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Voluntary peer review of competition law and policy: Egypt

**Voluntary peer review of competition law and
policy of Egypt: Overview* ****

* The findings, interpretations and conclusions expressed herein are those of the authors and do not necessarily reflect the views of the United Nations or its officials or Member States. The present document is an overview of a full report on the voluntary peer review of the competition law and policy of Egypt.

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I. Foundation and history

A. Purpose of peer review

1. An external and independent assessment of the effectiveness of competition law and policy in Egypt is provided in this document. Specifically, Law No. 3 of 2005 on the Protection of Competition and the Prohibition of Monopolistic Practices (hereinafter, Egyptian Competition Law (ECL)) and its accompanying Executive Regulations are scrutinized by assessing the substantive aspects of the law as they relate to prohibited anticompetitive behaviour and merger control. The Egyptian Competition Authority (ECA) is also assessed as an institution, namely regarding its independence, powers and case record. Building on the analysis undertaken, recommendations are proposed to improve the legal and institutional frameworks as well as the effectiveness of competition law and policy of Egypt.

B. Legal and economic context

2. In recent decades, the economic system of Egypt underwent significant changes, transitioning from protectionism in the 1950s to an open-door policy in the late 1960s.¹ Throughout this period, competition-related provisions were included in various pieces of legislation, and it was not until the 1990s and early 2000s that Egypt developed a specialized competition law driven by economic reforms and international agreements.² Egypt enacted ECL in 2005, which was further strengthened with the 2014 amendments to the Egyptian Constitution.

3. A recent evaluation by the Economic and Social Commission for Western Asia of the United Nations indicates significant improvement in the competitive landscape of Egypt and strengthened enforcement of antitrust measures, mergers and international agreements by 2023.³ These developments suggest a positive impact of competition law on the country's market dynamics.

C. Background: Promulgation of the Egyptian Competition Law and its amendments

4. ECL was promulgated on 15 February 2005 and enacted on 16 May 2005. It aims to ensure economic activities are conducted in a competitive manner. The law initially prohibited agreements and practices that could hinder competition, while granting significant powers to the competent minister. The subsequent amendments in 2008 and 2014 introduced measures, such as an ex post merger notification system and a leniency programme, aimed at enhancing the independence of ECA and increased fines for violations. In 2022, the law was further amended to include an ex ante compulsory merger control regime, replacing the ex post notification system.

¹ Al-Sayyid Marsot AL, 2012, *A History of Egypt*, Cambridge University Press, p. 158.

² See, for example, Attia K, 2009, Introducing competition law and policy: the case of Egypt, *Mediterranean Competition Bulletin*, No. 1, p. 18; Shahein H, 2012, How is the E[uropean] U[nion] seeking to influence competition law in Egypt?, *Mediterranean Competition Bulletin*, No. 6, p. 54; Organisation for Economic Co-operation and Development (OECD), 2012, [Annual report on competition law and policy developments in Egypt, 2011](#), DAF/COMP/AR(2012)45.

³ United Nations, Economic and Social Commission for Western Asia, 2023, [Competition, Country profile: Egypt](#), The Arab business legislative frameworks, Beirut.

D. Current institutional structure and enforcement procedures

5. After the enactment of ECL, a Board of Directors of ECA was appointed, on 24 August 2005.⁴ This was followed by the hiring of technical staff, which took place from that date until early 2006.⁵

1. Enforcement procedure for antitrust cases

6. An investigation is launched by ECA based on a complaint, a request from a State authority or ECA *ex officio*. The Investigations Department, or the Bid Rigging Department supported by the Economic Intelligence Department, conducts antitrust investigations. After an investigation is finalized, a report is drafted by the case team and reviewed by the Technical Office; the report is then presented to the ECA Board for a decision. The infringing party is then notified, in writing, of the decision of ECA.⁶

7. While violations of ECL are criminal in nature, ECA enforcement decisions are administrative. These include decisions relating to interim measures,⁷ infringement decisions⁸ and settlements.⁹ According to State Council Law No. 47 of 1972, a grievance against those decisions can be submitted to ECA, with a subsequent appeal to administrative courts.

8. ECA can also request public prosecution to initiate criminal proceedings for a particular infringement, but only public prosecution may launch a criminal case.¹⁰ Public prosecution investigates cases, reviews the evidence received from ECA¹¹ and may decide that additional evidence is required, carrying out further investigations.

9. Based on evidence from ECA or further investigation, public prosecution can terminate procedures if no case is warranted¹² or file a case and request the defendant to appear before court if sufficient evidence exists.¹³ Although ECA has the power to request the initiation of criminal proceedings, it has no control over whether a case is brought to court. Fines can only be imposed by courts.

10. The Central Bank of Egypt¹⁴ has the exclusive power to request public prosecution to file criminal cases in the area of its competence. If public prosecution proceeds, the case is brought to the Economic Courts, and decisions of the Economic Courts can be challenged before the State's Court of Cassation.¹⁵

11. In conclusion, ECL is enforced through a criminal model with a dual institutional regime; ECA takes administrative decisions, while the judiciary imposes fines on the cases brought by public prosecution.

⁴ Egypt, 2005, Prime Ministerial Decision No. 1342 of 2005, *Official Gazette No. 192*.

⁵ ECA, 2006, [Annual Report 2006/07](#).

⁶ Article 43 of the Executive Regulations of Law No. 3 of 2005 on the Protection of Competition and the Prohibition of Monopolistic Practices (hereinafter, Egyptian Competition Law (ECL)). Note that this notification is through a letter containing the final decision of the Board; i.e. the provisions of ECL infringed, the cease-and-desist order, and a notification that a referral has been sent to the public prosecution or that the settlement request has been accepted (whichever applies, if either). Currently, there is no legal obligation, nor is there an internal mechanism at ECA, to send a copy of the report to the infringing parties. They may, at the discretion of ECA, be sent a non-confidential version of the report if they show willingness to settle with ECA.

⁷ Egypt, ECL, article 20, para. 2.

⁸ *Ibid.*, article 20, para. 1.

⁹ *Ibid.*, article 21.

¹⁰ Egypt, Law on Criminal Procedures (No. 150 of 1950), article 1.

¹¹ Egypt, General Instructions for Prosecution Offices, article 776.

¹² Egypt, Law on Criminal Procedures (No. 150 of 1950), article 61.

¹³ *Ibid.*, article 63.

¹⁴ Egypt, Banking Law No. 194 of 2020, article 238.

¹⁵ Egypt, Law No. 120 of 2008 Creating the Economic Courts, articles 11 and 12.

2. Enforcement procedure for merger cases

12. The procedures for mergers are not yet as clear as for antitrust cases due to the absence at the time of writing of the Executive Regulations of ECL amendments reflecting the new ex ante merger control regime. There is a dedicated Economic Concentrations Department at ECA, which currently handles the ex ante review of economic concentrations in the healthcare industry and those referred to ECA by the Common Market for Eastern and Southern Africa (COMESA) Competition Commission. According to the new provisions of ECL, decisions relating to merger control are administrative in nature. Decisions for phase I decisions¹⁶ and for cases referred from the Financial Regulatory Authority¹⁷ (see chapter II, section B.2 below) are issued by committees composed of three Board members, and decisions for phase II are issued by the Board of ECA.¹⁸

13. The ECA Board can also refer merger cases to public prosecution for certain infringements, including failure to notify and to comply with ECA decisions, but the power of ECA is limited to requesting criminal proceedings, and it cannot directly file cases in court.

II. Legal framework

A. Egyptian Competition Law: Assessment of the clarity, coherence and effectiveness of the legal framework

14. The ECL prohibits certain horizontal agreements, anticompetitive vertical agreements, abuse of dominant position and restrictive economic concentrations. Sector-specific regulators also play a role in this framework.

1. Horizontal agreements

15. Article 6 of ECL and article 11 of the Executive Regulations of ECL prohibit four types of agreements between competitors, all treated as anticompetitive by object. It also lays out a mechanism for the ex ante exemption of horizontal agreements that will result in economic efficiencies, which outweigh the harm to competition and are passed on to consumers.

16. Article 6 of ECL prohibits conduct that “intends to” result in the four types of effects on the market listed in the article. The wide interpretation of the words “intends to” could arguably mean that even practices not explicitly mentioned in the exhaustive list set out in article 6 of ECL could still be a violation to the extent that they result in one of the effects listed.

17. However, the list does not include information exchange as a stand-alone violation. It is recommended that this should be added to article 6 of ECL. This is particularly necessary in addressing challenges, such as algorithmic collusion, and in cases where competitors implement similar price structures or methodologies, potentially harming consumers in digital markets. Alternatively, to promote legal certainty, an amendment of ECL may qualify the exchange of sensitive information as a stand-alone violation. This may be particularly important regarding practices adopted in digital markets.

18. Another challenge includes interpreting “contract or agreement” (article 11 of the Executive Regulations of ECL). Considering related literature¹⁹ and case law,²⁰ these terms are to be interpreted widely to include at least oral and non-binding agreements. However,

¹⁶ Egypt, ECL, article 19 bis (c).

¹⁷ Egypt, ECL, article 19 bis (f).

¹⁸ Egypt, ECL, article 19 bis (d).

¹⁹ Established literature on the Egyptian legal system clarifies that all contracts encompass agreements, but not all agreements take the form of a contract, meaning that an agreement is a broader concept than that of a contract. See Al-Sanhūrī ARA, 1964, *Al-Wasīf fī Sharḥ al-Qānūn al-Madanī*, Arab Renaissance Publishing House, p. 117.

²⁰ Egypt, Cairo Economic Court, Court of First Instance, Case No. 1898 of 2016.

in practice, it is unclear whether these terms include decisions by associations of undertakings and concerted practices, as does, for instance, article 101 of the Treaty on the Functioning of the European Union.²¹

19. The importance of defining the market in article 6 cases may also be an issue. While the article prohibits agreements between “competing persons in any relevant market”, article 11 of the Executive Regulations of ECL could be interpreted as implying that ECA does not need to proceed to a full market definition, and that it should suffice to prove that the undertakings operate in the same market, as also seen in ECA decisions in recent cases. Both the administrative²² and criminal courts²³ have issued decisions supporting this practice of not defining the market for article 6 cases. Nonetheless, to avoid unnecessary burdens on ECA and to promote clarity, article 6 of ECL could be amended to delete any reference to the concept of relevant market, or to clarify that there is no need to proceed to a full-fledged market definition but eventually to sketch the competitive relation (or not) between the parties to an agreement.²⁴

20. Furthermore, the exemption regime in ECL refers to economic efficiencies that may also eventually cover (industrial) restructuring agreements (“crisis cartels”).

2. Vertical agreements

21. Article 7 of ECL and article 12 of the Executive Regulations of ECL prohibit anticompetitive vertical restraints. Under article 7 of ECL, ECA shall demonstrate that, at least in abstracto, the agreement has actually or potentially the effect of harming competition. The wording of the article is vague, lacking specification on the types of vertical restraints that may be prohibited.

22. The case history of ECA shows that there have been very few article 7 cases. Vertical restraints by dominant undertakings cases have been dealt with under article 8 of ECL. Particularly, in article 7 of ECL, there is no explicit reference in the text to conduct more likely to be harmful, such as minimum and fixed resale price maintenance, or to most favoured nation clauses and restrictions of passive sales leading to absolute territorial protection.

23. Aligning with international best practices, ECL should be amended to include a paragraph with a rebuttable presumption that certain categories of vertical restraints are capable of producing anticompetitive effects. This would facilitate the pursuit by ECA of such categories of agreements under article 7 of ECL and provide increased legal certainty, also recognizing that vertical restraints can be pro-competitive under certain circumstances, although these pro-competitive effects need to be put forward by the parties to an agreement. Additionally, the same article can include an open-ended clause covering all types of anticompetitive cooperation agreements, both horizontal and vertical, not listed under article 6 of ECL, which is to be assessed under an anticompetitive effects standard.

3. Abuse of dominant position

24. Article 8 of ECL prohibits the abuse of a dominant position, supplemented by article 13 of the Executive Regulations of ECL. Additionally, article 4 of ECL and articles 7 and 8 of the Executive Regulations of ECL set out the criteria for the evaluation of a dominant position in the relevant market. The first step is to assess whether the undertaking has a market share of over 25 per cent, and then ECA checks for the ability to control price and quantity. Also, there is no rebuttable presumption or fixed cut-off point, where an undertaking is automatically deemed dominant without additional conditions, such as the 50 per cent presumption under European Union competition law for the enforcement of article 102 of the Treaty on the Functioning of the European Union.

²¹ See European Court of Justice, Case C-382/12 P, *MasterCard and Others v. Commission*, ECLI:EU:C:2014:2201.

²² Egypt, State Council, Case No. 74232 of judicial year 62.

²³ Egypt, Economic Court of Appeal, Case No. 447 of 2018.

²⁴ El-Zahraa Adel F, 2019, L’effectivité du droit égyptien de la concurrence – Essais de mise en perspective, doctoral thesis, Paris 1 Panthéon-Sorbonne University, p. 77.

25. The absence of a rebuttable presumption for dominance may lead to unnecessary work by ECA, particularly in cases where undertakings have a very high market share. Therefore, ECL could be amended to introduce a rebuttable threshold. For instance, undertakings with a market share below 40 or 50 per cent would require ECA to prove their ability to control price and quantity, while those exceeding the threshold of 50 per cent would have a rebuttable presumption of dominance.

26. Additionally, ECL lacks the concept of collective/joint dominance of two or more undertakings. An amendment to ECL to add the notion and criteria for collective dominance should be considered, in the situation of an oligopoly in which there may be a high likelihood of coordinated or non-coordinated effects, even if each of the merging undertakings involved has on its own less than 25 per cent market share.

27. Moreover, article 8 of ECL exhaustively covers common exclusionary abuses of dominant position. However, it lacks provisions for exploitative abuses, including excessive pricing or unfair trading practices, and also potentially overlooks certain categories of abuses associated with digital markets, such as excessive data extraction, refusal of interoperability and self-preferencing. Article 4 of ECL and article 6 of the Executive Regulations of ECL, on assessing market power, could also be relevant to this point and difficult to be applied in markets where digital ecosystems may be present. While these provisions have been used in the past also to define markets in the digital economy, their exhaustive nature makes them difficult to apply in markets where digital ecosystems may be present.

4. Merger control

28. The ex ante merger control system introduced in December 2022 takes a broad definition of “economic concentration” to cover both the acquisition of “decisive influence” and material influence.²⁵ The law imposes a strict standstill obligation on merging parties and allows ECA to impose structural and behavioural remedies. While the Executive Regulations of ECL have not yet been amended accordingly, they should be revised to cover any areas left open to interpretation.

29. It is worth noting that ECA has prior merger control experience through participation in the review of transactions in the health-care sector, since August 2021, collaborating with health authorities and issuing a total of 778 decision,²⁶ and through cooperation with the COMESA Competition Commission, where the Commission refers a notification file to ECA to conduct an assessment.²⁷ Since 2015, ECA has reviewed a total of 151 cases.²⁸

B. Sector regulators

1. Powers of the Central Bank of Egypt (anticompetitive conduct and merger control)

30. Banking Law No. 194 of 2020 exempts banks from ECL, instead subjecting them to the competition provisions of Banking Law No. 194 of 2020 enforced by the Central Bank of Egypt. Article 221 of the Banking Law prohibits activities that including price-setting agreements, market allocation, bid rigging, restriction of providing services and providing services below cost, and requires consumers and service providers to refrain from dealing with competitors with no justification. Article 222 of the Banking Law empowers a unit in Central Bank of Egypt to handle competition-related complaints, investigate violations and enforce measures, including cease orders, fines and director disqualification.

²⁵ Egypt, ECL, article 2 (g). See Nabil A, 2023, The new Egyptian merger control regime: A former enforcer’s perspective, Competition Policy International columns, February, available at <https://www.pymnts.com/cpi/cpi-column/>.

²⁶ Data provided by ECA.

²⁷ See [COMESA Competition Regulations](#), Part 4.

²⁸ Data provided by ECA.

31. There are both advantages and disadvantages in granting exclusive jurisdiction to competition authorities or sharing it with sector regulators. On balance, although the jurisdiction of the Central Bank of Egypt on competition may have some limited advantages, as it has experience in the banking sector, granting the exclusive or concurrent jurisdiction to the competition authority may be more beneficial for consumers as it could improve competition analysis of the sector. In any case, close collaboration between the Central Bank of Egypt and ECA is essential to maintain consistency and legal certainty in applying competition laws. Establishing a formal memorandum of understanding between ECA and sector-specific regulators, including the Central Bank of Egypt, so that ECA may express its views in competition proceedings undertaken in the banking sector to the Central Bank of Egypt would facilitate this process of cooperation.

2. Powers of the Financial Regulatory Authority (merger control)

32. Articles 19 bis (e) and 19 bis (f) of ECL outline the procedures for economic concentrations in the financial non-banking sector. Economic concentrations where the target firm operates in the financial non-banking sector are notified to the Financial Regulatory Authority. The Financial Regulatory Authority is obligated to seek the opinion of ECA, although it is not binding. Certain procedural infringements relating to economic concentrations within the Financial Regulatory Authority's jurisdiction are handled and referred to the public prosecution, if necessary, by ECA.²⁹ All other competition matters in the financial non-banking sector are also handled by ECA. While this mechanism has not yet been implemented in practice, as the Executive Regulations of ECL have not yet been updated (see above), it could be envisaged that the system would require clear guidelines for cooperation between the Financial Regulatory Authority and ECA, and eventually also the conclusion of a memorandum of understanding between ECA and the Financial Regulatory Authority.

3. The telecommunications sector

33. The National Telecommunications Regulatory Authority, established in 2003, regulates the telecommunications sector without any substantive or enforcement powers relating to competition. The telecommunications sector is not exempted from the scope of applicability of ECL. A decision by the Economic Court of Appeal in 2013 settled a jurisdiction dispute between ECA and the National Telecommunications Regulatory Authority, affirming the sole authority of ECA over the telecommunications sector for competition law enforcement.³⁰ In 2021, the two authorities signed an addendum to an older memorandum of understanding to increase coordination and cooperation. Furthermore, a joint committee was established between the two entities, tasked with discussing issues of common interest.³¹ In June 2023, ECA issued guidelines addressed to market players in the telecommunications market, providing guidance on avoiding ECL infringements in the context of providing services to closed urban complexes.

III. Institutional design

A. Enforcement structures and practices

34. Article 21 of ECL lays out that only ECA can initiate proceedings against infringing undertakings. Public prosecution takes over the case, utilizing the findings of ECA, and conducts further investigation if needed. If public prosecution finds merit in the case, it

²⁹ Egypt, ECL, articles 21 and 22 bis (d).

³⁰ Mostafa Saleh EM, 2021, Intra-governmental struggle for power between competition authority and telecommunication regulator: A story from Egypt, Kluwer Competition Law Blog, 23 November. Available at: https://competitionlawblog.kluwercompetitionlaw.com/2021/11/23/intra-governmental-struggle-for-power-between-competition-authority-and-telecommunication-regulator-a-story-from-egypt/#_ftnref13.

³¹ Organisation for Economic Co-operation and Development, 2022, [Interactions between competition authorities and sector regulators – Contribution from Egypt](#), p. 3.

raises it to the Economic Court. If, in turn, the Economic Court upholds an ECA decision, it can fine the undertaking, in line with the fines laid out in ECL.

1. Determining settlement amounts and fines

35. Fines for substantive ECL infringements and settlement amounts (articles 21 and 22 of ECL) can be calculated either as an absolute value or as a percentage of the revenue of the product subject to the infringement during the period at stake, both within specified ranges. Practical challenges arise from the latter option, particularly in determining the duration and specific products involved in the violation. For example, an agreement does not have to be implemented to be considered a violation of article 6 of ECL, and it would be difficult to determine the duration of the agreement, as it technically would not have lasted beyond the initial concurrence of wills.

36. Considering those difficulties, courts have used the absolute value option in all decisions enforcing ECL. However, this can result in fines that may not necessarily reflect the anticompetitive harm. In fact, ECA usually resorts to the percentage option when calculating settlement amounts.

37. It would seem, therefore, that the percentage option could be simplified so that it is easier for courts to apply and less problematic for ECA. Some international practices adopt fine calculation methodologies based on the undertaking's turnover or the volume of affected commerce.

38. In addition, the current settlement procedure poses challenges, particularly its requirement for a settlement agreement among all parties involved in an infringement, excluding hybrid settlements. Allowing hybrid settlements on a case-by-case basis could provide flexibility and expedite proceedings. It is important to provide ECA the discretion to make the choice of settling with some of the defendants on a case-by-case basis, and ECL should be amended accordingly.

39. Finally, the amount of fines, particularly those of absolute value, should be revised in the context of recent economic changes.

2. Administrative monetary sanctions

40. ECA lacks the authority to impose administrative monetary sanctions, relying instead on a prosecutorial criminal justice model. While courts are impartial and accountable, they may lack specialization in competition matters. The Economic Courts, established in 2008,³² specialize in commercial and financial matters, but are not necessarily familiar with competition law and policy. Also, court rulings may take longer than decisions of an administrative authority. For the eight cases referred to the courts so far, the average time from an ECA decision to a final decision was three years and nine months. This may weaken deterrence and allow infringing undertakings to benefit from the rents they reaped from the conduct that violated ECL before finally paying fines.

41. Considering the prolonged nature of court proceedings, it may be also worth considering a mechanism by which ECA can issue administrative monetary sanctions for undertakings that violate ECL, and for those who fail to implement ECA decisions, in parallel to the criminal route, which prosecutes individuals in court. This can be seen in competition regimes in the Middle East, such as Kuwait³³ and Saudi Arabia.³⁴

42. Furthermore, concerns about the independence and impartiality of ECA to act as an investigator/prosecutor and decision-maker can be addressed through institutional changes, such as creating a specialized grievance committee within the ECA structure. This committee, composed of external competition law and economics experts, would handle administrative monetary sanctions independently, ensuring transparency and accountability.³⁵ This approach would expedite procedures, enhance deterrence and utilize

³² Egypt, Law No. 120 of 2008 Establishing the Economic Courts.

³³ Kuwait, Law No. 72/2020 for the Protection of Competition, articles 32 to 34.

³⁴ Saudi Arabia, Saudi Arabian Competition Law (2019), article 18.

³⁵ Article 27 of the Executive Regulations of ECL allows for the creation of such committees.

ECA's expertise without compromising impartiality. Additionally, ECA could provide a policy document or guidelines on the methodology for determining administrative monetary sanctions to ensure a more objective assessment and transparency in setting fines.

3. Alternative sanctions

43. Currently, ECL only imposes pecuniary individual penalties for infringements relating to antitrust and merger control. While article 50 of Law No. 182 of 2018 prescribes debarment from participation in future public procurement tenders as a separate sanction against bid rigging, ECL lacks similar provisions.

44. Debarment sanctions, such as exclusion from public procurement and director disqualification, are utilized by some jurisdictions against undertakings and individuals, respectively, with the objective of deterrence. This sanction should be considered, but its length and application should be limited to account for the special characteristics of the Egyptian economy, including the prevalence of family businesses. Moreover, ECA could consider similar sanctions with the aim of "naming-and-shaming" directors, by publishing a list of those found to have infringed the law. This aligns with the focus of ECL on individual sanctions. A "legality rating" system could also be employed, where undertakings can be given a star rating following an assessment of compliance with competition law.

45. Regarding imprisonments, contemplated in several jurisdictions, they may not fit in ECL. Debates during the initial formulation of ECL rejected imprisonment, emphasizing that financial sanctions would be more appropriate in the law's nascent years.³⁶ The Penal Code, however, nonetheless includes provisions allowing courts to impose a one- to two-year prison sentence for violations of article 6 of ECL. Notably, these provisions have not been applied since the enactment of ECL.³⁷

B. Egyptian Competition Authority

46. ECA formally began carrying out its mandate in 2006, and its powers are derived from article 11 of ECL. The ECA Strategy 2021–2025 explains the ECA vision as "[r]aising the efficacy and robustness of the Egyptian economy by stirring competition in the markets", as well as laying out the missions as "[i]nstilling competition policy by curbing anticompetitive practices and opening markets to new competitors with reduced barriers to entry while guaranteeing competitive neutrality, thus ensuring a competitive market that improves the welfare of consumers, businesses, and the national economy".

1. Institutional independence

47. ECA benefits from a degree of independence through its autonomous budget and authority to issue administrative decisions. Independence is crucial for a competition authority's reputation and performance.³⁸ ECA still lacks independence regarding two key aspects: its formal affiliation with the Prime Minister and the composition of its Board of Directors. This contrasts with the way the Egyptian Constitution envisages other State institutions, which are independent bodies and directly affiliated with the Head of State. As ECA carries out similar supervisory mandates, it should follow the same institutional structure in order to avoid any situation of conflict of interest, particularly in cases of competitive neutrality.

48. Indeed, enabling ECA to refer institutional matters to the Head of State or make competition advocacy suggestions could enrich its role in policymaking, aligning with the

³⁶ Egypt, *Official Gazette*, 2005, 8th Term of Assembly of the People's Assembly of the Arab Republic of Egypt, 5th ordinary meeting, 27th session (17 January 2005), 12 February, pp. 63–64.

³⁷ Momtaz MA, 2017, Revisiting the imprisonment sentence under the Egyptian competition regime, *World Competition*, 40(4):637–654, 644.

³⁸ Guidi M, 2011, [Does independence affect regulatory performance? The case of national competition authorities in the European Union](#), EUI Working Papers.

State Ownership Policy Document that focuses on competitive neutrality, thus allowing it to better fulfil its mandate in accordance with international best practices.³⁹

49. Moreover, to further increase the independence of ECA, the composition of its Board may be reviewed to remove ministerial representation and business community involvement, while increasing the number of experts, to prevent any potential political or business influence from its final decisions.

50. Finally, explicitly granting executive power to ECA decisions would enhance their authority, as well as reassert the independence of the Board. It is also noted that ECA decisions are subject to judicial review by the administrative courts.

2. Investigation powers

51. Article 11 of ECL confers ECA the power to receive requests for inquiry, investigation and collection of information and issue orders to initiate proceedings against anticompetitive agreements and practices, pursuant to the Executive Regulations of ECL.

52. Under article 38 of the Executive Regulations of ECL, ECA officials may review records and documents, obtain information from any governmental or non-governmental authority and conduct dawn raids and interviews. It also empowers them to inspect the personal premises of those suspected to be involved in anticompetitive behaviour.⁴⁰ ECA can impose fines for non-cooperation with the investigation or for providing inaccurate data. Moreover, dawn raids do not require any authorization nor notification to other bodies unless police assistance is sought. Investigations can be initiated by ECA on its own accord or following a complaint or request. These are often initiated based on findings established through market monitoring. In addition, there are sanctions for non-cooperation during dawn raids and data requests but not for refusing meetings with ECA, which could cause potential inefficiencies in evidence gathering and market understanding.

3. Market monitoring

53. ECA, in accordance with article 11 of ECL, is empowered to exert efforts in monitoring the state of competition in different markets, primarily through its Economic Intelligence Department.⁴¹ The ECA Strategy 2021–2025 also lists market monitoring under the enforcement pillar. Since its creation, ECA has conducted market surveys and produced reports and recommendations on various sectors including cement, steel, school uniforms and dairy, as well as the pharmaceutical sector.⁴²

54. Once ECA carries out a market study, its powers are limited to either: (a) pursuing specific anticompetitive infringements, (b) issuing non-binding guidelines targeting the market players involved or (c) making recommendations to amend public measures, if appropriate. Unlike some jurisdictions, ECA cannot impose binding remedies. Granting ECA the authority to impose remedies following a market study, structural or behavioural, would allow ECA to address anticompetitive issues that may not always be adequately pursued under the current provisions of ECL, particularly in oligopolistic or “new” (e.g. digital) markets.⁴³

³⁹ Egypt, 2022, State Ownership Policy Document, p. 18. Available (in Arabic) at <https://www.cabinet.gov.eg/conference/pdf/property-policy-document.pdf>.

⁴⁰ Greiss M, 2010, Investigative powers of the Egyptian Competition Authority: A guide for companies in the Egyptian market, *European Competition Law Review*, 31(11): 459–465, 461–462.

⁴¹ Information provided by ECA.

⁴² World Bank, 2014, *The Competition Policy Advocacy Awards: Changing Mindsets to Transform Markets: Lessons Learned from the First Annual Awards in Competition Policy Advocacy*, Washington, D.C.; *ECA Annual Reports 2015–2021*, available (in Arabic) at <http://eca.gov.eg/ECA/Publication/List.aspx?CategoryID=2>.

⁴³ Motta M et al., 2021, Market investigations in the E[uropean] U[nion], in: Motta M et al., eds., *Market Investigations: A New Competition Tool for Europe*, Cambridge University Press, p. 3.

4. Limiting anticompetitive public measures and promoting competitive neutrality

55. Since its establishment, ECA has dedicated resources to advocacy efforts, particularly under article 11(5) of ECL, which empowers ECA to issue its opinion on legislations, policies and decrees that may affect competition and obliges concerned government authorities to consult ECA on such measures. Since 2013, ECA has issued 96 opinions on such measures of different forms.⁴⁴ It is suggested that ECA should communicate to a wider public the benefits of competitive markets and diffuse information on business conduct that may violate ECL, through different channels, including the publication of guides and systematic contacts with specialized and generalist media.

56. The ECA Strategy 2021–2025 emphasizes the commitment of ECA to limiting anticompetitive public measures and fostering competitive neutrality. The ECA Competitive Neutrality Strategy, approved and supported by the Cabinet of Ministers in 2022, as evidenced by the State Ownership Policy Document,⁴⁵ focuses on four pillars:

- (a) Setting the institutional framework.
- (b) Setting the regulatory framework.
- (c) Raising awareness of competitive neutrality.
- (d) Carrying out periodic ex post assessments.

57. To implement this strategy ECA established the Competition Policy and Competitive Neutrality Department, active since September 2022. It receives complaints and initiates studies of new and existing measures potentially harming competition, bringing its findings to the High Committee on Competition Policy and Competitive Neutrality.⁴⁶ In 2023, Law No. 195 of 2023 removed any preferential tax treatment for State-owned enterprises specifically with regard to taxes and fees. However, it does not empower ECA to enforce it. ECA should be granted authority to issue binding recommendations to State authorities through its Board for more effective implementation.

58. The High Committee on Competition Policy and Competitive Neutrality reviews public measures to ensure that they are not anticompetitive and do not distort competitive neutrality, relying on ECA technical studies. Its decisions to amend or repeal anticompetitive public measures are binding on all administrative authorities and cover variety of sectors such as petroleum, healthcare and food production.

59. The substantive analysis of public measures is explained in the ECA Guidelines for Competition Impact Assessment of State Measures,⁴⁷ drafted in cooperation with the World Bank Group, providing a structured analysis process for public measures.

60. With regard to raising awareness, ECA has focused on explaining the concept of competitive neutrality and bid rigging to various public entities across Egypt, through the organization of workshops.

61. ECA is developing a competitive neutrality index to quantitatively measure perceived competitive neutrality in various sectors. The index uses surveys sent to market players, allowing ECA to highlight competitive neutrality issues and evaluate the effectiveness of its intervention.

62. Despite strides in preventing anticompetitive public measures, ECA opinions remain non-binding, while the decisions of the High Committee on Competition Policy and Competitive Neutrality are binding. The efforts of ECA in promoting competitive neutrality should be supported by amendments to ECL, allowing it to issue binding opinions and

⁴⁴ Data provided by ECA.

⁴⁵ Egypt, 2022, State Ownership Policy Document, p. 18. Available (in Arabic) at <https://www.cabinet.gov.eg/conference/pdf/property-policy-document.pdf>.

⁴⁶ This Committee was created in June 2022 through Prime Ministerial Decision No. 2195 of 2022. It is headed by the Prime Minister and members include a number of ministers, as well as heads and representatives of government authorities.

⁴⁷ ECA, 2022, [Guidelines for Competition Impact Assessment of State Measures](#).

ensuring quicker interventions. A mechanism for State institutions is also envisaged to explain diverging from ECA recommendations if they have justifications.

5. International relations and regional cooperation

63. ECL lists cooperation with international jurisdictions as one of the competences of ECA, and ECA has identified this as one of its goals in its Strategy 2021–2025. ECA has been an active member of global forums, such as the International Competition Network and the OECD Competition Committee, and participated in sessions of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy.⁴⁸ ECA also participated in other conferences held by UNCTAD and the Economic and Social Commission for Western Asia.⁴⁹ ECA has played a leading role in both the Middle Eastern and African regions. ECA launched the Arab Competition Network in 2022, fostering cooperation among Arab States through working groups focused on agency effectiveness, enforcement and merger control.⁵⁰

64. ECA also plays a prominent role in the African region. In 2016, it signed a memorandum of understanding with the COMESA Competition Commission.⁵¹ Also in 2022, ECA initiated the Africa Heads of Competition Dialogue, joining forces with authorities from Kenya, Mauritius, Nigeria and South Africa.⁵² ECA played a pivotal role in shaping competition policy discussions during the negotiations for the African Continental Free Trade Area agreements in 2022 and 2023.⁵³

65. ECA has signed a total of 15 bilateral protocols and memorandums of understanding with competition authorities from different jurisdictions.⁵⁴ ECA has benefited from cooperation with other competition authorities, including on an ad hoc basis in specific investigations.

6. Agency resources

66. It is evident that the ECA budget, on average, sits below that of other Middle Eastern and African competition authorities, as well as other non-OECD competition authorities. One of the key sources of expenditures is specialized human resources and capacity-building activities. While the number of staff has increased, it is still low compared to other countries in the region and the total workload of ECA has also increased over time.

⁴⁸ For instance, ECA presented its strategy for the years 2021–2025 and its recent achievements, particularly relating to promoting competitive neutrality, at the 21st Session of the IGE on Competition Law and Policy held in Geneva, Switzerland. See ECA, 2023, [ECA participates in meetings of the Intergovernmental Group of Experts held by UNCTAD in Switzerland and presents achievements on advocacy and competitive neutrality](#), 16 July.

⁴⁹ Since 2019, OECD, in cooperation with UNCTAD and the Economic and Social Commission for Western Asia, has held an annual conference for the Middle East and North Africa region (Arab Competition Forum). ECA is an active participant in these conferences. See <https://www.oecd.org/daf/competition/middle-east-north-africa-competition-forum.htm>.

⁵⁰ Arab Competition Network, 2022, Protocol on cooperation in the field of competition among Arab Countries, Cooperation protocol, 16 March. Available (in Arabic) at <https://arabcompetitionnetwork.com/law-and-protocol/>.

⁵¹ See [Cooperation Agreement Framework between the COMESA Competition Commission and the Egyptian Competition Authority regarding Cooperation in the Application and Enforcement of the COMESA Competition Regulations](#), signed 9 August 2016.

⁵² Africa Heads of Competition Dialogue, 2023, [Joint Statement of the African Heads of Competition Authorities Dialogue on Regulation of Digital Markets](#), 8 February.

⁵³ Information provided by ECA.

⁵⁴ Information provided by ECA.

67. This would call for increased budget allocation to attract and retain staff with technical expertise. This can be further assured by removing the maximum wage limit imposed by Law No. 63 of 2014 regarding the Maximum Wages of Employees of the State, allowing ECA to attract qualified competition experts. Moreover, ECA could benefit from an internal prioritization mechanism, to ensure efficient use of its scarce resources. While the ECA Strategy 2021–2025 sets out its general priorities, there is no mechanism through which complaints are prioritized internally. The Strategy also emphasizes capacity-building, including officials pursuing postgraduate studies and secondment of staff to other organizations.

7. Enforcement record

68. The ECA Strategy 2021–2025 focuses on enforcement priorities. This includes publishing substantive and procedural guidelines to increase efficiency in case-handling and focusing on bid rigging. Accordingly, ECA updated its Compliance Toolkit and issued draft Market Definition Guidelines and Dominance Guidelines, as well as published sector-specific guidelines relating to the school uniform sector and guidelines on its leniency policy and on detecting and avoiding bid rigging. ECA established a Bid Rigging Department in 2022 and issued numerous decisions across sectors. It also collaborated with government institutes to amend their procurement practices, ensuring that they do not facilitate collusion nor distort competitive neutrality.

69. ECA issued a total of 34 infringement decisions in 2023, significantly higher than in previous years. ECA has recently intensified enforcement efforts, possibly due to a rise in initiations of investigations and a concentrated focus on enforcement outlined in the ECA Strategy 2021–2025. This underscores the resource challenges discussed earlier, namely the need for more budgetary and human resources.

C. The role of private enforcement

70. Private enforcement is often seen as complementary to public enforcement, as well as a mechanism to allow the compensation of victims of anticompetitive practices.⁵⁵ It is important to streamline both paths to achieve more effective enforcement against anticompetitive practices. The Egyptian legal system permits victims of anticompetitive practices to bring civil claims against infringers under article 163 of the Civil Code. However, there is no official policy or guidance on the involvement of ECA or its decisions in civil proceedings. There are at least three cases where undertakings and individuals harmed by anticompetitive practices initiated private claims and referred to the respective infringement decisions issued by ECA.

71. There are also at least three cases in which private damages were sought standalone. These examples show the importance of streamlining the two enforcement mechanisms, namely through ECA cooperation with the judiciary, on procedures of civil courts. ECA could also eventually compile a registry for private actions for damages or other private enforcement proceedings.

IV. Recommendations

72. Following the above analysis, recommendations are set out regarding the substance of ECL, issues of jurisdiction and institutional design on the enforcement structures and practices of ECA. Most of the recommendations are addressed to the Government of Egypt, as they concern changes to legislation.

⁵⁵ See Lianos I, Davis P and Nebbia P, 2015, *Damages Claims for the Infringement of E[uropean] U[nion] Competition Law*, Oxford University Press.

A. Substance of the Egyptian Competition Law

73. **Market definition and market power.** Articles 3 and 4 of ECL and article 6 of the Executive Regulations of ECL on market definition and market power have been applied to define digital markets; however, difficulties in application in markets have been faced where digital ecosystems may be present, due to their exhaustive nature. These provisions should therefore be amended to enable the assessment of economic power and anticompetitive conduct in digital ecosystems.⁵⁶

74. **Anticompetitive agreements.** It is recommended that article 6 of ECL is amended to include all types of agreement, horizontal and vertical, that are prohibited per se unless exempted ex ante by ECA, i.e. to include a list of the agreements that are anticompetitive by object.⁵⁷ Additionally, the concepts of agreement and contract should be expanded to include concerted practices and decisions by associations of undertakings. The standard for the exemption should be interpreted as also covering restructuring agreements (“crisis cartels”). Moreover, the reference to the “relevant market” in relation to horizontal agreements should be removed. Article 7 should cover other types of agreements for which ECA will need to prove actual or potential anticompetitive effects. For some of these categories of anticompetitive conduct (e.g. resale price maintenance), there would be a rebuttable presumption that they can produce anticompetitive effects. Of particular interest could also be the development of specific class exemptions for small and medium-sized firms.

75. Also, ECA should enhance clarity on antitrust provisions, for instance, concerning the application of article 6 of ECL to information exchange and price signalling, and with regard to enforcement practice concerning the interplay between articles 7 and 8 of ECL for vertical restraints.

76. **Abuse of dominance.** Article 4 of ECL should be merged with article 8 of ECL in order to avoid any confusions by courts. Article 8 of ECL should also be amended to include exploitative abuses in its exhaustive list, particularly associated with digital markets, such as excessive data extraction, refusal of interoperability, self-preferencing and data bundling. It is also recommended that practices such as margin squeeze and rebates are added to the list for legal clarity, even though they might already fall under article 8 (a) of ECL. Additionally, article 4 should be amended to establish a rebuttable presumption of dominance for undertakings with a market share exceeding 50 per cent, without the need to analyse other conditions. Undertakings with less than 25 per cent of market share would also be considered dominant if they exceed the market share of 25 per cent combined with other players (collective dominance). The concept of collective dominance could be clarified in guidelines adopted by ECA.

77. **Merger guidelines.** Regarding the new merger control regime, ECA is advised to publish merger guidelines and soft laws, defining substantive and procedural aspects of the regime, as well as clarifying its relationship with the Financial Regulatory Authority.

B. Jurisdiction to enforce competition law

78. **Relationship between ECA and the Central Bank of Egypt.** It is recommended that the exemption for banking institutions from the jurisdiction of ECA is abolished, for more consistent application of competition rules, reducing jurisdictional uncertainty and mitigating the influence of market players on the sector regulator. In any case, a

⁵⁶ An “ecosystem” may be defined as: (a) a nexus of interconnected and, to a great extent, interdependent economic activities of different undertakings aiming at the provision of products or services which impact on the same group of users; or (b) a platform connecting economic activities of different undertakings with the purpose of providing one or more products or services, affecting either the same users or different groups of business users or end users. See Lianos I, 2022, Reorienting competition law, *Journal of Antitrust Enforcement*, 10(1):1–31.

⁵⁷ This could be the current list of agreements in article 6 and some vertical restraints that can be anticompetitive by object, such as minimum resale price maintenance.

cooperation mechanism between ECA and the Central Bank of Egypt should be established through, for instance, a memorandum of understanding.

79. **Relationship between ECA and the Financial Regulatory Authority.** Similar to the relationship between ECA and the Central Bank of Egypt, ECA and the Financial Regulatory Authority should also cooperate in a more formal manner for merger control in the financial non-banking sector. The Financial Regulatory Authority, as the decision-making entity regarding such transactions, should incorporate ECA members in its decision-making process to leverage their expertise.

C. Enforcement structures and practices of the Egyptian Competition Authority

80. **Methodology for calculating fines.** It is recommended that the Government considers an amendment to ECL, increasing the amount of fines and providing more discretion to ECA as to setting the level of fines and the scope of settlements, eventually through the adoption of specific guidelines. Moreover, the current mechanism for setting fines and determining settlement amounts (article 21 of ECL) should be amended to determine fines based on a percentage of the revenue of the financial year preceding the occurrence of the violation or revenue of all products affected directly or indirectly by the violation.

81. **Administrative monetary sanctions by ECA.** Amendments of ECL may be considered to provide the Board of ECA with the authority to impose administrative monetary sanctions. These sanctions would be subject to judicial review by the State Council. This system can be employed in parallel to the criminal enforcement route, whereas the criminal route would prosecute individuals and the administrative route would sanction undertakings. Also, it is advisable to give ECA the power to bring cases to court, rather than just referring cases to public prosecution. In addition, during court proceedings, ECA should be involved and be able to intervene as *amicus curiae*. In addition, a provision should also be included to punish non-compliance with ECA decisions, preferably with an administrative fine issued by ECA.

82. **Alternative sanctions.** It is recommended that alternative penalties for anticompetitive behaviour are considered with the aim of promoting deterrence, such as publishing names of directors involved in competition law violations and eventually creating a compliance rating system for undertakings.

83. **Hybrid settlements.** It is also recommended that ECA is given the power to impose hybrid settlements.

84. **Investigation powers.** It is suggested that ECL should be amended to compel individuals receiving formal requests for attendance from ECA to respond and/or participate in meetings with ECA. A sanction should also be added in a similar fashion to that of failure to cooperate in dawn raids or in provision of information.

85. **Independence of ECA.** ECA should follow the same institutional structure as other independent authorities in order to avoid any situation of conflict of interest, in particular in cases of competitive neutrality. In this context, and following article 215 of the Egyptian Constitution, affiliation with the Head of State would enhance the impact of ECA recommendations and its overall status and independence.

86. **Competitive neutrality.** It is recommended that ECA opinions on anticompetitive public measures are made binding on State entities. Accordingly, State entities that do not abide by a written opinion of ECA would have to justify divergence.

87. **Composition of the Board of ECA.** It is recommended that the composition of the Board of ECA is reviewed to limit ministerial and business representatives, while increasing the number of its competition expert members. Additionally, ECA Board decisions may be granted executive power.

88. **Remedies in market study.** It is recommended that the powers of ECA in market monitoring are increased, allowing it to issue behavioural or structural remedies after a market inquiry, subject to judicial review by the State Council.

89. **ECA resources.** It is recommended that ECA financial resources, namely those allocated by the Government, are increased and stable. One option is to tie the ECA budget to a fixed percentage of gross domestic product. ECA should also establish a prioritization mechanism for cases in order to deal with them in an efficient manner, thus saving resources.

90. **Private enforcement.** ECA should clarify the substantial basis and procedures of private enforcement to promote it as a tool complementary to public enforcement, eventually issuing documentation and reports to assist civil courts in assessing causality between the anticompetitive conduct and damage, and computing and estimating damages.
