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Egypt

Competition Litigation

Contributor

Matouk
Bassiouny
& Hennawy

Matouk Bassiouny & Hennawy

Dr. Mohamed Shehata

Partner and Head of Litigation | mohamed.shehata@matoukbassiouny.com

Dr. Amr Abbas

Partner and Head of Arbitration | amr.abbas@matoukbassiouny.com

Mariam Metwally

Senior Associate | mariam.metwally@matoukbassiouny.com

Hesham El Wakeel

Associate | hesham.elwakeel@matoukbassiouny.com

Mohamed Abdelhay

Associate | mohamed.abdelhay@matoukbassiouny.com

This country-specific Q&A provides an overview of competition litigation laws and regulations applicable in Egypt.

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Egypt: Competition Litigation

1. What types of conduct and causes of action can be relied upon as the basis of a competition damages claim?

As a matter of principle, Egyptian law recognizes anticompetitive practices as faults that give rise to (i) tortious liability under the Egyptian Civil Code (the "ECC") and (ii) criminal liability under the Egyptian Competition Law No. 3 of 2005 (the "ECL").

The types of misconduct that form anticompetitive practices are:

- i. Hardcore cartels, which are "per se crimes" defined by Article 6 ECL as:- arrangements or agreements between competitors, in a specific market, that may lead to:
 - a. increase, decrease or fix the prices of a product;
 - b. divide or allocate markets for specific geographic areas, distribution centers, types of clients or products, market shares, or specific periods of time;
 - c. coordinate in submitting to, or refraining from, tenders, bids and other calls for procurement; or
 - d. restrict the production, distribution or marketing of a product.
- ii. Vertical restraints, which are "rule of reason crimes" broadly defined by Article 7 ECL as:- arrangements or agreements between a person and his supplier or clients in a manner that shall limit competition.
- iii. Abuse of dominance, which is defined by Articles 4 and 8 ECL as:- actions committed by a dominant person (whose market share exceeds 25% and has the power of affecting the prices or supply of a product unilaterally without its competitors having the ability to prevent that) to achieve any of the following:
 - a. partially or fully stay the manufacture, production or distribution of a product for a certain period(s);
 - b. refrain from concluding arrangements or agreements, or ceasing to deal, with a person, regarding products, in a manner that results in restricting that person's freedom to access or exit the market at any time;
 - c. limit the distribution of a product, on the basis of geographic areas, distribution centers, clients, seasons or periods of time among vertically-related persons (*this is a per se crime*);
 - d. impose a condition that, in concluding a sale or purchase arrangement or agreement of a product, requires acceptance of obligations or products that are unrelated, by their nature or by commercial customs, to the original transaction/agreement (*this is a per se crime*);
 - e. discriminate between suppliers or clients having similar commercial positions, in concluding any arrangement or agreement, whether on the grounds of pricing, types of products, or any other terms of the transaction;
 - f. refuse to produce or provide a product that is circumstantially scarce when its production or provision is economically possible (*this is a per se crime*);
 - g. oblige dealers to block a competitor's access to their utilities or services, despite this being economically viable;
 - h. sell products below their marginal cost or average variable cost; or
 - i. oblige a supplier not to deal with a competitor.
- iv. Abusive economic concentration: which is any change in the control or material impact of a person, upon merger or acquisition, that shall limit or adversely affect competition (Articles 1(g), 19 bis(a) and (b) ECL). This mandates that economic concentrations must be approved, in advance, by the Egyptian Competition Authority ("ECA").

2. What is required (e.g. in terms of procedural formalities and standard of pleading) in order to commence a competition damages claim?

To commence competition damages claim in Egypt, it is formally required to either (i) initiate civil proceedings before the competent civil court or (ii) – in ongoing criminal proceedings pushed by the ECA – file a claim for damages, whether subordinately to the criminal proceedings or in a standalone damages claim.

- i. **Standalone damages claims**

Irrespective of criminal proceedings for a violation under the ECL, a harmed party(s) can claim damages from anticompetitive practices by initiating separate proceedings before the civil division of Egyptian Economic Courts. Pursuant to Law No. 120 of 2008, Economic Courts have exclusive subject-matter jurisdiction to hear claims initiated under the ECL.

Procedurally, harmed parties are required to follow the ordinary procedures of filing claims in tort (see below Question 14).

ii. Subordinate damages claims

Where there are criminal proceedings ongoing for an ECL violation, it is possible for the harmed party(s) to file a subordinate claim for damages before the competent Public Prosecution "PP" or the criminal division of the Economic Court that is examining the ECL Violation (see Question 14).

3. What remedies are available to claimants in competition damages claims?

Egyptian law entitles harmed parties to claim monetary compensation in competition damages claims. There are no specific rules governing the calculation of compensation for uncompetitive practices, thus, the general principles of the ECC apply (see Question 4).

4. What is the measure of damages? To what extent is joint and several liability recognised in competition damages claims? Are there any exceptions (e.g. for leniency applicants)?

Damages are measured by the lost profit and actual losses, as per the general provision of Article 221 ECC. In the absence of an accurate interpretation of "lost profits" and "actual losses", Egyptian courts exercise broad discretion in assessing the elements of damage. In tortious claims, it is established by civil courts that compensation includes direct damages that are both anticipated and unanticipated. This, however, does not apply to criminal courts, where unanticipated damage is excluded (see Question 14). In practice, Egyptian courts customarily use the help of expert(s) – registered by the Egyptian Ministry of Justice – to recommend compensation.

Joint liability of juristic persons is recognized by Article 25/2 ECL. The liability is statutorily equated between the tortfeasors and juristic persons, unless otherwise decided by the court (Article 169 ECC).

Regarding leniency, Egyptian law – contrary to the explicit provision for leniency in criminal proceedings – is silent about any privileges granted to leniency applicants in damages claims.

5. What are the relevant limitation periods for competition damages claims? How can they be suspended or interrupted?

The limitation period for torts, e.g., competition damages claims, is generally 3 years from the date of knowing about the violation or 15 years from the date of committing the violation (Article 172(1) ECC).

The above limitation, however, is statutorily suspended until the limitation period for criminal proceedings expires. This is established by Egyptian case law under Articles 172(2) and 382(1) ECC.

As the ECL violations are misdemeanors, the limitation period for initiating criminal proceedings is 3 years from the date of committing the violation. Where the violation is continuous, the limitation period starts after the last continuous act stops.

Given so, the limitation for competition damages resumes after expiry of the limitation for the criminal proceedings.

6. Which local courts and/or tribunals deal with competition damages claims?

Economic Courts have exclusive subject-matter jurisdiction (see Question 2).

7. How does the court determine whether it has jurisdiction over a competition damages claim?

Economic courts have jurisdiction over competition damages claims (see Question 2).

8. How does the court determine what law will apply to the competition damages claim? What is the applicable standard of proof?

By virtue of Law No. 120 of 2008, Economic courts must presumably apply the ECL to be competent of the competition damages claim.

In form, Economic courts shall abide by the relevant procedural code, i.e., the Civil and Commercial Procedures Code "CCP" (for standalone damages claims examined by civil division of Economic courts) and the

Criminal Procedures Code "CRP" (for subordinate damages claims examined by the criminal division of Economic courts).

On the merits – absent any rules governing competition damages – Economic courts apply the general rules of the ECC (see Question 4).

The applicable standard of proof is generally subject to the Egyptian Evidence Law ("EEL"), whereby the harmed party shall establish the elements of tortious liability (fault, harm and causal link), and the tortfeasor shall negate these elements to avoid liability. Nonetheless, in the competition context, it is possible that the burden of proof shifts under the ECL as *lex specialis*. For instance, in the *per se competition crimes*, the harmed party needs only to establish the fault.

9. To what extent are local courts bound by the infringement decisions of (domestic or foreign) competition authorities?

There is no statutory requirement for Economic courts to respect infringement decisions.

In practice, Economic courts tend to uphold the domestically rendered decisions of ECA. Conversely, foreign infringement decisions are likely to form mere "facts" that must be supported by admissible evidence.

10. To what extent can a private damages action proceed while related public enforcement action is pending? Is there a procedure permitting enforcers to stay a private action while the public enforcement action is pending?

For standalone damages claims, civil Economic courts are statutorily required to stay the civil *private damages actions* until the criminal *public enforcement actions* are finalized (Articles 265(1) CRP). This is because civil courts are statutorily obliged to abide by criminal findings in relation to the conviction/acquittal from the violation, the nature of such violation and the relation of the violation to the tortfeasor (Article 456 CRP).

For subordinate damages claims, criminal Economic courts examine both the criminal proceedings and the relevant damages claim simultaneously.

11. What, if any, mechanisms are available to aggregate competition damages claims (e.g.

class actions, assignment/claims vehicles, or consolidation of claims through case management)? What, if any, threshold criteria have to be met?

Egyptian law does not recognize class actions.

However, it is possible to request joinder of related proceedings – which involve the same parties and subject-matter – to be examined simultaneously in one proceeding.

12. Are there any defences (e.g. pass on) which are unique to competition damages cases? Which party bears the burden of proof?

No. For burden of proof, see Question 8.

13. Is expert evidence permitted in competition litigation, and, if so, how is it used? Is the expert appointed by the court or the parties and what duties do they owe?

Yes, expert evidence is generally recognized under Egyptian law (Article 135 EEL).

In practice, courts tend to refer disputes to an expert panel composed of 1 or 3 experts, to make fact findings in the harmed party's claims. It is possible for parties to agree on an expert panel, however, typically, courts appoint the expert panel from those listed at the Ministry of Justice (Article 136 EEL).

The expert schedules inquisitorial sessions, in the presence of all parties, and thereafter, renders an opinion that is not binding to, but is typically upheld by, courts.

14. Describe the trial process. Who is the decision-maker at trial? How is evidence dealt with? Is it written or oral, and what are the rules on cross-examination?

In standalone damages claims, the harmed party(s) files a written statement of claim enclosing: description of the harmed party, his legal representative and the tortfeasor (name, title, occupation and domicile), the facts, claims, and legal basis (Article 63 CCP). Written evidence – typically copies – are submitted at the registration of the case (Article 65(3) CCP). Afterwards, the clerks' bureau schedules the first hearing and refers to the court bailiffs' bureau to serve the defendant(s) of the case (Article 67

and 68 CCP).

During the proceedings, the harmed party(s) and tortfeasor(s) can attend, in person or by proxy (Article 72 CCP). Defenses can be orally pleaded (Article 97 CCP); however, it is typical, in civil proceedings, that parties exchange defenses in writing (i.e., defense memoranda supported by documents). Admissible evidence includes original documents issued in Arabic and officially translated original documents issued in foreign languages. Courts may resort to experts (see Question 13) or testimony, by issuing procedural orders before adjudicating the case. There is no cross-examination in Egypt; parties are statutorily required to address their questions to the court, which in turn interrogates the witnesses (Article 87 EEL).

In damages claims relating to criminal proceedings, it is important to first understand how criminal proceedings are initiated. The ECA, *ex officio* or upon request, initiates thorough investigation of potential anticompetitive practice. If violations are unraveled, the ECA can issue precautionary measures (e.g., suspend the violations for a temporary period to avoid irreversible damages, Article 20 ECL). However, fines can only be imposed via courts.

Where feasible, the ECA refers the case to the competent PP, which – if convinced of the accusation – raises the matter to the criminal division of Economic courts to finalize the investigation and convict/acquit the tortfeasor(s).

During the investigation by the PP or court, the harmed party can file *subordinate damages claim*, by either: - recording his claim in the hearing minutes (if the tortfeasor attended in person) or by serving the tortfeasor via court bailiffs (Article 251 CRP). Alternatively, the harmed party can initiate *separate damages claim* before the civil division of Economic courts (Article 265 CRP).

For *subordinate damages claim*, the criminal Economic court applies the CRP. For instance, CRP excludes "unanticipated" damage from compensation (Article 251 *bis*). Also, oral pleadings are commonly held in criminal courts. Regarding evidence, criminal courts are typically strict about the accepted evidence and may dispense with original documentation (which is typically binding to civil courts).

For *separate damages claim*, the above rules for standalone cases apply.

15. How long does it typically take from

commencing proceedings to get to trial? Is there an appeal process? How many levels of appeal are possible?

Standalone damages claims commence by trial (see Question 14). There is no timeframe, but it is typical for civil Economic courts to finalize proceedings in 2 years. The claim could be heard, *ab initio*, in appellate circuits if the claim amount is EGP 15,000,000 or more, i.e., approx. USD 310,000 (Article 6 of Law No. 120 of 2008); otherwise, the claim would be heard in first instance. For the levels of appeal, it is a 3-level hierarchy: first instance, appeal and cassation.

For damages claims relating to criminal proceedings, the investigation by ECA could take up to 2 years. Thereafter, PP proceedings could take months, before reverting to courts. Trial commences before first instance circuits, with the possibility to challenge before appellate circuits and cassation (Articles 5 and 12(5) of Law No. 120 of 2008).

It is worth noting that, in competition challenges, the Cassation Court exceptionally reviews claims on the merits, if it decided to overrule the challenged decision (Article 12(5) of Law No. 120 of 2008).

16. Do leniency recipients receive any benefit in the damages litigation context?

No.

17. How does the court approach the assessment of loss in competition damages cases? Are "umbrella effects" recognised? Is any particular economic methodology favoured by the court? How is interest calculated?

Please see Question 4.

18. How is interest calculated in competition damages cases?

Egyptian law recognizes a statutory interest of 4% for delayed payments in civil context. The interest applies as of commencing litigation proceedings unless otherwise provided (Article 226 ECC).

19. Can a defendant seek contribution or indemnity from other defendants? On what basis

is liability allocated between defendants?

Please see Question 4.

20. In what circumstances, if any, can a competition damages claim be disposed of (in whole or in part) without a full trial?

None.

21. What, if any, mechanism is available for the collective settlement of competition damages claims? Can such settlements include parties outside of the jurisdiction?

Egyptian law does not recognize collective settlements.

It is not prohibited to settle with parties outside the jurisdiction, however, careful legal coordination is required to ensure enforceability of the settlement.

22. What procedures, if any, are available to protect confidential or proprietary information disclosed during the court process? What are the rules for disclosure of documents (including documents from the competition authority file or from other third parties)? Are there any exceptions (e.g. on grounds of privilege or confidentiality, or in respect of leniency or settlement materials)?

The court process in Egypt is public, unless otherwise ordered by the court – *ex officio* or upon request – to maintain public order or morality or family relationships (Article 101 CCP). Typically, any document presented in court is public. Also, judgments must be issued in public (Article 174 CCP).

On the other hand, the ECL prohibits ECA from disclosing any data, except before the public prosecution or courts. Also, ECA ex-officials are prohibited, for 2 years after leaving ECA, from working with any party that was subject to investigation (Article 16 ECL).

23. Can litigation costs (e.g. legal, expert and court fees) be recovered from the other party? If so, how are costs calculated, and are there any circumstances in which costs recovery can be

limited?

No.

24. Are third parties permitted to fund competition litigation? If so, are there any restrictions on this, and can third party funders be made liable for the other party's costs? Are lawyers permitted to act on a contingency or conditional fee basis?

Third party funding is not regulated under Egyptian law.

Lawyers can act on success rate up to 20% (Article 82 of Advocacy Law No. 17 of 1983).

25. What, in your opinion, are the main obstacles to litigating competition damages claims?

Introduced in 2005, anticompetitive practices are relatively new to the Egyptian legal system:

- There is limited case law to facilitate the understanding and control of such harmful practices.
- Demonstrating a causal link between the fault and the harms can be challenging, especially in the standalone cases not backed up by ECA investigation.
- Absent any class actions, claimants tend to file separate proceedings. This increases the workload of Economic courts, which were established to create "fast-track" litigation.

26. What, in your opinion, are likely to be the most significant developments affecting competition litigation in the next five years?

The ECA is proactive lately, and thus, we expect this to increase awareness of anticompetitive practices.

Our experience shows that, while several businesses and consumers are harmed by anti-competitive practices, they have limited awareness of their rights to redress under the ECL.

Thus, increasing awareness of ECL violations will echo before the ECA, thereby unraveling anticompetitive practices. Similarly, increasing awareness of the associated fines for ECL violations is likely to deter market power abuse.

Contributors

Dr. Mohamed Shehata
Partner and Head of
Litigation

mohamed.shehata@matoukbassiouny.com



Dr. Amr Abbas
Partner and Head of
Arbitration

amr.abbas@matoukbassiouny.com



Mariam Metwally
Senior Associate

mariam.metwally@matoukbassiouny.com



Hesham El Wakeel
Associate

hesham.elwakeel@matoukbassiouny.com



Mohamed Abdelhay
Associate

mohamed.abdelhay@matoukbassiouny.com

