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## **Global Forum on Competition**

### **DOES COMPETITION KILL OR CREATE JOBS?**

#### **Contribution from Tunisia**

-- Session I --

*This contribution is submitted by Tunisia under Session I of the Global Forum on Competition to be held on 29-30 October 2015.*

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## COMPETITION AND JOB CREATION: THE ROLE OF THE COMPETITION COUNCIL

### -- Tunisia --

1. According to article 40 of Tunisia's new constitution, employment is a constitutional right. Every citizen is entitled to a job. The State takes the measures necessary to ensure that jobs are allocated on the basis of merit and fairness. All citizens are entitled to work under good conditions for fair pay.
2. The country has a high rate of unemployment<sup>1</sup>, however. The lack of jobs is largely due to poor competition regulation which encourages the proliferation of monopolies that produce little, innovate and invest less, and therefore fail to create jobs.
3. This weakness is exposed by the markets for basic network services and upstream products: rail transport, freight, water distribution and international communication.
4. One example of competition weakness lies in the international communication market: Tunisie Télécom owns all international undersea cable landing sites and enjoys a *de facto* position of dominance in the rental of international lines.
5. The company's competitors, namely Orange and Ooredoo, are entitled to offer voice communications on the international market, but only to their own subscribers (Ooredoo, for example, cannot offer communications services to subscribers to Orange and Tunisie Télécom).
6. This situation has had an impact on pricing (rates are relatively high) and on the sector's growth.

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<sup>1</sup> The unemployment rate stood at 12.1% in the first quarter of 2015. According to the results of the National Survey of Population and Employment, also taken in the first quarter of 2015, the number of jobless came to 601,400 for a total active population estimated at 4 million, giving an unemployment rate of 12.0%. In the same period, an estimated 12.5% of men and 21.6% of women were out of work. The graduate unemployment rate: the number of jobless graduates was estimated to be 222,900 in the first quarter of 2015, which corresponds to an unemployment rate of 30.0%.  
Source: Institut national des statistiques

**Comparative statistics on international communications**

	Liberalisation	Communication per person in 2010 (minutes)	Cumulated growth 2004-2010
MENA average	2006	181	10%
AMU average	2006	48	11%
Eastern European average	2002	73	8%
Tunisia	2002	25	1%

Source: World Bank report – Tunisia's Unfinished Revolution

7. Between 15 September and 30 October 2014, the Tunisian Institute of Competitiveness and Quantitative Studies (ITCEQ) conducted a survey to assess Tunisia's business climate and competitiveness, polling 1,200 private firms in industry and services with at least six employees, across the entire country.

8. The survey aimed to identify the main hurdles faced by businesses carrying out their activities and to shed light on the action taken and strategies employed to meet the challenges of stiffening competition and the need to be competitive.

9. It also collected information on business leaders' expectations in terms of market trends, investment and employment.

10. Questions focused on business leaders' perception of the economic climate in Tunisia, taking account of the following factors: infrastructure, the macroeconomic and regulatory framework, bank lending, taxation and social contributions, insecurity, human resources, administrative procedures and the legal system, corruption and political instability.

11. Political instability was included in the survey for the first time, and was ranked as one of the top three barriers by 39% of respondents; it was cited as the major cause of business climate deterioration in 2014.

12. In terms of investment, the survey found that 41% of businesses did not invest in 2014 because of political instability.

13. In this climate, insecurity was one of the three biggest difficulties for 26% of respondents, and had caused 6.5% of businesses surveyed to suspend their activity in the first half of 2014, compared to 7% during the same period in 2013.

14. Market practices, **especially unfair competition, the black market and anticompetitive practices, had become a greater concern than in 2013.** They are damaging competitiveness and undermining businesses that "play fair".

### **The role of the Competition Council**

15. The Competition Council plays an important role in curbing business practices that threaten the balance of the market and hence the emergence of a healthy competitive environment that promotes investment growth and job creation.

16. This role is absolutely decisive, both in terms of its consultative activity and in dispute resolution. Its responsibilities are listed below.

### **Boosting competition-friendly regulation**

17. In the regulatory texts themselves: To help ensure transparency and facilitate private initiatives that encourage business creation, the Council has ruled that, as a general rule, the wording of proposed specifications must provide details of the technical conditions required for the practice of the activity, because the main goal of the specifications is the establishment of precise technical rules, which prevent the administration having to resort to interpretation and protect the different parties from any ambiguity that could hamper free competition.

18. The Council adds that examination of the proposal reveals that most of the conditions required grant discretionary power to the administration, which runs counter to the spirit of the creation of these specifications. It has therefore proposed to formulate a more precise wording of the technical provisions of the specifications so as to ensure that they are understood from the specifications themselves and not from the interpretation of the administration or the person practising the activity. In this way, the goal of the specifications can be reached without circumscribing the freedom of trade and industry.

19. As a result, the Council has seen the role of the administration in the liberalisation process transition from control before the fact to control after the fact, while the specifications have partially maintained the system of prior authorisation by three parties, which restricts freedom of business activity in this sector. It adds that the government's policy for some years has been the gradual elimination of administrative authorisations and their replacement with specifications that are limited to setting technical and regulatory conditions.

### **Educating the government about competition**

20. The Competition Council has tried to defend and represent the principle of competition to the government.

21. Defending this principle is designed to guide and counsel public administrations in order to improve regulation and open public action to competition.

22. The authorities must understand that laws and regulations determine the level of competition in the market.

23. Our participation in ministerial committees in an advisory capacity enables us to communicate the competition policy to those responsible for drafting regulatory texts that organise the practice of economic activity.

24. The obligation to consult the Competition Council over the drafting of regulatory texts allows us to defend this principle.

## **Modernising case law: telecommunications sector case study**

\*2006 to 2008

25. The telecommunications operators first applied to the Competition Council in 2006.
26. It was noted that the rise in the cancellation rate, involving the withdrawal of all or some of the requests in an application, for a number of disputes was preventing the modernisation of case law.
27. Requests for protective measures (emergency procedure) are delayed by the legal provisions relating to competition and prices that prevent these requests being processed quickly.
28. In some of its rulings, however, (and in the absence of other guidance) the Competition Council has helped with the:
  29. Delimitation of relevant markets, from that of retail markets to that of wholesale service markets.
  30. Popularisation of some technical terms such as: Interconnection, call termination, added-value services, on-net and off-net calls.
  31. The application of standard law to the telecoms sector, based on a detailed survey of the relevant market.

\*End 2008 to 2011

32. The real change in the role of the Competition Council began with a case taken on its own initiative. The practices denounced by the Competition Council concerned the termination charges for mobile SMS+ and premium SMS.
33. Added-value SMS and MMS services based on short numbers
34. On examining a certain number of conventions between providers of added-value services and the telecommunications operators, the Council found malpractice and took action to ban some antitrust clauses.

\*In 2011:

35. Malpractice was exposed at Tunisie télécom and Tunisianna:
36. Discriminatory pricing between on-net and off-net calls
37. OTT and TT applied differential pricing to on-net (calls within the network) and off-net (calls from an Orange subscriber to a Bouygues subscriber) calls.
38. This “overcharging” for off-net calls gave the Orange network the disadvantage of making it seem expensive, and encouraged consumers choosing as a group (members of a family, group, business, etc.) to subscribe to the same network, i.e. the larger of the two).
39. This is known as the “club effect”. The Council stressed that the anti-competitive impact of this effect was due not to the absolute size of the two networks, but to the discrepancy between their sizes: the larger network had a market share of over 82%. The gap between the two intensified the effect on pricing.

***The practice of margin squeezing***

40. The practice known as the “margin squeeze” consists in an operator, which is generally vertically integrated, setting both a market’s retail prices and the price of an intermediary service required to access the said retail market, without leaving sufficient space between the two to cover the other costs incurred to provide the retail service. It is considered by the Council as aiming to distort competition from the point at which it may help to force other operators out of the market.

41. A price in proportion to the value of the service it offers

Case study: case linked to competition and presenting issues related to job creation

42. Price cartels can artificially push prices upwards if information is exchanged that reduces the uncertainty of all operators as to the intentions of their rivals and thereby lessens competitive pressure, hence preventing the entry of new players on the market and the creation of jobs.

43. By way of example, there exists another practice that encourages prices to rise artificially: price recommendations. Price recommendations often take the form of recommended prices or price scales issued by professional bodies. The circulation of documents setting out figures is considered to be a form of hidden price fixing. The Competition Council condemned a price-fixing cartel of this kind in the driving school sector in the governorate of Siliana[5]. The case involved the members of the regional driving schools association increasing their prices. The Council’s annual report, commenting on the case, concluded that price fixing is banned because it contravenes the essential principle enshrined in Article 2 of Law No. 91-64 which states that the market operates according to the mechanism of supply and demand.

**Conclusion:**

44. The role of the Competition Council was boosted by a new competition law enacted on 15 September 2015, which expands the remit of the Council in both its advisory capacity and in the resolution of disputes.

45. The Council is also preparing guidelines on the setting of fair, transparent and deterrent financial penalties.

46. All these reforms will inevitably contribute to the national drive to push up the rate of investment and create more jobs.