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**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN EGYPT

-- 2014 --

27-28 October 2015

This report is submitted by Egypt to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015.

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Executive Summary

1. The year 2014 witnessed major changes as to the independency and effectiveness of the Egyptian Competition Authority (ECA). By passing the Egyptian Competition Law (ECL) amendments in July 2014, ECA became technically fully independent and is endowed with more enforcement powers and tools.
2. ECA's jurisdiction on telecommunications sector was also affirmed by the Economic Court.
3. On the enforcement side, ECA investigated 15 cases and referred 4 of those cases to the public prosecutor for violating the Egyptian Competition Law.
4. For additional information on ECA activities throughout 2014, 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. A new Law is promulgated and entered into force on July 3, 2014; the said Law amended around 60% of the original law.
6. The main features of the amended Law are, as follows:
 - Independence:
 - Endowing ECA Board with the power to Initiate criminal lawsuits and to settle with violators (The Minister of Trade and Industry was the person responsible for such power)
 - Introducing the inviolability of ECA Board members (cannot be compelled to leave office but in few and specific cases)
 - Reducing the number of Government representatives in ECA Board (to be two instead of four)
 - Hiring the Executive Director by ECA Chair (instead of the Competent Minister)
 - Effectiveness (Markets & ECA):
 - Introducing a revenue/sales value based fine for anticompetitive practices (to ensure more deterrence & fairness)
 - Adopting full and mandatory leniency for the first applicant who comes forward to ECA (instead of partial and discretionary leniency)
 - 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 (more powers where conducting 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 (some provisions were dealing only with sale and purchase agreements/contracts) .
 - Reducing the number of Board members (to be ten instead of fifteen).
 - Relaxing the quorum of vote for some types of decisions (to be majority of attendees instead of majority of members)
- Credibility:
 - Extending confidentiality obligation upon ECA officials to Board members
 - Adopting harsher sanctions for the breach of the said obligation

7. In the same vein, ECA approached the Constitutional Committee, and succeeded it to convince it to introduce competition in the Constitution.

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

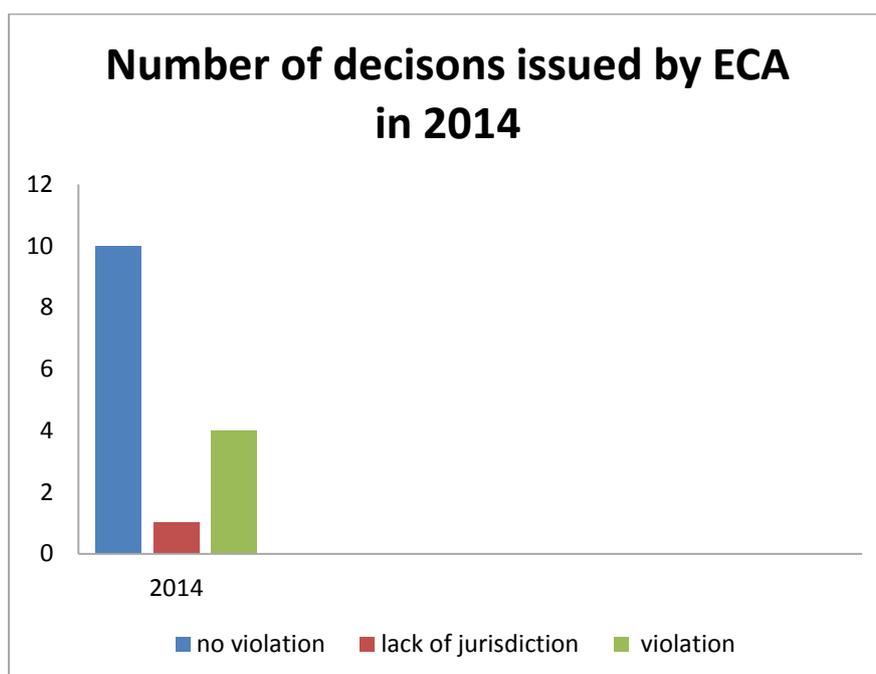
9. Furthermore, and due to the effective cooperation that ECA has established with the Egyptian Financial Surveillance Authority (which regulates stock exchange, real estate mortgage, financial lease and insurance markets), the Law no. 55 of 2014 amending the real estate mortgage law provides, inter alia, that the said Regulator will monitor and regulate the real estate mortgage market **without prejudice to ECA's jurisdiction in this sector**.

2. Enforcement of competition law and policies:

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

2.1.1 Summary of activities of:

a. ECA



Lack of jurisdiction	1
violation	4
No violation	10

b. Courts

10. As mentioned above, the **Economic Courts** affirmed ECA's jurisdiction in detecting anticompetitive practices in the telecommunications sector. The peculiarity of this case is two-fold: first, it settled a long jurisdictional dispute that arose since ECA's inception; second, the legal arguments put forward by the Court in this case can be a ground to extend virtually ECA's jurisdiction over other regulated industries.

11. In addition, the **Administrative Courts** refused the appeal against ECA's decision and affirmed ECA's decisions in films distribution and raw milk cartel cases.

2.1 *Description of significant cases*

a. Car insurance case

12. ECA had received two complaints, in 29 Oct. 2014 and 19 Nov. 2013, alleging the existence of an agreement between the Insurance Companies to raise the percentage borne by the customers to 25 % of the car's value in case of robbery or to increase the instalments of the insurance by 50%. According to the said complaints, this agreement came into effect on 1st Dec. 2011 by virtue of decision of the Egyptian Insurance Federation (EIF).

Facts Finding:

13. The team concluded that the thirteen Insurance companies operating in the market were in violation of article 6 of the ECL, based on the following;

- The Insurance companies have been compensating the insured in case of robbery by 100% of the vehicle's value before 25th of January uprising.
- Due to the high rates of car robberies after the said uprising, a meeting was held, by the Technical Committee for the cars of the (EIF), to discuss the said phenomenon. The aforementioned Committee issued its recommendations to the Executive Council of the EIF, which consists of all insurance companies operating in the market of car insurance, to raise the percentage borne by the customers to 25 % of the car's value in case of robbery, or to increase the instalments of the insurance by 50% if the customer wishes to obtain full insurance coverage. The Executive Board unanimously agreed with the said recommendations and submitted them to the Egyptian Financial Supervisory Authority (EFSA) for approval.
- The afore mentioned recommendations was approved by EFSA, subsequently, the EFI issued a publication thereof, to be implemented by all the companies operating in Car Insurance market from 1st Dec 2011. Subsequently, EFSA re-approved the renewal of the agreed on percentage from 31st Dec 2010 to 31st Dec 2013, so that the approval of EFSA was limited to only one year. However, The Insurance companies continued to implement the said percentage from the beginning of 2014, without EFSA's approval to renew for 2014.
- It was proved through the minutes of the Technical Committee for the cars of the (EIF) the existence of an agreement between the Insurance companies to impose the above mentioned percentage, and to restrict competition among them.
- It was also proved that the percentages determined by EFSA are guidance percentages, and not obligatory to the companies, besides, according to the Laws and regulations governing the Insurance sector, it turned out that the Insurance companies are obliged to notify EFSA, individually, of their prices and the amendments of terms and conditions of their insurance policies.

ECA decision:

14. ECA issued a cease and desist order to the thirteen insurance companies in violation of the ECL.

Observations:

- It is worth mentioning that EFSA cooperate effectively to ensure the compliance of Insurance companies with ECA’s remedies.
- This case reflects ECA’s enforcement policy where dealing with crisis cartels.

b. World Cup Matches Broadcasting case

15. ECA started, in January 2014, an initiative to study the broadcasting market of 2014 world cup as a result of the announced marketing policy by Al Jazeera Media Network (JMN), the holder of exclusive broadcasting rights in MENA region.

16. The said policy was announced on the JMN’s internet site, and it stated that anyone who wants to watch the matches is obliged to subscribe for one year in BEIN sports channels (JMN’s channels) in addition of purchasing a specific receiver device from .

Facts Finding:

17. ECA team concluded that JMN is abusing its dominant position in the broadcasting market of 2014 world cup, based on the following:

- The JMN enjoyed a dominant position as a result of having the exclusive broadcasting rights of the 2014 world cup (100% market share), with neither existing nor potential competitors.
- JMN tied the broadcast of 2014 world cup with the purchase of a specific receiver offered only through JMN (or its sales agent in Egypt) albeit the fact the same receiver can be bought by other distributors or on the internet on souk.com.
- Besides, JMN tied the broadcasting market of 2014 world cup with the broadcasting market of other national and regional championships.

18. The team concluded that both the tying product (broadcasting market of 2014 world cup) on the one hand and the ties products (receiver not to sell but from JMN or its sales agent- broadcasting markets of other national and regional leagues/championships) on the other were unrelated by their nature, or by the commercial use. Accordingly, this practice was in breach of article (8-d) of Competition Law which stipulates that “A Person holding a dominant position in a relevant market is prohibited to impose as a condition, for the conclusion of a sale or purchase contract or agreement of a product, the acceptance of obligations or products unrelated by their very nature or by commercial custom to the original transaction or agreement”.

ECA decision:

19. ECA addressed the concerned entity to readjust its conditions in accordance with Competition Law and obligated the concerned entity to undertake the following:

- To Give the customers (whether potential or existing) the freedom of choice to watch the World Cup matches either through subscribing for only three months or for one year;

Announcing that the existing clients who already subscribed for one year have the right to subscribe for only three months and the entity shall refund them the remaining amount of the subscription;

Announcing that the matches can be watched on any secured receiver available in the Egyptian market.

c. Publishing Educational books case

20. ECA received, in September 2013, a request from the Public Prosecution for Financial and Trade Affairs to study procurements of the Ministry of Education (MOE) relevant to the educational books.

Facts Finding:

21. ECA team found out that the Group for publishing educational books abuses its position in the market of supplying English books to the MOE market during the period from 2008 to 2011, based on the following;

- The Group enjoyed a dominant position in the market of supplying English books to MOU.
- The Group abused its position in this market for leveraging its dominant position in some other markets for supplying other educational books, where there were several actual and potential competitors.
- The Group abused its dominant position through supplying several educational books in other subjects below their average variable cost to MOE
- The said practice eliminated some of the Group's competitors so that the Group could dominate most of the educational books purchases of the MOE through bidding for books to MOE for free (markets where he didn't enjoy dominant position) then offsetting losses from English educational books sales (market where he enjoyed dominant position).

ECA decision:

22. ECA board decided to refer the Group for publishing educational books to the Public Prosecution after finding out that the Group had abused its dominant position in the market during the period from 2008 to 2011 according to article (8-H) of Competition Law which prohibits selling products below their marginal cost or average variable cost.

d. Starch Case

23. 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:

24. 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:

25. The ECA board concluded that the said agreement is a naked cartel and in breach of article (6/b) of the ECL.

26. The case is, further, to the prosecution and still pending.

2.2 Mergers and acquisitions:

- Ex-post control under the ECL:

27. 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.”

28. 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 fifty thousand EGP and no more than one million EGP.

29. During the year 2014, a total of eighteen transactions were notified to ECA.

- Ex-ante control under the COMESA regulations:

30. The COMESA (Common Market for Eastern and Southern Africa) issued its guidelines on M&A’s Control in October 2014, since then, all undertakings located in Egypt are subject to the COMESA M&A’s regulations when their transactions fall under the jurisdiction of the COMESA Competition Commission.

31. ECA can issue reports addressed to the COMESA stating its opinion on a specific M&A’s transaction and how this transaction would affect the competition in Egypt.

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

3.1 Advocacy with government entities:

32. ECA took advocacy initiatives by approaching the Government to remove or minimize the adverse effect of laws and regulations (existing/contemplated) on competition. Accordingly, in 2014 ECA continued to focus on Government advocacy given the cardinal role that Government can play in designing and implementing an effective competition policy at the national level.

33. ECA’s main advocacy activities in 2014 were, as follows:

- ECA approached the Ministry of Tourism and the Ministry of Civil Aviation regarding granting a subsidy (limited in time) in a form of a travel package (Flight + Hotel) for the domestic trips headed to Luxor and Aswan. This package included all hotels who accepted to

be part of the package deal. However, the package included the state owned company only (dominant market player in the domestic aviation market with a market share exceeding 50%) and its sister company working in the tourism market: the Karnak company. Based on this initiation, the Ministry of Finance subsidized 500 EGP¹ (approx. USD 70) for each flight seat of this state owned company. In addition, this package was marketed and provided by the Karnak Company only, excluding all other companies working in the domestic tourism market. Clearly, this package was very harmful from a competition standpoint to all these private companies.

- In consequence to ECA’s approach, the Ministry of Tourism changed its approach regarding the package offered for the winter of 2014/2015 and included all domestic tourism companies willing to be part of the package.
- Regarding its intention to set a flat rate of Electricity to trade centers having resale licenses , ECA advocated the Electricity regulatory Agency the importance to comply with article (10)² of the ECL prior to fixing the price of any product (goods or services) by the Cabinet or any State Department.
- ECA approached the National Telecommunication Regulatory Authority (NTRA) regarding its intention to hold a joint meeting with the three mobile network operators in Egypt, to discuss their failure to apply for a tender of high-speed internet services. As such, ECA urged NTRA to hold separate meetings with each market player to avoid any possibility of sharing any sensitive information (whether intentionally or otherwise) between competitors during the contemplated meeting.

3.2 *Advocacy with Other Stakeholders:*

34. ECA, continuously, worked on disseminating competition culture among various stakeholders, as one of the core goals of awareness, besides, targeting each category separately to ensure maximum benefit and addressing questions and inquiries in a way that assures a full understanding of the Competition Law and policy. In 2014, ECA was particularly attentive to advocate governmental and judicial entities, for their complementary role to ECA's role. Accordingly, ECA gave a priority this year to EFSA and the State Council's Judges, as follows;

- A workshop in cooperation with the Financial Services Institute (which is affiliated to EFSA) on 27 March 2014 where there were a focus on the complementary roles of both ECA and EFSA together with depicting in a nutshell the main features of the law and some success stories in terms of the enforcement of the ECL.
- A workshop in cooperation with the State Council's Judges on 22 September 2014 where there were a focus on the main competition concepts and the role of economic analysis in proving anticompetitive practices.

¹ USD 1 = 7.15 EGP

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.”*

4. Resources of ECA

4.1 Resources overall

4.1.1 Annual Budget

Fiscal year ³	Budget expenditure (EGP Million)	Budget expenditure ⁴ in USD
2013/2014	14,802,000	2,070,210

4.1.2 Number of employees

Number of employees/year	2014
Technical staff (lawyers & economists)	20
IT & Communications	5
Support Staff	25
All staff combined	50

4.2 Human Resources (person- years) applied to:

Enforcement against anticompetitive practices	Merger review and enforcement	Advocacy efforts.
10	Not applicable	3

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

⁴ USD 1 = 7.15 EGP according to then Central Bank exchange rate.