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## **The Role of Competition Policy in Promoting Economic Recovery – Note by Egypt**

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More documents related to this discussion can be found at  
<http://www.oecd.org/daf/competition/promoting-economic-recovery.htm>

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## *Egypt*

### 1. Introduction

1. Past crises show that efficient competition law and policy is one of the most important tools that governments have to build more resilient, inclusive, and sustainable economies and this is due to its paramount importance in ensuring the well-functioning of markets and the speedy recovery of the economy from a crisis. For this reason, during the COVID-19 pandemic, the Egyptian Competition Authority (hereinafter “ECA”) had fully exercised its role as both enforcer and advocate of competition law and policy in Egypt in order to lessen the implications of the current crisis on the economy and foster its recovery. After examining the measures and policies adopted by different competition authorities worldwide in order to address the consequences of the current crisis on the economy, ECA undertook a number of measures to ensure the effective application of competition law and policy in these times.

2. The following sections summarize the policy that was followed and the measures that were undertaken by ECA to mitigate the implications of the COVID-19 pandemic on the Egyptian economy and to ensure the speedy recovery of the economy, as well as ECA’s vision regarding the policy that might be followed in the near future. Following this introduction, Section (1) illustrates preliminary considerations necessary to better envision the implications of the COVID-19 on the Egyptian economy and the importance of the adoption of an efficient competition law and policy in order to attenuate the implications of the current crisis on the economy and highlight ECA’s role in such times. Section (2) focuses on the institutional changes ECA implemented in order to ensure it can play its role effectively. Section (3) puts emphasis on the advocacy measures that were and will be taken by ECA and its attempts to forge a continuous dialogue with the public and private sector. Section (4) is devoted to the enforcement related measures that were and will be taken by ECA.

### 2. Preliminary considerations

3. Due to the COVID-19 crisis, the Government of Egypt (GoE) had to reconsider its next steps concerning the second phase of planned economic reforms. Since the beginning of the crisis, the GoE took early and gradual action with an integrated approach to address the pandemic’s impact on Egypt’s health and business sectors. The GoE’s current direction is to introduce policies that aim to support the hardest-hit businesses/sectors and reinforce Egypt’s industrial policies to address the negative economic repercussions of COVID-19 crisis while attracting further investments. One of the major industrial policies is competition policy and law.

## 2.1. Economic implications of The COVID-19 pandemic on Egypt's economy

4. Like other countries, the Egyptian economy was extensively hit by this pandemic. To mitigate the pandemic's economic and social repercussions on the Egyptian economy, an initial budget of EGP 100 billion (equivalent of USD 6.4 billion) was allocated.<sup>1</sup>

5. Nonetheless, the macroeconomic indicators are still ambiguous. The GoE expected a real GDP growth rate by the end of FY 2019/2020, approximately 5.8%, that was guaranteed to be reached as Egypt achieved 5.6% growth rate during the first half of 2019/2020. However, the adverse economic impact of the COVID-19 pandemic necessitated reviewing down economic growth expectations. According to the Ministry of Planning and Economic Development of Egypt (MPED) forecasts, growth rate now of 3.3% is expected for FY 2019/2020. While for FY 2020/2021, MPED expects a growth rate of 1.93% without government intervention and 2.59% with intervention (down from 6% expected growth rate before the pandemic hit). In addition, Egypt's trade balance deficit has declined by 38% by the end of March year over year (y-o-y) basis to mark USD 2.69 billion vs. USD 4.38 billion in March 2020. Moreover, Egyptian exports declined by 18% y-o-y while imports declined by 30% y-o-y.

6. According to MPED, the private sector investment may also fall by up to 30% in FY2020-2021 if the crisis extends to December. Additionally, the four main sources for foreign currency revenues- remittances, tourism, exports and Suez Canal are facing great challenges. The tourism sector is expected to witness 70-75% decline in total revenues in comparison with the 2019 levels of USD 11.4 billion. The remittances from 10 million Egyptians abroad (amounting to USD 26 billion annually) are also expected to witness an alarming decline due to the return of Egyptian workers from abroad, particularly from Gulf Cooperation Council (GCC) countries. The Minister of Finance warned that Egypt's budget deficit could widen to 7.8% of GDP in FY2020-2021 if the COVID-19 crisis continues until the end 2020.<sup>2</sup>

## 2.2. The role of the Egyptian competition law and policy in mitigating these implications

7. Egypt undertook reform policies in 1991 and 2016 to promote liberalization and competitiveness, endorse open market economy, achieve economic integration, attract more foreign investment, and reduce the role of government as a key player in the market. However, private investment needs to grow in many sectors, which signals the need to shed the light on the importance of enforcing more efficient competition law and policy in order to encourage private investment, in general, and foreign direct investment (FDI), in particular. As well as, guaranteeing that private investment will not be harmed by anti-competitive practices and that such behavior would not block or hinder their entry and / or expansion in the market.

<sup>1</sup> International Monetary Fund (IMF), Press release regarding Policy Responses to COVID-19. Available at: <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#E>

<sup>2</sup> Clemens Breisinger et al., Impact of COVID-19 on the Egyptian economy: Economic sectors, jobs, and households, 2020, Ministry of Planning and Economic Development (MPED), Available at: <https://mped.gov.eg/AdminPanel/sharedFiles/ae32ff30-2ec9-4633-a128-99d66bb3e748%20The%20impacts%20of%20COVID-19%20on%20Egypt%E2%80%99s%20economic%20sectors.pdf>

8. ECA has worked on an in-depth policy paper in order to identify the major areas of reform needed in Egyptian competition law and policy, by assessing the impact of the adoption of the Egyptian Competition Law (hereinafter “ECL”) and its effective enforcement on FDI inflows. ECA demonstrated in its study that, to realize such positive impact on investments and FDI inflows, competition law and policy should be effective.

### 2.3. ECA’s role in prior crisis in Egypt

9. The COVID-19 pandemic was not the first crisis that hit the Egyptian economy in the last decade. Since the beginning of 2011, the Egyptian economy has witnessed many successive crises on both economic and political levels. These changes imposed the necessity of reviewing the work mechanisms of many government agencies and institutions in a manner that ensures the achievement of the main listed objectives of the state; promoting economic growth, providing a favorable environment for investment, generating more job opportunities; in order to achieve the desired social justice.

10. Egypt has witnessed several economic and political crises that enlightened the role of competition policy as crucial tool to mitigate crises’ repercussions on the business environment and the economy as a whole. In this context, ECA emphasized its role as a key tool to ensure competition in all Egyptian markets, and encourage the private sector as an engine for growth.

11. Regarding 2011, the changes occurred on the Egyptian political scene, particularly post the January 25 revolution, which highlighted the importance of ECA’s role in reinforcing its policy in order to attenuate political instability repercussions. The revolution in 2011 gave ECA the opportunity to widen even further its advocacy scope. In cooperation with the Government, ECA conducted a “Political Parties Program” which permitted ECA to establish a communication channel with prospective decision makers. The aim of this project, which induced political parties, movements and civil society organizations, was to introduce the concept of competition policy within their programs and to support ECA to be more independent and efficient. ECA met with key representatives of several Parties.

12. In 2020, the COVID-19 pandemic has drawn the attention of ECA to various changes on different levels, starting from institutional changes, to advocacy policies and enforcement measures, that should be adopted to alleviate the pandemic repercussions on Egypt’ business environment and to help ECA guarantee fair competition in the market.

### 3. Institutional changes

13. In order to address the COVID-19 challenges the GoE imposed different regulations, ECA adopted different institutional changes. In addition, ECA allocated some resources in order to assess the impact of its competition policy enforcement on the macroeconomic indicators, and the mitigation of the repercussion of future crises.

14. In order to study and assess how the adoption of effective competition law and policy may foster economic growth, ensure the well-functioning of markets and the speedy recovery of the economy from a crisis, ECA created a new department *Public Policy and Private Sector Enabling Department*. The latter’s objective is to quantify the impact of the enforcement of competition policy on macroeconomic variables and consumer well-being, by performing impact assessment studies, ex-post evaluations and econometric modelling. The department vision is to prove the prominence of competition policy as an effective tool, especially for developing countries like Egypt, to foster economic development, attenuate crises’ economic repercussions, and help expedite the economic recovery, while

reducing anti-competitive practices and promoting consumer welfare. The department is launching a megaproject using Dynamic Stochastic General Equilibrium (DSGE) model, in order to assess the distributional macroeconomic effects of the important anticompetitive decisions taken by ECA.

#### 4. Advocacy

15. ECA is of the view that, during the times of crisis, competition authorities must adopt effective advocacy policies. The advocacy policy must encompass both providing guidance and clarifications to businesses regarding measures and procedures that may be adopted by the competition authority and providing guidance to public entities with regards to their responses to the current crisis.

##### 4.1. Measures taken by ECA

16. Competition has a primordial role in ensuring the well-functioning of markets which may help expedite the economic recovery. Nevertheless, competition may be significantly restricted by various public policies and institutional arrangements and not only through restrictive business practices. ECA believes that competition policy during these times shall extend beyond merely enforcing competition law to include ECA's participation in the formulation of public responses to the crisis.

17. Article 11 (5) of ECL confers ECA the power *“to give its opinion, voluntarily or upon the request of the Cabinet of Ministers, Ministries or concerned entities, on legislations, policies, or decisions that would harm competition, and the concerned Authorities shall be obliged to take the opinion of the Authority with regard to draft laws, and regulations relating to the regulation of competition”*.

18. With the aim of cooperating with the other public entities in order to address the implications of the COVID-19 pandemic, ECA has undertaken many advocacy measures in the medical sector in Egypt. First, ECA has provided recommendations to the Egyptian Pharmaceutical Affairs Central Administration, which is responsible for granting the necessary licenses for the production of the ethanol or ethyl alcohol in Egypt. ECA recommended the Pharmaceutical Affairs Central administration to expedite the procedures for granting the required license to undertakings who wish to produce the ethyl alcohol in the times of the current crisis in order to avoid the exploitation of the Egyptian consumers' needs by a small number of ethyl alcohol producers in Egypt. Furthermore, ECA has recommended the Pharmaceutical Affairs Central administration to not intervene and delineate quotas for the production of ethyl alcohol as such practice limits the competition in the market and reduces market openness. Second, ECA has issued a number of recommendations to the Egyptian Authority for Standardized Procurement, Supply and Medical Supplies, which is responsible for the purchasing of certain medical goods from different undertakings and the resale of these products to the different hospitals in Egypt. ECA has provided guidance to the Egyptian Authority for Standardized Procurement, Supply and Medical Supplies about bid rigging and the harm that may occur to the market as a result of bid rigging as well as the different methods of infringement detection and the necessity of notifying ECA with any violations regarding this matter in particular in these times.

19. In addition to its advocacy policy with public entities, ECA provided guidance to stakeholders on the procedures that were applied by ECA, during the crisis, regarding the enforcement of ECL. Furthermore, ECA provided undertakings the opportunity to inquire

about their compatibility with ECL, as well as procedures that shall be followed in order to submit exemption requests, if applicable.

## 4.2. Future measures to be taken by ECA

20. The COVID-19 pandemic has drawn ECA's attention to particular areas that were mostly affected in its scope of study. One of which is the aviation sector. With the spread of COVID-19, the aviation sector is facing a crisis that is considered the worst of many crises that took place during the last ten years. The demand on the airlines decreased due to the COVID-19 pandemic, the situation deteriorated to ban aviation and impose international restrictions on travel, which led to a significant decline in airline revenues.

21. The aviation sector faced financial losses estimated at one and half billion US dollars and loss of 9.5 million passengers, with 205,000 jobs being threatened, with a total of 2.4 billion US dollars' losses for the Egyptian economy in the sector, according to the International Air Transport Association. The airline sector faces bankruptcy as the typical airline has only a two-month cash stock to pay its monthly dues. As for airlines in the Middle East, they have a cash stock that starts from two months and can reach up to 9 months for some companies.

22. Furthermore, there is no doubt that this pandemic affects the competitive environment, whether it is between the airlines themselves or between airlines and other means of transportation that may be considered a potential substitute within a certain geographical scope. This crisis may lead to the exit of many small airlines and the continuation of only large or national airlines, or the possibility of companies merging that are capable of facing the losses resulting from the decrease in demand, which may harm competition between airlines.

23. Based on the aforementioned, ECA concluded that the aviation sector requires immediate and urgent intervention from the state, as different airlines are fighting to survive in the market with the suspension of air traffic at most airports around the world for passenger transport. ECA also aims to encourage producers to improve their product and increase its volume and distribution in order to achieve the economic efficiency defined in Article 2(E) of ECL, which states that economic efficiency is: *“reducing the average variable cost of products, improving their quality, increasing the volume of their production or distribution, producing or distributing new products or accelerating their production or distribution”*.

## 5. Enforcement

24. During these times, ECA adopted strong enforcement policy of ECL in order to ensure the well-functioning of markets and to mitigate the implications of the current crisis on the economy and foster its speedy recover. However, while ECA enforced competition law and policy, ECA adopted flexible procedural mechanisms in order to preserve the efficiency of competition law and policy. This policy was implemented regarding both anti-competitive practices and mergers and acquisitions.

### 5.1. Enforcement measures and policy regarding anti-competitive practices

25. As stated above, ECA was aware of the economic crisis that the country is going through and the drastic consequences the crisis may have on the Egyptian economy, which may affect businesses and consumers alike. Thus, ECA adopted a strong enforcement

policy regarding the prohibition of anti-competitive practices in order to ensure the availability and affordability of goods in these unprecedented times.

### **5.1.1. Horizontal agreements**

26. Article 6 of ECL prohibits agreements or contracts between competing undertakings that would have as their object, raising or fixing prices, restricting manufacturing or distribution or marketing processes, allocating markets, or bid rigging.

27. Anti-competitive agreements between competitors are considered the most serious violations of competition law, as they harm consumers by raising prices and restricting supply, thus making goods and services completely unavailable to some purchasers and unnecessarily expensive for others. Indeed, in a free market economy, each undertaking shall take its commercial and strategic decisions individually without being influenced by other undertakings and only in light of the supply and demand flows. Consequently, anti-competitive agreements between competitors may result in, high prices, loss of incentive to reduce cost or innovate and harm to consumer welfare.

28. Consequently, ECA will continue to deal firmly with all horizontal agreements during the current crisis. In case of cooperation between competing undertakings is necessary in order to provide goods or/and services without deficit to citizens in accordance with the public order and without affecting prices, this may benefit from the exemption set forth in Article 6 (2) of ECL, which states:

*“The Authority, upon the request of the concerned parties, may exempt the agreement or the contract intended to achieve economic efficiency, from the ban stipulated in this article, if proved that the aforementioned agreement or contract attains benefits to the consumers exceeding the effects of restricting the freedom of competition, and the Executive Regulations shall determine the procedures, the conditions of submitting the request and the regulations of issuing the decision by the Authority.”*

### **5.1.2. Abuse of dominant position**

29. Article 8 of ECL prohibits any undertaking from abusing its dominant position. The dominant position exists if: undertaking’s market share exceeds 25% of the total relevant market, the undertaking has the ability to significantly impact the prices or the supply of the product in the relevant market, and its competitors do not have the ability to limit its activities in the relevant market.

30. ECA will strictly implement the provisions of Article 8 of ECL, and necessary measures will be taken against any undertaking that exploits its dominant position in a relevant market in order to eliminate competition. This is due to the special responsibility of dominant undertakings, which entails that dominant undertakings do not abuse the barriers to entry and expansion that have arisen in the market as a result of the current crisis and impose excessive prices that may harm consumer welfare and exclude smaller competitors from the market.

## **5.2. Enforcement measures and policy regarding merger control**

31. The COVID-19 crisis’ disruptive impact on the economy leads to the financial distress of many firms, forcing them to exit the market or to merge. However, the benefits merging parties reap in terms of productive efficiencies may be outweighed by anti-competitive effects resulting from strengthening their market power, such as price increases and reductions in consumer surplus. For these reasons, ECA is of the view that the role of

competition authorities to preserve competitive market structures, by using their merger control regimes, particularly in these times, is a key role. Competition authorities must exercise their merger control powers through flexible procedural mechanisms in order to preserve the efficiency of merger control, to speed up the process, and thus address the current crisis implications.

### **5.2.1. Measures taken by ECA**

32. Although the majority of jurisdictions worldwide employ a mandatory *ex-ante* merger control regime under their competition laws, Article 19 of ECL only requires an *ex-post* merger notification of transactions involving a combined turnover exceeding 100 million EGP. Article 19 of ECL states that:

*“Persons whose annual turnover of the last balance sheet exceeded one hundred million pounds shall notify the Authority upon their acquisition of assets, proprietary or usufructuary 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 this Law.”*

33. Notifications shall be submitted to ECA according to the notification form available at the official website of the authority and the notifying party shall provide all the data, information and documents required to be attached to the notification form in order for the notification file to be considered complete. In times of crisis, ECA did not take any adjustment measures regarding the date on which the notification file shall be submitted. However, as stated above, ECA granted extensions to the notifying party/parties in case of missing documents or data.

### **5.2.2. Future measures to be taken by ECA**

34. Given the role of competition law and policy in enhancing Egypt’s economic freedom and performance, reform to ECL is required to enhance Egypt’s productive capacity and thus its international performance indicators. ECA is currently drafting amendments to ECL. The proposed reform will encompass many pillars, among which the introduction of the first *Ex-ante* Egyptian Merger Control Regime (hereinafter “EMCR”).

35. Regarding the procedures that will be adopted in times of crisis, the future EMCR will encompass flexible procedural mechanisms that permit ECA to adjust the existent timeframe regarding the substantive assessment of mergers and acquisitions and this will be through both expediting procedures to grant fast approval for transactions that require immediate implementation, or extending deadlines in cases that do not require a rapid intervention. It should be noted that these procedural adjustments will be applied in accordance with the due process principles.

36. Therefore, while the future EMCR will not soften the standards for merger assessment in times of crisis, it will provide flexible procedural mechanisms that will allow ECA to expedite procedures or extend the deadlines when necessary in order to ensure the effective implementation of the future EMCR in times of crisis. In addition, ECA will take the market conditions resulting from the crisis as a relevant factor when assessing mergers and acquisitions.

## 6. Conclusion

37. In times of crisis, competition authorities must adopt effective advocacy and enforcement policies and this is due to the paramount importance of efficient competition law and policy in mitigating the economic implications of the crisis and granting a speedy recovery of the economy. ECA believes that the advocacy policy that might be adopted during the current crisis must encompass providing guidance to both businesses and public entities with regards to their responses to the current crisis. As for the enforcement policy, ECA is of the view that it is quite evident that authorities must strike a balance between under and over-enforcement in times of crisis. Indeed, during the times of crisis, competition authorities must adopt strict enforcement policies in order to address the disruptive impact the crisis may have on the economy and expedite the economic recovery while employing flexible procedural mechanisms in order to expedite the proceedings or extend it when necessary.