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The Use of Structural Presumptions in Antitrust – Note by Egypt

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Introduction:

1. Structural presumptions are assumptions used by competition agencies in evaluating antitrust matters and economic concentrations. These presumptions are especially relevant for assessing market dominance and certain anticompetitive practices, such as passive participation in cartels. They also apply to the control of economic concentrations, covering areas such as the assessment of control/material influence, assessment of the impact of economic concentrations, eligibility of simplified procedures, and identifying potential killer acquisitions.

2. Structural presumptions are deemed useful for competition agencies in simplifying the assessment they undertake for the purpose of promoting competitive markets. In this regard, competition agencies must carefully determine specific uses of structural presumptions in competition enforcement based on objective assessments to accurately reflect the diverse realities of the economy and its sectors. This approach is vital especially for developing countries, due to challenges encountered by young competition authorities in enforcing competition law due to shortage of personnel and limitation of data and financial resources.

3. This background note seeks to examine how structural presumptions can be adapted across various assessment areas, including anticompetitive practices and the control of economic concentrations, with a particular focus on their application and associated risks in developing countries. To achieve this research objective, the paper will address the following: (1) Structural presumptions related to anticompetitive practices, (2) Structural presumptions related to economic concentrations, and (3) The impact of adopting structural presumptions in competition related matters within developing countries.

1. Structural presumptions related to anti-competitive practices:

1.1. Presumptions related to the assessment of dominance:

1.1.1. The assessment of dominance under Article (4) of Egyptian Competition Law (ECL):

4. According to Article (4) of the Egyptian Competition Law (hereinafter "ECL") "In the application of the provisions of this Law, dominance in a relevant market is the ability of a person, holding a market share exceeding 25% of the market above, to exert substantial influence on prices or the quantity supplied in the market, without his competitors having the ability to limit it."

5. Additionally, Article (7) of the Executive Regulations (hereinafter "ER") lists the factors to be taken into account in proving an undertaking's dominant position as follow:

> *The dominance of a person in a relevant market is established with the presence of the following elements:*
>
> *1. The person has a market share exceeding 25% of the relevant market. This share's calculation is based on the relevant products and the geographical area of this market over a specific period.*

2. The person's ability to exert substantial influence on the prices or the quantity supplied of the relevant products in the relevant market.

3. The inability of the competitors to limit the person's effective impact on the prices or the quantity supplied of the products in the relevant market."

6. In Egypt, dominance is not presumed based solely on market share, as the ECL requires meeting three cumulative conditions to establish market dominance, utilizing both structural and empirical tools. Within this framework, market share serves as a useful indicator for assessing dominance, but cannot serve as the sole determinant. In this context, the ECL employs a negative presumption, indicating that a market share above 25% does not automatically imply dominance unless accompanied by the ability to influence prices or supply and the inability of competitors to limit this influence.

7. According to Article (4) of ECL, an undertaking is considered to hold a dominant position if it has the ability to independently set the prices or control the supply of the relevant products without competitors being able to limit its influence. To objectively assess dominance, Article (7) of the ER outlines several factors for ECA to consider. These include the person's market share and relative position among competitors, its market behavior, the number of competitors and their relative influence on the market structure, the ability of both the undertaking and its competitors to access essential production materials or distribution channels, and the presence of any type of barriers to entry in the relevant markets. Together, these factors provide a comprehensive perspective regarding the assessment of market power, underscoring that both market share and these additional factors are essential for assessing dominance. This approach ensures that dominance is assessed holistically, preventing any misinterpretation of market power based solely on market share.

1.1.2. Refining Dominance Assessment through Structural Presumptions and Empirical Tools

8. While ECL sets market share as a starting point for assessing dominance, relying on this measure alone may not provide an accurate assessment of market power. Additional factors, such as a firm's ability to influence supply and the ability of competitors to counteract its influence, must also be considered.

9. To streamline enforcement and focus on cases with clear evidence of substantial dominance, some jurisdictions adopt a rebuttable presumption (simple presumption) of dominance by setting a higher market share threshold, such as 50%. Under such approach, firms holding a market share of 50% or more are presumed dominant, which allows competition authorities to prioritize cases with clear and significant market influence. It falls on to concerned persons to prove otherwise. For firms below this threshold, other indicators of market power, such as control over supply and the ability of competitors to respond, would be considered alongside market share to determine dominance, as outlined in Article (7) of the ER.

1.2. Presumptions Related to Passive Participation in Cartels

10. Hardcore cartels represent some of the most harmful anticompetitive practices, as they prevent undertakings from independently making their commercial decisions based on market supply and demand mechanisms. Many jurisdictions consider hardcore cartel a per se violation, underscoring the importance of identifying all violators, which raises the question of whether passive participation in a cartel can be incriminated. Theoretically, passive participation in cartels is viewed as a structural presumption because a silent party

in an anticompetitive agreement may be considered complicit. However, it is not the case in all the jurisdictions, in Egypt, for instance, this structural presumption is rejected by both law and practice.

11. One significant challenge in proving passive participation is demonstrating that a firm was aware of and accepted the cartel activities without actively engaging in collusion, making it difficult for authorities to gather sufficient evidence.

1.2.1. The Theory of Passive Participation in Cartels:

12. Passive participation in cartel is regarded as a structural presumption. Engaging in activities such as attending a meeting or being part of a social media group aimed at forming an anticompetitive agreement constitutes valid participation that requires incrimination under the relevant provisions. In this context, the burden of refuting this presumption rests on the passive participant involved in the agreement.

13. In several jurisdictions, passive participation in cartels cannot be refuted unless the undertaking proves that it publicly distanced itself from the agreement, meeting or group in question. This public distancing may take several forms, including expressing objections in meeting minutes or recordings, posting dissent in the group, sending messages, or utilizing other communication methods.

14. Additionally, in case the duration of the agreement is relatively extended, or involves multiple meetings, the public distancing will not be sufficient for the competition agency to exempt the passive participant, additional factors shall be taken into account as follows:

- Assess whether the primary purpose of the meeting was to form anti-competitive agreements;
- Evaluate if the nature of the meeting was evident from the invitation and if the invitees' intentions to join the cartel were clear.
- Examine whether there is evidence that cartel members acted in accordance with the agreed terms or policies discussed during the meeting.

15. Thus, the adoption of a bare structural presumption of passive participation to establish the violation, particularly in the context of multiple meetings or long-term agreements, is insufficient unless supported by additional evidence.

1.2.2. ECA's Approach to Passive Participation in Cartels

16. In Egypt, there is no structural presumption regarding passive participation in cartels. According to Egyptian legislation, silence or passive participation in agreements cannot be regarded as an active participation breaching ECL. Particularly when the objective of the meeting or social media group is not to conclude an anticompetitive agreement. Egyptian laws require a positive action expressing the intention of the undertaking to be considered a cartel member and subsequently subject to sanctions.

17. However, if the primary objective of the meeting or social media group is to establish an anticompetitive agreement, and the undertaking knowingly attended this meeting or requested to join the group, this behavior is regarded as active participation according to ECL. ECA's approach has been illustrated in several decisions, including the laser cartel, the ice blocks cartel and the printing companies' cartel.

Public Awareness and Compliance Initiatives

18. To enhance understanding and compliance among businesses regarding the risks associated with cartel involvement, including passive participation, the ECA has initiated several public awareness and compliance programs. These initiatives aim to educate companies about the legal implications of both passive and active participation in cartel activities.

19. Through workshops, seminars, and informative materials, the ECA seeks to promote a culture of compliance and encourage firms to implement robust internal policies against anticompetitive behavior. These efforts are particularly vital in fostering a competitive market environment where businesses can operate fairly and independently.

Box 1. ECA vs. Laser Centers Cartel

In 2021, ECA issued its decision against 20 undertakings operating in the hair removal laser market for engaging in price fixing of laser pulse rates via a WhatsApp group. Although 29 undertakings were part of the group, only 20 were found in violation of Article (6/a) of ECL. This decision was based on the fact that only those 20 undertakings actively participated, explicitly contributing and expressing their intent to fix the pulse price for laser services, while the remaining members did not exhibit any active involvement.

Box 2. ECA vs. Ice Plates Manufacturers Cartel

In February 2024, ECA sanctioned 16 ice plates manufacturers under Article (6/a) of ECL for engaging in price fixing through a WhatsApp group. Although the WhatsApp group consisted of 33 members, only 16 were found guilty of cartel conduct, as they actively participated by suggesting and agreeing upon the fixed prices. The remaining 13 members were excluded from the cartel due to their passive participation in the group and lack of contribution to price related discussions.

Box 3. ECA vs. Printing Companies Cartel

In December 2023, ECA has issued a decision against 33 printing companies for colluding to set a minimum price for printing and supplying school books. This anticompetitive agreement was facilitated through various channels, including a WhatsApp group with 45 printing companies as members. However, only 33 of these companies were found guilty of cartel conduct due to their active contribution in reaching a consensus on the minimum price. The remaining members were excluded from the decision, as they were inactive in the group and neither by accepted nor opposed the agreement, leading ECA to conclude they had not participated in the cartel.

2. Structural presumptions related to economic concentrations:

2.1. Presumption of Control through Acquiring More Than 50% of Voting Rights

20. Under Article (19 bis a) of ECL, parties must notify ECA of any economic concentration that meets specified conditions: "ECA shall be notified of any economic concentration that fulfils the conditions provided by Article (19 bis) of this Law, and the economic concentration will not be implemented before obtaining ECA's clearance decision." Economic concentrations, as defined in Article (2/g) of ECL, refers to "any change of control or material influence over one or more persons …"

21. For changes in control, Article (2/h) of ECL defines control in this context as follows: "Control: is the ability of one or more controlling persons to exercise decisive influence, either directly or indirectly, by directing the economic decisions of another person or persons, either through acquiring the majority of voting rights, or the ability of the controlling person to block economic decisions by the person or other persons, or by any other means, and this includes any situation, agreement, stocks or shares ownership regardless of their portion, provided that it leads to a decisive influence on the management or decision making."

22. In practice, ECA presumes that acquiring more than 50% of the voting rights in a person, typically results in a change of control, thereby constituting an economic concentration under ECL. However, this presumption is rebuttable.

23. Instances may arise where, despite holding more than 50% of the voting rights, a shareholder does not actually control the target due to factors such as: corporate rights held by minority shareholders (e.g. veto rights), technical experience held by other shareholders, or low attendance rates of the shareholder acquiring more than 50% of the voting rights in the target in comparison with the remaining shareholder(s), resulting in the dilution of the de facto voting rights.

24. ECA adopts a comprehensive approach when assessing whether a notified transaction results in a change of control, even though a structural presumption exists in the text of ECL providing that acquiring more than 50% of the voting rights in a person may be identified as control, all other aspects regarding corporate rights and reserve matters that exists in the target(s) may be taken into consideration, to confirm that this majority of voting rights "leads to a decisive influence on the management or decision making.". Nevertheless, the burden of proof lies on the notifying parties, who must demonstrate the absence of control. In the absence of such proof, ECA presumes the acquisition of control in case of acquiring more than 50% of the voting rights, per ECL and ER.

2.2. Presumption of Acquiring Material Influence by Holding More Than 25% of Voting Rights in an Undertaking:

25. As noted, Article (2/g) of ECL identifies a second scenario that can be identified as an economic concentration, a change in material influence of an undertaking. Article (50) of the ER elaborates on the concept of "material influence," defining it as: *"the ability to directly or indirectly influence the policy of another person including their strategic decisions or commercial objectives. Material influence can be achieved by any of the following, in particular:*

> *Act that leads to the ownership of 25% more of the total voting rights or total shares or stocks of the capital of another person …"*

26. In parallel to the presumption of control associated with acquiring more than 50% of the voting rights, Article (50) of ER established a simple and rebuttable structural presumption that holding more than 25% of voting rights in a person, then they presumably have material influence over that person. However, this presumption may be challenged by demonstrating that the acquisition does not grant decisive influence over strategic or commercial decisions.

27. The burden of proof rests on the notifying parties to provide evidence refuting material influence when holding more than 25% of voting rights, particularly if minority rights, shareholder agreements, or other mitigating factors limit the shareholder's impact on policy or strategic decision-making. In the absence of such evidence, ECA maintains a presumption of material influence in alignment with the ECL and ER provisions.

2.3. Presumption Against Material Influence When Acquiring Less Than 10% of Voting Rights in an Undertaking:

28. Article (50) of the ER states that "In any case, material influence is not achieved by owning less than 10% of the total voting rights, shares or stocks of the capital in another person, unless the acquirer is ranked among the top three shareholders or stakeholders in the acquired person."

29. This provision establishes a "safe harbor", presuming that an acquisition of less than 10% of voting rights does not result in a change in material influence. However, if the acquirer is ranked among the top three shareholders or stakeholders, they may still be presumed to acquire material influence even with a smaller shareholding.

30. The rationale behind this provision is that if an acquirer holds less than 10% of the voting rights and is not ranked among the top three shareholders or stakeholders in the acquired person, it is unlikely to possess the capacity to influence the strategic or commercial policy of the target undertaking. This presumption of non-influence provides clarity in minor acquisitions, simplifying the assessment of material influence where the acquiring party holds a relatively small stake in the target undertaking.

2.4. Presumption of Non-problematic Economic Concentrations Eligible for Simplified Procedures:

31. ECA's merger control regime includes a series of structural presumptions that certain types of economic concentrations are unlikely to negatively affect the freedom of competition in Egyptian markets, making them eligible for simplified procedures. These simplified procedures serve to reduce administrative burdens on notifying parties and allow ECA to focus resources on more complex cases with higher competitive risks. Simplified procedures involve:

1. Examining the notification file within a period of twenty (20) working days, starting from the next working day following the date of receiving the complete submission of the attached notification file.
2. Completion of a short notification file to ECA. The short notification file is characterized by the fact that the information provided by the persons concerned with the economic concentration is minimal, due to the nature of the economic concentration they intend to implement.

32. The following types of economic concentrations are presumed to be non-problematic and thus eligible for simplified procedures:

1. Transactions that meet domestic notification thresholds stated in Article (19 bis) (a) of ECL, where the combined annual turnover or value of assets in Egypt of the persons concerned with the economic concentration does not exceed EGP 2 billion for the latest year in the last audited consolidated financial statements.
2. Transactions that meet worldwide notification thresholds stated in Article (19 bis) (b) of ECL, provided that the target's annual turnover in Egypt does not exceed EGP 500 million for the latest year in the last audited consolidated financial statements.
3. Establishing or acquiring a joint venture operating an independent and permanent economic activity outside Egypt.
4. Establishing or acquiring a joint venture that operates an independent and permanent economic activity in markets that are not horizontally or vertically related or otherwise related to the markets in which the parent companies operate.
5. Conglomerate economic concentrations between persons operating in markets that are not horizontally or vertically related or otherwise related to each other.
6. Acquisition of sole control over one or more persons after the acquiring person or persons exercised joint control over the same person.

33. These structural presumptions streamline the process for transactions that are expected to have a minimal impact on market competition, ensuring efficient use of ECA's resources while reducing procedural burdens on businesses involved in low-risk economic concentrations.

34. First and second presumptions – domestic and worldwide thresholds, Article (19 bis) of ECL states that:

> *The Authority will examine the economic concentration if it fulfills any of the following thresholds:*
>
> *The combined annual turnover or the value of the combined assets of all the concerned persons in Egypt exceeds EGP 900 million for the latest year of the last audited consolidated financial statements, provided that the annual turnover in Egypt for at least two of the concerned persons individually, exceeds EGP 200 million from the latest year of the last audited consolidated financial statements …"*

35. Article (19 bis)(a) ECL mandates that ECA will review economic concentrations where the combined annual turnover or the value of assets in Egypt of all involved parties exceeds EGP 900 million, with at least two parties each reporting over EGP 200 million. However, ECA's simplified notification form states that if the combined turnover or assets in Egypt do not exceed EGP 2 billion, the transaction is presumed not to adversely affect the freedom of competition in Egyptian markets.

36. Moreover, Article (19 bis) of ECL further sets the worldwide turnover and asset value notification thresholds as follows:

> *"(b) The worldwide combined annual turnover or the value of the combined assets of the all the concerned persons exceeds EGP 7.5 billion form the latest year of the last audited consolidated financial statements, conditional upon that the annual turnover in Egypt of at least one of the concerned persons exceeds EGP 200 million from the latest year of the last audited consolidated financial statements."*

37. Article (19 bis)(b) sets an international criterion, where worldwide combined turnover or asset value must exceed EGP 7.5 billion, with at least one party holding over

EGP 200 million in Egypt. For cases that meet these worldwide thresholds, the simplified notification form states that if the target person's annual turnover in Egypt does not exceed EGP 500 million for the latest year in the last audited consolidated financial statements, a low competitive impact is presumed.

38. These thresholds are based on the rationale that small players, with turnover and asset values below these limits, are unlikely to affect competitive dynamics significantly. Nonetheless, in sectors of strategic importance, even small market players could have a significant competitive impact. To address this, the simplified notification form allows ECA to request a standard notification file at any time, at no additional cost, and apply the legal deadlines stated in Articles (19 bis c) and (19 bis d) of ECL, if it becomes necessary to ECA according to the assessment.

39. Third structural presumption according to which economic concentrations may be eligible for a simplified procedure is the case of joint ventures established or acquired outside Egypt, carrying out independent and permanent economic activity. This presumption aims to expedite the review process for international transactions without direct relevant to the Egyptian market, aligning ECA's practices with international best practices.

40. Fourth structural presumption is regarding joint ventures operating in markets which are not horizontally or vertically related to the parent companies' existing activities are presumed to have minimal impact on competition and are thus eligible for a simplified procedure. By defining a "non-overlapping" economic concentration as one where the parties' products are neither complementary, neighboring, nor non-related products. ECA acknowledges that such concentrations are unlikely to restrict competition in Egyptian markets where the parent companies have no presence or any form of overlap.

41. Fifth presumption in concerning the pure conglomerate economic concentrations between firms operating in unrelated markets, which lack horizontal or vertical overlap, are generally seen as low-risk for competition. These transactions are eligible for simplified review, as they typically present fewer competitive risks due to the absence of any sort of relationship between the concerned parties' activities. However, ECA remains cautious for any potential anti-competitive outcomes that may rise from a similar economic concentration.

42. The sixth and final presumption is concerning the acquisition of sole control over an entity which was previously under joint control, provided there is no change in the competitive dynamics, a presumption is made that this transaction will have minimal impact on market competition. The shift is seen as low-risk if the acquirer was already involved in strategic decision-making of the target undertaking under joint control. As with other presumptions, this can be overridden if ECA's competitive assessment indicates a need for further review and the submission of a standard notification form.

43. These presumptions support ECA's goal of fostering efficient reviews, ensuring that only economically significant cases undergo the full review process, while allowing transactions with limited or no competitive impact to proceed with reduced procedural obligations.

2.5. Presumptions Related to Transactions Below Notification Thresholds: Addressing "Killer Acquisitions"

44. Killer acquisitions pose significant challenges for competition law, particularly in dynamic markets where innovation is crucial. These transactions involve established firms purchasing emerging competitors, not primarily for strategic synergies or product

integration but to eliminate potential future competition. In many instances, the acquired firms are in early stages of product development, generating limited revenue, which often allows the acquisitions to fall below the notification thresholds set by competition authorities. This absence of mandatory notification creates a regulatory blind spot, making it difficult to assess the long-term impacts of these transactions on market dynamics and innovation.

45. These acquisitions can substantially curb innovation by reducing the number of active competitors. For instance, in the pharmaceutical industry, larger firms may acquire biotech startups that are developing promising new drugs, only to shelve those projects to avoid competition with their existing products. This behavior not only reduces the immediate competitive pressure on incumbents but also has broader implications for consumers, who may face fewer choices and higher prices in the long run. The chilling effect on innovation is particularly pronounced in industries characterized by rapid technological advancements, where the ability to bring new products to market quickly can determine competitive success.

46. The traditional merger notification framework often fails to capture the competitive significance of killer acquisitions. The competition authorities typically assess the economic concentrations based on either the thresholds of turnover or market shares, which may overlook the strategic motivations behind certain transactions. Consequently, many harmful acquisitions may occur without scrutiny, therefore leading to a call for reform in competition policy. In response to these challenges, some jurisdictions have begun to explore ex-post reviews, investigations conducted after a merger is complete, to evaluate the competitive effects of previously unnotified transactions.

47. Large corporations, particularly in tech and pharmaceuticals, frequently acquire smaller, innovative startups to eliminate competition and gain access to emerging technologies. Companies like Amazon, Alphabet, and Roche use acquisitions to speed up development and reduce the risks of independent growth. This allows them to integrate promising innovations without investing heavily in internal research and development. However, while this strategy offers smaller startups resources, it can also limit their autonomy. Larger companies may prioritize maintaining market share over advancing innovations, which can slow the development of breakthrough products and reduce competition. Consequently, acquisitions can sometimes hinder rather than promote progress and innovation.

48. Theories of harm surrounding "killer acquisitions" highlight the negative consequences of large companies acquiring smaller, innovative startups to suppress competition. This practice harms potential competition by allowing the acquirer to either suppress or integrate the startup's innovations, reducing consumer choices, and hindering product quality and innovation. By acquiring potential rivals, larger firms protect their existing products, which stifles technological advancement and discourages new startups from investing in research.

49. Killer acquisitions also distort market dynamics by creating barriers to entry for new competitors and making the market less competitive. Regulatory challenges arise because many acquisitions bypass scrutiny due to financial thresholds, leaving smaller firms unprotected. This suggests a need for regulatory reforms, such as lowering notification thresholds in critical industries or introducing pre-notification phases for emerging competitors.

50. According to Article (19 bis) of ECL, “the Authority has the power to examine the Economic concentration below the stated threshold for the obligation to notify, after the board’s approval, if there are evidences or indications that may lessen, restrict or harm

competition within one year from the implementation of the economic concentration, under executive regulations of this law. In case any lessening, restriction or harm of competition resulting from the Economic Concentration is proven, the Board shall impose one or more of the following behavioral remedies in accordance with each case:

1- Refraining from undertaking an act that would lead to the exclusive distribution of a specific product solely.

2- Permitting essential utilities/facilities or services to the competitors

3- Refraining from discriminating in agreements or contracts, of any kind between sellers or buyers whose contractual positions are similar, whether was this discrimination in the prices, the quality of the products, or other terms of dealing.

4- Refraining from imposing as a condition, for the conclusion of a contract or agreement of a product, the acceptance of obligations or products unrelated by their very nature or by their commercial custom to the original transaction or agreement

The stated indications may take one or more of the following forms:

Restriction of technological development and innovation.

Controlling the market by increasing or decreasing prices.

Reducing the quality of products.

The creation of entry or expansion barriers in the market."

51. The merger control regime allowed for ex-post initiations of investigating economic concentrations, which do not fulfill the notification thresholds as per Article (19 bis) of ECL. These initiations can begin conditional upon the implementation of the suspected economic concentrations within one year and after the approval of ECA's Board of Directors. This regulation allows ECA to investigate killer acquisitions that do not fulfill the notification thresholds and may harm competition in the relevant markets, depending on the competitive dynamics and market structure of the investigated markets.

52. In summary, killer acquisitions present a significant challenge for competition authorities, particularly in fast-evolving markets where innovation is a key driver of competition. The existing regulatory frameworks often inadequately capture the competitive risks associated with these transactions, highlighting the need for reforms that enhance the ability to monitor and assess the implications of unnotified mergers. By adopting proactive measures and improving collaboration with industry stakeholders, regulators can better safeguard competition and encourage innovation in the marketplace.

2.6. Presumptions Related to HHI Thresholds in Market Concentration

53. The Herfindahl-Hirschman Index (HHI) is a valuable tool in merger analysis as it quantitatively assesses market concentration, helping identify potential anticompetitive effects. The HHI is calculated by squaring each firm's market share in a relevant market and summing these values. This method places greater weight on larger firms, as their squared market shares contribute more to the total score. The index ranges from near zero, in highly competitive markets with numerous small firms, to a maximum of 10,000 in monopoly conditions. This makes it an effective initial measure for regulators to evaluate whether a merger could potentially harm consumers by reducing competition.

54. In merger reviews, specific HHI thresholds guide competition agencies in determining whether a merger warrants further scrutiny. These thresholds act as an initial

filter, focusing regulatory efforts on transactions most likely to harm competition. While HHI thresholds are useful indicators of anticompetitive risk, they have limitations. For example, they provide a static view of market shares, omitting market dynamics. In industries characterized by rapid technological change, dominant firms may face intense competition from startups or disruptive innovations. Thus, a high HHI may not always reflect a firm's ability to exert long-term market power.

55. Conversely, in a market where several firms appear to compete based on market shares, high barriers to entry or other strategic factors, for instance, intellectual property control or exclusive contracts, could still allow firms to engage in anticompetitive practices. Hence, relying solely on HHI thresholds without considering these broader factors can lead to false positives or false negatives in assessing competitive harm.

56. In Egypt, the HHI thresholds align with those used by the European Union. An HHI below 1,000 reflects low market concentration, and transactions falling within this range typically do not require further review by ECA. If the HHI is between 1,000 and 2,000, indicating moderate concentration, the ECA conducts a more detailed analysis to assess the potential effects on competition. For transactions resulting in an HHI above 2,000, signaling high concentration, prompting rigorous review. This structured approach ensures mergers and acquisitions do not harm market competition and align Egypt's practices with international standards.

57. However, while aligning with international best practices, this framework may not fully capture Egypt's unique market structures and competitive conditions. Tailoring HHI thresholds to better reflect Egypt's specific market dynamics could improve assessments of competitive risks, ensuring that regulatory actions are well-suited to local conditions.

3. The Impact of Adopting Structural Presumptions in Competition Matters in Developing Countries:

3.1. Benefits of Adopting Structural Presumptions:

58. Structural presumptions serve as practical shortcuts for competition authorities, particularly valuable in developing countries where financial and human resources are often limited. Key benefits include – but not limited to – achieving higher level of efficiency and overcoming insufficient resources.

3.1.1. Achieving Higher Levels of Efficiency:

59. In developing countries, where competition authorities often face capacity constraints, structural presumptions help streamline enforcement actions by simplifying the legal and economic analysis required for investigating potential anticompetitive conduct. Rather than engaging in complex and costly behavioral assessments to prove harm, competition authorities can use certain structural conditions - such as high market concentration or a firm's dominant market share - as presumptive evidence of anticompetitive risk. This improves the speed at which decisions are made, reducing the time-consuming nature of investigations.

60. This efficiency gain is particularly valuable in markets where swift regulatory action is needed to prevent anticompetitive mergers or practices. Protracted investigations may allow anticompetitive practices to persist, harming consumers and market entrants. By relying on structural presumptions, regulators can act preemptively to block or impose

conditions on potentially harmful mergers or dominant firm behaviors, thereby maintaining market competition and protecting consumer welfare.

61. In addition to improving procedural efficiency, structural presumptions can help create a more predictable and transparent regulatory environment. In developing countries, businesses often face uncertainty regarding how competition laws will be enforced, which can deter investment and reduce confidence in market fairness. By adopting structural presumptions, competition authorities provide clearer benchmarks and more predictable legal outcomes for firms. For instance, if a merger exceeds certain concentration thresholds, businesses can anticipate the likely regulatory response and adjust their strategies accordingly. This predictability reduces the regulatory burden on firms while simultaneously deterring anticompetitive behavior in the first place.

62. Moreover, structural presumptions can facilitate cooperation between competition authorities in developing countries and those in more developed jurisdictions. Given that many international organizations like the World Bank and OECD often advocate for a more rules-based approach to competition law in emerging economies, structural presumptions align with global best practices. This can lead to greater harmonization of competition law enforcement across borders, promoting cross-border trade and investment. Efficiency gains are also realized when local authorities adopt structural presumptions, as they can more easily collaborate with international counterparts by using similar legal frameworks.

3.1.2. Overcoming the Challenge of Insufficient Resources:

63. Developing countries often suffer from shortage of personnel, technical expertise, and financial resources to conduct in-depth necessary economic analyses for assessing either the antitrust cases or the notified economic concentrations. Structural presumptions help in mitigating these limitations by allowing authorities to rely on established criteria, like market share thresholds, which can be applied without needing detailed investigation into the specific behavior of firms.

64. For example, rather than proving a merger will reduce competition through extensive data collection and modeling, authorities can use a structural presumption based on the post-merger market concentration to block the deal or impose remedies. This approach allows competition authorities to manage their limited resources more efficiently, enabling them to cover more cases and act more proactively. It also alleviates the risk of market failures caused by delayed enforcement due to resource shortages.

65. The issue of limited resources is particularly pronounced in many developing countries where competition authorities are often underfunded and lack specialized staff capable of performing sophisticated economic analyses. Structural presumptions allow these authorities to sidestep the need for highly technical evaluations of competitive effects, which can be time-consuming, expensive, and prone to errors, especially in environments with weak data collection systems.

66. Another benefit of structural presumptions in resource-scarce settings is that they can empower less experienced competition authorities to make impactful decisions without being overly reliant on external consultants or experts. This increases the independence and authority of local regulators and reduces the likelihood of decisions being influenced by political or economic interests, thus promoting a more impartial enforcement environment.

67. Adopting structural presumptions also serves as a way to build institutional capacity over time. In the absence of structural presumptions, competition authorities in developing countries may have to rely heavily on discretionary power when evaluating market conditions. This discretionary power can often lead to inconsistent decisions, regulatory capture, or biased outcomes, especially in jurisdictions where the legal

framework is still maturing or where corruption is a concern. Structural presumptions provide a framework of rules that limits discretion, making enforcement less vulnerable to subjective interpretations or external influences.

68. As competition authorities mature, they can use structural presumptions as a foundational tool and gradually introduce more sophisticated analytical techniques as their capacity improves. Over time, this process helps build institutional knowledge and expertise, enabling more effective competition law enforcement without overwhelming regulatory bodies in the early stages of their development.

69. In conclusion, the adoption of structural presumptions offers a range of benefits for developing countries that are still building their competition law frameworks. These presumptions streamline enforcement, help overcome resource constraints, and promote transparency and predictability in the regulatory environment.

3.2. The Risks of Adopting Structural Presumptions:

70. Structural presumptions can be double edged weapons. They may be beneficial for competition agencies to achieve higher level of efficiency in competition law enforcement, by saving time and resources. However, adopted structural presumptions in developing countries are usually heavily impacted by those that were observed in developed nations. Consequently, there is a risk that structural presumptions may not be effective and adaptable in all jurisdictions, namely in developing countries.

71. In this regard, the position of structural presumptions in developing countries may be misleading, as market players may be presumed dominant for holding a significant market share of a certain market, while there are deterrent mechanisms; such as high market regulation by the government. Additionally, an important factor may be taking into account when assessing the admissibility of structural presumptions in developing countries, is that consumers are price-driven especially in essential products. Indeed, every consumer is keen to find the best quality for the lowest price. However, due to the living condition of a large pool of consumers, price volatility in some essential products may lead to consumer indifference to a certain brand or presumed dominant firm, eliminating any chance for brand loyalty to a presumed dominant firm.

72. Therefore, non-adapted structural presumption in developing countries may cause competition agencies to commit type I or II errors, either by over-enforcing or under-enforcing competition law.

4. Conclusion:

73. Structural presumptions in competition law tend to provide clarity and predictability. However, there is always a confusion regarding their reliability.

74. There are various structural presumptions that may be used by competition agencies, either in defining the market relying on non-empirical tools, assessing market dominance by relying solely on the market shares, silence in cartels, besides, the competitive assessment of economic concentrations through concentration ratios, thresholds set for control and material influence, as well as eligibility to simplified procedures and killer acquisitions. Therefore, it is important to address structural presumptions in these areas to understand its advantages and disadvantages, emphasizing and stressing on the effective and credible presumptions and thus dismissing inaccurate and unreliable ones.

75. Additionally, and as structural presumptions play a crucial role in the enforcement of competition law in developing countries, by simplifying the burden on competition authorities, especially, structural presumptions enable more consistent and proactive regulation, reduce the risks of anticompetitive practices taking root, and help safeguard consumer welfare. Over time, they contribute to building more capable and independent institutions that can enforce competition laws effectively, setting the stage for sustainable economic development and fairer markets.

76. However, caution is crucial when adopting structural presumptions as markets characteristics differ from jurisdiction to other, thus several risks may inherent such as government intervention in the markets, externalities and data deficiency. Moreover, in dynamic markets characterized by rapid technological changes and shifting competitive landscapes, structural presumptions may not always hold true. In such contexts, relying solely on static criteria could lead to false conclusions regarding market behavior and anticompetitive risks.

77. While structural presumptions can significantly streamline competition law enforcement, it is essential to adapt these frameworks to the unique characteristics of each jurisdiction. Competition agencies must conduct thorough market analyses to ensure that the presumptions applied are relevant to the local context. This involves not only understanding the economic landscape but also considering cultural, political, and social factors that may influence market behavior. By tailoring presumptions to fit specific market dynamics, authorities can enhance their effectiveness and reduce the likelihood of unintended consequences.

78. In conclusion, while structural presumptions offer valuable benefits in enforcing competition law, their implementation must be approached with care and diligence. By recognizing the importance of contextual adaptation, continuous evaluation, capacity building, and stakeholder engagement, competition authorities can harness the full potential of structural presumptions, leading to more effective regulation, improved market outcomes, and ultimately, a more equitable economic environment.