



Egypt is the most populated country in the middle Eastern and North African (MENA) region; bordering the Mediterranean Sea between Libya and the Gaza Strip, and the Red Sea North of Sudan, including the Asian Sinai Peninsula. A rapidly growing population (the largest in the Arab world), limited arable land, and dependence on the Nile, all continue to overtax resources and stress the society. The Government has struggled to prepare the economy for this millennium through economic reform and massive investment in communications and physical infrastructure.

### Economy

Egypt took up the socialist ideology after its Revolution in 1952, but an increasing number of economic reforms, starting with the Open Door Policies of the early 1970s - which shifted from import substitution to export promotion - have moved it into a market economy. Lack of substantial progress on economic reform, since the mid 1990s, has limited FDI in Egypt, keeping annual GDP growth in the range of 2-3 percent in 2001-03.

However, in 2004, Egypt implemented several measures to boost FDI. In September 2004, Egypt pushed through customs reforms; proposed income and corporate tax reforms; reduced energy subsidies; and privatised several enterprises. The budget deficit rose to an estimated 8 percent of GDP in 2004, compared to 6.1 percent of GDP the previous year, in part as a result of these reforms. Monetary pressures on an overvalued Egyptian pound led the Government to float the currency in January 2003, leading to a sharp drop in its value and consequent inflationary pressure. In 2004, the Central Bank implemented measures to improve currency liquidity.

Egypt reached record tourism levels, despite the Taba and Nuweiba bombings in September 2004. The development of an export market for natural gas is a bright spot for future growth prospects, but improvement in the capital-intensive hydrocarbons sector does little to reduce Egypt's

PROFILE	
Population:	67.6 million***
GDP (Current US\$):	82.4 billion***
Per Capita Income: (Current US\$)	1,390 (Atlas method)*** 3,810 (at PPP)**
Surface Area:	1million sq. km
Life Expectancy:	68.6 years**
Literacy (%):	55.6 (of ages 15 and above)**
HDI Rank:	120***
<i>Sources:</i> - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

persistent unemployment. In reality, it is currently something of a mixed economy, officially an open free-market economy, but still bogged down with socialist policies.

### Competition Evolution and Environment

Before 1991, the public sector dominated the economic scene. Since Egypt embarked on its Economic Reform and Structural Adjustment Programme (ERSAP) in 1991 in collaboration with the World Bank and IMF, there was a clear signal towards shifting to market economy. The size of the private sector increased from 61 percent of GDP in 1991, to more than 72 percent in 2002. Privatisation, as well as other free market economic policies started taking place, but the regulatory reforms concerning competition law and policy remained absent.

There are several reasons that explain why the enactment of such laws has been delayed. Among such reasons, is the huge size of the public sector, which although reduced by privatisation, has still dominated various sectors. Other reasons are the political economy arguments stating that

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1 Edited by Mirette Mabrouk of Daily Star, Egypt

the private sector has been resisting such laws due to the high concentration existing in many fields; and the political influence the private sector has, which has been increasing over time.

The issue of competition is not new in Egyptian legislation. The Criminal Law contains articles that deal with monopolistic and anticompetitive behaviour, for example, articles 345 and 346, which have been embedded in the Egyptian legislation for more than a century.

However, Egypt never had a special law devoted to competition until 2005. There were several attempts made, in implementing a competition law, since 1995, with several drafts turning into seventeen drafts, but none of these drafts reached the final stages of being approved by the Parliament. It was only in 2004, when the new Cabinet, that took charge in July 2004, agreed upon a draft for the law and passed it to the Parliament for approval. In 2005, the law was approved by the Parliament.

### Competition Policy

The objective of the law, *Competition and Prevention of Monopolies Law*, adopted in 2005 is the right to undertake economic activity, which is preserved for all, as long as it does not lead to restraining, preventing, or negatively affecting the status of competition. This objective does not clearly state the ultimate aim of the Law, that is, to ensure that it neither negatively affects domestic or international trade, nor economic development.

In addition, the 2005 Law does not draw upon the ultimate aim mentioned in other countries' laws, such as economic efficiency and the welfare of consumers in the case of Algeria; or protection of consumer rights, in the case of Armenia; or economic efficiency and ensuring equitable opportunities for SMEs in participating in economic activity, in the case of Canada.

The Law applies to all natural persons and economic entities with all its kinds, while it excludes all public utilities. The Law gives the Cabinet the right to exclude private firms from being subject to that law if they partake in anticompetitive behaviour, but simultaneously create welfare gains or positive benefits for the consumer, the so-called public interest. The criteria for measuring the economic benefits for the consumer are not identified. Despite such a logical intervention here, such a provision might give room for political and discretionary power to negatively influence the application of the law.

The Egyptian Law applies to all kinds of economic activities related to production, distribution, marketing, selling, buying, developing, inspecting, and transporting. In other words, activities included are all those mentioned in the UNCTAD model law, with the exception of IPRs. This is a drawback of the law, since the Egyptian economy is well known to be a pioneer in a large number of copyright

related products; and not applying the law to this variable could result in a major loophole, negatively affecting the preservation of competition in the Egyptian economy. Moreover, the law applies to both goods and services.

The law does not include a *de minimis* provision. *De minimis* means that certain agreements are too small in size to do any real harm to competition and are not, therefore, of real concern to competition authorities. *De Minimis* agreements should be differentiated from other agreements, which have anticompetitive features, and may nevertheless deserve to be exempted from the law because of other redeeming features.

Dominant position is defined as controlling over 25 percent share of the relevant market. This percentage has been lowered from the draft suggested by the Cabinet, which had 35 percent as the threshold. The basis for choosing this percentage specifically is not based on any clear reasoning. In fact the Egyptian market contains a higher percentage of market shares (high market concentration) in many activities, which can be one of the main reasons for deterring the adoption of this law. The *per se* rule is not complemented by any other criteria to explain dominance. However, the abuse of dominant position follows a rule of reason approach.

#### Box 42.1: Travails of Law Making

The proposed draft of Egypt's Competition Law which intends to get rid of the local market of monopolies, generated a mixed response from the proponents of the law. Even after 12 years of efforts put in, the draft Bill prepared lacked some basic points like defining monopoly and monopolistic practices and has since been subject to several revisions.

The new version of the draft Bill raised the dominant share of monopoly from 35 to 65 percent. It was alleged that this was done in order to serve the needs of Ahmed Ezz, a leading NDP MP and owner of Ezz-Al-Dekheila Steel, which controls more than 60 percent market share.

Ezz has been fiercely and widely criticised as Egypt's number one monopolist and was blamed by many Parliamentarians for an increase in steel prices of as much as 70 percent.

Egyptian Minister of Investment, Mahmoud Mohieddin though observes that the private sector generates most of the national income and receives most of the banking credit, so the anti-trust law must be applied carefully in order not to riddle the private sector with new bureaucratic obstacles.

However, MPs are not convinced by the minister's argument and believe that the new draft anti-trust law would act to protect monopolists, not to put an end to them.

Source: [www.businesstodayegypt.com](http://www.businesstodayegypt.com). October 2004

The relevant market has been clearly identified from the product perspective and the geographical perspective. The identification of the product market is based on the availability of the similar product or its close substitutes from the point of view of the consumer. The executive regulations are not out yet to determine which criterion (the reasonable interchangeability of use or cross elasticity) will apply to determine the test used for identifying the relevant product market. The relevant geographic market takes into consideration the possibility of an extended market depending on the differences of competition status in each market.

The law does not identify specific criteria other than the general competition status for determining the scope of the market. For example, it does not include aspects of price disadvantages arising from transportation costs, degree of inconvenience in obtaining goods and services, choices available to consumers, or the functional level at which the enterprise operates. At this stage, it is not known whether such aspects will be included in the executive regulations or not. However, it should be pointed out that despite the fact that if such specific issues were not mentioned this might give rise to manipulation of defining explicitly the relevant geographic market.

### **Institutions, Competencies and Anticompetitive Business Practices**

The law contains the conventional list of prohibited activities contained in most competition laws, which include: manipulation of prices; restraints on production or sales; intentional over-supply, which affects prices; prevention of any person from supplying; concerted refusals to supply and/or purchase; market or consumer allocations, affecting bidding processes as collective tendering (its components are not provided in the draft as identified in the footnote, however they might be included in the executive decree)<sup>2</sup>; and complete or partial stop of production, and/or distribution, and/or marketing without justified reasons.

The law does not specify whether such types of illegal activities are confined only to horizontal or vertical agreements as well, as is the case with other laws and regulations worldwide. This is expected to be illustrated in the executive regulations, which are yet to be released. It is expected that the Law will cover horizontal arrangements as well as vertical arrangements, despite that the capacity of the administrative body and the nature of data do not allow for the handling of vertical arrangements.

The law does not comprise any block exemptions,<sup>3</sup> unlike the case in the EU, for example.

There is no wording in the Egyptian Law that implies the independence of the Competition Authority. The Authority reports to the Minister concerned (defined in the Law to be the Prime Minister; in earlier drafts, it was the Minister of the Economy and then the Minister of Supply and Internal Trade).

The Authority's activities include all the conventional activities of a Competition Authority, ranging from receiving appeals to investigation, database establishment, etc. It also includes a modern, or rather non-traditional, role in policy advocacy and public awareness.

Its board is comprised of 13 members in addition to the head of the Competition Authority, and his deputy (who must be a judge), four representatives of the ministries concerned, three experts, and six representatives from the General Federation of Commercial Chambers; Federation of Egyptian Industries; Federation of Banks (although banks are separately regulated by their own law); the General Federation of Consumer Protection; the General Federation of NGOs; and the General Federation of Egyptian Labour.

In addition to the Board, there is a body whose members will not be getting Governmental wage scales, but will have a rather special financial treatment. This is an important aspect to avoid corruption, especially if we take into consideration the low wage levels prevalent in Egypt, which if applied to the personnel of this body, could either lead to a lack of incentive to work efficiently and honestly or open the door to corruption.

The new Law gives the right to any person, and any NGO concerned with consumer rights protection, the right to complain to the Authority about any anticompetitive behaviour. The exact procedures and requirements for such complaints are expected to appear in the executive regulation. The Law gives the right for the affected enterprises of complaints to appeal the Authority's decisions. The appeals are to be made to the administrative court

Sanctions in the Egyptian law are confined to fines. The sanctions do not include imprisonment, divestiture, rescission, restitution to injured consumers; or permanent injunctions for activity. This is not in line with the trend

2 May take different forms: agreements to submit identical bids; agreements as to who shall submit the lowest bid; agreements for submission of cover bids (voluntary inflated bids); agreements not to bid against each other; agreements on common norms to calculate prices or terms of bids; agreements to squeeze out outside bidders; agreements designating bid winners in advance on a rotational basis or on a geographical or customer basis.

3 That excludes certain activities from competition law. In the EC, since 2000, a new general block exemption applied to all supply and distribution agreements. It exempts, up to a market share threshold of 30 percent, such agreements that can be considered to be efficiency enhancing. However, a number of hard core restrictions are excluded from the exemption. In other cases, block exemptions can be provided if they protect the environment or enhance technological affiance.

worldwide, which is leaning more towards imposing terms of imprisonment, at least to certain illegal activities, to ensure the active enforcement of the Law. Moreover, the fines are not defined, in line with the international practice, in terms of a certain percentage of the turnover (like the case of the EU), or income (like Ukraine).

The Law does not vary the fines according to the type of infringement. This detail may be left to the executive regulations. However, it would have been more appropriate to have identified the fines in the Law itself. Rather, the Law sets out a minimum and a maximum fine that can be imposed, but not according to the level of infringement. The power to impose the fine is vested in the hands of the relevant Minister and is based on the application of the Authority. The Law does not contain amnesty. Finally, the Law does not identify the relationship between the existing regulatory bodies in certain fields, such as banking, telecommunications, and electricity, with the competition authority.

### Anticompetitive Business Practices

In many sectors, anticompetitive behaviour is crystal clear. Such sectors include the steel, cement, fertiliser, and cinema industries. The concentration ratios of the largest three firms in such industries exceed, in many cases, 70 percent, and collusive behaviour is evident. However, due to the lack of a competition law, the Government was not able to tackle such behaviour in an appropriate way.

The situation changed recently when such anticompetitive behaviour started to be heavily criticised in the media, as it resulted in the skyrocketing of prices and negatively affected the public. The anticompetitive practices ranged from the abuse of dominant position in the steel sector, where one firm controls around 68 percent of the market; to collusion of cartel members in the case of cement, which has been dominated by the control of the multinationals; to other practices.

The Government intervened on an *ad hoc* basis in such cases, sometimes lowering trade barriers (the case of steel and cement); stopping anti-dumping duties (the case of steel); or even negotiating with the cartel to stabilise prices (the case of cement). However, none such *ad hoc* interventions had a positive effect on stopping anticompetitive behaviour. As a result of such criticism, and in trying to find a coherent consistent way of solving such problems related to anticompetitive behaviour, the need for accelerating the passage of an effective competition law.

### Sectoral Regulation

In Egypt, there are two sectoral regulatory bodies: electricity and telecommunications. Both were established in the late 1990s and designed to be independent. However,

### Box 42.2: Anticompetitive Practices in the Cement Industry

Until 1999, the Egyptian cement sector was publicly owned and faced problems of low utilisation of production facilities, low productivity and dependence on imports. The distribution of cement was in the hands of a small number of powerful licensed distributors. Public and private construction companies could not order cement directly from the manufacturers but had to order through the distributors who were known to withhold supply in critical periods in order to boost prices.

Starting in 1999, the picture changed completely. Customers were given the right to order directly from the producers. The Government sold majority stake in cement companies to four foreign and two local strategic investors. In the aftermath, the fierce race to secure a place in the market was a challenge to newcomers particularly because of the economic slowdown. The companies started lowering their prices, sometimes selling them at the break-even point to ensure a market share and meet the financial obligations of the loans they took out to establish themselves.

In December 2002, the price of cement had fallen to an exceptionally low LE125 a ton in Egypt. The drop had caused serious worry among the cement producers. In response, almost all local cement producers met and set a price range for cement between LE167 and LE176 a ton. However, no action could be taken as Egypt did not have a competition law.

Source: *Al-Ahram*, December 19, 2002.

in reality, both fall under the auspices of their relevant ministers, which affect their independence. Their role, though defined by law, lacks transparency, and they lack the necessary ‘teeth’ to act aggressively for the sake of consumers. As previously noted, the new competition law does not identify any relationship between the regulatory bodies and the competition law.

### Telecommunications Sector<sup>4</sup>

The formation of the new Ministry of Communications and Information Technologies (MCIT), in October 1999, marked a new era for Egypt’s telecommunications and information technology sector, characterised by a new regulatory framework and a more liberalised market. Although Egypt has suffered an economic slowdown since 2000, the telecom sector has continued to perform consistently well. Data traffic is rapidly growing, and the demand for both fixed-line and mobile communications is huge.

4 [www.budde.com.au/Reports%5CContents/Egypt-Key-Statistics-and-Telecommunications-Market-Overview-2888.HTML](http://www.budde.com.au/Reports%5CContents/Egypt-Key-Statistics-and-Telecommunications-Market-Overview-2888.HTML) - 22k

Current reform processes position Egypt as one of the more forward-looking Arab countries. In particular, the process of corporatising the telecom incumbent has already taken place, and the privatisation of Telecom Egypt is at an advanced stage of planning. However, the most significant changes in the sector have been achieved by the introduction of privatisation and competition in mobile communications and Internet service provision. A broadband initiative launched by the Government, in 2003, will increase the number of broadband connections ten-fold within three years, and is to bring 24Mb/s access to residential households in 2005. The Telecom Regulatory Authority (TRA) regulates Egypt's telecom sector.

### **Energy Sector<sup>5</sup>**

The energy sector plays a substantial role in the economic development of Egypt, fulfilling domestic energy demands for petroleum products, natural gas, and electricity. The sector contributes indirectly to macroeconomic variables, such as GDP, commodity exports, investments, the state budget, and employment.

The main strategic goals of the electricity sector are supplying electricity according to international standards, and meeting demand in all consumer sectors, with due consideration for environmental concerns. The policies include, but are not limited to:

- maximising the utilisation of hydropower resources, through construction of suitable barrages on the Nile River and its tributaries;
- maximising the use of natural gas in electricity generation;
- promoting new and renewable energy, in order to increase its share in the power generation mix;
- interconnecting the Egyptian electricity grid with neighbouring countries, both East and West, to facilitate electricity exports;
- permitting private sector power investors to share in electricity generation, and encouraging them further through investment incentives;
- improving the efficiency of energy production and use by adopting energy efficiency policies; and
- adopting measures in electricity generation, transmission and distribution, to enhance environmental protection.

The Electric Utilities and Consumer Protection Regulatory Agency was established by Presidential Decree No. 339/2000. The Agency regulates and supervises all electricity generation, transmission, distribution and usage, as well as ensuring availability to users at fair prices.

### **Consumer Protection**

In general, consumer rights and protection are the issues which have been overlooked in Egypt. Consumers' rights

NGOs exist, and there are over 200 of them, but they lack political influence and are relatively considered as very weak. Moreover, the culture of consumer rights and protection in Egypt can be considered as very low.

However, earlier this year, two new societies formed to protect consumers; the powerful Press and Lawyers' Syndicates formed the Committee for Citizens' Rights; and the other is the People's Society for Consumers' Protection against Corruption. Both have been very active, and this effectively hobbling the country's two mobile phone providers: MobiNil and Vodafone. After a concerted boycott campaign led by the two consumer groups, both companies were forced to abandon plans that would have raised prices on their prepaid options.

There is a draft law in Egypt on consumer protection. However, it is still in its early stages, and has not been presented before the Parliament for its final approval. At one point, it was thought that consumer protection would be covered under one law, which would promote competition and protect consumers, but this idea was dropped later.

The existing draft law (which is still not final) aims at creating a body that governs and oversees consumer protection issues, following the same lines of the competition law. This body falls under the purview of the Ministry of Supply and Internal Trade. This law, in general, has a number of overlapping articles, like those existing in the competition law. However, it is expected that such overlaps would be dealt before finalising the draft of the consumer protection law.

### **Concluding Observations and Future Scenario**

Egypt, like other developing countries, has lacked the necessary pillars of having an effective competition policy. The law, in itself, is not sufficient to ensure an effective competition policy. The privatisation programme, in Egypt, has lately suffered a number of delays. Moreover, a number of the privatised companies remain 'semi-privatised', whereas the Government still owns the lion's share of their capital. The size of the SoEs remains large by developing countries' norms (World Bank, 1995). Substantial tariff and NTBs remain. The inflows of FDI remain constrained by various bureaucratic and red tape measures. The labour market lacks the competitive institutional pillars that would ensure full flexibility.

The new cabinet has been trying to tackle such issues, and in so doing, a new Ministry for Investment was established, whose main objective is to accelerate the privatisation process (19 firms have been privatised between July 2004 and January 2005, and more than 70 firms are ready for privatisation). The Ministry of Finance reduced the tariff

<sup>5</sup> [http://64.233.183.104/search?q=cache:CGEqmCYbC-oJ:www.undp.org/eg/workshops/2002/Nov/Post\\_wssd/Documents/Energy/report.pdf+energy+sector+in+egypt&hl=en&ie=UTF-8](http://64.233.183.104/search?q=cache:CGEqmCYbC-oJ:www.undp.org/eg/workshops/2002/Nov/Post_wssd/Documents/Energy/report.pdf+energy+sector+in+egypt&hl=en&ie=UTF-8)

rates from 14.6 percent weighted average to nine percent weighted average, and reduced the tariff bands from 23 to six (the latest Trade Policy Review of WTO in 2005 argues that the average tariff rates is higher and that the reduced tariff bands are larger than six).

Several measures are being undertaken to lessen the red tape measures that hinder the flow of investments, and finally there is a huge tax reform project being prepared, aiming at lowering tax rates and broadening the tax base. All such efforts are likely to improve the competition scenario in Egypt. Trade facilitation measures (including customs administration, port facilities, etc.) still remain as a major obstacle that needs to be addressed.

Moreover, there are a number of regulatory measures that impede competition, and such cannot be tackled by competition law, which relate to trade facilitation: Examples include technical standards, which are predominantly related to food products, engineering goods, and consumer products. The majority of those national standards have no equivalence to international standards.

Other examples include the cumbersome administrative customs procedures, where the average customs clearance

transaction in Egypt requires 25-30 stages, taking from one day to several weeks. The new cabinet appointed in 2004 has been working to reduce the clearance time by adopting different measures to facilitate trade, mainly focusing on customs procedures, and have succeeded in heavily reducing the clearance time.

It is clear that the Government of Egypt has decided to embark on a comprehensive programme to improve the business environment in Egypt. It started to tackle several issues that are likely to improve the business environment, including tariff measures, taxes, etc. The motivation of the people in charge of implementing the policies (civil servants) in contrast to the management remains a major challenge, which still needs to be addressed. Besides, the enforcement of laws, rather than drafting laws, should be strengthened.

In a nutshell, the Government has started to move in the right direction, by tackling the different issues related to competition, which were overlooked by past governments. This is a positive step, which however, will have been taken in vain, if comprehensive reforms regarding the enforcement of laws and civil servants' attitude do not experience dramatic changes in the near future.

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*P.S. As this report goes into print, the Government has appointed Mona Yassine, a former banker, as the Chairman of the new Competition Authority, who is in the process of establishing the institution.*