The competition regime in Egypt is managed by Law No. 3 of 2005 and executive regulation 1316/2005. On 29 December 2022, Law No. 175/2022 was officially published which amended several provisions of the Competition Law No. 3/2005. On 29 December 2022, Law No. 175/2022 was officially published. Also, a compliance toolkit was issued in 2022 that covers several competition concepts such as abuse of dominance, vertical and horizontal agreement, notification regime for economic concentration transactions, etc. Furthermore, in December 2022, the State Ownership Policy Framework Document was developed, through which the competitive neutrality policy was adopted.

**Competition laws**

Pursuant to articles 1 of the Competition Law and 2 of the executive regulation (ER), it’s clearly stated that the objective of the Law is to ensure that economic activities are undertaken in a manner that does not prevent, restrict or harm the freedom of competition and guarantees fair competition practices between all businesses. After the amendments made in Law No. 175/2022, the Competition Law in Egypt includes more competition-related definitions such as: economic concentration, effective control, material influence, corrective measures and behavioural measures, relevant markets and dominance.

Article 3 of the ER states that the law applies to activities outside the State if the activities impact the internal market. Moreover, the Egyptian Competition Authority (ECA) has adopted a strategy (2021-2025) with the following objectives: effective enforcement of the provisions of the Competition Law by combating monopolistic practices, limiting legislation/policies/decisions that restrict the freedom of competition, spreading a culture of competition and raising institutional efficiency. The compliance toolkit also emphasized compliance with the provisions of the Competition Law, calling businesses to build employee awareness of competition rules and of the repercussions of breaching the law.\(^1\)

In reference to article 9 of the Competition Law (2005), it’s clearly stated that the provisions of the law are not enforced on public utilities that are directly managed by the State (public utilities that are not engaged in any economic activity, such as ministries). It is worth mentioning that State-owned enterprises (SOEs) are not qualified as public utilities since they exercise economic activities in the market. Also, article 9 grants exemption for enterprises conditioned by public interest and consumer welfare. According to article 16 of the ER, several procedural and assessment criteria are followed by ECA before rendering the decision of the temporary exemption. Moreover, ECA may require certain commitments and conditions from companies that benefit from exemptions, with a possibility of retracting the exemption in case of non-compliance. It is worth noting that ECA reported violations by several SOEs (box 1, case 1). Article 10 of the Competition Law allows the State to intervene by determining the selling price of “essential products” for a specific period after consulting with ECA.

**Anti-dominance and monopolization laws**

Articles 7, 8 and 13 of the ER (2005) and article 8 of the Competition Law, dominance and abuse of dominance are defined and prohibited. Some prohibited practices are enumerated such as market barriers, controlling production, fixing/controlling prices, obliging a supplier not to deal with a competitor, discriminating between sellers or buyers, halting deals, or increasing/decreasing prices which will lead to the exclusion of competing firms from the market, the inability of competitors to reach distribution channels, having exclusivity in distribution based on geographic areas, agreement or contract between a person and any of its supplier or clients, etc. Finally, although monopolistic practices are determined and prohibited, there is no definition covering monopoly per se in article 2 of the Competition Law.

Next, the Law specifies thresholds to qualify if a firm has a dominant position in the market or not. Article 7 of the ER qualifies an individual as dominant when:

1. Its shares in the market exceed 25 per cent.
2. Has ability to induce effective changes in prices.
3. The inability of competitors to limit the influence of the dominant player.

\(^1\) Enhancing Competition culture, p. 50.
Furthermore, article 8 of the ER sets criteria to assess points 2 and 3 such as the extent to which each person and competitors are able to access the needed materials for production or distribution channels, the person’s share in the relevant market and his position in relation to the rest of the competitors, etc.  

Last, in reference to the provisions of articles 20 to 25, administrative measures and a categorized sanction regime is adopted in case of breaching articles 6, 7 and 8 of the Competition Law (abuse of dominance and anti-competitive agreements).  

It is worth noting the non-existence of imprisonment sanctions (to guarantee more deterrence). Also, the amendments of the Competition Law No. 175/2022 added new sanctions for violating the economic concentration rules (particularly the notification regime).

**Cartels and anti-competitive agreements**

According to article 6 of the Competition Law and article 11 of the ER, the following horizontal agreements are prohibited: agreements to divide markets, cooperating for public procurement contracts, conventions, restricting the production, distribution or marketing operation, limiting or controlling the production. Also, pursuant to article 7 of the Competition Law and to article 12 of the ER, vertical agreements (agreement or contract between a person and any of his suppliers or customers) are prohibited. The toolkit mentions examples of vertical agreements, such as: “most favoured nation” clauses, exclusive distribution, and passive sale restrictions.

The toolkit also sets specific criteria to assess vertical agreements since some of them can benefit the market and consumers. The criteria include the impact of the agreement or contract on the freedom of competition in the market, benefits to consumers and preserving the quality of the product and national security.

It is worth noting that cartels are defined and prohibited in the compliance toolkit. Also, the law prohibits cartel practices, although these practices are not defined in article 2.

**Competition enforcement practices**

Article 11 of the Competition Law and its amendments stipulate for the establishment of a financially and administratively independent competition authority. Moreover, the prerogatives of the authority are listed, and these include developing a comprehensive database relating to the economic activity, providing feedback on draft laws and regulations relating to competition, coordinating with similar entities in other countries, investigating competition cases, studying any notification of economic concentrations (pre-merger notification regime) and assessing concentration practices. Also, the Supreme Committee for Competitive Neutrality was established by the Prime Minister’s decision No. 2195 of 2022. The Committee shall be responsible for ensuring compliance with the competitive neutrality policy. Furthermore, For the purpose of enforcing the competitive neutrality policy, a special department was established in ECA with the role of receiving and investigating complaints from citizens/investors as well as giving opinions regarding legislations, regulations, and decrees that can harm competition and negatively affect the competitive neutrality policy.

Pursuant to article 31 of the ER, any person can notify ECA about competition infringements based on specific procedural conditions. Also, according to articles 34 and 37 of the ER, ECA should investigate complaints and notifications regarding breaches of the Competition Law within a specific time limit and then reach an appropriate decision. Finally, according to article 21 of the Competition Law, ECA can initiate a criminal lawsuit or take action with regard to acts violating the law through a written request from the Chairman of the authority’s board of directors.

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2 Abuse of dominance, p. 29.  
3 Articles 22 and 23 of the Competition Law (2005).  
4 Vertical agreement, p. 24.  
5 Cartels, p. 7.
1. On 8/3/2016, the ECA rendered a decision against Telecom Egypt (SOE) for breaching competition rules in the telecom sector.

According to ECA, Telecom Egypt took measures that partially prevented other Internet companies from operating. The SOE implemented a plan to replace copper cables with optical fibres without notifying or agreeing with other companies providing internet services. Moreover, Telecom Egypt imposed some arbitrary conditions on providing infrastructure during the period from September 2013 to October 2015.

Based on those facts, ECA rendered a decision that Telecom Egypt was in breach of paragraphs a and b of article 8 of the Competition Law. It is worth noting that the board of directors of ECA accepted the reconciliation request of Telecom Egypt after paying the reconciliation fees and presenting commitments to comply with administrative measures that ensure compliance with the provisions of the Competition Law. Furthermore, Telecom Egypt pledged to cooperate with ECA to ensure compliance with measures that guarantee fair competition in the activity of providing internet infrastructure services.

2. On 30/1/2023, the ECA confirmed that several companies operating in the market of electric poles and iron pipes were in collusion in procurement contracts.

The ECA board of directors issued a decision confirming that 10 companies operating in the electric poles market had committed a violation. The companies had agreed and colluded in some of the tenders issued for the electricity distribution companies in order to purchase lamps posts of various sizes. The agreement consisted of territorially sharing the market in public procurement tenders. Such a practice is deemed a hardcore violation of competition policy and does not fall under any exemption from the application of the Competition Law (article 6 – b/c) of the Competition Law.
After investigating, the Competition Authority in Egypt found that the violating companies mutually agreed on submitting bids with identical prices in order to divide the quantities between them by exchanging confidential information and colluding in tenders, which is considered a violation of the Competition Law. ECA considered that that the collusion worked against the objective of the public tenders made by electricity distribution companies, which is to obtain the best quality at the lowest price. Instead, higher prices have unjustifiably added to the financial burdens of the electricity distribution companies. Also, it was found that these practices led to charging additional costs to the State’s general budget, compared with the costs that would have incurred had the violating companies used fair and lawful competitions to win those tenders.

Finally, the practice of these companies was qualified as a horizontal agreement (cartel) as it led to the restriction of competition and to imposing market barriers. It was stated that these anti-competitive agreements have led to the disruption of the market, which is harmful to the investment environment and freedom of competition, and thus violated the provisions of the Competition Law.

3. **On 26/5/2022, the ECA issued a decision regarding the abuse of a market dominant position by an online food delivery platform.**

After investigating and studying the food online market, where several small and medium-sized enterprises (SMEs) operate, three breaches were exposed:

1. The dominant firm included an exclusivity clause in almost all its contracts with the restaurants it displayed on its platform. This practice is prohibited because it undermines competition, places barriers on market entry, and impacts consumers with higher prices.
2. The dominant firm is tied between the service of displaying a restaurant on its application and delivering for the restaurant, even when the latter had its own delivery services. This practice is prohibited because it restricts competition in the delivery market.
3. The dominant firm imposed a most favoured nation (MFN) clause among restaurants, unifying prices between its own platform and other platforms.

The above-mentioned breaches show that there was a violation of the Competition Law. It is worth noting that the authority accepted in its decision the request for settlement by the company.

4. **On 29/7/2022, the ECA issued a decision regarding a cartel.**

After investigating infringements by four brokers working in the supply of eggs in the food market, it turned out that these brokers were coordinating and colluding to fix the prices. This increased prices and therefore negatively impacted consumers.

Based on these findings, the Competition Authority decided that these practices constituted criminal behaviour and the colluders were qualified as a cartel who are obstructing competition in the market.

**Note:** for decisions taken by ECA, see: [http://www.eca.org.eg/ECA/News/List.aspx](http://www.eca.org.eg/ECA/News/List.aspx).
International trade agreements

Egypt has ratified several trade agreements that include competition provisions such as the Common Market for Eastern and Southern Africa (COMESA), the partnership agreement between the Egypt and the countries of the European Union, and the agreement to establish a free trade area between the Arab Mediterranean countries (Egypt, Jordan, Morocco and Tunisia).

Liberalization and State intervention in regulated sectors

The State is still the sole investor in strategic sectors relating the population’s daily needs and staple food products, although it has been stated in the State Ownership Policy Framework Document that the Government will be working to pave the way for the private sector’s participation at a later stage. Any company acting outside the scope of those strategic activities, including SOEs, must adhere to competition rules as well as the competitive neutrality policy.

Also, it is worth noting that policymakers in Egypt, through the State Ownership Policy Framework Document, are encouraging the private sector to participate in State-owned assets through different types of contracts such as: public-private partnerships (PPPs), build-operate-transfer (BOT) projects, design-build-operate (DBO) contracts, build-finance-operate-transfer (BFOT) projects, performance contracts, management contracts, the restructure and privatization of public institutions, etc.

Merger regulatory regime

Law No. 175/2022 which amended the Competition Law No.3/2005 and the adoption of the compliance toolkit issued in 2022 included clarifications and explanations about vertical and horizontal agreements, as well as a pre-notification regime for economic concentration. According to article 2 of the law, economic concentration is the change in control or material influence which is the result of the following cases: mergers, acquisitions or joint venture projects. The new law excluded the following practices from the definition of economic concentration: a merger or acquisition between two entities belonging to the same legal person and the temporary acquisition of securities.

The amended article 22 lists sanctions on any breach of articles 6 and 7 of the Competition Law. Also, companies that fail to notify the ECA of any transaction prior to its completion may be subject to a fine ranging between 1 and 10 per cent of the total annual turnover, assets, or value of the operation for persons of economic concentration. Also, Law No. 175/2022 states that in case of failure to calculate the mentioned thresholds, the fine will range between EGP 30 million and EGP 500 million.

As for the notification regime, following the amendments of article 19 by Law No. 175/2022, the economic concentration is examined by the authority if any of the following thresholds are met (the two levels of thresholds are not cumulative):

- The annual combined turnover of the parties exceeded EGP 900 million provided that the turnover of each of at least two parties exceeded EGP 200 million.
- The global annual combined turnover of the parties

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Labour protection

Article 9 of the Labour Law in Egypt ensures protection for employee contracts in merger and acquisition transactions. However, no other legislative provision covers labour protection in the context of competition in Egypt. Policymakers failed to include any labour protection provisions, such as the non-compete clause.

It is worth noting that even though no direct provisions address the non-compete clause, ECA has rendered a decision against anti-competitive practices through which it ensured the protection of more than 3000 employees. After investigation, it was proven that two delivery companies committed anti-competitive practices that constitute a violation of article 6 of the Competition Protection Law, as the two companies agreed to divide the markets in a manner that guarantees that no competition arises between the two companies. This was accomplished by the acquisition of minority rights by a company through access to the other company’s confidential information, market strategies, and to influence its strategic decisions. The geographic division drove one of the companies out of the Egyptian market, and consequently, thousands of employees lost their jobs.

In light of the mentioned facts, ECA obligated the two delivery companies to immediately halt the concluded anti-competitive agreements and to restore the situation as it was before the conclusion of those agreements. The decision of ECA has ensured the maintenance of thousands of jobs.

Also, according to Law No. 175/2022, the investigation of economic concentration is now done through two phases:

- First, the authority examines the application within 30 days of the notification (the period can be extended to 15 working days if commitments are submitted). Also, the authority establishes examination committees and can take the following decisions: the authority is not competent, retaining, approving, conditionally approving or referring the complaint to phase 2 of the investigation.
- Second, the authority further investigates within 60 days from the referral (the period can be extended to 15 working days if commitments are submitted). The authority can take either of the following decisions: retaining, approving, conditionally approving or rejecting the application.

It is worth noting that the Competition Law does not apply to economic concentrations that take place in any activity supervised and controlled by the Financial Regulatory Authority (a special assessment process is established according to article 19 bis e). Furthermore, the adopted amendments have expanded the controlling power of ECA, which now has the right to investigate, within 1 year, any economic concentration considered harmful to the freedom of competition. The investigations may take place even if the newly imposed thresholds do not apply, but only in the following cases: (i) if the economic concentration impedes technological development and innovation in the market; (ii) if it controls the market through the prices of the products; (iii) if it reduces the quality of the products offered to the consumers; or (iv) if it may create entry barriers or prevent the expansion of the market. Moreover, if a negative impact is established, the Competition Authority may impose measures that will limit that impact on competition. Also, pursuant to article 19 (a), economic concentration under the assessment of the Competition Authority cannot be implemented before obtaining the approval of the ECA.
RECOMMENDATIONS

The following recommendations are based on best and concrete practices/provisions that exist in several jurisdictions:

- Article 2 of the Competition Law should include definitions for several basic anti-competition practices, such as monopoly, cartel, transparency and veto power (in mergers and acquisitions).

- Policymakers in Egypt must issue guidelines and determine the list of horizontal agreements that are exempted from the Competition Law.

- Markets should be further liberalized for some vital sectors, (especially where State-owned enterprises operate), and State interventions should be based on specific conditions/circumstances.

- There should be further cooperation between the ECA and other public authorities (such as consumer protection, customs, and the Central Bank).

- Labour protection provisions should be added, such as the non-compete clause.