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*Tunisia**

Centrally located on the North African coast, on the shores of Mediterranean Sea, Tunisia is bordered by Algeria to the West and Libya to the Southeast. Following independence from France in 1956, Tunisia became a Republic. With its capital in Tunis, the country is divided into 24 Governorates.

PROFILE	
Population:	9.9 million***
GDP (Current US$):	24.3 billion***
Per Capita Income: (Current US$)	2,240 (Atlas method)*** 6,760 (at PPP.)**
Surface Area:	163.6 thousand sq. km
Life Expectancy:	72.7 years **
Literacy (%):	73.2 (of ages 15 and above)**
HDI Rank:	92***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Economy

The country is striving to capitalise on its location, as well as its proximity to Europe, in order to propel itself into the world economy. Tunisia has benefited from many World Bank development programmes and has made a concerted effort to privatise many state-run enterprises, and attract foreign investment.

The Tunisian economy has seen stable growth in recent years, largely due to the expansion of the tourism sector. In addition, the launch of an association agreement with the EU, in March 1998, has opened trade opportunities and increased foreign investment in the country.

In October 2002, the IMF expressed its approval of recent economic reforms. The IMF also acknowledged the resilience of the economy, despite the tough regional political landscape and modest deficit; and also commended efforts towards diversification and privatisation.

Competition Evolution and Environment

Until the mid-1980s, the Tunisian economy was based on a centrally-planned model, in which an omnipresent State assumed:

- direct responsibility for strategic economic sectors (petroleum products, iron and steel, transport, energy, etc.);
- control over essential products through its marketing offices (oil, sugar, cereals); and
- control over prices by setting prices for essential products and by specifying profit margins for other products.

This model, as a result of its limitations, proved to be neither capable of driving the economy to a higher level nor of improving standards of living. In conjunction with trade liberalisation policies in the 1980s, domestic price controls were liberalised in 1986. The same year, Tunisia adopted the SAP in agreement with the World Bank and the IMF, bringing about necessary and inevitable changes to the Tunisian economy. These were in the form of adjustment to international competition and its 'harnessing' of the global economy through trade liberalisation and globalisation.

The objectives of the privatisation programme included:

- improving the efficiency of the privatised companies;
- mobilising capital for enterprises;
- developing financial markets; and
- supplementing government efforts in the provision of public services, particularly for Infrastructure.

With structural adjustments and the move towards a growth strategy, relying on market forces and private sector

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development, it became only a matter of consistency and dedication to promulgate a new law, which would set the rules and guidelines for business conduct appropriate for a market economy and for the prevention and sanctioning of anticompetitive conduct.

Tunisia has been amongst the first Southern partners of the Euro Mediterranean Agreements to enact a competition law. The inception of this law in July 1991 signalled an important shift in development strategy. The law underlined the transition from a highly controlled and regulated economy, towards a market economy. The need for a competition policy was not felt as long as the public sector dominated the major economic activities; and price and investment regulation permeated most activities, which had been the case in Tunisia until the late 80s.

Competition Law and Institutions

After its enactment in 1991, The Tunisian competition law was amended several times. It is modelled extensively on the French 1986 ordinance, especially regarding its emphasis on the principle of free price setting. This law recognised the need for abolishing a complex and highly distortional system of price control dating back to 1970s.

The opening of the local market to foreign goods; the liberalisation of private enterprise in the manufacturing and service sectors; the introduction of competitiveness and competition as factors governing economic life; and the withdrawal of the State from direct management of the economy, all necessitated the creation of a body responsible for monitoring compliance with the rules of competition and thwarting any anticompetitive practices. The creation of the Competition Council was accompanied by the introduction of the first core of Tunisian competition law, which drew heavily on French and European law.

The 1991 law did not differentiate between horizontal and vertical agreements, and lacked explicit details on exclusive arrangements. Two amendments of the law were introduced to deal with the latter issue. The explicit prohibition of all exclusive agreements of concessions and commercial representation, was added in 1995; and the relative easing of this prohibition by granting the Minister of Trade the power to authorise such agreements on an exceptional basis, was enforced in 1999.

Anticompetitive Business Practices

Merger control was an absent issue in the initial law of 1991, and was only introduced in the 1995 amendment. Cases for and against mergers can be filed, before the Council for Investigations, by the Minister of Commerce on behalf of the Government, by firms, trade or business associations, consumer associations or the Chamber of Commerce, industry or agriculture. The Council has very limited authority to initiate cases, itself.

Box 57.1: Abuse of Dominant Position

In 1994, the Minister of Trade filed a case against ‘Poulina’, a giant poultry firm. ‘Poulina’, sharing the market with 1500 small producers of chicken and eggs, then dominated the poultry sector. This company started as a poultry and egg producer and, as it expanded financially, withdrew from direct production and took on the role of provider of all kind of inputs to the large number of small producers.

The Competition Council found this company guilty of abuse of dominant position, by obligating distributors to carry only its products, even if the products of other suppliers did not compete with those of Poulina. The Council also found Poulina guilty of resale price maintenance by imposing on distributors resale prices to consumers, thus, limiting competition between distributors and harming consumer welfare. Furthermore, the Council invoked a contractual condition imposed on distributors according to which they will assume legal responsibility for any economic or health related infractions.

Considering that all these actions of resale price maintenance and conditional sales were abuses of dominant position, the council imposed a fine of 240,000 Tunisian Dinars (approximately US$194,000), which was the largest fine issued over the whole work period of the Council, 1992-2001.

Source: The Practice of Competition Policy in Tunisia, June 2003

Initially, the 1991 law did not provide the Council with any such power. It was not until the amendment of 1999, and after having to investigate cases where the defendants were suspected of anticompetitive practices, but where the plaintiffs subsequently withdrew their cases, that the legislator decided to grant the council limited powers to initiate and investigate cases.

Box 57.2: Agreement between Firms

The Tunisian Farmers’ Association filed a case against the Association of Producers of Canned Vegetables and Fruits. The former complained that the latter colluded to fix the purchase price of fresh tomatoes, which, if proven, constituted indeed an anticompetitive practice.

The Council initiated proceedings on the case, considering that price fixing clearly fell under the ambit of competition law. However, the plaintiff withdrew the case whilst still under investigation. The council dropped the case but stated, in its report, that it would have continued its proceedings if it had the legal power to act on its own.

Source: The Practice of Competition Policy in Tunisia, June 2003

Tunisian competition legislation has been amended on a number of occasions, and on an average every three years, the latest amendment being in November 2003 to adjust to economic developments in the country, and to honour numerous international commitments entered into by the Tunisian Government.

Box 57.3: Alleged Case of Abuse of Dominant Position
In the year 2001, the Association of land measurement engineers filed a complaint against the National Electricity and Gas Company, accusing the latter of discriminatory tender procedures, involving procurement for their services and the use of old selection criteria that had become outdated due to progress in land measurement techniques. The council deemed such practices an abuse of dominant position and that the criteria used were barriers to entry for new experts in the field. A fine equal to 15000 TD (about US$12000) was imposed and the Council issued an injunction to the public undertaking, to revise its tender procedures within a six-month period.
Source: The Practice of Competition Policy in Tunisia, June 2003

It is largely acknowledged, in the light of these various provisions, that competition between enterprises is a basic factor for economic efficiency. Nonetheless, amongst non-competition and total and absolute competition, a choice needs to be made between a number of levels that are appropriate to the needs of the country, and commensurate with the stage reached in its development. It is, therefore, the task of the Competition Council to ensure that an appropriate match is made.

Sectoral Regulation

According to a recent study by the World Bank, utility regulation should be progressively introduced for all infrastructure sectors, no matter whether service providers are public or private. Regulation could be performed through semi-autonomous regulatory agencies that could cover one or several related sectors if the level of competition is sufficiently advanced, or through the strengthening of regulatory departments in Sectoral Ministries where reforms are still in an embryonic stage.

A key function of regulatory agencies and departments would be to introduce a benchmarking system for performance and the efficient costs of service provision, and help introduce cost accounting in regulated enterprises. Advice on tariff reviews, including through the introduction of indexing systems as well as an estimate of the magnitude of cross-subsidies, would also be part of the regulatory functions. Since infrastructure regulation is a relatively new area for Tunisia, a significant effort at capacity building would be necessary. In parallel, the functions of the existing Competition Council should be strengthened.

Telecommunications Sector

The Tunisian telecommunications market has long been characterised by the monopoly of Tunisie Télécom and the extensive role of the Government as policy-maker, regulator and operator in the sector. Until recently, Tunisie Télécom also had a monopoly in mobile telephony through its subsidiary, Tunicell. However, since 2002, a second mobile telephony operator, ORASCOM has entered the market.

In January 2001, Tunisia enacted a new Communications Code, which would regulate the telecommunications sector. The law enabled the opening-up of the market to private companies, by introducing a licensing regime for the supply of telecommunications services and networks. In addition, the Code created two regulatory agencies: the National Instance of Telecommunications (NIT) and the National Agency for Frequency (NAF). The NIT is in charge of the regulation of the telecommunications sector and the NAF is in charge of spectrum management.

Currently, there is no independent regulator in Tunisia; however, the process of separation of operational and regulatory activities has begun with the Government's 1997-2001 telecommunications plan. The process involves the structural adjustment, and the separation of responsibilities into Tunisie Télécom as the public network operator, and CERT (Telecommunication Study and Research Centre) as the regulator.

The Government of Tunisia has recognised the importance of telecommunication network for socio-economic development. The public telecommunication operator, Tunisie Télécom has been given a wide range of responsibilities for the development of an advanced and pervasive network throughout the country.

Consumer Protection

The Consumer Protection Law (law No. 92-117 of 7 December) gives general guidance on policies on labelling and packaging, whilst various standards, varying according to individual products, involve specific rules. One mandatory food standard requires that all pre-packed food commodities be labelled with specific information.

The Government has introduced measures to increase consumer protection, including a standard sales contract, designed by the Ministry of Commerce detailing the requirements of retail or manufacturer guarantees. The model contract is included as an annex to the decision of the Minister of Commerce taken on December 17, 1998, requiring specific clauses in all guarantees of electronic and household equipment.

In addition to providing technical instructions in Arabic, French or English, and providing verification of the proper functioning and good condition of the merchandise, the law includes a schedule of reimbursements to be made to the consumer if faulty merchandise cannot be adequately repaired within 15 days of notification by the consumer.

Concluding Observations and Future Scenario

The Competition Council has, ever since its establishment, not only worked with very limited human and material resources but also lacked financial and administrative autonomy. The Council stresses the importance of such autonomy in order to enhance the credibility of the enforcement of competition law, and to urge firms, enterprises and consumers to file more complaints if subject to anticompetitive practices or abuses.

The Competition Council will undoubtedly have to face a number of challenges in the future, one of which being the development of certain cross-border practices, which may pose a threat to competition and which, due to cross border practices, makes it essential to seek a multilateral framework for cooperation.

Suggested Readings

1. OECD Report on Competition in Tunisia, *2002*
2. The Practice of Competition Policy in Tunisia, Lahouel Mohamed El Hedi