Competition Rules in the Euro-Mediterranean Partnership

by

François SOUTY, Professor, University of La Rochelle (FR)

This report presents and assesses the development of the Competition Law and Policy in the Mediterranean Countries associated to the European Union under the framework of the Union for the Mediterranean.[1]

Within the European Union (hereafter "the EU"), unlike as in the United States,[2] the concept of Competition Law and Policy includes of private anticompetitive behaviours prohibitions or "antitrust" [regarding restrictive agreements, abuses of a dominant market position and merger control] as well as provisions on the control of granting of State Aids to the Private sector. It also includes provisions concerning the performance of services of general interest [in other words "utilities" or "public services"] either by state-owned enterprises or private-owned enterprises enjoying exclusive or special rights granted by the State or its local entities and subdivisions. The concept thus may concern the issues and problems raised by the liberalisation of certain sectors of the economy. Within the EU, breaches to Competition Law are mainly treated as administrative law offences.[3]

In the group of countries of the Mediterranean associated to the EU, the concept of Competition Law and Policy mirrors that EU approach to Competition Law and Policy, although in terms of institutional design and sanctions, its enforcement gives rise to somewhat differentiated approaches mixing the EU administrative approach and the US criminal and civil approach.

In a first section, this report recalls the brief history of the regional integration that has started to take place some decades ago and which are the Mediterranean countries participating. In a second section we examine the Competition Law enforcement institutions and the institutional organization of the concerned countries. A third section briefly highlights the actual competition law enforcement in the concerned countries: most of that section derives from countries answers to a questionnaire drawn up in January-June 2008 and discussed in a regional meeting in Paris on 8-10 July 2008.

A conclusion presents some policy recommendations deriving from observations in the first three sections and in view of debates during the Euromed segment of the European Competition Day under the French Presidency taking place in Paris on November 19, 2008.

Section 1

a. The Process of Euro-Mediterranean Integration and Competition Law and Policy

Competition Law and Policy has been taking a decisive role in the institutional integration of the European Union in the last decade of the 20th century which was sharply accelerated with the enlargement to the East, making the EU a Union of 15 States grow to 25 Nations on May 1st 2004 and then to 27 States on January 1, 2007. After a long period of Eastward oriented political and economic expansion, the first decade of the 21st Century seems to lead to a Southward oriented enlargement process. Indeed the Mediterranean side of the EU may look like more directly important to Countries such as France, Greece, Italy or Spain. However given the strategic nature of the Middle-East, the future economic, political and social evolution of the region in question do represent a major challenge to the whole of the EU Members States. Some of these States – e.g. Germany – have perceived that strategic importance and have been managing major cooperation or Twinning Programs over the recent years with Mediterranean Countries – e.g. Morocco and Jordan.

The political situation in the Mediterranean region today differs of the problems of transition that were encountered by Central and European Countries. Mediterranean countries have specific problems created by persistent tensions due to the Middle East conflicts, the war in Iraq and its spill-over to other neighbouring countries, regular upsurges of terrorist activity with domestic political tensions in some countries. Consequently, lack of political openness, criticism on corruption and increasing popularity of political Islam movements are also a factor of relevance in the region. In the economic field, a combination of fast demographic and labour force expansion and slow economic growth is resulting in high unemployment and flat incomes growth. The economic situation is aggravated by three socio-political “deficits”, the freedom deficit, the women’s empowerment deficit and the lack of access to knowledge and education. The prospects for long-term economic growth are further threatened by the non-sustainable management of the environment and natural resources.

If the evolution of South of Europe countries is likely to follow the kind of approach that has benefited the Eastern and Central European Countries, Competition Law and Policy Institutions will definitely play a major role in North African and the Middle Eastern Countries. Observers can already identify the shaping of a Free-trade zone that is still in a process of construction where competition institutions do contribute not only to a North/South dynamic but also to the achievement of South/South objectives. This evolution rests on a European initiative known as the Euro-Mediterranean Partnership or as the “Barcelona Process” starting in November 1995 and vastly reorganized in July 2008. This partnership has evolved with the development of a European neighbourhood policy and of a European Neighbourhood and Partnership Instrument (ENPI). In turn, the States of North Africa and the Middle-East have developed their own integration approach known has the Agadir Group development. Competition Policy plays a key role in the Agadir Treaty implementation process.

As recalled by Geradin and Petit, there were three main reasons for the introduction of more specific provisions on competition in the Euro-Med agreements:

- The fact that the link between trade and competition had gradually become a “hot issue”, especially following negotiations in the WTO and other multilateral fora. In this respect, the European Union also had a specific interest in exporting its own provisions on competition as a way to facilitate trade with neighbouring countries.

- Drafting of the "Europe agreements" facilitated the (partial) replication of some provisions also in bilateral agreements with Euro-Med partners. In this respect, the EU enjoyed "economies of scale" by replicating similar provisions in bilateral agreements with different countries.

- The Euro-Med countries had become increasingly important trade partners for the EU, following the elimination of some tariff and non-tariff barriers to trade with the previous wave of agreements in the 1960s, 1970s and 1980s. This suggested that a further opening of the Parties economies could boost trade to the mutual advantage of the signatories.

b. The European Neighbourhood and Partnership Instrument (ENPI)

Since 2003, the European Neighbourhood Policy and its bilateral Action Plans derive from the Euro-Med Barcelona Declaration. Policy priorities under the European good Neighbourhood Policy in the region until 2009 have been decided by the Heads of State at the Second Euro-Mediterranean Summit of Barcelona in November 2005, with still the establishment of an EU-Mediterranean Free Trade zone by 2010.

They relate to four broad domains: political and security cooperation, sustainable socio-economic cooperation, education and culture, and migration. This Regional Strategy Paper channels the contents of the five-year work programme into three priority objectives to be implemented at regional level:

- a common Euro-Mediterranean area of justice, security and migration cooperation;

- a common sustainable economic area, with a focus on trade liberalisation, regional trade integration, infrastructure networks and environmental protection;

- a common sphere for socio-cultural exchanges, with a focus on cultural and people-to-people exchanges, and raising awareness of the Partnership through the media.

The Regional Indicative Programme 2007-2010 transposes this policy response into concrete action programmes representing a total of € 343.3 million. Within the ENPI, the Euromed programs are developed in bilateral perspective linking the EU and each of the Euromed countries in support to economic transition: the aim is to prepare for the implementation of free trade through increasing competitiveness with a view to achieving sustainable economic growth, in particular through development of the private sector and strengthening the socio-economic balance: the aim is to alleviate the short-term costs of economic transition through appropriate measures in the field of social policy. Examples of projects financed by MEDA include structural adjustment programmes as well as development and capacity building in the field of Competition Law and Policy in Jordan, Morocco and Tunisia, a Syrian-Europe Business Centre, the social fund for employment creation in Egypt, rehabilitation of the public administration in Lebanon, rural development and Consumers protection in Morocco, etc.

The ENP lies on the premises that EU institutions and the "*acquis communautaire*" should be mirrored in the legal environment of all associated countries. One of the key elements of functioning and of regulation of the EU Internal Market is the EU Competition Policy which rests on the following:

- *Antitrust rules regarding anticompetitive behaviours*, prohibiting agreements restricting competition, such as price fixing and cartelization among producers, or abuses of a dominant position by firms enjoying market power on a given relevant market, for example through predatory pricing aiming at eliminating

competitors and/or preventing new entries on the market.

- *Mergers and acquisition rules to monitor market structures evolution* that prevent merging firms from reducing competition by reducing substantially competition or by creating or strengthening a dominant position on some given markets with highly concentrated market structures.

- Creation since May 1, 2004 of a most powerful *European Competition Network* that brings all National Competition Authorities in a network with the EU Commission's DG Competition which organizes daily cooperation and transmission of information on anticompetitive behaviours and their authors.

- *Liberalisation of the market* so as to avoid national impediments to the good functioning of the internal market: EU liberalization Policies have aimed at increasing a more efficient provision of services in a variety of areas that had previously been considered as areas for public or private provision of services under special and exclusive rights creating *de facto* if not *de jure* monopolies. Thus, areas such as fixed and mobile telecommunications, airports facilities and ground services, maritime and road transportation, ports facilities, energy, insurance, broadcasting, water utilities have been opened up to competition with new sets of regulation as a corollary especially in those sectors where barriers to entry to the market and scale economies may affect the actual working of the competitive processes. The liberalization final objectives have been an improvement of the internal market integration as well as an improved service delivery to consumers in an ongoing process.

- *State Aid rules* though possibly not overly important for Jordan, these rules are essential within the EU and some former centrally planned economies in a process of approximation with EU rules: these rules place rather restrictive conditions on member states, who may in the past have been giving certain firms or products favoured treatment, in the form of financial aid or fiscal advantages, to the detriment of other firms or products. However State Aid rules do allow some exception in specific conditions, for instance with regard to certain types of support aimed at promoting the economic development of underdeveloped areas or some research efforts.

To implement the ENP with regard to competition policy, several Association Agreements have been agreed between the EU and its neighbours of the Mediterranean and Middle-East Region under the MEDA partnerships programmes. All MEDA Agreements incorporate the types of provisions that reciprocate the EU treaties approach to questions raised by anticompetitive practices (namely provisions against cartels, abuses of a dominant position, regarding state aids). This is the main driving reason for having competition institutions developed in all Sub-Mediterranean countries in question.

The Euro-Med Agreements and their status of implementation

COUNTRY	TITLE OF THE AGREEMENT	
ALGERIA (COM (2002) 157 Final)	Euro-Med Association Agreement	Signed on 22.04.02 In process of ratification
EGYPT (COM (2001) 184 Final)	Euro-Med Association Agreement	Signed on 25.06.01 In force since 1.06.04
ISRAEL (OJ L 147)	Euro-Med Association Agreement	Signed on 20.11.95 In force since 1.06.00
JORDAN (OJ L 129/02)	Euro-Med Association Agreement	Signed on 24.11.97 In force since 01.05.02
LEBANON (COM (2002) 170 Final)	Euro-Med Association Agreement Interim Agreement for Early implementation of trade measures	Signed on 17.06.02 In process of ratification. In force since 01.03.03
MOROCCO (OJ L 70/00)	Euro-Med Association Agreement	Signed on 26.02.96 In force since 1.03.00
PALESTINIAN AUTHORITY (OJ L 187/97)	Interim Association Agreement, awaiting a Euro-Med association agreement	Signed on 24.02.97 In force since 1.07.97
SYRIA (Final text will be soon published)	Euro-Med Association Agreement	Negotiations concluded. Initialled 19.10.04 Council to decide on signature.
TUNISIA (OJ L 97/98)	Euro-Med Association Agreement	Signed on 17.07.95 Entry into force 1.03.98
TURKEY (OJ L 35/96)	Agreement establishing the definite phase of the customs union	Signed on 6.03.95 In force since 31.12.95

***c. The Agadir Agreement and the creation of the Euro-Mediterranean Free Trade Area in 2010*.**

The Agadir process explains the efforts that have actively and successfully been undertaken since 2002 in Egypt, Jordan and since the late 1990s in Tunisia, Morocco and Algeria and that are still in motion although at slow speed in Lebanon, Syria and in the Palestinian Authority. Competition Laws already existed in some Agadir Countries prior to the beginning of this process: Enforcement has started in Tunisia as early as 1991, in Algeria in 1995, in Morocco in 1999, in Jordan in 2002 and in Egypt in 2005 largely due to broader commitments such as World Trade Organization accession of those countries. The variety of Competition Policy institutions in place in those countries demonstrates an institutional convergence. The 2010 objective of establishment of a Free Trade zone remains on the paper, although nothing has been written or said about it in the Paris Summit creating the Union for the Mediterranean in July 2008.

d. The Union for the Mediterranean, Paris, 13 july 2008

Competition Policy has not been mentioned so far in the creation of the renewed Process of Barcelona: Union for the Mediterranean (in French: *Processus de Barcelone: Union pour la Méditerranée*), previously known as the "Mediterranean Union" (French: *Union méditerranéenne*). This Union for the Mediterranean is a community established on 13 July 2008 at a Paris Summit by the French President Nicolas Sarkozy, as a development of the Euro-Mediterranean Partnership. Its institutions remain in the making and the Union remains in a process of creation with the seat of its administrative body still undesignated at the end of October 2008.

The Union for the Mediterranean appears as a looser grouping than the EU. The Mediterranean Union con-

sists of all the EU states and states on the Mediterranean rim or those which are participating in the Euro-Mediterranean Partnership. The idea is to form a connection between Europe, North Africa and the Middle East. President Sarkozy called on the Mediterranean people to "*do the same thing, with the same goal and the same method*" as the European Union, though he stated it would not be based on the EU model.

When the framework project was modified in 2008, many proposals remained undefined or were dropped, such as a Mediterranean Investment Bank (modeled on its European counterpart). Instead it would focus on more practical projects. Under the original plans, members would form a regular council under a rotating presidency (similar to the current EU model) dealing with energy, security, counter-terrorism, immigration and trade. President Sarkozy also offered that French nuclear power expertise would be exchanged for North African gas reserves. In addition, a Mediterranean Solar Plan was designed as a project of the Union for the Mediterranean to install concentrating solar power in the deserts.

Amidst some EU skepticism and expressed concerns, at the Paris Summit of 13 July 2008, sustainable development and energy issues were defined as priority and essential objectives of the Union.[4] This determined the appointment by the co-Chairs of the Union, Presidents Sarkozy of France and Mubarrak of Egypt, of two coordinators for sustainable development, Minister Jean-Louis Borloo, Minister of State, Minister of Ecology, Energy, Sustainable Development and Territorial Management of France, and Minister Rachid Mohamed Rachid, Minister of Trade and Industry of Egypt.

The Mediterranean and European Unions would work together and share some institutions, including a common judicial area to fight corruption, terrorism, organized crime and people smuggling. Still, so far, *one must stress that Competition Policy issues have not been officially mentioned as goals of the Union and Member countries have to rely only on the existing document setting up its creation and development as a tool to achieve a better regional integration*.

The predecessor to the Union for the Mediterranean, the Euro-Mediterranean Partnership, was seen as a failure by some, because it included *all* EU members, which is considered to have distracted from focusing on purely Mediterranean issues as well as it was poised into the debates gridlock on relationships between the Arab Community and Israel. The original «Mediterranean Union», which would have included only Mediterranean states, was also hoped to avoid this situation by having a clearer direction. However, when the Mediterranean Union was modified to become the Union for the Mediterranean, it was decided that all EU members would be involved and no significant progress was made on the Israel/Arab countries debates.[5]

To strengthen the taking into account of and to integrate Competition policy within the *Union pour la Méditerranée*, it was decided under the French Presidency of the European Union from July to December 2008 to hold during the Competition Day organized by each Presidency a specific segment devoted to Competition Law and Policy enforcement in the Euro-Mediterranean region. The Proceedings of that session have been released in February 2009.[6]

e. Competition Law and economic development in Sub-Mediterranean Countries

Given the conditions of economic development prevailing in North Africa and the Near-East, it should be stressed here that a Competition Law is by no means a "luxury" that should be reserved for developed countries. Indeed, a Competition Law - adapted to the prevailing concentration of the market in developing countries - is one of the necessary tools in the fight against poverty.

However, in the terms of an Indian NGO, developing countries should not be dogmatic about withdrawing all public involvement from the markets as "*distortions and failures in markets are quite ubiquitous and the state needs to play a role in promoting a fair and orderly market*".[7]

Promoting competition both in developed and developing economies may thus well contribute to increasing the competitiveness of industries, enhancing the real income of consumers, and allowing the exercise of freedom of entrepreneurship. In the context of economic development, a competition policy is necessary both to prevent domestic monopolization, crony capitalism with devastating effects on national and regional economies (as evidenced in the Asian Financial crisis of 1997-1998) and anticompetitive practices leading to inefficiencies as well as to allow economic agents to reap the benefits of economic freedom. However, within the context of a developing economy, an industrial policy, as well as micro-economic capacity building, are also useful in the initial stages of economic development because of imperfect markets, scale economies and need of technology transfer.[8] Indeed, developing countries (just as developed countries have done) need an «optimal amount» of competition (a blend between competition policy and industrial policy). As markets progress in maturity (i.e. develop), competition policy can therefore play an increasingly important role in support of national competitiveness.[9]

As can be considered in a small economy, it should be stressed that in small economies, market concentration tends to be higher than in larger economies (see «relevant market» definition perspectives); small economies are particularly vulnerable to abuses or misuses of market power.[10] Small economies tend to be more open and more dependent on foreign trade than larger economies and more vulnerable to offshore anticompetitive practices.

In the context of developed economies as well as in the context of economic development, the design of a Competition law must take into consideration several factors:

- The legal environment (i.e. administrative fines tradition vs. criminal sanctions tradition for businesses; public enforcement vs. private enforcement traditions; private tendency for consensus-seeking rather than legal conflicts, per se rules vs. rules of reason etc.)

- Economic circumstances (efficiency defence, exemptions, relationship with regulatory agencies)

- Political and social choices (scope of the law, substantive standards such as public interest, consumer surplus, regional surplus etc.).

Trade liberalization in a given country or group of countries is insufficient to ensure that international trade will take place or that the expected benefits from trade will materialize. Indeed, private anticompetitive practices as well as domestic regulations can defeat trade liberalization and deprive nations of the benefits of free trade. Unlike many observers have noticed, there are several competitions provisions within already existing agreement at the World Trade Organization.[11] As a matter of fact, within the Basic Telecommunications Agreement, a Reference Paper on Basic Regulatory Principles provides for a commitment by members to adopt appropriate measures to prevent anti-competitive practices by major suppliers.

These provisions produced a direct incentive for the adoption of a Competition Law in Algeria, Egypt, Jordan, Morocco for instance (the case of Tunisia is different as it had adopted a Competition Law as early as 1991). This WTO factor also explains to a certain extent why in some developing countries, and more specifically among the Agadir group of countries, such as Jordan in the Arabic Peninsula or Morocco in the Maghreb area,

the National Telecommunications Agency in charge of sectoral regulation has been provided some responsibility in the field of Competition Law enforcement pursuant to this WTO broad commitment. This also explains why such sectoral agencies may thus claim a role in the field of competition rules enforcement vis à vis Telecoms operators, thereby somehow conflicting with the Competition Agencies. Such a situation calls for a real cooperation framework between the two types of regulators to avoid costly discussion among the government as well as in the interest of the market and of the operators.

In the Jordan legal context, the WTO commitment to enforce the Telecommunication Agreement and the "Reference Paper" has allowed this country to start its experimentation of market liberalization and competition law principles enforcement. Consequently a Telecommunication Regulation Commission has been set up in 1995, with powers to enforce competition law elements in its telecommunications statutes. The same scheme seems to have determined evolution in most other Agadir Countries where Telecoms Regulatory Agencies have the capacity and indeed do enforce, Competition Laws as Competition Laws with dedicated enforcement institutions have been created at later stages than the Telecom Regulatory frameworks.

f. Sub-Mediterranean countries, the Arab League and Competition Policy

The location of most sub-Mediterranean countries among the Community of Arab Nations as well their association with the European Union under the Euromed program explains how and why the regional context has been further inspiring the development of Competition Law institutions after their accession to the World Trade Organisation.

The Arab League has started to consider the benefits of establishing a Competition Law in the late 1990s, at a time when only Tunisia, Morocco and Algeria were in the beginning of national Competition Laws operation. A Conference was organized in Cairo in 1999 at the initiative of Secretary of the Arab League. In the early 2000s, the idea of a Pan-Arab Market has emerged with a regional agreement among countries using the same language in North Africa and the Middle-East : the Great Arab Free Trade Area (GAFTA). The GAFTA is still in the making and has developed only few operative institutions to date. The GAFTA Treaty is a Free trade program which aims at reviving the 1981 Agreement for Facilitation and Promotion of trade among the members which was signed at Tunis on February 27th 1981. The GAFTA treaty contains no detailed competition provisions but it calls for the application of international rules regarding subsidies, countervailing measures, safeguards and anti-dumping measures, which should be possible under World trade Organization Agreements. However the program does not explicitly refer to the WTO agreements since not all GAFTA countries are WTO members. Furthermore, these provisions are very close to the basic European Union Treaty provisions regarding Market integration and the Free Circulation of goods within the Internal Market. However, there are no specific competition provisions and one may regard now the utility of the adoption of competition provisions in the future evolution of the GAFTA Treaty.

Lastly, as a majority of the set of countries under review belong to Islamized North Africa and the Near East, a few words should be said about the Muslim environment and context that shape legal and Market institutions in those countries and in which a Competition Policy is being developed. Until the Umayyad period, a function of Market Governor existed which aimed at supervising the normal and proper functioning of Markets (Sukhs) upstream and downstream. During the Abbasid's period, this function of Market Governor evolved into a Market Accountant function that had gained an important markets overseeing role regarding economic activities performance. This Ac-

countant function was less concerned with price fixing and classical accountancy functions than a regulatory function: in particular the Market Accountant could prohibit any speculating operation on some given goods, to avoid abusive pricing on basic consumption goods and pricing agreements among traders and retailers trying to speculate on some food stuffs. This accountant had a power to force traders to sell their stocks, since speculation is considered as a sin in Islamic Law and prohibition of sins is compulsory for the government.[12] Some genuine aspects regarding market regulation have survived in most states situated in the Muslim area as governments have kept important market monitoring functions including powers to administer prices in exceptional situations.

Those aspects of a religion playing a role in the functioning and inspiration of rules applying to Markets and Consumers in the Euro-Mediterranean region have to be borne in mind when some Euromed Countries are pressing the EU to accept the integration of the Arab League Secretariat as a player in the Barcelona Process: Union for the Mediterranean. The Egyptian President Mubarrak for instance was said in the Egyptian Press to support this request during his October meetings with the French President of the Union. From a Competition Policy standpoint which is our perspective in this chapter, it would be necessary to consider the inclusion of Competition Policy provisions in the GAFTA to make the Arab League a potential participant to the Union for the Mediterranean for all what regards future regional markets and economic integration.

Section 2

Competition Law enforcement institutions and institutional organization in Mediterranean Countries

Elements presented hereafter mainly derive from the countries questionnaires responses presented by each Competition Authority at a regional Seminar that took place in Paris on July 8 to 10, 2008. As already mentioned, the Agadir process explains the efforts that have been successfully undertaken in Tunisia and Morocco since the late 1990s and in Jordan and Egypt since 2002 and 2005: this group of Agadir Countries appear as fairly homogeneous in the level of development of their competition law enforcement. The enforcement is essentially administrative, giving a priority role to Divisions, Directorates or Authorities institutionally situated within Ministries of Internal Trade and Industry, although Tunisia and Morocco have been clearly designed as Administrative and Egypt and Jordan were initially designed as Criminal. Developments are still taking place (albeit at a slower pace) in Lebanon, Syria and in the Palestinian Authority. In the cases of Turkey and Israel, competition law institutions development has reached a level of development similar to that of EU Member Countries. Algeria follows the same pattern of institution building as Tunisia and Morocco, although significantly less developed. In this section, competition rules of the 10 Mediterranean Partners of the EU are treated in alphabetical order for purposes of presentation: Algeria, Egypt, Jordan, Israel, Lebanon, Morocco, Palestinian Authority, Syria, Tunisia and Turkey. The regulatory framework from Algeria, Morocco and Tunisia is largely inspired by the French regulatory system whereas that from Egypt, Israel and Jordan resembles more that of the EU Commission with some hints of the US system, in particular with regard to the criminal nature of breaches to the Law. The System of Turkey is clearly shaped after the Competition regulation of Germany.

Algeria

The Competition law in Algeria was introduced with the *Ordonnance n° 95-06 of January 25 1995,* substantially amended by *Ordonnance n° 03-03* of July 19, 2003. Specific measures to implement the law were then adopted through executive decrees.

The stated objectives of the law are to "*set the conditions for the existence of effective competition in the market, to prevent any practice that restricts competition and to control mergers, to stimulate economic efficiency and protect consumers welfare*". The legislative framework covers all activities of production, distribution and services. Activities performed by public entities fall within the scope of the law whenever they do not constitute a specific prerogative of the public entity at stake or do not concern the execution of its duties/mission. In Algeria, the respondents to the EIPA questionnaire specify that there are two institutions in charge of competition: the Ministry of Commerce and the Competition Council.

The Ministry of Commerce

The Ministry of Commerce is a Government Department in charge of competition policy design and its implementation. It is composed of a Directorate of Competition with expertise in the areas of Competition, Regulation, Economic Expertise, Markets Monitoring, Prosecution and Control of Anticompetitive Practices and Mergers. It also supervises Commerce Directorates within the forty-eight Wilayas (territorial units like the French *Départements*) and nine Regional Directorates with responsibility of competition investigations. Upon completion of investigations, reports are in principle to be filed to the Competition Council for treatment and possible sanctions.

A Competition Council (CC) established as an autonomous body within the Ministry of Commerce

The Algerian respondent to EIPA questionnaires over the last three years regularly stressed that a major condition for establishing an effective antitrust system in line with EU system of Competition regulation is the design of a powerful and independent competition authority. In Algeria, since 1995 the *Conseil de la Concurrence* (hereinafter, "CC") has been established within the Ministry of Trade as the main "market regulator" since the Government is considered to be the most powerful of all institutions. This also means that the CC in Algeria is a government agency, not an independent authority. It is largely served by civil servants and resources are determined within the Directorate of Competition of the Ministry. The 2003 Order provides greater details than the original order of 1995 on the composition of the CC and its competences. As reported by the Ministry of Commerce, a revision of the 1995 provisions was deemed necessary following the rather disappointing performance of this body: the initial structure, composition and functioning of the CC turned out to be inadequate to perform its important tasks. And there are signs that the CC has not changed its course of action characterized by a reduced level of enforcement until the summer of 2008.

Although established within the Ministry of Trade, the CC is presented in the questionnaire answer as a "*separate body with financial independence*".

With regard to its structure and organization, the CC is composed of nine permanent members (this number is to be raised to twelve) including a Chairman, with the following backgrounds:

- two members having served as a Judge or Counsellor in the Council of State, in the Civil Supreme Court or in the Court of Auditors;

- seven members with proven economic or legal track record in competition policy, distribution policy or consumer protection matters;

- One of the latter members is nominated by the Minister of Home Affairs.

CC members have a five year mandate, renewable. They are supposedly supported by the staff provided by the Ministry of Commerce but no figure is available so far.

The CC has to present annual reports on its activities to the Head of Government and to the Minister of Commerce. Reports are to be published in the Official Journal of the Republic of Algeria after one month from the initial publication although it seems that no report has been effectively reporting any completed case over the last five years.

The CC has in principle and on the paper the power to decide, propose and advise on any issue or action in order to ensure the proper functioning of competition in the market. It has in principle powers of investigation, injunction, sanction and advocacy. In addition, the Council has to be consulted on all legislative projects pertaining to competition and on all measures causing one of the following effects:

- submitting specific professions / activities or, more generally, access to the market to quantitative restrictions;

- establishing exclusive rights for certain areas or activities;

- establishing particular conditions for activities related to production, distribution or services;

- establishing identical conditions (pratiques uniformes) for retail conditions (conditions de vente).

Under the condition of reciprocity, the CC can also establish cooperation with foreign competition authorities by exchanging information and relevant documents. As pointed out by the Ministry of Commerce, such competence does not only aim at ensuring that national and foreign competition law is correctly enforced, but it also plays a key role in the cooperation with the European Union, as specified by the Association Agreement. The CC can act upon request and *ex offico*. The Council's action can be requested by the Minister of Commerce and also by private undertakings filing complaints or asking for a clearance certificate. In addition, regional bodies, financial and economic institutions, professional associations, trade unions, and consumer associations can require the intervention of the CC on matters falling within their competences. The Council decides if the case falls within the scope of the law on a case-by-case basis. Whenever the facts at stake do not fall within its competences or available evidence is insufficient, the Council can declare the complaint inadmissible: in this case, the decision must be expressly motivated. No case related to practices or conduct that took place more than three years before the complaint can be opened. All decisions issued by the CC can be appealed by the parties. Appeals have to be filed with the Commerce Chamber of the *Cour d'Appel d'Alger* (High Court).

Sector Specific authorities

Next to the Ministry of Commerce and its CC, sector-specific regulators appear to have been set up and actually deal with markets perturbations including anticompetitive practices. Those authorities seem to be more effective including in the competition law principles enforcement area:

- the Regulatory Authority in charge of Postal services and Telecoms (*Autorité de régulation de la poste et des télécommunications* or *ARPT*), which is to guarantee the competitive and transparent functioning of the Post and Telecoms market.

- the Regulatory Commission of Electricity and Gas (*Commission de régulation de l'électricité et du gaz* or *(CREG*) which is to guarantee the competitive and transparent functioning of electricity and gas markets.

- in addition, respondents to the questionnaire have enumerated a series of other regulatory authorities in the sectors of Water, Mining, Oil, Transports, Money and Credit. Those authorities seem to have structural duties in privatization processes and the opening of those sectors to new entry of competition-driven operators.

Egypt

Market competition regulation in Egypt is defined by Law No. 3 of 2005 on the Protection of Competition and Prohibition of Monopolistic Practices. To evidence that the Egyptian regulatory system is fully alive, the Law has been amended after the first three initial years of operation by Law No. 190 of June 2008. The amendments entered into force on the 23rd of June 2008. The amendments included the following:

a) Increasing both the minimum and maximum limits of the fine to be between 100 thousands L.E. (20 thousands US$) to 300 million L.E. (60 million US$).

b) Imposing fine for non compliance with the Competition Authority's decisions.

c) Imposing fine for not providing the Competition Authority with the requested information and documents. The fine is to be doubled in case of providing false or misleading information.

d) Introducing an obligatory mergers and acquisitions notification for merging where the annual turnover of the companies involved exceeds 100 million L.E. (20 million US$).

e) Introducing a partial leniency program (exemption of half of the fine) in cartel cases. The implementation of such program is up to the discretion of the court on a case by case basis after assessing the extent to which the information provided by the person concerned has helped in revealing the crime.

The Egyptian Competition Authority (ECA)

The Authority responsible for the enforcement of the Competition Law is the Egyptian Competition Authority (ECA). The ECA is an Agency which has an autonomous legal existence under the Prime Minister. The role of the ECA is to:

a) Receive complaints and initiating inquiries in relation to anti-competitive agreements and practices.

b) Receive notifications on mergers and acquisitions.

c) Set up a comprehensive database relating to the economic activity and performing necessary studies and researches to detect acts that are harmful to competition.

d) Take measures to stop the violations detected.

e) Comment on draft laws and regulations relating to the regulation of competition.

f) Coordinate with competition authorities in other countries on matters of common interest.

g) Organize training and educational programs with a view to creating awareness about the provisions of the Competition Law and free market principles in general.

h) Issue periodic reports including decisions, recommendations, procedures and measures taken by the Authority.

i) Prepare an annual report on the activities of the Authority and its future plans and recommendations to be submitted to the Competent Minister. A copy of the annual report shall be sent to the Parliament.

With regard to its structure and organization, the ECA is governed by a Chairperson and a Deputy (who must be a Judge) and Board of directors comprising 15 members including three experts on competition issues and representatives of all the General professional and economic Federations of Egypt. Its executive body

consists of the executive director (also a Judge) on top of the hierarchy, and five departments, namely, economic department, legal department, IT department, communication department, and administration and finance department. The ECA is served by 40 persons including technical staff, administrative and finance staff and support staff.

The Law provides for all types of competition provisions of modern Competition Laws in force in OECD countries such as rules governing horizontal agreements (exhaustive list of anticompetitive agreements and per se approach), vertical agreements (rule of reason approach) abuse of dominant position (exhaustive list of anticompetitive practices), mergers and acquisitions notification (binding), confidential treatment of all information received and fines. The law also applies extraterritorially to behaviours that affect the Egyptian market (under the European standard of the theory of effects). Exceptions and exemptions under the law include public utilities managed by the state (which are not subject to the law according to a reasoning that very much resembles the US State Action Doctrine). Private firms managing public utilities may apply for exemption of the provisions of the law. Agreements concluded by the government concerning essential products are decided by the Council of Ministers after consulting the ECA.

The Authority is vested with the power to receive complaints and initiate inquiries regarding anti competitive practices stipulated in the Law, use law enforcement powers whenever needed in conducting inspection, take final decisions regarding the cases under inspection, take necessary measures to stop the violations and, refer the case to the competent minister to refer it to court in case a violation to the Law is proven.

Other Specific sector Authorities and Courts

Next to the ECA some sector specific authorities and institutions have been created namely the Telecommunication Authority (NTRA), the Electricity Authority (EA) and the Consumer Protection Authority. The NTRA and EA were both created in the 1990s and were designed as independent Divisions within their relevant ministries. The reform process of the Telecom sector in Egypt is recognized as one of the most advanced and forward-looking of the Arab countries: privatization of Telecom Egypt and privatization and the introduction of competition in mobile communications and Internet service supply.

The Ministry of Investment is the body responsible for privatization. The Law does not provide for a binding consultation mechanism in the privatization process. However, there is voluntary cooperation between the Ministry of investment and the ECA through advisory opinions on the position of the firms under privatization in the market.

The three types of violations stipulated in the Egyptian Competition Law are of criminal nature. In case referred by the competent minister to the prosecution office, they follow the same criminal procedures applicable to criminal offences. The court depends on the report prepared by the ECA and may hear lawyers and economists of the Authority as expert witnesses. Decisions of the court may be appealed to the courts of appeal. A final court decision of conviction is to be published in two widespread daily newspapers.

Israel

Competition Law enforcement in Israel has reached the same level of development and sophistication as the most advanced states within the European Union both in terms of Institutions activity and of tools for enforcement. The Israel competition law system design very much looks like the Canadian Competition system which appears as a mix between the German Model (an independent Agency like the *Bundeskartellamt*) and the American Model, and more particularly after the organization of activities and enforcement of the Antitrust Division of the US Department of Justice: from the American experience, the Israel Antitrust Autority (IAA) investigates and has broad settlement powers like the DOJ's Antitrust Division, whereas it has to go before an independent judge for sanctioning offenders, the Antitrust Tribunal: this is exactly the Canadian type of organization with the Competition Bureau and the Competition Tribunal of Canada. Borrowed from the German system, the Israel system also features an important advisory body with a policy making or shaping role, the Exemptions and Mergers Advisory Committee (which also exists *mutatis mutandis* in the Jordan Competition Law system with the Competition Matters Committee).

A powerful investigating Competition Authority: the Israel Antitrust Authority (IAA)

Israel's antitrust enforcement was created almost fifty years ago, with the enactment of the Restrictive Trade Practices Law of 1959 ("the 1959 Law"). The legislative history of the 1959 Law reveals a clear understanding of the significance of competition in the marketplace. The legislature has aptly recognized the harm that restrictive trade practices can inflict on the public and sought to remove the legal and economic effects of the previously-existing austerity regime to introduce a free-market economy. In 1988, based upon approximately thirty years of antitrust enforcement and significant developments in modern antitrust thinking, the Israeli legislature enacted the Restrictive Trade Practices Law of 1988 ("the Law"). The Law amended many of the 1959 Law's provisions, shaping Israel's competition law so that its unmistakable objective became the prevention of harm to competition. The Law was first amended in January 1994, when the Israel Antitrust Authority ("the IAA") was established. Together with the 1994 amendment, the statute also provided for significant additional funding and personnel for Israel's antitrust enforcement system and for pro-competitive advocacy initiatives. A recent amendment of the Law (entered into force on 11 Jan., 2007) narrowed § 3's international air transportation exclusion considerably.

In March 2005, the Minister of Industry, Trade and Labor appointed a committee, headed by Professor Zohar Goshen, to consider and make proposals regarding the modernization of the Restrictive Trade Practices Law. The Committee has issued a draft legislative bill and a statement of purpose concerning the amendment of the definition of the term "restrictive arrangement" in § 2. The proposed amendment is likely to yield greater transparency and stability and create more certainty in the legal determination of which arrangements are restrictive. Moreover, the amendment intends to rationalize § 2 (the restrictive arrangement section of the Law) by, among other things, eliminating any vertical situation from the categories of restrictive arrangements listed under § 2(b) as presumptively illegal. In addition, the proposed amendment is expected to streamline the number of transactions that require notification to the IAA in order to attain an individual exemption.

The Goshen Committee also examined the Law's provisions dealing with oligopolies, and concluded that there was a clear need to make a substantial change regarding the handling of the oligopolies in the Law's framework, in order to respond to the competition problems resulting from the existence of oligopolies in the Israeli

economy. The Israeli market is limited in size, in comparison to other developed economies, inter alia, due to the small local demand and the existence of various barriers to trade, such as geographic isolation, political barriers and language barriers. These characteristics occasionally limit the number of players who can operate efficiently in a wide variety of industries. Therefore, in many Israeli industries there are only a few actors, and the level of competition between some of them is often unsatisfactory. The Proposed Law is important because it will, for the first time, allow the IAA to deal with competitive failures that prevail in the markets with few competitors – a type of market which is relatively common in Israel.

Subsequently, the IAA distributed on 19 June 2008 a bill (the Proposed Law) that provides new tools for dealing with oligopolies. These are established through two main amendments that address the deficiencies in the current statutory language: an amendment of the definition of an oligopoly and distinction between a monopoly and an oligopoly and the manner in which the Law regulates them.

The IAA is an independent government enforcement agency established in 1994 under an amendment to the Law. The General Director is independent in carrying out the IAA's mission. Ministerial responsibility lies with the Ministry of Industry, Labour and Trade. However, the IAA's independent budget, coupled with its authority to hire personnel independently, allows administrative independence. The fact that all IAA decisions are subject to a *de novo* judicial review forces the IAA to adhere to the strictest professional standards.

The IAA mandate includes preventing market power through merger control and anti-cartel enforcement, restraining abuse of dominant position by firms and enhancing competition in the various markets. An Antitrust Tribunal, sitting within the District Court of Jerusalem, has exclusive jurisdiction over non-criminal governmental antitrust proceedings. The District Court of Jerusalem has exclusive jurisdiction over criminal antitrust matters. Both criminal and civil antitrust rulings are subject to appeal before the Supreme Court

Regarding its organisation, the IAA employs 71 staff and management in four departments (legal, economic, investigations and administrative). The IAA does not support a strict structural separation between the areas of mergers, anti-cartel and dominance-related issues as explained hereunder. In practice, the investigations department comprises of 15 investigators and operates independently to gather intelligence and carry out investigative activities. The professional staff working for the legal and economic departments is usually not confined to a single area of competition enforcement. The legal department comprises of 20 lawyers, 7 of which work mainly (but not exclusively) in the area of anti-cartel. Their work consists in leading criminal cases, while the remaining lawyers work on civil antitrust cases. In the civil branch of the legal department, the day to day work is being carried out in an integrative manner which allows lawyers to take part in various types of cases, including mergers and restrictive arrangements. The IAA perceives the integrative approach as a means to improve the professional capacities of its lawyers. In addition, the legal department allocates legal interns to assist in individual cases as necessary. Currently there are 7 interns who work at the IAA for a one year period.

The economic department, comprises of 13 economists, is in charge of handling merger filings and conducting economic assessments in relation to monopoly declarations and unilateral conduct. In certain cases, depending on the complexity of the merger cases, its legal implications and market consequences, a lawyer joins the assessment process. Economists working at the IAA are often required to offer their expertise in various cases, even if those are not related to specific mergers.

A substantial percentage of IAA lawyers and economists are actively involved in various legislation proceedings on which they are consulted. Moreover, professional staff is often required to accompany privatisation processes and provide legal advice or economic assessments with regards to relevant competition issues that emerge. In addition, the IAA initiates each year a number of seminars, workshops and conferences in which professional employees regularly take an active role as lecturers and discussants.

With regard to the issue of state aid, Israel has adopted the same approach as Egypt, Tunisia, Morocco and Jordan, like most Competition Agencies of the EU Member States having entered the EU before 2004: state aid is not included in the Law, hence the IAA does not have any relevant powers.

As for liberalization, as the Israeli Government's sole antitrust agency, the IAA has long been playing an active role — both formally and through advocacy work — in shaping and facilitating pro-competitive government reforms and privatizations. Based on its expertise, the IAA frequently renders antitrust advice and counsel to government ministries, other government entities and the Knesset Committees. In recent years, the IAA has worked closely with several government agencies and regulators on the promotion of pro-competitive initiatives, structural changes, liberalization reforms and privatizations. In addition, through its General Director, the IAA attends all meetings of what is commonly known as the "capital market's forum of regulators," comprised of the Commissioner of Capital Markets, the Commissioner of Insurance, the Supervisor of Banks and the Chairman of the Israel Securities Authority. At these meetings, Israel's financial market regulators discuss proposed structural changes, reforms and other matters that require inter-ministerial coordination. The IAA is a frequent commentator at hearings and discussions held by the Knesset's Economic Affairs Committee and regularly presents its procompetitive perspectives on the issues discussed by the Committee. Additionally, the IAA frequently appears before other Knesset committees, such as the Finance Committee.

It should be noted that although the IAA has been involved in the majority of reforms and privatizations affecting competition in the underlying markets, the IAA's *formal* role in such structural changes is not sufficiently defined. No statute, regulation or rule grants the IAA formal responsibility in the implementation of reforms or privatizations aimed at enhancing competition or which are intended to lower the barriers to entry in specific sectors of the economy. Similarly, there is no specific duty imposed upon government agencies to consult with the IAA regarding matters involving competition.

The IAA has exclusive authority with respect to cartels, other restrictive arrangements, abuse of monopoly position and prevention of illegal mergers. However, sector-specific regulators are often vested with the authority to consider competition issues when granting licenses and approving transactions of licensees in their areas of expertise. To this end, as part of the IAA's advocacy efforts, regulators are encouraged to take competitive consequences into consideration when drafting or reviewing sector-specific regulation. It is important to note, however, that the IAA is the only body responsible for preventing activities on the ground that they may hinder competition. Further, the IAA is the only body which also has the powers to enforce and prevent violations of the Antitrust Act embodied in such activities.

With regard to enforcement, the record of the IAA is particularly impressive and has won the IAA an exceptional praise among the OECD Competition Committee Members during the examination session of Israel's Competition Policy on October 22, 2008 within the OECD Accession Review exercise. Since its inception in 1994, the IAA has issued hundreds of decisions pursuant to the powers conferred on it by the Restrictive Trade Practices Law, 1988 ("the Law"). Below is a

review of the different categories which the IAA's decisions fall into.

- *Restrictive Arrangement*s: Pursuant to §§ 2 and 4 of the Law and the relevant case law, arrangements which may prevent or stifle competition in the marketplace, referred to as "restrictive arrangements", are prohibited unless either the General Director or the Antitrust Tribunal have accorded such arrangements by an IAA Exemption under § 14 or Tribunal Approval under § 9, respectively.

Thus, § 14 of the Law authorizes the General Director to issue an Exemption to a restrictive arrangement provided that such an arrangement is not likely to stifle competition in a significant portion of the relevant market or, alternatively, if the restrictive arrangement is not likely to considerably harm competition. The General Director may attach conditions to an Exemption for a proposed restrictive arrangement. In addition, Pursuant to §§ 43(a)(1) and (2), the General Director may issue a Determination that an arrangement entered into by parties who have not sought an Exemption or Tribunal Approval, or a policy set by an industrial association without seeking such Exemption or Approval, respectively, amounts to a restrictive arrangement. All General Director Determinations pursuant to § 43 constitute *prima facie* evidence in all ensuing legal proceedings. In sum, the General Director may issue five types of decisions in connection with restrictive arrangements: (1) Exemption without conditions; (2) Exemption subject to conditions; (3) Denial of an application for Exemption; (4) Revocation or modification of existing Exemption; and (5) Determination finding an arrangement to be restrictive.

- *Mergers:* The IAA's powers to evaluate the potential anticompetitive effects of a proposed merger are triggered when the proposed merger at issue meets both the general definition of a "Corporate Merger" under § 11 and one of the three alternatives detailed in § 17(a): (1) the merged company's market share is expected to exceed the statutory market share presumption for a monopoly (typically, 50%); (2) the parties' sales turnover exceeds a statutory threshold; or (3) the proposed merger involves a company which amounts to a monopoly under the Law's Monopolies Chapter. Pursuant to § 19, the General Director may attach conditions to its Approval of a proposed merger. Similar to the law regarding restrictive arrangements, the General Director may issue a Determination, pursuant to § 1 The definition of a "Corporate Merger" under § 1 is "Including [sic] the acquisition of most of the assets of a company by another company or the acquisition of shares in a company by another company by which the acquiring company is accorded more than a quarter of the nominal value of the issued share capital, or of the voting power, or the power to appoint more than a quarter of the directors, or participation in more than a quarter of the profits of such company; the acquisition may be direct or indirect or by way of rights accorded by contract." 43(a)(3), that an unreported corporate merger was subject to the premerger notification system.

- *Abuses of a Dominant position and Monopolies:* the IAA uses the American concept of Monopolization imbedded in Law, rather than the EU standard of Abuse of a dominant position. But the actual reasoning and enforcement does not raise significant differences with the EU standard. Pursuant to § 26, a monopoly is defined as the concentration of over 50% of the total supply or buying of assets or services in the relevant market. Sections 29 and 29A prohibit certain monopoly conduct which amounts to abuse of dominant position. Section 26(a) authorizes the General Director to issue a Determination finding a corporation to be a monopoly. Section 43(a)(4) allows for a General Director Determination that two or more competitors who do not sufficiently compete with each other are a "concentration group," subject to the Law's monopoly chapter. Section 43(a)(5) states that the General Director may issue a Determination that a monopoly has abused

its dominant position. Pursuant to § 30, the General Director may issue binding instructions to a company which harms competition or the public as a result of its being a monopoly or its conduct as a monopoly on how to remedy such harm.

- Exemption Regimes: Sections 3 and 3A of the Law are the main source of the various exclusions and exemptions from Israeli antitrust law. Thus, all sectors and industries within the Israeli economy are subject to the IAA's antitrust enforcement, unless they are mentioned in § 3. However, the exclusions and exemptions listed in §§ 3-3A apply only to restrictive arrangements and not to any other practice, and the courts and Antitrust Bodies have consistently interpreted them narrowly. For instance, in order for a statutory exclusion or exemption to apply, the connection between the underlying restraints and the exempt subject matter must be tight, and each and every restraint must relate to an exempt subject matter. Moreover, the IAA has determined that a proposed restrictive arrangement that technically falls under § 3, but exceeds the exemption's legitimate purpose, is not protected by the exemption.

Role of Courts

The Israeli general courts have almost forty years of experience hearing antitrust cases, following the enactment into law of the former Restrictive Trade Practices Law, 1959. In 1988, a new specialized court, the Antitrust Tribunal, was established under the Restrictive Trade Practices Law, 1988 — Israel's current competition law. Provided below is a short review of the different categories of antitrust court decisions in Israel.

- *The Antitrust Tribunal:* Section 32(a) of the Law established the Antitrust Tribunal as a division of the District Court for the District of Jerusalem, headed by two District Court judges - a President and a Deputy - and adjudicating antitrust cases in a forum of three panel members. Pursuant to §§ 35-36, the Antitrust Tribunal is authorized to issue antitrust decisions, as well as any orders and interim rulings it deems necessary to ensure that such decisions are implemented. The Antitrust Tribunal hears original cases brought by either corporate parties, consumer organizations, or the General Director.

- *The General Courts:* Criminal antitrust proceedings are brought by the General Director to the District Court of Jerusalem. In addition, pursuant to § 50, an act or omission contrary to the provisions of the Law shall constitute a tort in accordance with the Torts Ordinance [New Version], and therefore private litigants may seek remedy in the general courts to enforce the antitrust Law. A class of consumers may also bring an antitrust class action pursuant to §3(a) of the Class Action Act, 2006. In addition, any litigant injured by a decision of the Tribunal may appeal against such decision to the Supreme Court (§39). Finally, non-appealable IAA actions give rise to the narrow judicial scrutiny by the Supreme Court in its capacity as the High Court of Justice which is available to petitioners against any government action.

Jordan

The last decade has demonstrated for Jordan how a developing country could benefit from economic liberalization and cooperation with the EU. However, economic liberalization could not progress without the design of appropriate tools to make sure that some private operators would not confiscate the benefits of trade liberalization.

The Competition Law n° 33 of the year 2004 was first issued in a provisional form on August 15, 2002 as part of Jordan' s Economic Reform Program. This law has been an element of the modernization of the national legal framework towards consolidating market economy in the country. The clearly stated objectives of the Law show that Jordan's Competition Law and Policy is a part of a broader framework. Indeed, pursuant to the enforcement of a strategy of development, the Competition Law aims to :

- achieve sustainable economic growth,
- improve the Jordanian economic environment to attract foreign direct investments
- provide incentives for enterprises to improve their competitiveness,
- protect small and medium enterprises from restrictive anticompetitive practices, provide consumers with high quality products at competitive prices.

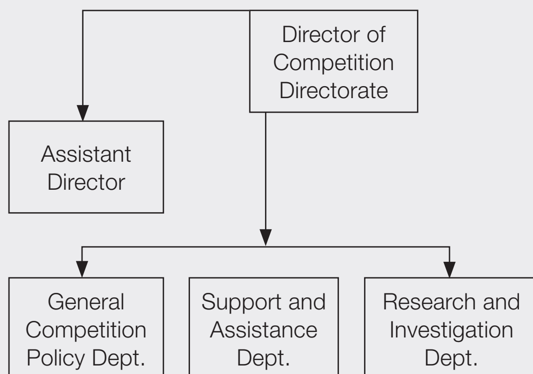
Thus the broad nature of those objectives help ensuring a commitment of the government of Jordan to sustain a high level of enforcement of its competition law in the future. But this also suggests that Jordan's Competition Law enforcement has to meet the specific needs of a developing country.

Deriving from the organization of the American Antitrust institutions with an Antitrust Division at an Executive Department investigating and bringing eventual cases before Criminal and Civil Law Courts, the key enforcement role in the Jordan Competition Law is vested to the Competition Directorate at the Ministry of Industry and Trade with some opinions requested from an advisory body, the Competition Matters Committee, and an important sentencing role on criminal matters granted to the High Court of Amman. Enforcement of Competition Law also rests in Jordan on Mediation.

The Competition Directorate at the Ministry of Industry and Trade

The Competition Directorate (CD) is a Division at the Ministry of Industry and Trade (MIT) with full-time government officers that are entrusted with the main role of enforcement of Law n° 33. The Competition Directorate was established at the Ministry of Industry and Trade on 17 December 2002 and was incorporated into the organizational structure of the Ministry. The Directorate conducts the following duties: work to spread and preserve the culture of competition, participate to prepare the general competition plan and related legislation, conduct the necessary investigations of practices that may contravene competition, receive complaints and requests for economic concentration activities and exemptions and following them up, issue clarifying opinions in competition matters, cooperate with similar entities outside the Kingdom for the purpose of exchanging information and data and in relation to the execution of competition rules to the extent permitted by international treaties.

Organizational structure of the Directorate



Officers of the CD delegated to conduct investigations and research enjoy the same powers as officers of the Court, within the limit of their jurisdiction. Their powers include the right to conduct necessary inspections and searches in all business premises, to inspect documents, records and files and seize any of them and to record the testimony of the relevant parties.

According to Law n° 33 of the year 2004, officers of the CD and any person looking into its activities is and shall be required to maintain strict professional confidentiality. In compliance with article 12 B of Law n° 33, the Competition Directorate established at the Ministry of Industry and Trade according to the law is charged with the mission of preparing an annual report on its activities and on the state of competition in the Kingdom, and the Minister of Industry and Trade is charged with presenting this report, or a summary thereof, to the Council of Ministers, pursuant to the provisions of Paragraph B of Article 12.

The report aims to introduce the provisions of the Law and spread the culture of competition and the awareness thereof, and inform the public of the various facets of its activities and the complaints, consultations and other cases presented to it and the proceedings followed or instituted by it within the framework of its follow-up of the progress of market mechanisms.

The publication and dissemination of this report also provides a mechanism for the publication of the decisions issued by the parties delegated to execute the Competition law in Jordan, and placing them at the disposal of researchers and reviewers, and Arab and international organizations seeking to avail themselves of the Jordanian experience in view of its precedence in the region. The report is published and distributed through the various communities that are concerned by competition law enforcement. So far, three reports of activities have been issued.

It should be noted here that, according to some observers interviewed, other Regulatory agencies vested with competition law principles powers within the ambit of their sectoral laws are not bound by such a kind of provisions which may significantly hamper business security in the area of consistent Competition Law enforcement in the Country.

The Competition Matters Committee

The Competition Matters Committee was formed with the Minister of Industry and Trade as chairman, pursuant to the Decision of the Minister of Industry and Trade No. 1 of 2003, by virtue of Article n° 14 A of the Competition Law. The membership of the committee is as follows:

- the Secretary General of the Ministry of Industry and Trade (Vice-Chairman).
- the Director General of the Insurance Commission.
- the Chief Executive Officer of the Telecommunications Regulatory Commission.

- the Director General of the Transportation Regulatory Commission.

- The President of the Union of Jordanian Chambers of Commerce.

- A representative of the business community (currently Mr. Hatem Halawani, President of the Management Committee of the Amman Chamber of Industry)

- A representative of the consumers (currently Dr. Mohammad Obeidat, President of the Consumer Protection Association)

- A representative of the academic world (currently Prof. Ibrahim Sayf)

- Eng. Omar Maani.

- A member of the Amman Bar.

- The Director of the Competition Directorate as rapporteur.

The Competition Matters Committee (CMC) is an advisory body set up to give opinion to the Minister of Industry and Trade. So far, the CMC has held four one-day sessions (one per year of actual enforcement of Law n°33).

The CMC was intended to be an opinion-making institution on all aspects of competition law enforcement, in a way which very much resembles the German Monopoly Commission or the British Competition Commission (though without its role in the sensitive area of merger control). However, it has seldom met not because of lack of willingness of support or intent of the CD Director who in principle should propose to convene meetings to the Minister in charge of the MIT. Rather, the small number of meetings of the CMC can be attributed to the high turnover of MIT's portfolio holder: five ministers have succeeded each other in the last three years of operation of Law n° 33.

- Assessment of the actual role of the Competition Directorate at the Ministry of Industry and Trade

- Assessment of the actual role of the Prosecutors

- Assessment role of the Courts

- Appeal issues

- Assessment of role of the Business community, Consumers' associations, professional and Unions associations

- Assessment of the role of Sectoral and Regulatory Commissions

Judicial Institutions and Courts role

The Ministry of Justice has appointed the Public Prosecutor of the Court of First Instance (CFI) of Amman who is specialized in Competition Law Matters as mandated by the Law n°33. Other Judges from the Amman Court of First Instance have also been appointed to adjudicate Competition Cases. The competition law allows the Supreme Court of Justice to hear appeal of the decisions issued by the Minister regarding an approval or prohibition of a merger operation or decision of an exemption application. CFI decisions in cases related to competition shall be appealable before the Court of Appeal and the Supreme Court. The Court's Jurisdiction shall include claims for damages arising out of the violations

Competition Law, Business Law and Legal Mediation in the Jordanian context

There seems to be in Jordan a "*culture of compromise*" or preference for Dispute Resolution rather than Actions in Courts, like in Tunisia: i.e. there is a tendency to strike deals and achieve commitments or administrative settlements through lawyers or compromises with the Administration rather than risk or initiate prosecution which is perceived as an action involving the Government.[13]

One should also consider the fact that his culture of compromise is not exceptional in Asian countries (Jordan is located on the Minor Asia Continent). For instance, in China, Japan, India, Pakistan, arbitration develops as a major mode of dispute resolution. This allows the business community to avoid or escape the shortcomings of judicial legal systems in developing countries impaired by the lack of resources. This lack of resources prevents the judicial systems to function properly (especially with regard to the delays of treatment on individual cases, in which full treatment of a case may take as much as ten years). Therefore several developing countries in Asia are actively supporting developments of dispute settlement systems that involve agreements between parties where the general interest supported by a given Government is represented by law firms.[14]

In the field of Competition Law enforcement, in most jurisdictions in the World, including in Japan, Korea and China, decisions have been taken to avoid burdening Legal systems with competition cases in first instance cases: such first instance cases are most often treated and adjudicated by specialized independent quasi-judicial bodies under the form of Competition Commissions filled with specially trained lawyers, magistrates and economists.

Morocco

The Moroccan Competition Law entered into force on July 6, 2001. It is known as the *Loi 06-99 sur la liberté des prix et de la concurrence (*Price Liberalization and Free Competition Act) adopted by the Moroccan Government on June 5, 2000. It was further completed and detailed by two decrees n° 2-00-854 and 2-02-1 regarding the quality of the Prime Minister as the Authority in charge of Competition and the authority for the Prime Minister to appoint a Chairman and members of the Competition Council (hereafter CC). The law has remained unchanged since then and is currently under review for modifications as a follow-up of an EU twinning program managed by Germany since early 2007. So far, all decisions have been advertised and made by the Prime Minister's Office. Opinions of the CC, if any, have not been published.

Following a pattern very similar to that of Jordan, in connection with the accession to the WTO of the Kingdom of Morocco and in light of the increasing cooperation with the European Union, the objectives of the law are to foster the modernization of the Moroccan economy and increase the protection of consumers. The Competition Act is conceived as a natural by-product of the economic reforms and the gradual opening of markets to competition and liberalization of the Moroccan economy initiated in the 1980s.

The scope of the Competition Act covers all physical and moral persons whenever their activities have an impact on the level of competition within the Moroccan market or on a significant portion thereof, to all activities of production, distribution and services and to all public entities for economic activities that do not fall within their prerogatives as public bodies or that do not relate to the execution of their duties/mission. The law covers also exports agreements whenever they may have an effect on the domestic level of competition of the Moroccan market (art.1). The Competition Act adopts

a rule of reason approach by providing substantial flexibility and discretion to the administrative authority in charge of competition.

Like all the other Agadir Countries, the main provisions of the law deal with anticompetitive practices (concerted arrangements, agreements, collusive behaviors or collusions explicit or implicit), abuse of dominant position (refusal to supply, discriminatory selling terms, tying arrangements, and abusive commercial terms) and economic concentrations which should be notified to the Prime Minister. There are exemptions when anti-competitive practices are the result of implementing legal or regulatory provisions, or in case their authors can show their positive effect on economic progress. While the law stipulates that prices are freely determined by market forces, it allows for price fixing in specific sectors or geographical areas where price competition is limited by the existence of *de jure* or *de facto* monopolies, by shortages of supplies or by existing legislative or regulatory measures. Temporary price regulation can be allowed in special cases such as excessive fluctuation of prices or natural disasters. The duration of those temporary measures cannot exceed six months.

The Ministry of General Economic Affairs (MGEA) as a competition authority

As detailed in the Questionnaire answers this Law n° 06- 99 empowers the Prime Minister of Morocco as "*the ultimate Authority in charge of the enforcement of that Competition Law*". The Prime Minister has delegated this authority to his Minister of General Economic Affairs (hereafter MGEA) who has supervision over a Directorate of Competition and Prices (DCP) which is a Division within the MGEA.

The DCP is composed with 14 case handlers under a director. They work on all competition issues at the national level. To deal with issues of unfair competition (advertising, refusals to deal, unlawful increase of regulated prices are deemed "restrictive trade practices") a specific group of investigators from the Ministry of the Interior is seconded to the DCP.

The Competition Council: a consultative body within the MGEA

The Moroccan Competition Council (*Conseil de la Concurrence*) has been instituted in 2003 as a consultative body within the MGEA. The Moroccan situation reflects the same approach that was adopted in the Kingdom of Jordan with the consultative Committee on Competition Matters located within the Ministry of Industry and Trade. The CC is composed by twelve members and a Chairman: six members represent the administration, three members are chosen on the basis of their competences in juridical, economic, competition or consumer matters, three members having exercised a professional activity in the sectors of production, services or distribution. The president of the CC is designated by the Prime Minister while other members have a five year mandate (renewable once) and are appointed by decree, on the basis of recommendations of the administration and the entities they represent.

Case Handlers ("*Rapporteurs*") are appointed to ensure the functioning of the CC and are assigned to individual cases; among them a Head Case-Officer (*Rapporteur Général*) is selected in principle by the Chairman of the CC with the task of leading and supervising the work of the other *Rapporteurs*. Tasks are assigned by the Chairman. The CC can be consulted by the standing committees of the Parliament for all legislative proposals pertaining to competition; by the government for all competition-related matters; and by regional and local entities, chambers of commerce, other representative bodies and consumers associations for all matters relating to competition that fall within their competences. Finally, competent jurisdictions can consult the CC on

cases they are referred to: the CC can issue its opinion only after a procedure in which both parties have been heard. In any event, the opinion of the CC cannot be published before the final decision of the case. In principle, the CC must be consulted before introducing any price fixation or any creation of Monopoly, exclusive or special rights or the granting of State Aids.

In addition, the CC should be consulted on all matters pertaining to anticompetitive practices, mergers and price regulation according to the relevant articles of the Competition Act. Facts older than 5 years cannot be brought to the attention of the CC if no action has been taken during that timeframe: this prescription period is suspended as soon as the CC is consulted. The CC can recommend measures, conditions or injunctions, but final decisions are taken by the Prime Minister. Appeals against the Prime Minister's decisions have to be filed with the competent administrative jurisdiction. The CC should submit annual reports on its activities to the Prime Minister but none have been published so far.

Answers to the EIPA questionnaire stress the fact that the Competition Law should be amended as a key component of the ongoing EU Twinning program between Germany and Morocco. It has been announced in January 2009 that the Competition Council should see its powers and authority broadened within the context of a major amendment to the Moroccan Competition Law that should take place by the beginning of 2010. The new CC Chairman, appointed in November 2008, has also announced in early 2009 that its authority would launch a series of about ten to twelve sectoral investigations to examine the major competition problems in key sectors of the Moroccan economy. A national seminar is also to be held with support of an EU Twinning program between competition authorities of Germany and Morocco. This Seminar is to be held on April 23 2009 to further mobilize support for the increase of resources granted to this authority and set priorities for reforms.

Tunisia

Despite a wording somewhat similar to that of the Competition Law system of Morocco, the Competition institutions of Tunisia are indeed very different in practice as, for instance, The Tunisian Ministry of Trade is one of the two Tunisian competition authorities with a Directorate for Competition and Economic Investigations (*Direction générale de la concurrence et des enquêtes économiques* or *DGCEE*), without interference from the Prime Minister's Office. And a second Competition authority, the Tunisian Competition Council, possesses a fully independent capacity to exercise its powers and make decisions on sanctions for anti-competitive practices.

The record of the Tunisian Competition Council in this respect is particularly impressive and ranks the Tunisian Competition Authorities as the first and most advanced enforcers of the Agadir Community in terms of actual competition decisions effectively taken by competition authorities. An EU twinning program was successfully completed in 2006-2007 between the French and Tunisian Competition Authorities under the leadership of a Deputy Director General at the French Competition Division of the Ministry of Economy and Finances (*the Direction générale de la concurrence, de la consommation et de la répression des fraudes* -DGCCRF) with the participation of a key expert from the French *Conseil de la concurrence*. To sum up the whole program, 59 experts missions were conducted over 18 months by DGCCRF and the French Competition Council, which represented about 270 days-experts and 10 training sessions were organized in France for 69 Tunisian case handlers and investigators (370 days-agents).

In Tunisia, the Competition and Prices Act (*Loi N. 64-91 du 29 juillet 1991 relative à la concurrence et aux prix*) was introduced in 1991 and was amended several times, with the last modification occurring in 2005. The text provides for an extensive definition of tools for the

development and protection of competition on the Tunisian markets: it deals with price liberalization, defines the prohibition of anticompetitive and discriminatory practice, merger control, and contains measures on consumer protection and transparency of practices. The main goals of the law are to modernize the Tunisian economy and strengthen its competitiveness on the international scene. The Tunisian Competition expertise has reached a point where Tunisian experts have already engaged into cooperation programs with younger agencies including within the Agadir Community, such as in the Kingdom of Jordan of which the Competition Directorate of the Ministry of Industry and Trade has been developing extensive cooperation with the Tunisian Ministry of Commerce since its creation in 2004. The Tunisian Competition System has been successfully reviewed in 2007 by Peers at Geneva by the UNCTAD group of experts on Competition.

From a historical perspective, thus, the Tunisian system of Competition Regulation is clearly the oldest operating one in the group of Agadir Countries. The provisions on competition law were introduced gradually in Tunisia, with amendments to the main competition law (of 1991) starting in 1993. The first provisions focused in particular on transparency rules and vertical restraints – such as franchising and exclusive representation contracts. The ban for the latter types of vertical agreements was lifted in 2005, with the introduction of a *rule of reason* which mirrors more closely the development of the EU Competition Law and economics literature in that area. The provisions on merger control were also significantly updated in 2005, and a leniency program was even introduced in 2003.

The Ministry of Commerce as a Competition Authority

To develop enforcement of the Competition and Prices Act, a system of two authorities has been developed, the first authority being the Ministry of Commerce (MC) with a specific Directorate General of Competition and Economic Investigations (DGCEE), that mirrors the organization of the French DGCCRF. The DGCEE investigates on cases and complaints of anticompetitive practices and monitors transparency and reports violations to the courts or to the Competition Council for cases falling within the Council's competences. DGCEE oversees the functioning of the market and monitors compliance with existing regulations on pricing, consumption and competition. The DGCEE has approximately 20 agents working on Competition issues.

An independent Administrative Competition Authority: the Competition Council

The second Tunisian Competition Authority is a truly independent Agency, also modeled after the French Competition Council and is totally distinct from the MC. Using the same name as its sister institutions in Algeria and in Morocco - but with the major difference that the second Tunisian Competition Authority is an effective agency acting independently from the Ministerial Department with which it has to cooperate - it is named CC (*Conseil de la Concurrence or CC*). The CC was created by the Act No. 95-42 of 24 April 1995. The CC has both advisory, decision-making powers and advocacy capacities. Under the leadership of its previous and present Chairman, the Tunisian CC has started to issue in 2008 its comprehensive annual reports in Arabic, English and French, detailing all decisions taken within a full year of reference.[15]

The Tunisian Competition Council is composed by thirteen members divided in four sections and is chaired by a president (normally a judge or an outstanding professional in the fields of economics, competition or consumption) and by two vice-presidents, the first being a Counselor (*"Conseiller")* of the Supreme Administrative Court while the second should be a Counselor from

the Court of Auditors. The Chairman and the two Vice-Chairmen constitute the first section of the authority. The second section is composed by four judges; the third by four professionals exercising or having exercised their activities in the sectors of production, distribution, handicraft or service provision; finally, the fourth section is composed by two independent personalities with a proven track record in economics, competition or consumption matters.

CC members are nominated by decree as proposed by the Minister of Commerce; the mandate of the president and of the vice-presidents lasts five years and is renewable once; members from the professional sector have a four year mandate non renewable, and the two independent experts are appointed for six years with a non renewable mandate. The members of the CC are supported by a group of about ten case handlers ("*Rapporteurs*") in charge of preparatory inquiries; their activities are coordinated by a Head-Case Officer ("*Rapporteur général*"). In addition, a representative of the Ministry of Commerce is appointed with the role of defending the general interest and of presenting the observations of the public administration to the Council.

As far as its advisory role is concerned, the CC may be consulted by the Minister of Commerce for all legislative texts and for matters relating to competition. The MC must consult the CC for all regulatory measures imposing specific conditions for the exercise of a professional or economic activity or establishing restrictions to market access. Consultation of the CC is also compulsory for all merger cases since the 2005 revision of the Competition Act. Before that date, the Council was consulted at least on seven occasions about merger issues. Through the intermediation of the MC, consumers' associations, chambers of commerce, professional organizations and trade unions may also consult the Council on competition issues in their industry. Finally, regulatory authorities may directly submit questions related to competition to the CC.

Phases of Competition Law Development in Tunisia

1993	1995	1999	2003	2005
Transparency provisions	Merger control	Greater flexibility for franchising and representation agreements	Consolidation of the right to defence	The Council is given legal personality and financial independence
Accreditation of inspectors	Strengthening of Competition Board (becomes Council)	Broader powers to the Council	Flexibility in urgent consultations	Extension of the Council's advisory function and jurisdiction
	Prohibition of exclusive franchising and representation agreements	Improvement in organisation of the Board	Leniency procedure	Relationship between the Council and regulatory authorities is defined
		Further transparency provisions	Rules on access to evidence	Strengthened cooperation between administrative bodies in the fight against anticompetitive conduct
			Transparency and fair competition	Lifting of the ban for exclusive franchising and commercial representation contracts
				Review of merger control rules Broader definition of predatory pricing Mandatory greater transparency in distribution International cooperation

Source: UNCTAD (2006)

Turkey

The competition law system in Turkey meets the best standards of requirement of the most advanced Competition Systems of EU Member States. In the Mediterranean, Turkey has a system comparable to that of Israel, both in quality, density and quantity of cases brought up to a solution or a sanction. Turkey adopted the "Act on the Protection of Competition" in 1994.

Following the model of development of the German Competition Law and of the *Bundeskartellamt*, the Act created the *Rekabet Kurumu* or Turkish Competition Authority (TCA) as an autonomous antitrust enforcement agency, with a Competition Board to resolve cases and set policy in order to achieve efficient markets and promote consumer welfare. The Act is in line with Articles 167 and 172 of the Turkish Constitution, which require that the state "takes measures to protect and inform consumers." In 2005, as a Member State of the Organization of Economic Cooperation and Development, Turkey has been reviewed under the Regulatory Reform exercise at the OECD and its Competition Authority was praised for its tenth year of development.

The Turkish Competition Authority

The Competition Authority is an Independent Administrative Authority governed by a Board which is vested with the Agency's decision-making powers. The Chairman of the Board is also the President of the TCA and acts as its chief executive, managing it and representing it publicly.

The Board is composed by 11 full-time members (including the Chairman) appointed for 6 years (renewable). One-third of the terms expire every 2 years. The Chairman is appointed by the government from among three sitting members nominated by the Board.

The Competition Act creates a complex mechanism for appointing Board members (Art. 22), designed to balance expertise with political responsiveness. Appointments are made by the government from among individuals nominated by several designated institutions. The Ministry of Trade and Industry can nominate for 2 positions, and 5 bodies – the Ministry of State with which the State Planning Organisation is affiliated, the Court of Appeals, the Council of State, the Inter-University Board, and the the Turkish Union of Chambers and Exchanges – can each nominate 1 member. The Competition Board itself submits nominations for the remaining four positions, and half of those nominees must be experts from the Authority.

As regards the independence of the Authority, the Competition Act provides that "*no organ, authority, entity or person can give orders or directives to affect the final decision of the Authority*". Board members are subject to conflict of interest rules about shareholdings and, under applicable civil service law, may not be members of a political party. The Competition Act states that the agency is a legally separate entity from the government and possesses "administrative and financial autonomy." Appeals of TCA's administrative decisions are introduced before the Administrative Supreme Court, the Council of State.

Among the extended powers the TCA has developed an extensive secondary legislation in the form of communiqués and guidelines.

The TCA has one of the most original sources of financing of OECD countries. The Competition Act originally provided that the budget of the agency would arise from three sources: an appropriation in the budget of the Ministry, a 25% share of the fines it collected for violations of the Act, and revenues from sale of publications. No Ministry appropriation has ever been made, nor has the TCA ever charged for its publications. The provision for a 25% share of the fines collected was repealed in

2003 in response to criticism that such a mechanism created an improper prosecutorial bias. In any event, the fines provision was never a significant source of funds, as the amount received by the Authority totalled in 2005 only TRL 196 billion (USD $131,000). The Authority's income actually comes entirely from another law – *i.e.* Law No. 4077 of 1995 which introduces registration fees for newly-constituted corporations. 19% of the capital amount registered was initially allocated to the Authority, and the percentage was later drastically reduced to 0.04%. The TCA has a staff of about 300 agents including support personnel.

Competition provisions

Starting its operation on the same pattern as the British Competition Authorities decades ago, with a regime of registration of anticompetitive behaviour, the Competition Act provided at its inception that any agreement, decision, or concerted practice "*within the scope of Article 4 must be notified to the Board within one month of the conduct's execution, unless the conduct qualifies for protection under a block exemption*".

In full line of compliance with all EU Competition Law developments and prohibitions, the Turkish Competition Act prohibits agreements and concerted practices between undertakings and decisions and practices of associations of undertakings which have as their object or effect or likely affect the prevention, distortion or restriction of competition (article 4), abuses of dominant position (article 6) and mergers and acquisitions including privatization transactions creating or strengthening a dominant position as a result of which competition is significantly decreased (article 7). Exemption for agreement, concerted practices between undertakings and decisions of associate of undertakings limiting competition is possible under the same conditions as the EC Treaty article 81-3.

Failure to file where otherwise required is a separate violation subject to a fine, in addition to any penalty that may be assessed if the conduct is subsequently found to be unlawful. From 1999 through 2004, the TCA received a total of 193 applications for exemption or negative clearance and resolved 159 of them. Of the applications resolved, 49 were subjected to conditions and the rest were granted unconditionally. Article 9(4) of the Act provides that the Board may impose *interim* relief orders during the course of an investigation "where there may arise serious and irreparable damages until the final decision." The Board used this authority on 7 occasions in the years before 2002, but only once between 2002 and 2005. Most members of the legal and academic communities in Turkey praise the quality of the Boards decisions, particularly in comparison to those issued by other agencies. Some lawyers complain that the Board provides inadequate analysis of such legal issues as the proper admission of evidence. Also, the Board's decisions do not always describe and consider the EU case precedents relevant to the issues in dispute. The sophistication of the Board's economic analysis varies considerably from decision to decision, reflecting in part the fact that the TCA is still a relatively new agency and partly the fact that the TCA does not have a staff of industrial organization economists. Even the harshest critics of the TCA, however, do not usually assert that the decisions reached are incorrect on economic grounds, but rather that the analysis in the decisions should be more thorough and incisive.

As regards appeals to the Competition Authority's decisions, most of the (few) decisions in which the Council of State reversed the previous ruling by the Authority were grounded on procedural points.

Unlike most other Competition Law regimes in the Euromed countries, it should be stressed that the TCA is the only responsible Turkish Authority to implement the Competition Act in all sectors of the economy including

telecommunications and banking sectors as well as electricity, petroleum, natural gas and LPG markets.

Sanctions

Procedural as well as substantive fines may be imposed for the Competition Act enforcement purposes. For instance, regarding procedural fines in case on the spot inspection is prevented or complicated, the relevant undertaking can be imposed 0.5% of its annual gross revenue provided that the fine is not less than ten thousand Turkish Lira (TRL), an equivalent to 5000€. Moreover, preventing or impeding on the spot inspections is subject to a fine amounting to 0.05% of the annual gross revenue per day. Regarding substantive fines, fines can be imposed up to 10% of the annual gross revenue (article 16). Moreover, the executives or employees of the undertaking or the association of undertakings which is detected to have had a determining impact on the violation will be imposed fines up to 5% of the substantive fine imposed on the undertaking or association of undertakings. Immunity from or reduction of fines is possible for those cooperating actively with the TCA for uncovering the violation of the Competition Act under a leniency policy.

Lebanon, Palestinian Authority and Syria

In this short section, the situation of the remaining three countries of the Union for the Mediterranean is reviewed briefly as these three countries do not have yet any competition institutions.

Lebanon

The Lebanese Ministry of the Economy has commissioned a study by Toufic K. Gaspard in 2003 to develop a favourable environment for competition.[16] This author has empirically assessed what was perceived for decades by observers of the Lebanese economy, namely that many sectors are shielded from competition. According to the study, about half of Lebanon's domestic markets can be considered oligopolistic or monopolistic. And a third of those markets have a dominant firm with market share above 40%. The reasons for such high concentration indexes (and hence, many potential anticompetitive behaviours) are manifold, but always relate in one way or another to the existence of barriers to entry and exit. Some of the barriers identified are natural, such as economies of scale. Others are artificial, and stem from rules, regulations and norms that practically restrict entry at least to some enterprises. In this regard the study lists outdated commercial laws, long delays in commercial disputes settlements, non business-friendly administrative regulations, corruption, and the existence of exclusive agencies as important artificial barriers to entry. Given the interpenetration of the Lebanese economy with that of Syria, there is no doubt that the evolution of positive relations between the two countries as well as the evolution of the Syrian economy towards market liberalization will do a lot to create the appropriate instruments to fight against market power abuses affecting the Lebanese economy.

Palestinian Authority

The Palestinian Authority (PA) still does not have a competition law. A draft law has been reportedly discussed since 2002, when the PA launched an extensive reform programme. In the context of the EU-Palestinian Authority bilateral trade negotiations, the enactment of a competition law was included as one of the priorities, but no significant developments have been observed since then. Any draft to be presented would most likely be in line with EC concepts. The partition of the Country and internal as well as international political hurdles evidently hamper any positive evolution of the regulatory framework of the Palestinian Authority.

Syria

In November 2008, Syria has adopted an antitrust law creating a Syrian Competition Authority and Competition Council depending on the Prime Minister Office but with financial independence such as the Japanese model. Enforcement decrees are now said to be in preparation. The Syrian national competition authority is now also in a building process. But at the time of writing this report there was still no specific Governmental entity or committee governing competition. No Syrian competition Delegate could attend the November 2008 Euromed Competition Roundtables at the European Competition Day referred to in introduction. And all issues related to market behaviours and consumers' protection are still currently governed by the General Trade Law. In addition, the Syrian Criminal Code contains Articles 671-674 which cover the "Unlawful Speculations", and Article 700 which covers "Fraudulent Competition". However, studies are underway with the help of the European Commission to implement new regulations regarding Market operations. It is expected that the new Syrian Competition Authority will start its first activities in 2009.

Section 3

Competition Law enforcement in Sub-Mediterranean Countries

The set of ten countries answers to the EIPA questionnaire clearly show that there are currently three groups of differentiated countries in the Mediterranean from a competition enforcement point of view. Although each of those ten countries is bound to the European Union by an Euro-Med Association Agreement, the level of enforcement – as measured by the number of cases completed by the national competition authorities each year – clearly demonstrates that a first group of countries emerges with a practice of enforcement that runs into hundreds of cases since the ten years or more that their competition institutions have been in place. By its practice, this group is equivalent to most advanced EU member countries: it includes Turkey and Israel, the first being a long-standing member of the OECD and the second one being in a process of accession to OECD membership. A second group of countries is characterised by already operating competition authorities, with a lesser developed level of enforcement: the Member States of the Agadir Treaty Community plus Algeria. This group is nevertheless characterised by differentiated types of enforcement with Tunisia clearly on top of the group and Morocco at the end of the Agadir Group, followed by Algeria, that still remains outside the Agadir Group. A third group is composed of three countries that are also bound to the European Union by an Association Agreement but all three countries remain without any Competition Institutions so far: Lebanon, the Palestinian Authority and Syria. Still, notwithstanding these differences, the observation of competition law enforcement demonstrates that there are only very few cases regarding cross-border anti-competitive practices demonstrating that no country at all is regionally integrated. The enforcement of competition law in each group of countries is briefly surveyed in this section.

TWO OECD DEVELOPED COUNTRIES: TURKEY AND ISRAEL

Turkey

As evidenced in the answer to the EIPA questionnaire, the level of enforcement of the Turkish Competition Authority runs into hundreds of cases over the last decade and an average of 300 decisions are taken each year, a rate of enforcement more important than most EU member countries, including the most important.

In 2007, the TCA took a total of 148 final decisions on anti-competitive agreements and abuse of dominant position. 79 of them concern anti-competitive agreements, 48 deal with abuse of dominant position whereas the remaining 21 are about both anti-competitive agreements and abuse of dominant position. Number of decisions on mergers and acquisitions is 232. Fines around € 7,000,000 have been imposed in 2007 in investigations finalised. Concerning exemption and negative clearance, 39 decisions were taken. The numbers indicate an increasing trend in number of files concluded. The highest increase emerges in mergers and acquisitions indicating that Turkey is also affected by the recent global rise in such transactions. Number of files concluded regarding anti-competitive agreements keeps its stable rise. Therefore, caution should be exercised against the possibility of removal of evidence by the undertakings whose knowledge on competition law has been increasing year by year. Increase in number of abuse cases by 60% and that in number of cases on anti-competitive agreements and abuse by 69% is also notable.

Sectoral statistics obtained via examinations concluded regarding infringements of competition provide important clues on the competitive map of Turkey as well as behaviours of undertakings. These statistics may be of a peculiar importance for further investigations in the neighbouring countries since the regional factor as well

as the level of development may induce the same type of restrictive and anticompetitive behaviours as those observed in Turkey. Sectors where examinations are mostly carried out are *transport, food products and beverages, education, sports, professional occupation and other services, health and medical products, telecommunication, post and bureau machines and computers*. Apart from post and telecommunications, all these sectors have concentration levels that may be deemed to be relatively competitive markets. Two arguments may be made against this assessment: Firstly, there is a tendency to act in a collective manner in these sectors. Secondly, concentration levels or the number of undertakings in the market is not adequate to create a competitive structure.

It should also be underlined that certain sectors have been subject to many examinations in the last six years. These sectors are *food products and beverages, transport, telecommunication, chemistry and chemical products, health and medical products and equipments*. Despite the existence of many examinations in these sectors, the fact that no decrease is observed in the number of allegations and examinations initiated based on such allegations implies that it would be proper to initiate joint studies with the relevant authorities responsible to regulate these sectors in order to take certain structural measures for these sectors. The statistics on decisions where it was determined that the Competition Act was violated support this argument. As a matter of fact, main sectors where the Competition Act was violated in the last eight years are press and broadcasting, transport, telecommunication, food, cement and ready-mixed concrete. One can observe that sectors which are examined following allegations of violation of the Competition Act and those sectors where violation of the Competition Act was proved coincide. As a result, it is seen that there is a need to create a coordination mechanism between the TCA and the legislator and the public authorities responsible to regulate these sectors.

Another important activity in 2007 is the Opinions sent to various public authorities as part of advocacy powers of the TCA. These Opinions concerned *banking, energy market, civil aviation, professional accounting, and pharmaceuticals*. Such Opinions are important as they regard sectors that take a significant place in economic activities and some of the sectors have the characteristics of network industries.

Israel

In Israel, major breaches of the Competition Law are regarded as criminal violations, sanctions being imposed by the Antitrust Court as a result of cases investigated and prosecuted by the IAA. The criminal nature of sanctions may be a factor hindering the development of the Competition Law in the region (when compared to Israel, the Turkish administrative model doesn't know any hindrance to development. It seems that Tunisia's administrative model, in which no criminal sanctions are applied, allows the same kind of development.

The IAA considers that the prison terms and fine maximums set in the RTPL, if applied, would be sufficient to deter violations. A problem confronted by the IAA is that, in cartel cases, the courts have failed to impose consistently high fines on defendants, instead assessing fines that the IAA believes fall well short of either the actual harm inflicted by the defendants or the level necessary for optimal deterrence. Although the Supreme Court emphasised in a 2002 decision that a "severe fine" is appropriate in a cartel case, fines imposed in cartel prosecutions over the past five years have averaged only approximately ILS 157,000 (USD 43,650) for individuals and approximately ILS 874,000 (USD 243,000) for corporations.

The IAA considers that the courts' record in imposing substantial prison sentences against cartel participants could also be improved. In the early 1990s, defendants argued with some success that harsh sentences were unjust because the law had been so rarely enforced in the past. For the balance of that decade, sentences languished in the 3 to 6 month range, and defendants frequently avoided incarceration completely under a Penal Law provision specifying that, at the sentencing court's discretion, prison sentences of six months or less may be discharged by assignment to "public work."[17] The first sentence mandating actual jail time was not imposed until 2000. Prison sentences of six to nine months were imposed in a 2002 case in conjunction with a pair of 2002 Supreme Court opinions stating that appropriate punishment for an individual participant in a hard core cartel was "actual imprisonment" even if the defendant had no previous criminal record. The Court followed those opinions in 2003, forcefully emphasising that "actual imprisonment" meant confinement and not public work. Still, no prison sentences were handed down from 2003 to 2005, and since then only two have been imposed: a 30 day term in the 2006 frozen vegetables case and a 100 day term in the 2007 LPG case. The IAA believes that such sentences fall too far below the maximums to reflect the true gravity of the offences or to deter future violations effectively. During the past five years, the Supreme Court resolved 3 appeals from district court criminal antitrust decisions in which the government sought to require harsher punishment than the trial court had imposed.

No comparable problem arose in the merger area, as the merger control process is administrative only. During 2007, the IAA issued 237 merger decisions. It is worth noting that the average review period of all merger notifications stands on 23 days, two days less than in 2006. The average review period of "green" mergers stands only on 20 days in average. In 2007 most merger notifications were approved without conditions and only one merger was blocked.

With regard to regional market integration issues only one case is reported to have dealt with anticompetitive behaviours affecting trade between Israel and an EU member country, namely Cyprus. Israel Salt Industries Ltd. exports 20% of its output and in 1999 it supplied half of the salt consumption of the Cyprus market. In 1997, a Cyprus company competed with Israel Salt Industries Ltd. both in Israel and in Cyprus. Although it exported only a small amount to the Israeli market, the managers of Israel Salt Industries Ltd. claimed that it had actually influenced the local prices of salt. According to the General Director's determination, Israel

Salt Industries Ltd. took action to block the import of salt. It had exerted pressure on the Cyprus firm, inter alia, by threatening with dumping the Cyprus market with under-priced salt. In addition it realized its threats, when for a period of 10 days, it exported to Cyprus 1000 tons of salt, which constitute 1/7 of the yearly consumption of the Cyprus market. Consequently, the Cyprus firm gave in as it stopped exporting salt to Israel and became an agent of the Israeli company. Israel Salt Industries Ltd., a declared monopoly in the edible salt market, reached a restrictive agreement in 1999 with a Cyprus based salt company (hereinafter – Cyprus company) that exported salt to the Israeli market. According to the agreement, the foreign company would become an agent of the Israeli company and refrain from exporting salt to Israel. Indeed, the export of salt to Israel stopped and has not been resumed since. For many years, Israel Salt Industries Ltd. enjoyed full control of the Israeli salt market, inter alia, thanks to agreements it reached with another Israeli salt company according to which the latter would not enter the retail marketing of salt. Those agreements were abolished by the Antitrust Tribunal in 2004 as part of a consent decree that was reached by the General Director.

The IAA General Director explained in 2008 the reasons of successes of operations of its authority: "*in 1994, a reform upgraded a small and secondary department at the Ministry of industry and trade into an independent Authority with extensive investigative and prosecutorial powers and a substantial degree of institutional independence to protect its work from external and political pressures. The fact that the Authority has an extensive range of powers and tools in-house considerably enhances our professional capacity and independence. Another advantage is the fact that we have a clear and unambiguous objective – the protection of competition (not competitors) for the benefit of consumers. Multiple objectives may lead to adverse results and constrain the ability of competition agencies to attain the best possible outcome. Taking a step-by-step approach, the Authority began to bring results and justified its mandate by the mid 1990's. Our own experience teaches us that it is worthwhile investing in laying solid foundations for a stable competition regime by bringing cases to court in order to create precedents and develop a local competition case law. We do, however, need to cope with a certain degree of uncertainty surrounding the fact that the local case law is still evolving. The upside is that there are opportunities for the Authority to break new ground in various cases and play a pioneer role in shaping the law and creating precedents*".[18]

THE FOUR AGADIR MEMBER STATES: EGYPT, JORDAN, MOROCCO AND TUNISIA

The situation in the Agadir group partly reflects the dichotomy of enforcement observed in Turkey and Israel. Where the sentencing system rests on Criminal sanctions enforced by Courts after investigation of Authorities under the Prime Minister or under a Minister of Trade – thus giving the ultimate role to a Member of Government - the institutional and enforcement developments are confined within the administrative investigative authorities. And anticompetitive practices prosecution are very limited: this is the case of Egypt, Jordan and Morocco. Where the Competition Law is enforced with investigations by a Directorate under the Minister of Trade and where administrative sanctions are applied by an independent administrative agency, such as the Tunisian *Conseil de la concurrence*, ten years of experience or more show interesting and indeed promising developments with a steady rise of the number of cases.

Egypt, Jordan and Morocco

The Competition Law systems of Egypt and Jordan are fairly close with a legal setting influenced by the British Law system: in Egypt, a Competition Authority is autonomous under the Prime Minister, whereas in Jordan the Competition Authority is vested to a Competition Directorate within the Ministry of Industry and Trade, both countries being similar in this sense more to Morocco with a French legal tradition.

In Egypt, since its creation in 2005, the Egyptian Competition Authority (ECA) has investigated 30 cases, concluded 14 of the cases, of which 8 were advisory opinions, 6 were "studies" (investigation on unlawful conducts). One case has been referred to the Prosecution Office of Cairo in October 2007 and then to court in January 2008. The case is still pending trial. And 15 of these cases are still pending, which makes an average of only 3 investigations brought to an end per year. Such a number should by no means be judged according to advanced EU member States standards as the first years of operation of those countries have yielded quite comparable figures. Rather, one should try and identify which impediments prevent the ECA from operating at a wider scale.

One of the main problems affecting the work of ECA is the lack of information on the markets and consequently the lack of evidence and proofs. Indeed, violations of the Law include both engaging in anti-competitive behaviour and failing to comply with the ECA's decisions. But failures of firms to provide information (data and documents), within a reasonable period of time, or the provision of false or misleading information is not yet considered as a violation to the Competition Law. Furthermore, no provision in the Competition Law imposes clear penalties to stop any data or information manipulation by firms. Consequently as the respondents to the EIPA questionnaire observe: "*Awareness of market players is also a problem as competition culture is not yet well established. Moreover, economic analysis related to competition violations is not yet up to the required standards due to the non-introduction of such courses at universities*". Thus a specific provision encouraging firms to cooperate in data and information issues would allow the ECA to perform a much more efficient role in its investigations.

Another problem may lie in the fact that sanctions in the Egyptian law are not effectively dissuasive as they do not compel or threat firms. For instance, the sanctions do not include divestiture, rescission, restitution to injured consumers or an effective power of injunction for the ECA. Although a provision in Article 20 states that the "violator [to articles 6, 7, 8] would be requested to adjust its position", this statement is too vague as it does not specifically define the actual significance of an "adjustment" and the Law does not vary the fines according to the type of infringement. Indeed, although breaches of any of the provisions of the Law may be sanctioned with a fine between 30,000 E£ (approximately €4,000) and not exceeding 10 million E£ (roughly €1,200,000), the power to impose the fine is vested to the Minister in charge of the industry where violations were found, following a request by the Authority. Then, the Law allows the said minister to settle the issue with the concerned parties without referring the case to Court if the violator stops the contested practice and pays the corresponding fine. Again, this provision adds to the discretionary power of the concerned Minister and impedes the efficiency and capacities of the ECA and the whole system despite the internationally recognized quality of its Management and Agents.

Very few cases are reported by the ECA. One of the cases mentioned deals with Concrete industry in which nine firms – most if not all being subsidiaries of foreign-owned firms - allegedly have cartelized the Egyptian Market. However, no case is reported with regard to interstate trade among members of the Mediterranean Union. The case is currently under judicial review.

With already more experience than Egypt, Jordan has followed the same pattern of enforcement with more successes since the Jordan Minister of Industry and Trade has followed all recommendations made by the Competition Directorate. In Jordan, law enforcement is the responsibility of the Competition Directorate at the Ministry of Trade and Industry (MIT). The duties and powers of the Competition Directorate include competition policy shaping and legislation drafting, competition advocacy, conducting investigations ex officio or upon complaints or those assigned to it by the competent courts, and preparing reports on its findings and receiving notifications of mergers operations. The investigative powers of the Directorate include the power to enter into commercial establishments and inspect documents, and the Director may request any person who has or may have knowledge of information relating to a violation, to testify in an investigation. If the violation is ascertained, the Minister shall, upon the recommendation of the Director, refer the violation to court. The Competition Directorate is composed of a permanent staff of about 9 persons. It is also assisted by a "Committee for Competition Matters" (CMC). The Committee is chaired by the Minister and includes heads of other regulatory bodies (Insurance, Telecommunications, Transportation). The Committee is responsible for presenting consultations and advice regarding the general plan of competition in various sectors and for reviewing matters related to the provisions of the Law. Furthermore, the Court of First Instance has the jurisdiction to hear cases relating to any violation of the provisions of the Law pertaining to anti-competitive practices, economic concentrations and non-compliance with certain decisions issued by the Minister pursuant to the Competition Law. All other violations of the provisions of the Competition Law are subject to the general rules of court jurisdiction. Moreover, one or more specialized judges who have been appointed by a decision of the Judicial Board are assigned to hear cases of practices that are in violation of competition. The Law specifies the parties that may file cases relating to practices in violation of competition, and such cases shall be granted summary status while the court shall have the power to issue temporary (interim) orders or decisions. Decisions of the court may be appealed before the Court of Appeal and the “Cour de cassation”. Nevertheless, the possibility of evaluating the degree of enforcement of the existing Law is limited by the relatively short experience of the Competition Directorate.

In 2007 four cases were sent to the prosecutor by the directorate, and one of them was sent to the Court of First Instance by the prosecutor, and 2 cases were filed directly to the court of first instance by personal act. In 2006, twelve complaints have been dealt with, ten opinions were made on mergers notifications, four consultations were made with the business community and nine studies and investigations were conducted, a remarkable achievement performed by a most active little team at the Competition Directorate. Indeed, after some years of existence, the Competition Directorate has received a fair amount of trust by the Jordanian Business Community which does not hesitate to consult or refer cases to the MIT. Some cases show a strong relationship between Competition Policy and Interstate Trade Policies such as the Meat Industry case: for instance in 2004, a couple of months prior to the holy month of Ramadhan, the Directorate received a consultation request regarding the increase in meat prices which could have potentially resulted from anticompetitive activities in that sector, with potentially major foreseeable consequences in social unrest at a critical period. The issue was addressed with a sense of urgency to avoid problems resulting from the anticipated increase of demand during the holy month of Ramadhan. The Directorate conducted field investigations which highlighted the Trade barriers that prevent competitors from neighbouring countries to enter the Jordanian market. Talks were held between the various bodies that regulate the meat industry such as the Ministry of Agriculture and the Ministry of Health to discuss

the potential for opening up new import markets, and removing barriers of entry to this industry. The adopted policies succeeded in lowering prices and maintaining them at reasonable levels during Ramadhan.

In Morocco, given the French background of legal institutions in that country, one would expect the same type of development of enforcement. On the contrary, the two systems are very different: in Morocco, the Competition Council is an advisory body without legal and autonomous existence, being a part of the Prime Minister's Office, who is the National Competition Authority within the meaning of the Competition Law. A major institutional reform is likely to take place by 2010 with the current formulation of an amendment of the national Competition Law that would give a fully-fledged independence status to the Competition Council. The reform is being prepared under supervision of the German managers of a Twinning programme between Germany and Morocco aiming at strengthening institutional and technical capacities of Moroccan Competition Authorities. In January 2009, Members of the Board of the Moroccan Competition Council after appointment of a new Chairman in November 2008 have been installed to that purpose. Mobilization of resources is under way under a current EU Twinning program between the German and Moroccan Competition Authorities aiming at strengthening the national capacities in the area of Competition. This program is scheduled to run up to April 2009.

Tunisia

In Tunisia, the Competition Council (CC) is fully autonomous and independent from the Department of Commerce which has a General Directorate in charge of investigations to be conducted pursuant to the National Competition Law. From the answers to the EIPA questionnaire, one cannot get an accurate view of the merging picture of the most spectacular Tunisian Competition Law developments over the last three years. These developments, in particular with regard to the activity of the CC make the competition regulatory system of Tunisia almost if not already fully comparable to the enforcement systems of Turkey and Israel. In particular, in a country where price regulation concerns about 13% of the products on the market and 20% of the distribution sector (UNCTAD 2005 Voluntary Peer Review estimate), the situation of competition enforcement can be better assessed after the publication in 2008 of the CC Annual Report for 2006 and this exhaustive document is of a peculiar value as it is unique in advocacy terms and information terms among the Agadir Countries and even in the whole Mediterranean area where Competition Authorities operate.

In the sphere of litigation, the Council rules on the cases concerning anticompetitive agreements and abuse of dominant position and can act upon request or of its own initiative. The latter possibility was, until fairly recently, confined to quite exceptional circumstances, such as cases in which a complaint had been filed and later withdrawn, or cases in which during an investigation the Council decided *ex officio* to extend the proceeding to adjacent markets where *fumus boni juris* suggested a closer look. Most often, the Council's intervention is requested by the Minister of Commerce and his Directorate General, by enterprises, consumers' associations, chambers of commerce, professional organizations, trade unions, regulatory authorities and regional or local bodies. When acting on its own initia-

tive, the CC must inform the Minister and the relevant regulatory authorities.

With regard to actual enforcement, the CC has been increasingly active in the last three years, following a rather slow start due to the fact that both institutions and market players had to get to grips with the main principles and goals of competition legislation. The number of legal cases presented to the CC during the period 1992-2002 did not exceed 48, that is an average of 4.3 cases per year and of 2.5 if we do not take into account the years 1993, 1999 and 2002 where the cases brought before the CC were respectively 9, 11 and 8 cases. The CC explained the relatively modest resorting to its competences by the various parties, by the transition of the Tunisian economy and a competition culture not deeply taken in by the operators. The parties which have the most referred cases to the Council are respectively firms which referred 39 cases to it, i.e. 81.2% of the total. The Minister of Commerce referred a modest number of 5 cases, i.e. 10.4% of the total. In 2001 and 2002 two cases were initiated by the CC *ex officio*. Out of the 48 petitions that were presented to the CC during this period, the Council has considered that 26 among them did not fall within the scope of the Competition Law because almost all of them were unfair competition and not market anticompetitive restrictions. The steady activity increase of the Tunisian CC in the table hereunder.

In 2006 alone, the Tunisian CC issued 20 decisions on detailed anticompetitive cases and issued 38 opinions, a total superior in one year to its total activity over its first ten years of operation. Out of the 20 decisions, 16 were dismissals or rejections, 1 dealt with a cartel case and 3 were prohibitions of abuses of a dominant position or of abuse of superior buying power. Out of the 38 opinions evidencing a prominent and leading advocacy role among the Tunisian administrative bodies and authorities, thirty were delivered on specifications or terms/conditions, two regarded projects of merger and two dealt with general competition principles.

The substance and the industries which have been investigated and surveyed are worth mentioning as well, showing that the CC is becoming a key administrative body to fuel the process of regulatory reforms in Tunisia and to improve the setting of the Tunisian Economy as a whole. The wide variety of sectors and industries surveyed in the advisory activity alone is worth detail-

Matters on which the Tunisian Competition Council was consulted (1991-2005)

Subject	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total
Mergers	0	0	0	0	0	0	2	3	1	1	NA	NA	NA	2	NA
Exclusive practices	0	0	0	0	0	0	0	0	1	0	1	5	2	2	11
Draft legislation	0	0	0	0	0	2	6	4	3	3	6	5	1	2	32
Terms/ conditions	0	0	0	0	0	0	0	6	2	4	2	2	3	1	20
Other	0	0	0	0	0	4	4	3	1	4	3	2	1	1	23
Total	0	0	0	0	0	6	12	16	8	12	NA	NA	NA	8	NA

ing as Tunisia equals Turkey or France with regard to the advocacy capacity, quality and sophistication of analyses and the variety of areas of surveyed activities: in 2006 the CC decided cases dealing with Lawyers, Attorneys and Chartered Accountants rights to exercise their profession, the distribution of foreign newspapers and magazines, drugs and pharmaceuticals wholesale, car paintings, spare parts and electrical components of household appliances, luxury perfumes (2 cases of abuses), electricity transformers public demand and supply, public procurement of water canals and polyethylene pipes and scuba diving pricing policies. The CC also investigated and delivered opinions on many draft legislation elements regarding terms of references, specifications, terms/conditions in various agricultural and industrial areas of production of goods and services: i.e. controlling of sheep milk production, creation of cattle breeding centres, rabbit breeding and production centres, import of cardboard, seats, furniture and furniture components and spare parts, import of tyres and wheels, imports of TV sets, activities of travel agents, imports and exports of energy consulting services etc... In that same year, the Tunisian CC also delivered opinion on draft legislation with regard to the granting of broadcasting rights, trade and distribution law, the organization of Maritime Professions, Drugs pricing, Olive Oil regulation and subsidies and public road transportation. So far, thanks to the development of the activities of the Tunisian CC, the Tunisian experience of competition law enforcement and advocacy is unique in the Agadir Countries for its variety and comprehensiveness. This notable increase of activities has coincided with the EU Twinning program between Tunisian and French Competition Authorities (2006-2007), but the trend clearly started one or two years before. The present capacity of the CC to communicate openly on its enforcement and experience is also a powerful instrument to integrate the Tunisian competition authorities in the regional and international Competition enforcement community.

COUNTRIES WITHOUT COMPETITION INSTITUTIONS: LEBANON, PALESTINIAN AUTHORITY AND SYRIA

Lebanon

In Lebanon, there is no modern competition law, and consequently no competition authority yet at work. The *European Neighbourhood Policy Action Plan* was jointly adopted by the EU and Lebanon and scheduled to enter into force in January 2007. However some major disruptions have affected the political and economic setting of the country, including bombings in the summer of 2006. Thus, for the time being, it is difficult to assess implementation of that Plan. In terms of competition policy, like all other Action Plans signed between the EU and each of the other Mediterranean countries, it aims at ensuring the creation of a national competition framework and establishing an operational and effective competition authority.

Palestinian Authority

The Palestinian Authority has to overcome major political problems to integrate its economy for the time being disrupted by two differing political and regulatory settings in its two territorial components, the Gaza Strip and the so-called West Bank. A European Neighbourhood Policy Action Plan was jointly adopted by the EU and the Palestinian Authority on 4 May 2005. Since then political shifts (including the Hamas victory in 2006 elections) have delayed the enforcement of hat Action Plan. It aims at strengthening political co-operation and economic integration to approximate them with the EU institutions. The Plan is based on a Palestinian Reform Program adopted before 2005 under leadership of President Mahmood Abbas. It aims at political, economic, social and institutional changes (consolidation of democracy, accountability, transparency and justice, building of institutions and infrastructure necessary for an independent Palestinian state; the achievement of the Palestinian statehood, good governance, development of economy, including trade. With regard to competition policy a draft competition Law is said to be under consideration by the Palestinian Authority and the Palestinian Parliament, taking into account a differentiated regulations in the West Bank and Gaza Strip where legal structures have been inherited from Jordan or the British Mandate. The Plan foresees the adoption and implementation of a legal framework to guarantee the functioning of a market economy and includes the introduction of a Competition Law, most likely in line with EU concepts.

Syria

In Syria, political stability and evolution due to the exchange of Ambassadors between Syria and Lebanon in October 2008 may well lead to acceleration of an overhaul of the economic regulatory structure. Due to numerous tariff and non-tariff barriers, Syria's trade regime remains restrictive, excluding trade with GAFTA and neighbouring countries. Unclear regulations, quantitative restrictions, and other non-tariff requirements continue to prevail and to add to the costs and length of conducting international trade transactions. Non-tariff barriers generate distortions in the allocation of resources in the Syrian economy and undermine the positive effects of the ongoing economic liberalization on domestic competition and external competitiveness. As was said above, a new national Competition Law has just been adopted in November 2008. It is too early to report on activities of enforcement of this law. But it is expected that the new Syrian Competition Authority and Competition Council that are being set up will not start their operations before 2009.

Conclusion

Some policy recommendations may be formulated, deriving from the analyses in the three sections of this report with a major contribution by the heads of National Competition Agencies themselves when they formulated their observations on Competition Law and Policy in the Mediterranean Region at the European Competition Day in Paris in November 2008. As already mentioned in the section one, an exhaustive record of the proceedings of that meeting has been released in February 2009 under the academic revision of Professor Catherine Prieto.[19]

A first recommendation is about the European assistance programs to Euromed countries. Despite very strong efforts undertaken by the European Union in some countries (such as Tunisia, Morocco and Jordan), there seems to be a strong demand for increases of technical assistance and improvements of that assistance and training, as evidenced by the opening statement of the Chair of the Egyptian Competition Authority at one of the round tables of the already mentioned November 2008 European Competition Day. She stressed that despite European Aid has indeed been granted, this was not always consistent with aid from other countries, including from the United States: The "*Egyptian competition law came in effect at the end of 2005 and the Competition Authority was formed in September 2005. The first seminar we had in December of that year, was arranged by the Euro-Eight countries. We had experts from six different countries giving us what were essentially private lessons on organization and process, which were eye opening. Unfortunately, the Euro-Eight project now is closed. There is another EU Assistance Program called TAIEX; we find it bureaucratic and slow. We are not getting the help we used to get. Sometimes we still get individual help. For example, Professor Jenny came to Egypt several times through the "Cour de Cassation" or through the USAID assistance program. We had four experts from the Italian authority, who were very helpful. But in the last year the most active assistance we received was from the United States, with experts from the FTC and the DOJ visiting. This was a more active exchange because the AID office responds very quickly to our needs. I hope that with the "Union des Pays Méditerranéens" organization we can do more things in that respect.*"[20] One should thus recommend that Assistance programs in the area of competition Law and Policy in the Mediterranean region become a priority both in a North/South and in a South/South perspective (see hereafter remarks by H.E. Montaser Oklah). Some very precise formulations were made such as "induction programs" at basic, intermediate and senior levels to be set up on a regional basis with high level of technicality and concrete cases discussed.[21] However, such programs should not necessarily involve "twinning programs" or "*jumelages*" because of too strict conditions sometimes associated to such programs.[22]

A second recommendation relates to the institutional framework which has been put in place over the last decade in the concerned countries. The existence of a functionally independent authority coupled to administrative enforcement of Competition Law, properly deriving from the European Competition Law system and experience have clearly demonstrated the superiority of a system of enforcement by the number of cases of actual enforcement. Where such a system is in place, such as in Turkey and Tunisia, the countries clearly have a record of enforcement that differs from the other countries experiences. One should thus recommend that in the initial phases of development, Competition Law enforcement in the Mediterranean mirrors as closely as possible the prevailing experiences within the European Union, setting up an Administrative process of enforcement with authority vested in an Independent decision making body.[23]

A third recommendation relates to the setting up and institutionalization of a Mediterranean Competition

Network with its own "regional identity" as suggested by the representatives of Tunisia, Morocco, Egypt, Jordan and a German lawyer at the 2008 European Competition Day. The first initiatives taken in this area by the EIPA could be further developed in connexion with efforts of electronic communication by Competition Agencies.[24] A new level of regional cooperation could possibly be envisioned by the setting up of such a Mediterranean Competition Network as considered by Mona Yassine to avoid the limits of reflexions and actions undertaken so far against regional anticompetitive behaviours. Such behaviours have been coped with on a purely national basis by Agadir Countries National Competition Authorities.[25]

A fourth recommendation relates to the possible organization of a program of peer reviews among the Mediterranean Countries. Such peer reviews could have the benefit to analyze the actual strengths and weaknesses of Competition Law Systems in the region on the model of Peer reviews performed at the OECD Competition Committee, OECD Global Forum on Competition, and at the UNCTAD Intergovernmental Group of Experts (among developing countries such as Tunisia, Senegal, Kenya, Jamaica, the COMESA and the UEMOA-WEAMU have volunteered to such reviews so far).[26]

A fifth recommendation aims at drawing attention on the fact that GAFTA currently has no competition Law and Policy component. Such regulatory component is highly desirable to speed the process of economic integration and should possibly be considered or studied to promote further regional economic and market integration among the community of Arab countries.

Beyond purely competition-related regional cooperation, a fifth recommendation derives from remarks made at the 2008 European Competition Day by H.E. Montaser Oklah, Secretary General of the Jordan Ministry for Industry and Trade, relating to trade and competition discrepancies and issues between the EU and Arab countries, but also between the Mashrek and Maghreb countries themselves with regard to the EU. [27] As the Euromed Agenda under the Barcelona and Agadir Processes in theory calls for the creation of a unified Free Trade zone in 2010, initiatives should be taken by the UpM Secretariat to call for Seminars leading to a regional Conference to address Competition and Trade issues having distortive effects upon trade within the Agadir Countries themselves and between these countries and the EU.

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Notes

1 The Union for the Mediterranean (in French: *Union pour la Méditerranée*), previously known as the "Mediterranean Union" (in French: *Union méditerranéenne*), is a community established on July 13th as a development of the Euromediterranean Partnership. It unites all EU members with several non-EU countries that border the Mediterranean Sea. The idea was originally proposed in April 2007 by French President Nicolas Sarkozy as an alternative to Turkish membership in the European Union, whereby Turkey would instead form the backbone of the new Mediterranean Union. However, modifications to the plan were made in March 2008, when Turkey was given a guarantee that the project would not be an alternative to Turkish EU membership. Since UfM membership was no longer seen as an alternative to joining the European Union, and instead considered more as a stepping stone into the EU, Turkey accepted the invitation to participate. French President Nicolas Sarkozy had eschewed the Union during his election campaign. Following his election, the idea was further developed, with plans being drawn up. Despite the potential division it could cause to the Muslim world, with a part of it being united with Europe, and a part separated, President Sarkozy saw the initiative as a way of promoting peace between Israel and its Arab neighbours. An institutional core has been established at the Ministerial Conference at Marseilles on November 3-4, 2008. Among other institutions, a Secretariat of the Union of the Mediterranean has been created. It will be based at Barcelona and is scheduled to start operating by April 2009.

2 In the United States, the "Antitrust" is concerned exclusively by Private sector behaviours. And a special Doctrine – known as the State Action Doctrine - immunizes from prosecution public behaviours, public actions or private actions on the Market following public instructions or licenses, provided that the said public authorities exercise the mandatory responsibilities attributed to them by the Constitution.

3 Whereas in the US, offenses to the Antitrust provisions are of a Criminal nature (regarding cartels) and of a civil nature (private monopolization, private attempts to monopolize and prohibited anticompetitive mergers).

4 The Egyptian unofficial Daily *Al Ahram*, stressed in an October 23, 2008 leading article: "*Originally the brainchild of Sarkozy, for which the French president arduously extracted some European support, the Union for the Mediterranean was launched in Paris 13 July, amid considerable scepticism, in pursuit of a multi-faceted Mediterranean cooperation that the Barcelona Process failed to deliver since its launch in 1995 -- in part due to the many shadows cast by endless deadlocks in the Arab-Israeli peace process. It was launched to promote joint projects among some, and not necessarily all, its 40 plus member states, especially in areas of environment and migration regulations. It was also expected to help foster cultural, if not political, dialogue among countries of the Mediterranean*." See EZZAT, Dina (2008).

5 The original proposals would have excluded the EU states not bordering the Mediterranean. All other EU states apart from France, Spain, Italy, Slovenia, Malta, Greece, and Cyprus, would have been silent observers which angered those countries who would not be involved, such as Germany, as it did not approve of EU funds being used in a project over which it had no influence. Frank-Walter Steinmeier, German Minister of Foreign Affairs, gave a cautious response to the initiative and emphasized that it should not compete with the EU or the Barcelona process. In December 2007, German chancellor Angela Merkel criticized Sarkozy's plans, saying that they risked splitting and threatening the core of the EU. In particular she criticized that just a small number of EU countries, excluding the others, would form the union with EU funds, stating that "*this could release explosive forces in the union I would not like*." When Slovenia took the EU presidency in 2008, Slovenian Prime Minister Janez Janša added to the criticism stating: "*We do not need a duplication of institutions, or institutions that would compete with EU, institutions that would cover part of the EU and part of the neighborhood*." In response to criticism from his European partners, President Sarkozy modified his original plans for the union. Disagreements with Germany led to a mini summit between the two leaders being delayed three months until June 2008. At the start of the semester of French Presidency of the EU, President Sarkozy consequently held a summit on 13 July 2008 involving the relevant EU states and the Southern countries. The Union for the Mediterranean was then created and it is still in a process of construction.

6 See PRIETO, Catherine (2009). In 2008, an evaluation of the implementation of competition law in Mediterranean countries was carried out within the framework of the European Institute of Public Administration (EIPA). During that segment of the Competition Day, two round tables were organized to bring together representatives from competition authorities in both Mediterranean countries and the EU. The first round table was moderated by the French chair of the OECD Competition Law Committee, Professor Frederic Jenny, a Justice at the Civil Supreme Court (*Cour de Cassation*). It allowed participants to assess how competition authorities in Mediterranean countries operate, their level of development and actions taken in tandem with the EU in the area of competition. This round table detailed the shared experiences of representatives from Portugal, Morocco, Italy and Tunisia. The goal of the second roundtable was to set objectives and define the means for implementing competition policy in 2009. The actions will take place within the context of the creation of the new Union for the Mediterranean institutions in Barcelona in the first semester of 2009. The second round table, moderated by the Chair of the Egyptian Competition Authority, Mrs Mona Yassine, led to a discussion between representatives from the State of Israel, Turkey, Jordan and Germany.

7 CUTS (2005), p. 9.

8 SINGH, Ajit (2001)

9 JENNY F. (2004)

10 STEWART, Taïmoon (2004)

11 SOUTY F. (2005)

12 République Tunisienne (1995), p. 101.

13 Discussion of the author a.o. with Law Faculty professor and Lawyer Omar ALJAZY and Senior Magistrates (e.g. Judge Ali AL-MUSEIMI, at the time of the interview General Prosecutor of AMMAN Court of First Instance). This may also be connected to the religious and government tradition which conferred a market overseeing role to a Market governor or Market Accountant by the head of state in the Umeyads or Abbasids Kingdom.

14 To evidence this trend, see among others the Chinese Supreme Court issuance of draft *Provisions regarding the handling by the People's Supreme Court of cases involving foreign-related arbitrations and foreing arbitrations*, Dec. 31, 2003.

15 See Republic of Tunisia (2008). The book presents all decisions as well as all opinions formulated as a part of its consultative activity.

16 GASPARD Toufik K.(2004)

17 A sentence to public work is considered a form of imprisonment and leaves the defendant with a criminal record. Public work service entails working full time in a hospital, shelter, or similar facility.

18 KAN, Ronit (2009)

19 PRIETO, Catherine (2009)

20 YASSINE, Mona (2009)

21 "*First, training – we need to have an induction program where we can train the new hires for the competition commissions. We hire academics, economists, lawyers, but they need to be trained in competition. Therefore, in our region we can have, for example, once a year an induction program, seven to ten days long, which will give basic training on competition specifically. We can also have an intermediate training program for those who are already seasoned, two to three years into this business, to discuss cases and how they were handled in different countries so that there is an exchange of experience. A third program can be a senior meeting where change in legislation, need for change in structure and timing and other matters that have to be taken at a senior level [can be discussed]. Heads of competition agencies and the executive directors could come together and exchange views and experiences once a year".* YASSINE Mona (2009)

22 ""*Jumelage", most of the people here like it. But from our experience in Egypt – we did not want to do it because it had conditions. We were very new and did not know what kind of structure we will need to have and we wanted to be very dynamic and flexible, so it was still early to have a diagnostic of our institution, which was required. There was nothing to diagnose in 2006 as we were just starting. But another condition was we had to commit to have the same organizational structure and process as the agency with which we "jumelize". We did not want to commit at the time to that because we did not really know which structure we would use in the end. These two conditions made us skeptical about going into "jumelage". Maybe later, once we know more about our markets and how we are going to proceed. But certainly this is an important tool of cooperation for effectiveness*". YASSINE Mona (2009)

23 Within the Mediterranean countries, at initial stages of development, the existence of criminal powers has led to very cautious approaches hindering for more than a decade actual enforcement. This has been the case in Egypt, Israël, Jordan and Morocco. Whereas in Israel, after 50 years of experience and with a major reform in 1994, fifteen years ago, this has led to an efficient system of enforcement, one needs to stress the time of development of a fully-fledged competition law system. In the initial phase of development administrative sanctions clearly lead to faster development, as evidenced positively in Tunisia and less positively in Egypt, Jordan or in Morocco. It should be stressed here that within the European Union, criminal law enforcement has not been retained as an option at the initial stage of institutional development for Community Law enforced by the Commission since 1962, nor by a majority of EU member countries. With regard to those countries which adopted criminal law sentencing systems, such as the United Kingdom, more than *fifty years* of prior experience were necessary.

24 See in particular BIERWAGEN Rainer (2009).

25 "*Another problem is that our laws deal with the effects of a given problem on our national local economies. If internally there is an action that affects another country we do not care as it is not under our jurisdiction. But should we care and work together and make sure that in our region competition is the rule? Let's think about that level of cooperation*." YASSINE Mona (2009). See also BIERWAGEN Rainer (2009).

26 "Also, in terms of cooperation we can have peer review that looks at comparative analysis. Since our countries are at different stages of competition law enforcement we can comparatively say are they on the right track or too slow, what do they need to do more? We need the ability to measure effectiveness and through peer reviews do something about it". YASSINE Mona (2009)

27 H.E. Montaser OKLAH explicitly made the following statement: "*As I said, we are very proud of our partnership with the EU, but, and underline this please, Jordan was shortchanged in terms of ultimate and true benefits of our partnership with the EU. I will tell you why and support it with evidence. Jordan is the recipient of technical and financial support from the EU, which we appreciate and we have tried to make the best out of it. But in terms of results on the ground Jordan did not fully integrate its economy with the EU. Trade statistics shows that Jordan was not able to export effectively since the implementation of the partnership agreement. Our imports from the EU increased approximately ten times, reaching high levels. However our exports are at standstill, at 100 million dollars. That is not fair. Do you know why that is the case? The reason lies in the pan-EuroMed's rules of origin, which are anticompetitive and protectionist in their nature, which prohibits countries like Jordan to fully integrate and compete with the EU member states and be able to fully export and trade fairly with the EU. That is one dimension. The other dimension is the discriminatory nature of the partnership agreement signed with the Mashreq Arab countries as compared with the Maghreb Arab countries. All Maghreb Arab countries were given the full accumulation privilege, whereas the Mashreq Arab countries were forbidden from that, which prohibited them from being able to export into the EU. That is not a level playing field. We have to have one set of rules apply to all, have to have instruments that enable partner countries to fully integrate and benefit from partnership with the EU*." OKLAH, Montaser H.E. (2009)