

Unclassified

DAF/COMP/AR(2014)46

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

12-Dec-2014

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2014)46
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN EGYPT

-- 2013 --

17-18 December 2014

This report is submitted by Egypt to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 17-18 December 2014.

JT03368489

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

English - Or. English

2013 ANNUAL REPORT ON COMPETITION LAW AND POLICY IN EGYPT

Executive Summary:

1. The year 2013 witnessed an exponential increase of the Egyptian Competition Authority's (ECA) advocacy activities resulting in the passing of the Law Amendments in July 2014 together with the introduction of competition into the 2014 Constitution. Furthermore, ECA launched its ambitious judiciary advocacy program in March 2013.
2. Relatedly, and in recognition of its accomplishments throughout 2013, the ECA was among the winners of the Competition Policy Advocacy Contest organized by the World Bank Group (WBG).
3. On the enforcement side, ECA adopted a harsh enforcement policy towards cartels and cracked down collusions in three key markets.
4. For additional information on ECA activities throughout 2013, 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

5. ECA succeeded to push forward the passing of a new law that makes it more independent and efficient.
6. The said Law was originally prepared by the ECA taking into account the hurdles that it encountered since its inception, the international best practices, the foundations of the Egyptian legal system, then political economic and social realities, and the objectives that ECA would like to achieve via such amendments.
7. For the purpose of enhancing the afore mentioned draft law, ECA conducted extensive public consultation with various stakeholders. ECA circulated the draft to the main business Federations and Associations, Economic Courts, prosecution, NGO's, and Academia to opine on ECA's preliminary draft. Further, ECA held an awareness event to various stakeholders to touch on the suggested provisions. Then Minister of Industry and foreign trade attended the said event as a keynote speaker and spoke out on the importance of competition policy for economic growth and fighting poverty.
8. Afterwards, ECA held focused group meetings with each stakeholder separately to get their comments on the draft.
9. Lastly, ECA tuned its preliminary draft and forwarded its final draft to the Cabinet of Ministers on 1st of January 2014.
10. The new Law entered into force on July 3, 2014 after amending 17 articles (out of 28) and introducing a fresh article.

11. The main features of the amended Law are, as follows:

- **Independency:**

- Endowing ECA Board with the power to Initiate criminal lawsuits and to settle with violators
- Introducing the inviolability of ECA Board members
- Reducing the number of Government representatives in ECA Board
- Hiring the Executive Director by ECA Chair

- **Effectiveness (Markets & ECA):**

- Introducing a revenue/sales value based fine for anticompetitive practices (deterrence & fairness)
- Adopting full and mandatory leniency for the first applicant who comes forward to ECA
- Imposing a prior consultation of ECA on draft laws and draft regulations that are likely to harm competition (Mandatory)
- Exempting Co-operation agreements among competitors that tend to be pro-competitive
- Endowing ECA with more Enforcement powers (dawn raids- Interim measures)
- Adopting harsher sanctions for the lack of co-operation with ECA
- Relaxing the settlement system to be more attractive for violators.
- Widening the scope of the Law to be applied on every contract instead of certain types of contracts.
- Reducing the number of Board members.
- Relaxing the quorum of vote for some types of decisions

- **Credibility:**

- Extending confidentiality obligation upon ECA officials to Board members
- Adopting harsher sanctions for the breach of the said obligation

12. In the same vein, ECA succeeded to approach the Constitutional Committee in 2013, and convinced it to give competition a constitutional ground.

13. As such, article 27 of the 2014 Constitution provides that the economic system is committed, inter alia, to prohibit the monopolistic practices.

14. Moreover, and in the context of ECA's Government Advocacy which witnessed greater emphasis and regular intervention since 2011, ECA responded 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.

15. 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:

- 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.

16. As such, the said proposal was postponed for further discussions and review.

17. Furthermore, ECA launched its Judiciary Advocacy Program in March 2013. Throughout the year, ECA organized three workshops for the judges of the Economic courts (The Economic Courts have exclusive Jurisdiction to penalize and fine violators) to introduce to them the concept of Competition Policy, and to ensure consistency in the interpretation of the Law. **ECA trained almost 80% of the judges of the said court.**

18. Not least, and in recognition of ECA's success to implement a comprehensive and multi-faceted advocacy strategy to promote competitive marketplaces in a difficult environment in which state-owned businesses and long standing traditions of political favoritism presented significant political and policy challenges, ECA won the 2013 Competition Policy Advocacy Awards organized by the WBG under the theme "*Assessing the Potential Negative Effects of Certain Rules and Regulations on the Market and Informing Policy Makers and Public Authorities*".¹

2. Enforcement of competition laws and policies

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

2.1.1 Summary of activities: Competition Authority

19. Throughout the year 2013, ECA investigated 23 cases, as follows:

Type of Decision	Number of Decision(s)
No violation	13
Violation	4
No jurisdiction	3
Cases Closed without Board Decision ²	3

20. It should be noted that out of the four violation cases, there were three cartels and one abuse of dominance case.

¹ For more information, kindly consult the WBG Publication on "The Competition Policy Advocacy Awards" on www.wbginvestmentclimate.org

² It refers to cases where ECA initiated an investigation then uncovered at an early stage that there is no competition concern, or where a complainant waived his complaint at an early stage and ECA couldn't identify any competition concern at the time of the said waiver.

2.1.2 *Summary of activities: Courts*

21. The Court of Appeal of the Economic Court convicted the largest steel manufacturer and for abusing its dominant position in the steel market during the period 2005-2006, fined him 200 million Egyptian Pounds.

2.2 *Description of significant cases, including those with international implications*

22. In this sub section we will illustrate the three cartel cases detected by ECA during 2013, namely, poultry case, stamp taxes case, and the starch case. We will, further, shed light on the first exemption request received by ECA under article 9 para 2.

- **Poultry case**

ECA started an initiative to study the poultry market in December 2010 based on media reports that claimed that this key market is replete with anti-competitive practices. The study period has been determined from June 2008 till December 2010.

Facts Finding: The study focused on one stage of the production of the live poultry stages which is "the production of the chicks" where the ECA team, based on its preliminary facts finding, suspected that there is a likely violation that took place therein.

Upon ECA's investigation, the team concluded the existence of a cartel by and between chicks "mother" companies based on the following evidence:

- A direct evidence showing an agreement between the "chicks' mother companies" to reduce the price of the chick for a particular period.
- The cartellists were receiving the **present daily chicks prices** via text messages ("SMSes") by "the General Union of the poultry producers".
- Economic and other non-economic indications confirming that the mentioned companies fix the prices through the text messages sent by the "the General Union of the poultry producers".

ECA decision: ECA board concluded the existence of a violation of article 6 (a) of the ECL and compelled the General Union of the Poultry Producers to stop sending text messages containing **present daily chicks prices** to their members. The case is further referred to the prosecution and still pending till to date.

Comment(s): The peculiarity of this case is twofold: First, it confirms ECA's position that anti-competitive Decisions of Associations are characterized as "agreements" even if it is not mentioned expressly in the Law. Second, it reflects ECA's policy towards the exchange of information (especially prices and quantities) between competitors where such prices are present and individualized.

- **Stamp taxes violation**

The ECA has received in October 2012 a complaint filed by the "Consumer Protection Authority" accusing the three mobile operators for fixing the price via agreeing on making their respective clients to bear the stamp taxes on mobile services.

Facts Finding: ECA team came up with the conclusion that there is a price fixing and market limitation cartels by the three mobile operators based on the following indications:

The three companies started to charge their respective clients the stamp taxes on pre-paid mobile services (which is accountable for more than 95% of mobile services market) on the 1st of March 2012. The companies notified their clients about this sudden change of policy in the same period (last week of Feb 2012) and through the same device (SMS). This sudden parallel conduct occurred after several years where companies were paying the stamp taxes on behalf of their clients for marketing purposes.

The official statement on one of the companies' website stating that the three companies agreed to levy their respective subscribers the full amount of the said annual tax (six pounds and ten piasters) and agreed upon the monthly breakdown of the said amount that each subscriber has to pay (51 piasters each month for a period of ten months and 50 piasters for each of the remainder two months). In practice, such agreement is materialized with the same way as described on the website.

The arguments put forward by the companies to justify this sudden change of policy were either erroneous or inaccurate.

ECA decision: ECA board concluded that agreeing on levying the stamp taxes on pre-paid mobile services was a disguised way to fix indirectly the price and to limit marketing activities between the three mobile operators; and it violates articles (6/a) and (6/d) of the ECL. The case is referred to prosecution and still pending therebefore.

Comment(s): This case is the first cartel case in a regulated industry. ECA confirms its jurisdiction to detect anti-competitive practices undertaken in telecommunications market. Anti-competitive practices can occur even where applying a binding statutory provision in another law.

- **Starch case**

The ECA has received complaints in October 2011 from the “National Corporation for Trade and Distribution”, and from the “United Company” claiming that there is a cartel in the distribution market of “dry starch corn product”.

- Facts Finding: ECA team came up with the conclusion that there is a market division agreement between the two main dry starch corn distributors, based on the following:
 - the existence of different factors facilitating the agreement between them, namely: the direct relationship between both companies, the transparency in the exchange of information and prices, product homogeneity, the two companies’ acquisition over a large amount of the local purchases of the product of dry starch corn, and finally the existence of barriers to entry in the relevant market.
 - Various testimonies from current and former employees of the two cartelists confirming the market division scheme between the two companies.
 - Some economic indications corroborating the afore mentioned testimonies.
- ECA decision: The ECA board concluded that the said agreement is a naked cartel and in breach of article (6/b) of the ECL. The case is, further, to the prosecution and still pending.

- **Exemption of the contracts of purchase of the alum material**

The ECA received a request from the “Holding Company for Portable Water and Sanitation” (referred to as “the Company”) to exempt the contracts related to the Company's purchases of the liquid alum material from the reach of the ECL, in accordance with the provisions of article 9(2) of the ECL, which expressly 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.*”

Hence, the contracts subject matter of the said request have to satisfy the alternative legal tests (public interest **or** likely benefits to consumers that outweigh the likely anticompetitive effects) to be exempted.

- *Facts Finding:* ECA team found out that the contracts satisfy, at least, the public interest test, based on the following:
 - The contracts tend to ensure the proper functioning of the public utility which provides the drinking water to approximately 9.5 million subscribers,
 - The contracts will provide consumers with potable water and an uninterrupted service. Besides, consumers will be immune from water pollution, which can cause the spread of epidemics and diseases.
- *ECA decision:* Albeit the fact that the public interest test is satisfied, ECA Board rejected the exemption request after uncovering the Cabinet's intervention in this case by approving a 5 year single procurement agreement (in accordance with tenders and auctions law) between the applicant and the two producing companies of the alum material. As such, ECA considered that the exemption approval will have no effect from a practical standpoint.

2.3 *Mergers and acquisitions*

23. 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.”

24. 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.

25. During the year of 2013, a total 12 of 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**

26. *Recycled oil:* ECA studied the recycled oil market and discovered that the lack of competition in this market resulted from the sole license policy followed by the Ministry of Petroleum. The Ministry only gives one license to a state-owned enterprise. ECA contacted the Ministry of Petroleum and recommended

to grant the license to several companies which will increase the competition in the market as well as reducing the size of sales in the black market.

4. International cooperation:

4.1 *Training to the National Competition Committee of Cameroun*

27. ECA, in the scope of the cooperation protocol signed with the organization of Islamic cooperation and the Turkish Competition Authority, provided technical training to the National Competition Committee of Cameroun.

4.2 *Discussions for signing Aghadir's agreement:*

28. ECA discussed the suggested program for Aghadir's agreement with the Tunisian, Moroccan and Jordanian Competition Authorities. The main purpose of the agreement is to strengthen the cooperation between all authorities and to improve the benefits of competition policy. The negotiations are still ongoing since last year.

4.3 *Competition Experts Committee at the Arab League*

29. This Committee is formed within the Arab League to ensure the harmonization of national legislations (to the largest extent) on Competition together with the cooperation in terms of the dissemination of competition culture among various stakeholders.

5. Resources of competition authorities

5.1 *Resources overall (current number and change over previous year)*

Annual budget (in LE and USD)

Fiscal year ³	Annual budget (EGP Million)	Exchange rate ⁴	Annual budget in USD
2012/2013	16,545,000	7.15	2,338,370

Number of employees (person-years)

Number of employees/ Year	2013
Technical Staff (lawyers & economists)	23
IT & Communications	7
Support Staff	9
Other professionals	16
All staff combined	55

³ The fiscal year in Egypt starts on the 1st of July and ends on the 31st of June.

⁴ www.mof.gov.eg