

6 ARAB COMPETITION FORUM

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Strengthen Competition Law Enforcement against Abuse of Dominance - Developing Legal Frameworks and Investigation Tools

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Forms of abuse of dominance

- **Article 8 of Law No. 3 of 2005 (Egyptian Competition Law (ECL))**
 - “A person holding a dominant position in a relevant market is prohibited from carrying out any of the following:
 - a) Undertaking an act that leads to the non-manufacturing or non-production or the non-distribution of a product for a certain period or certain periods of time.
 - b) Refraining to enter into sale or purchase transactions regarding a product with any person or totally ceasing to deal with him in a manner that results in restricting that person’s freedom to access or exit the market at any time.
 - c) Undertaking an act that limits distribution of a specific product, on the basis of geographic areas, distribution centers, seasons or periods of time among Persons with vertical relationships.
 - d) To impose as a condition, for the conclusion of a sale or purchase contract or agreement of a product, the acceptance of obligations or products unrelated by their very nature or by commercial custom to the original transaction or agreement.
 - e) Discriminating between sellers or buyers having similar commercial positions in respect of sale or purchase prices on in the terms of the transaction.

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Forms of abuse of dominance – cont'd

- **Article 8 of the Egyptian Competition Law (ECL) – cont'd**

- f) Refusing to produce or provide a product that is circumstantially scarce when its production or provision is economically possible.
- g) Dictating on persons dealing with him not to permit a competing person to have access to their utilities or services, despite this being economically viable.
- h) Selling products below their marginal cost or average variable cost.
- i) Obliging a supplier not to deal with a competitor.

The Executive Regulations shall set out the conditions and procedures for implementing the provisions of this article.”

Assessing dominance

- **Article 4 of the Egyptian Competition Law (ECL) defines *dominance* as:**

“In the application of the provisions of this Law, dominance in a relevant market is the ability of a person, holding a market share exceeding 25% of the aforementioned market, to have an effective impact on prices or on the volume of supply on it, without his competitors having the ability to limit it.

The Authority shall determine the situations of dominance according to the procedures provided for in the Executive Regulations of this Law.”

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Assessing dominance – cont'd

- **Art. 7 of the Executive Regulations** outlines the conditions that must be met for a person to be considered dominant.
- These conditions must be **collectively** fulfilled to confirm that the person holds a dominant position in the relevant market, which are:
 1. ***“The person has a market share exceeding (25%) of the relevant market. The calculation of this share is based on the two elements of this market, namely, the relevant products and the geographic scope during a certain period of time.***
 2. ***The ability of a person to exercise an effective impact on the prices of the products or on the quantity of the products supplied in the relevant market.***
 3. ***The inability of the person's competitors to limit his/her effective impact on the prices or on the quantity of the products supplied in the relevant market.”***

Based on these conditions, when investigating violations of Art. (8) ECL, ECA assesses whether an individual holds a dominant position in the relevant market during the period under examination. This could include the period of the violation as well as a reference period that illustrates the situation before and/or after the violation.



Enforcement tools when dealing with abuse of dominance

The enforcement tools at ECA's disposal relating to abuse of dominant position are as follows:

- **Issuing interim measures** in cases where there would otherwise be irreparable harm to competition.
- **Issuing an infringement decision.** In this case, the following routes can be followed:
 - The criminal route, whereas ECA can choose to refer the matter to the public prosecution (Art. 21 ECL).
 - The administrative route, whereas ECA orders the infringing undertaking to remove the infringement within a set period of time, as otherwise the contract subject to the infringement would be considered null and void (Art. 20 ECL).
 - Both routes, whereas the administrative decision would include a clause mandating that the matter is referred to the public prosecution. Moreover, for either route, ECA can give the party the option to settle with ECA. The settlement amount is determined by Art. (21) ECL and using guidance from internal guidelines created by ECA.

Enforcement challenges against abuse of dominance



- Ensuring **deterrence**, which often requires the swift issue of a sanction.

When cases are referred to court, it can take up to a few years for a decision to be issued, for that reason

1. Settlements

2. ECA to issue fines

3. Market Monitoring Unit

Recent enforcement by ECA



Example 1: Alcoholic Beverages Case (2020)

- ECA issued interim measures in December 2019 requiring an undertaking (presumably) dominant in a number of markets in the alcoholic beverages sector to cease a number of anti-competitive practices.
- ECA then continued its investigation, gathering evidence using **publicly available information, meetings, and contracts** between the undertakings and distributors.
- The undertaking's dominant position was confirmed, and ECA concluded that it carried out the following practices:
 - Tying its products, through obliging distributors to purchase wine in order to purchase beer.
 - Imposing exclusivity clauses on distributors.
 - Granting retroactive loyalty rebates to maintain exclusivity.
 - Refusal to deal with competitors through exercising margin squeeze.
- The undertaking settled with ECA after the issue was referred to the public prosecutor.





Recent enforcement by ECA – cont'd

Example 2: Food-Delivery Platform Case (2022)

- ECA investigated a case of abuse of dominant position by a food-delivery platform dominant in the market for displaying and ordering food through online platforms in Egypt.
- The investigation entailed analysing all of the platform's **contracts** with the restaurants during the period of the investigation, as well as **meeting** with and sending **requests for information** to competitors and restaurants.
- ECA concluded that the undertaking abused its dominant position as follows:
 - Imposing exclusivity clauses on the restaurants.
 - Tying between being listed on the application and using its delivery services.
 - Imposing wide and narrow MFN clauses on the restaurants.
- The undertaking submitted a settlement request to ECA before ECA finalized its investigation, which ECA accepted.



Recent enforcement by ECA – cont'd

Examples 3 and 4: Yeast (2022) and Tuk-Tuk (2023)

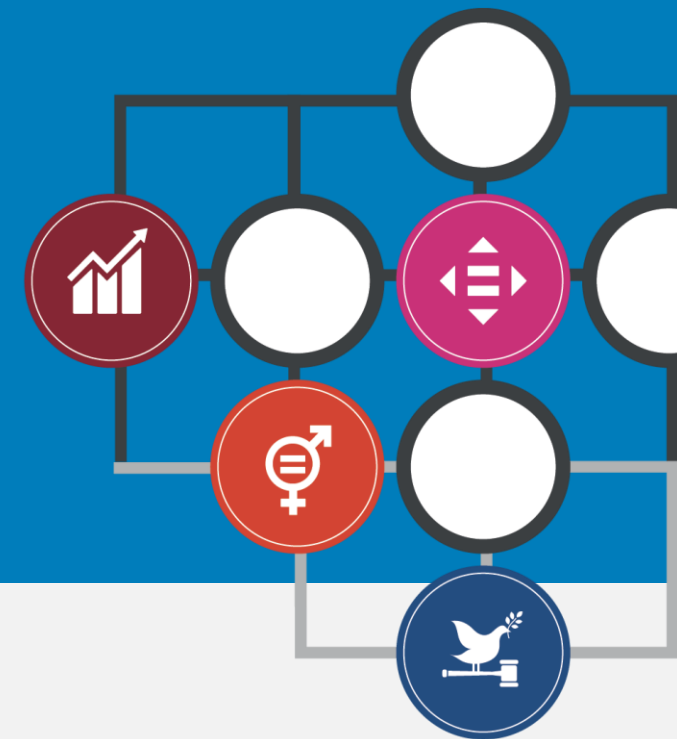
Cases

- In both cases, ECA found dominant undertakings to carry out the following practices:
 - Fixed RPM, whereas distributors were not allowed to sell the products in question below or above a certain price.
 - Restriction of passive sales, whereas the distributors were not allowed to sell products to consumers or other distributors around their assigned geographic area, namely if they were approached by the consumer and not actively sought out by the distributor.
 - Imposing exclusivity clauses, making it difficult or impossible for the distributors to work with competitors.
- Gathering evidence required: **meeting** with small distributors dispersed across Egypt, as well as analysing **contracts** between them and the dominant undertakings.
- In both cases, the dominant firm submitted a settlement request before ECA established the Article 8 violation, and it was accepted in both cases.

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Thank you!