Moreover, ECA undertook further advocacy efforts to introduce the concept of competition policy and to warrant the compliance with the Competition Law.

- Workshops addressed to business associations in the context of ECA "Compliance Program" :
 - Workshop at the Maritime Transport Division- Commercial Chamber in Alexandria;
 - Workshop at Alexandria Business Association
 - Workshop on the interface between Competition and IP, organized by the Egyptian Association of Intellectual Property Rights
- Protocols signed by and between:
 - The implementation of the MOU with the National Telecom Regulatory Authority (NTRA) in several telecom cases.
 - Protocol with the Information and Decision Support Center (IDSC)⁵ for the purpose of information exchange and trainings.
 - Protocol with the Anti-dumping, Subsidies and Safeguard Authority for the purpose of information exchange in all related matters.

4. International cooperation:

- Kick off of the EU-Egypt twinning project. The diagnosis phase is almost achieved to be followed by the drafting of the twinning fiche.
- MOU with the Turkish Competition Authority:

⁵ <http://www.idsc.gov.eg/>

ECA signed an MOU with the Turkish Competition Authority for the purpose of exchanging expertise and to cooperate in common cases. Given the previous success stories of cooperation between both authorities, this MOU is expected to hopefully meet its objectives in the implementation phase.

- Discussions for signing Aghadir's agreement:

ECA discussed the suggested program for Aghadir's agreement with the Tunisian, Moroccan and Jordanian Competition Authorities. The main purpose of the agreement is strengthening the cooperation between all authorities and to maximize the benefits of competition policy.

5. Resources of competition authority

5.1 Annual Budget

Fiscal year ⁶	Budget expenditure (EGP Million)	Exchange rate ⁷	Budget expenditure in USD
2012	11,460,065	6.98	1,641,288

5.2 Number of employee

Number of employees/year	2012
Technical staff (lawyers & economists)	22
IT & Communications	11
Support Staff	23

6. Summaries of or references to new reports and studies on competition policy issues:

- Knowledge management paper:

ECA participated in preparing a paper under the supervision of ICN (agency effectiveness working group) on the subject of knowledge management. The paper has the purpose to guide competition authorities in establishing specific rules to manage the human knowledge and papers in the authority.

⁶ The fiscal year in Egypt starts on the 1st of July and ends on the 31st of June.

⁷ www.mof.gov.eg