

Legislative Developments and Proactive Enforcement of the Egyptian Competition Law (“ECL”)

I. Proactive Enforcement Policy of the ECL by the ECA

Abuse of Dominance. The Egyptian Competition Authority (“ECA”) has recently adopted broad interpretation of the abuse of dominance rules under the ECL, whereby the ECA has considered each of fixed resale price maintenance, wide most favorite nation clause, margin squeeze, and restriction of passive sales to be an abuse of dominance in violation of the ECL.

Bid Rigging. The ECA has established a dedicated unit for bid rigging detection and launched its campaign “No to Collusions in Government Contracts.” We note an increase in the detected bid rigging cases involving markets such as medical goods, veterinary goods, and school books.

II. Adoption of the Pre-Closing Merger Control Regime in Egypt

The Egyptian Merger Control Regime (“EMCR”) has been introduced by virtue of an amendment of the ECL (“**Amendment**”), followed by an amendment of the Executive Regulations of the ECL (“**Amended ER**”), which implements the EMCR. The EMCR shall be implemented as of 1st of June 2024.

The EMCR is suspensory. Transactions that satisfy the following requirements must be filed and pre-approved by the ECA:

1. Economic Concentration Requirement: transactions shall satisfy this requirement if they involve any change in the control or material influence over a person or several persons resulting from any of the following:

- a. a merger;
- b. direct or indirect acquisition of control of a person(s); or
- c. the establishment of a full-functional joint venture.

2. Financial Thresholds Requirement: One of the following **financial thresholds** must be satisfied:

a. Threshold no. (1): This threshold consists of two sub-thresholds that must be satisfied collectively, as follows:

- i. The achieved combined audited annual turnover or the combined assets in Egypt pertaining to the concerned parties (and their related parties) (“**Concerned Parties**”) of the last year **exceed EGP 900 million**; and
- ii. The combined audited turnover of each of at least two of the Concerned Parties achieved in Egypt **exceeds EGP 200 million**.



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b. Threshold no. (2): This threshold consists of two sub-thresholds that must be satisfied collectively, as follows:

- i. the worldwide combined audited annual turnover or combined assets pertaining to the Concerned Parties of last year exceed EGP 7.5 billion; and
- ii. the combined audited turnover of at least one of the Concerned Parties achieved in Egypt exceeds EGP 200 million.

• In addition, we note the following:

- Control and material influence are defined very broadly under the Amended ER.
- Foreign-to-foreign concentrations that satisfy the filing requirements are notifiable.
- Companies conducting activities subject to the supervision of the Financial Regulatory Authority (“**FRA**”) must obtain its prior approval on their economic concentrations. The FRA shall procure the opinion of the ECA before issuing its approval.
- The review process of the filing is divided into phase (1) and phase (2) reviews.
- The ECA does not recognize the COMESA Competition Commission (“**CCC**”) as a one-stop shop. However, this issue still needs to be confirmed, as it will be subject to further discussions between the ECA and the CCC.
- Failure to notify ECA will subject the parties to severe financial penalties up to 10% of the total annual turnover, the asset value of the Concerned Parties or the transaction value, whichever is higher, or EGP 500 million if calculation of such percentage is not feasible.





Practice Area News

ECA's Request of Public Opinion on its Initial Draft of Dominance Assessment Guidelines and Market Definition Guidelines. Last September 2023, the ECA published initial draft guidelines on market definition and dominance assessment for public opinion. The ECA is expected to publish the final version of these guidelines soon. The ECA issued previously several guidelines such as cartel leniency guidelines, combating bid rigging guidelines, and competition impact assessment of regulations.

ECA's Efforts to Ensure Competitive Neutrality (1). The ECA has recently focused on anticompetitive practices by governmentally owned companies to ensure competitive neutrality in the Egyptian market. For example, on **January 20, 2024**, the ECA announced that two distributors wholly owned by a single governmental body operating in the bitumen 60/70 are considered related parties, and they abused their dominance by tying the sale of Bitumen 60/70 to the purchase of bituminous emulsions and solutions.

ECA's Efforts to Ensure Competitive Neutrality (2). In line with its efforts to ensure competitive neutrality, the ECA announced on **March 9, 2024**, that a governmentally owned telecom company abused its dominance in the market for provision of landline services by making the sale of such services conditional on subscription by customers in its fixed internet service. The ECA issued a cease-and-desist order against the telecom company to cease its tying practice.

The ECA Issued a Violating Decision Against 20 Ice Slabs Production Factories. On **March 2, 2024**, the ECA announced that 20 ice slab companies agreed to fix and increase their prices based on geographic area and type of consumers (particularly the customers of concrete companies) through three different horizontal agreements. The ECA has initiated the legal procedures against the companies in breach and ordered them to cease such anticompetitive practices.

In the Firm

• **Matouk Bassiouny** is a leading full-service MENA law firm with over 250 lawyers operating out of its offices in Cairo, Egypt (Matouk Bassiouny & Hennawy), Dubai and Abu Dhabi, United Arab Emirates (Matouk Bassiouny), Khartoum, Sudan (Matouk Bassiouny in association with AIH Law Firm), and Algiers, Algeria (Matouk Bassiouny in association with SH-Avocats)

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