

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Global Forum on Competition

FIGHTING CORRUPTION AND PROMOTING COMPETITION

Contribution from the Moroccan Competition Council

-- Session I --

This contribution is submitted by the Moroccan Competition Council under Session I of the Global Forum on Competition to be held on 27 and 28 February 2014.

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JT03352181

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FIGHTING CORRUPTION AND PROMOTING COMPETITION

-- Moroccan Competition Council * --

1. The fight against corruption and anti-competitive practices seems, at first sight, to concern two related forms of malpractice, but there has, in fact, been very little study of the relationship between them. We shall therefore examine the two concepts in turn, and the interactions between them, before reviewing the efforts undertaken by Morocco in this area and highlighting the challenges that lie before it.

1. Interaction between competition and corruption

2. In the framework of a competitive free-market economy, profit may be defined as the remuneration of entrepreneurial activity and the reward for value-productive risk-taking. Corruption, on the other hand, denotes the perversion or diversion of a process – or of an interaction with one or more persons – with a view, for the corrupting party, to securing benefits or particular prerogatives, and, for the corrupted party, to obtaining a reward for his complaisance. It leads inevitably to the creation of undue or unjustified income wholly unrelated to value creation. Corruption is thus bound to have negative consequences by establishing, through the income it generates, a vicious circle which gives rise to misallocation of resources, inhibits private initiative and adversely affects investment and growth prospects. Furthermore, corruption, as a factor of unfair exclusion, establishes a system of inequality which contributes to the risk of political and social instability.

3. These processes clearly show the dichotomy between competition and corruption: everything aimed at building the former is fundamentally destroyed by the latter. It needs no reminder that the nature of corruption is to undermine all the objectives sought by promoting competition, namely: improvement of the business climate, stimulation of investment and innovation, optimum allocation of resources, consolidation of competitiveness and preservation of consumer well-being.

4. In fact, the correlation between corruption and competition seems so obvious that, even without tools to measure it, we are entitled to assert that, where there is corruption, competition necessarily pays the price. Furthermore, corruption may justifiably be defined as fundamentally anti-competitive, since by nature it distorts socio-economic structures, creates unjustified monopolies, strengthens dominant positions – thus impacting on consumers' purchasing power – and leads to misallocation of resources and loss of competitiveness.

5. The prime areas for obtaining income from corruption are many and various, covering all situations in which undue advantages are secured through acquaintance with public authorities, especially in the field of public procurement, the concession and delegation of public services, licences and permits for the exercise of professional or commercial activities, monopolies, etc.

6. That said, it should be stressed that the undermining of competition by corruption is not confined to cases involving representatives of public authorities. There is also what might be called “private”, or “inter-enterprise” corruption, in which business players agree to distort competition on the market in exchange for reward. This form of corruption is no less dangerous than the other, but it often goes unmentioned since public opinion and civil society focus more on corruption involving public officials, which often entails abuse of power or malicious exercise of authority.

* Contribution by Abdelali Benamour, Chairman, Competition Council (Morocco).

7. Given that situation, how are the problems of the fight against corruption and the promotion of competition best addressed?

8. I shall begin by taking stock of the situation and go on to highlight the challenges facing us in the future.

2. Taking stock: experience in Morocco

2.1 A strong commitment to eradicating corruption

9. Armed with a political commitment at all levels to make fighting corruption and promoting integrity in public life a political, regulatory and institutional priority so as to establish relations of transparency and accountability with its citizens, Morocco has ceaselessly stepped up its efforts to consolidate its achievements in this area and improve its approach.

10. A plan of action for fighting corruption has been in force in Morocco for more than a decade, and a whole arsenal of legal instruments have been put in place. The rules governing public procurement have been regularly updated, the UN Convention Against Corruption was signed in 2003 and ratified in May 2007, a law on money laundering was passed at the end of 2007, and laws on the declaration of assets have been in force for several years.

11. At the institutional level, the Central Authority for the Prevention of Corruption (ICPC) was set up by the Government in 2005 and entered into operation at the end of 2008. That was the context of the royal address of 20 August 2008 demanding activation of the ICPC. Half of the ICPC's membership consists of representatives of ministry departments, while the other half is made up of representatives of professional organisations, chambers of commerce and industry, NGOs, trade unions, etc. The ICPC's remit covers the conduct of studies on corruption in Morocco, maintenance of a corruption database, development and co-ordination, consultation with the various administrations concerned, definition of communication strategies, and awareness campaigns. Also represented on the ICPC are civil society associations, academics and some seven professional bodies, including the Moroccan Bar Association, the Federal Chamber of Commerce, Industry and Services, the General Confederation of Moroccan Enterprises (CGEM) and the Professional Association of Moroccan Banks (GPBM). Trade unions, including the journalists' union, are also represented.

12. Civil society has also been given greater opportunity to participate in the fight against corruption by involving it in the national debate on the question and in the various projects initiated by successive governments over more than ten years.

13. In parallel with these developments, a large-scale administrative reform effort has been under way since the beginning of the 2000s involving, in particular, simplification of procedures, development of electronic administration, intensification of checks by ministry inspectorates-general and financial authorities, adoption of a public service charter and elaboration of a national pact on judicial reform. The Government has also appointed a national commission to oversee improvement of the business climate.

14. This whole process was consolidated by the new Moroccan Constitution promulgated in July 2011, Article 36 of which clearly and unequivocally condemned all forms of corruption or influence peddling liable to undermine the proper operation of public services and reformed the ICPC by establishing a national authority for probity and the fight against corruption. Article 36 stipulates that: "Offences relating to conflicts of interest, insider dealing and all offences of a financial nature are punishable by law. Public authorities are required to prevent and punish, in accordance with the law, all forms of delinquency relating to the activities of public administrations and bodies, the use of funds at their disposal, and the award and management of public procurements." The statutes of the newly created authority are therefore undergoing reform. In accordance with the provisions of Article 167 of the Constitution, the authority will

be charged with co-ordinating, supervising and monitoring the implementation of policies for preventing and fighting corruption, gathering and disseminating the relevant information, contributing to the promotion of integrity in public life, and consolidating the principles of good governance, a culture of public service and the virtues of responsible citizenship.

15. Moreover, the action plans adopted by the Government show the extent of its commitment to eradicate corruption. They reflect a consistent endeavour to implement the UN anti-corruption convention. The Government has been at pains to translate its instructions into national programmes and operational measures, both transversal and sectoral. A series of initiatives were taken under national programmes, including the establishment, in 1999, of a national system for fighting corruption, leading to a national plan for preventing and fighting corruption that was adopted in 2005; the signature, in 2003, of the UN Convention against Corruption and its ratification in May 2007; the elaboration, in 2005, of a national plan for preventing and fighting corruption; and the elaboration, in 2010, of a new national plan for preventing and fighting corruption.

16. This concerted participatory approach was crowned by the adoption of a formal plan of action for 2010-2012 comprising urgent measures for preventing and fighting corruption to be introduced in the short term. The plan is built around six areas of intervention, namely: the institution of transparent relations between the administration and its users; consolidation of the virtues of integrity and merit within the administration; the strengthening of internal control within public administrations; consolidation of transparency in financial management and public procurement; continuing reform of the regulatory system; promotion of partnerships and co-operation between the various players at national and international level.

2.2 Major advances towards the creation of a competitive environment

17. After more than a decade of profound structural reform of the Moroccan economic and structural landscape lasting throughout the 1990s, the process was consolidated by Law No. 06-99, promulgated in 2000, which established a new legal framework for the business sector based on the principle of free pricing and competition, the prohibition of anti-competitive practices, the institution of a system for controlling economic concentrations and the establishment of a Competition Council with consultative powers.

18. In substance, this law, which is still in force, conforms to the international principles applying to the regulation of competition. However, the institution set up to ensure compliance with the rules of fair competition remains handicapped by the nature of the powers conferred on it by its statutes, which give it neither the independence needed in order to carry out the tasks assigned to it nor the tools necessary for working effectively. It lacks, in particular, power of decision, power of investigation and the power to act *proprio motu*. These limitations obliged the Competition Council to shelve practically all its actions.

19. The Competition Council received fresh impetus when its current chairman was appointed in August 2008 and its members took office in January 2009. Once the team was in place, the Council embarked on several projects aimed at exploiting the possibilities of the existing legislation to the full while pushing for its reform – above all, for the creation of a genuine competition authority endowed with all the powers and attributes lacking so far. Following its reactivation, the Council concentrated on developing the institution itself by recruiting and training competent personnel, conducting studies on the state of competition in a number of strategic sectors, dealing with the referrals and requests for an opinion addressed to it, participating actively and effectively in international events in order to assimilate best international practice in the fight against anti-competitive practices and the control of concentrations and, finally, campaigning for reform of the legal framework governing its activity.

20. These efforts were crowned by constitutional enshrinement of the principle of free competition and of the Competition Council as an independent authority responsible for ensuring transparency and

equity in economic relations, in particular by means of analysis and regulation of competition in the markets, and the control of anti-competitive practices, unfair commercial practices, and economic concentration and monopoly operations (Article 166 of the Constitution of July 2011).

21. That stage was followed by the preparation of two draft laws on the Competition Council and freedom of prices and competition, the main points of which are as follows: establishment of a genuine competition authority with powers of decision, general competence, institutional and financial independence, and power of action *proprio motu*. These draft laws are currently in the process of adoption by Parliament and will be promulgated in the coming months.

3. Major outstanding challenges

3.1 *Mixed results in the fight against corruption*

22. The advances made by Morocco in the fight against corruption are undeniable. Political determination has been expressed clearly and emphatically, numerous cases have been brought to court, the media and civil society are playing a major role in denouncing cases of corruption, and the control authorities, especially the Court of Auditors, are putting a great deal of work into checking the use of public funds.

23. Nevertheless, much remains to be done. Corruption is not only a question of procedures and legislation but also a matter of mentality, civic-mindedness and inducing a change from unethical behaviour. In this respect, it is worth quoting the latest *Transparency International* ranking, based on the Corruption Perception Index for 2013, which puts Morocco in 91st place, although it ranked 80th in 2011.

24. According to that report, 49% of Moroccans stated that they had had recourse to bribery during the previous 12 months in their relations with at least one of the sectors covered by the survey. Of those polled, 89% thought corruption had remained at the same level or increased, while only 11% considered that it had decreased. This raises the whole problem of good governance and its correlation with mechanisms designed to ensure transparency and accountability.

25. Leaving aside the criticism that can be levelled at this or any other report, and irrespective of our view of the indices and measuring techniques used and the credibility of such surveys, one thing seems incontrovertible: corruption continues to exist despite the efforts made to eradicate or limit it.

26. The ICPC clearly reached the same conclusion in two studies it conducted on corruption in the road transport and health sectors.

3.2 *The challenges with regard to promoting competition*

27. Beyond the forthcoming adoption of the new legislation reforming freedom of prices and competition and the Competition Council, the main challenges which lie ahead concern the need to establish an overall competition policy that will enable us to draw up a map of competitiveness in the Moroccan economy. That work is a necessary condition for distinguishing sectors which have achieved the necessary maturity for full and effective opening up to competition from those which still require public intervention for economic reasons or social considerations.

28. Restructuring informal production is also a priority to which serious thought must be given, especially as it remains an important niche for anti-competitive practices and corruption.

29. Thirdly, on the eve of adoption of the revised legislation on freedom of prices and competition and the Competition Council, it is now essential to establish clearly the rules on the separation of powers

between the Council and the sectoral regulatory bodies so as to avoid any overlap. The Council must be responsible for regulating competition downstream of the market (fight against anti-competitive practices and control of concentrations), while sectoral regulators must continue to have the task of providing technical support to the sectors for which they are responsible and opening them to competition upstream of the market. The prospects in this regard seem to militate in favour of dual competence.

30. Beyond this, and in parallel with the fight against anti-competitive practices and the control of concentration operations, the Competition Council will have, as a priority, the strengthening and consolidation of a culture of competition so as firmly to entrench the principles of competition in mentalities and usage. It is worth repeating that competition has yielded all its benefits only in societies where it constitutes a genuine social value.

3.3 *The need to co-ordinate efforts in fighting corruption and anti-competitive practices*

31. Macro-economic studies based on international comparisons show that anti-competitive regulations have a significant negative impact on corruption practices.

32. It should be noted that a country setting up more barriers is generally one where corruption is more rife and the informal economy is larger, without any improvement in the quality of public or private goods and services.

33. Corruption and barriers to competition are thus mutually reinforcing. Public authorities, under the influence of powerful pressure groups, tend to increase the barriers to competition. Conversely, the barriers to competition generate “income” whose perpetuation sometimes requires diversion of a certain proportion for the benefit of public officials.

34. It follows that the fight against corruption and the promotion of competition must go hand in hand, via an overall strategy which lays the foundations for a clear competition policy in parallel with an integrated plan of action against corruption.

35. In this scheme of things, combination of the efforts of the Competition Council and the authorities responsible for fighting corruption is a *sine qua non* for their action to be effective. Such co-operation can take the form of an exchange of information during pre-judicial investigation of cases dealt with by one or other of the institutions, joint organisation of awareness campaigns, execution of studies which can serve to influence public policy and make public authorities more aware of the need to limit barriers to market entry and to revise anti-competitive regulations that are economically or socially unjustified.

36. It should be borne in mind, however, that despite the links between competition and corruption described above, they are two different areas of responsibility for which the remit lies with separate institutions. The Moroccan Competition Council is concerned, strictly speaking, with anti-competitive practices and the control of concentrations, whereas cases of corruption fall within the remit of other institutions, in particular the ICPC and the courts. Consequently, collaboration between the Competition Council and institutions responsible for fighting corruption must be achieved through memoranda of understanding or co-operation agreements which establish procedures for information exchange, joint pre-judicial investigation of cases of corruption and anti-competitive practices, exchange of expertise, and the pooling of resources for the execution of projects or studies of mutual interest.

37. Such co-ordination is all the more necessary as there is still a long way to go despite the very encouraging results achieved so far.