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## **OECD Global Forum on Competition**

### **CHALLENGES/OBSTACLES FACED BY COMPETITION AUTHORITIES IN ACHIEVING GREATER ECONOMIC DEVELOPMENT THROUGH THE PROMOTION OF COMPETITION**

**Contribution by Khelifa Tounekti**

-- Session II --

*This contribution is submitted by the Lead Discussant, Khelifa Tounekti (Director-General for Competition and Economic Surveys, Ministry of Trade) for Session II of the Global Forum on Competition to be held on 12 and 13 February 2004.*

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## THE ROLE OF COMPETITION AUTHORITIES IN DEVELOPMENT STRATEGY

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### Introduction

1. Competition policy in Tunisia is an integral part of the economic reform policy that has promoted the transition from a centrally managed economy to a market economy.

2. From its inception, Tunisian competition policy was given the following clearly defined objective, namely to:

- Promote the overall, sustainable equilibrium of the economy;
- Improve the competitiveness of Tunisian products;
- Ensure better resource allocation and greater economic efficiency;
- Give the economy the necessary capacity to adapt;
- Improve consumer welfare;
- Enable the Tunisian economy to become integrated into the globalisation process and reap the benefits of this integration.

### 1. Legal and institutional framework

3. Competition policy can only be implemented if there is an adequate environment that allows all economic agents to participate; this is essential if this policy to have a positive impact, particularly in an economy that has traditionally been centrally managed.

4. Aware of these requirements, in 1991 Tunisia passed an act on competition and prices, which has been revised in 1993, 1995, 1999 and 2003. This legislation has established the entire body of universal guidelines and rules on practices that restrict competition.

5. This act has banned anti-competitive and discriminatory practices and abuse of dominant position and has established merger control. The current legal framework is now exhaustive, is close to European legislation and regulations, and is well adapted to domestic and international requirements. In addition, this act established the institutions responsible for its enforcement.

6. The implementation of the act has gone hand in hand with a process of economic liberalisation of trade and investment and of privatisation of government-owned enterprises. Deregulation has also been a key component of the reform aimed at creating a favourable context for competition and private initiative.

7. The establishment of competition authorities is essential to the success of any policy in this field. Tunisia has adopted the following dual system consisting of:

- A directorate-general (Directorate-General for Competition and Economic Studies) within the Ministry of Trade, responsible for:
  - Enforcing competition policy;
  - Ensuring that economic actors do not interfere with the proper functioning of the market;
  - Detecting infringements and investigating anti-competitive practices;
- The Competition Council, which has decision-making and advisory powers.

## **2. The competition authorities' contribution to attaining economic objectives**

8. Competition policy is not an end in itself, but it is one means among others for achieving economic and social goals.

9. The means used to attain the same goal can be open to dispute.

10. Similarly, competition policy is not always consistent with sectoral policies, and this sometimes leads to conflicts between horizontal and vertical objectives. This being the case, the competition authorities must strike a balance between their mission of promoting competition and the needs of sectoral development.

11. In an economy in transition, economic operators and sectoral decision-makers often tend to avoid competition and still try to implement centrally managed sectoral policies or ask for government assistance, particularly greater protection and government intervention, rather than having to adapt to the rules of the marketplace.

12. The competition authorities must not yield to pressure and must enforce the rules of competition when handling the cases submitted to them or giving opinions on competition issues.

13. Governments and professionals often prefer easy solutions, but this is an attitude that can only compromise the future of competition and can lead to an endemically vulnerable economy.

14. The competition authorities must view these issues in a long-term perspective, while sectoral authorities and professional organisations are tempted to defend short-term interests.

15. Together with their competition policy, countries also have industrial and sectoral policies in which exemptions are granted and exceptions made to attain specific development goals. All countries use these kinds of methods to protect certain sectors from domestic and foreign competition. However, even though sectoral policies may be justified, they must not be allowed to lead to a situation of lasting protection or to create pockets of inefficiency within the economy. This type of behaviour can generate additional costs that will have to be borne by consumers or the community as a whole. The competition authorities have an important role to play in striking a balance between the conflicting objectives of meeting the needs of sectoral development and maintaining a competitive environment. Agriculture, infant

industries, small businesses and the banking and insurance sectors often receive special treatment that shelters them from real competition.

16. This encourages behaviour on the borderline of legality in these sectors, which prevents them from developing and gives them no incentive to adopt a competitive strategy.

17. The competition authorities in Tunisia have played a key role in consolidating a competitive environment favourable to economic development through the following:

- the dissuasive effect on businesses of action taken to prevent illicit practices and legal proceedings brought before the Council;
- the impact of litigation and investigations reported in the media;
- investigations conducted by the competition authorities, and when anti-competitive practices were found, warnings issued to professionals to prevent violations;
- opinions issued by the competition authorities that are used to justify introducing reforms in sectoral policies or to accelerate deregulation;
- monitoring and effective enforcement of legislation and regulations that ensure the normal functioning of the market and prevent barriers to competition.

18. Businesses are reassured by an environment that encourages them to innovate and take advantage of professional skills to face competition and improve their performance. In Tunisia, in recent years we have witnessed a radical change in the behaviour of businesses, which have been able to improve the quality of their products and lower their prices under the pressure of competition.

19. Consumers are the first to benefit from the market economy and activist competition policies.

### **3. Obstacles to implementing competition policy**

20. The mere fact that there is a legal and institutional framework does not in itself guarantee that competition policy will be implemented. Adequate budgetary resources must be provided if competition policy is to become a reality. The competition authorities face three difficulties that prevent them from carrying out their mission effectively:

- Insufficient physical and human resources;
- Lack of skilled staff, which points to the need for adequate training;
- Lack of a competition culture, which highlights the role played by the competition authorities in promoting this culture although the resources for this mission are very limited.

21. Competition policy is often combined with an opening up of the economy to the outside world and trade liberalisation.

22. However, competition from multinationals jeopardises small businesses and compromises vulnerable sectors.

23. The problem of the foreign trade balance as well as that of employment very rapidly become crucial. The competition authorities must strike a balance between development policy and competition policy that must under no circumstances compromise national objectives.

24. International behaviour also contributes to this dilemma. Many countries have subtle policies aimed at protecting their own interests, and shelter entire sectors from free competition. In finding a trade-off between effective competition and the economic and social problems that it can create, the competition authority unquestionably has a role to play.

25. More than other countries, small countries need a minimum of competition, and they must not try to neutralise, by using unorthodox procedures and practices, the effects of competition policy under the pretext of having to address sectoral or social problems. Small economies will only be able continue to develop by improving their competitiveness in order to become integrated into the global economy. A small, closed economy provides no opportunity for domestic competition and will ultimately become a perpetually inefficient economy that will be a burden to native consumers.