

## **Background Note for Session 5: Business Environment and Investment Climate – Antitrust & Competition in MENA**

**Expert Group Meeting on 12 and 13 June 2014**

### **Summary**

Market failures due to rent-seeking behavior and centralization of economic power within elite circles are among the triggers for the political upheaval in the MENA region, since they – for example - translate into rising levels of unemployment (especially among the youth), an unhealthy bias towards public service employment and a general lack of competitiveness of the private sector. Given that governments remain a strong force in the economic environment and with the expectation of serving towards fostering development and equitable, legal instruments and institutions tackling competition and antitrust issues become an important tool for policy makers. Recent developments towards the adoption of antitrust measures and competition legislation link to development, growth and trade, while at the same time influences employment, independence of the private sector and reduction of corrupt practices in the MENA region. We hope to gain from the discussions during this session a set of practical recommendations, for both the short and long term, to improve economic governance in relation to competition within markets. Furthermore, we would like to develop better measures for monitoring and evaluating the progress and concrete outcomes of any reforms implemented by member countries in order to develop best practices. In sum, the purpose of this session is to: a) discuss the current status of antitrust and competition policies in the Arab region; b) extract lessons learned that can be scaled and transferred to other countries within and beyond the region; and c) outline short-term and medium-term responses of countries in the region to address antitrust and competition issues effectively

### **Suggested questions for discussion:**

- How exactly can we best monitor the fair implementation and enforcement of antitrust and competition laws? How can we develop methods of measuring the effects of competition/anti-trust legislation on growth, employment, inequality, etc. and disaggregate the legislation itself from other effects? What measures can be taken to improve these types of legislation, increase transparency, and make enforcement viable, particularly for smaller economies where anti-trust legislation can be costly?
- How to both detect and reduce economic collusion, particularly involving the government, that may hinder the implementation of anti-trust legislation or decrease its efficacy?
- How can we leverage current initiatives geared towards developing, implementing and/or improving competition legislation?

**Table 1: UN-ESCWA Member Countries and their global competition rankings**

<b>Country:</b>	<b>Competition Ranking (WEF): Global</b>	<b>Competition Ranking (WEF): Member States</b>
Bahrain	10	3
Egypt	124	11
Iraq	N/A	N/A
Jordan	38	6
Kuwait	98	10
Lebanon	54	8
Libya	145	13
Morocco	53	7
Oman	12	4
Palestine	N/A	N/A
Qatar	4	2
Saudi Arabia	20	5
Sudan	N/A	N/A
Syria	N/A	N/A
Tunisia	95	9
UAE	3	1
Yemen	133	12

Source: World Economic Forum, The Global Competitiveness Report 2013-2014, Competition Rankings

## Introduction and context in MENA

Competition in markets and across all sectors is deemed crucial for economic growth and for consumer choice in the interest of better quality and efficiency. Healthy levels of competition are directly linked to increase in productivity (i.e. per capita growth), increased employment opportunities together with increases in wages and salaries, as well as – in the long run – a relatively improved position of a nation's economy in terms of global competitiveness and ability to participate in international trade.<sup>1</sup> The lack of competition within the private sector and between the private and public sector in the MENA region is cited as a major development challenge, which causes lagging behind in technological infrastructure (e.g. telecommunication standards)<sup>2</sup>, high unemployment rates (particularly among women and youth) and leads to sub-optimal public service employment.

The issue of competition is linked to overall challenges associated with inefficient market structures and governance systems. Over time these led to heavily concentrated economies, through collusion, centralization of economic power among a few elites, and rent-seeking behavior in the Arab States. To address antitrust and competition challenges, the UNESCWA Member Countries – with the exception of

<sup>1</sup> Nallari, R., & Griffith, B. (2013). *Clusters of Competitiveness*. World Bank Publications.

<sup>2</sup> <http://www.itp.net/596775-world-bank-calls-for-more-mena-broadband-competition>

Bahrain, Lebanon and Oman - decided on and implemented various regulations and policy measures to address competition issues (see a summary in Annex table 2).

Generally, the adoption of competition laws has been linked to economic development, in particular through the attraction of foreign direct investment, efficient distribution of resources, and an increase of the benefits of privatization.<sup>3</sup> Other studies show that competition laws enhance markets, sustain an effectual legal system, most efficiently distribute goods and services, lower corruption in economies in transition, and decrease the negative effects of rent-seeking during market reforms.<sup>4</sup> To this end there is room for improvement in the MENA region and given the diverse economic profiles across the region (e.g. middle-income countries, least developed countries), there are others who argue that small, developing economies should focus more on the cost-effective policy of trade liberalization and allow highly concentrated economies due to low consumer purchasing power within the country and to enable economies of scale. Nonetheless, focusing on equitable growth within a country, improved governance and regulation of competition within markets is a useful tool to assure effective and efficient distribution of resources gained through economic development.<sup>5</sup>

The World Economic Forum publishes the Global Competitive Index (GCI) determining the competitiveness of individual world economies and their comparative ranking. It is defined as “the set of institutions, factors, and policies that determine the level of productivity of a country taking into account its level of development.”<sup>6</sup> One of the major pillars composing this ranking index of global competitiveness is the quality of competition within each country’s economy (for an overview on the global and the regional ranking of UNESCWA countries see table 1). The competition ranking is a composite measure of the intensity of competition and market dominance within the country, as well as the effects of anti-monopoly policy, taxes and tariffs, and business registration processes/costs on the presence of competitive markets. Poor rankings of currently non-conflict or non-LDCs, such as those for Kuwait or Egypt, indicate an overall feeling that competitive markets are both weak and unsupported by the current institutions, while higher rankings for countries such in the GCC, indicate the opposite.

In addition, the ranking also leaves room to interpret the issue in MENA not only being the mere drafting and/or adoption of a regulatory framework on competition and antitrust, but rather the effective implementation and enforcement. Some researchers assert that the passage of anti-trust laws in many developing countries is just meant to be window dressing (e.g. meant to attract foreign investors) and the countries do not plan to effectively implement such laws. However, empirical research has shown that the adoption of anti-trust/competition laws remains highly correlated with their future enforcement, casting doubt on those theorists and giving credence to movements calling for the legislation of broader, stricter competition policy.

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<sup>3</sup> World Trade Organization; Paper of 18 September 1998; WT/WGTC/W/80.

<sup>4</sup> Waked, D. (2008). Competition law in the developing world: The *why* and *how* of adoption and its implications for international competition law. *Global Antitrust Review*, (1), 69-96.

<sup>5</sup> Nallari, R., & Griffith, B. (2013). *Clusters of Competitiveness*. World Bank Publications.

<sup>6</sup> <http://www.weforum.org/issues/competitiveness-0/gci2012-data-platform/>

## Competition challenges in MENA

With a history of **corruption** and cronyism, key towards effective regulatory governance of competition is the independence of the regulatory body. Although measures have been taken, such as the introduction of anticorruption agencies in the early 2000s<sup>7</sup>, the region still lags behind sub-Saharan Africa on issues of voice and accountability of the government.<sup>8</sup> Lack of transparency and government control of key industries remains both prevalent in the GCC and others sub-regions in (see example 4 on Egypt).

**Collusion** among and between economic and political actors are hindrances to development. Collusion among economic actors, and between economic and political entities, can result in large concentrations of economic wealth and a reduction in competition as detailed earlier. This type of corruption can result in unfair advantages to firms in gaining access to loans, receiving preferential treatment from government authorities, and other beneficial treatments from institutional authorities, further reducing competition within the market.

**Crowding out** of the private sector through public sector expansion (including government agencies and State-owned enterprises) goes hand in hand with low-levels on entrepreneurship in the MENA region (see Annex table 3). In result, the labour market effect is detrimental: “Employment in the public sector ranges from 22 percent in Tunisia to around 33–35 per cent in Syria, Jordan, and Egypt. Worse, if only non-agricultural employment is considered, the share of the public sector reaches 42 percent in Jordan and 70 percent in Egypt.”<sup>9</sup> In the case of the UAE, 91.7 per cent of the UAE nationals work in the public sector, but 78.4 per cent of the expatriates in the UAE work in the private formal sector<sup>10</sup>. To enhance the private sector means to ease the start-up processes for businesses and reduce barriers to entry. This can – for example - consist of measures to reduce the number of steps needed to register a business, clustering of all bureaucratic entities responsible for registration into a one-stop-shop, internal streamlining to reduce waiting time, and reducing both the costs of registration and required capital for start-up. Annex table 3 summarizes the global and regional ranking related to the “ease of doing business” in general and creating a start-up in particular. No specific MENA sub-region of member countries performs better than the other in this regard: however, the UAE leads the region and ranks 37<sup>th</sup> in the world for “Doing Business: Business start-up ranking”. The UAE does not require capital inputs, while costs of registrations equal to only 6.4% of per capita income and the administrations enables a quick registration process. In general, countries in the region lag behind the rest of the world with only Egypt and Morocco joining the UAE in the top 50 countries for the ease of business start-up.

**Monopolies**, hand in hand with lack of restrictions against abuse of dominance or monopoly power, are prevalent in the Arab region, in particular state-owned monopolies in the energy sector

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<sup>7</sup> Beschel, Robert. 2006. Corruption in the MENA region: a declining trend or more of the same?. Washington, DC. World Bank Group

<sup>8</sup> Sayan, S. (Ed.). (2009). *Economic performance in the Middle East and North Africa: institutions, corruption and reform*. Routledge.

<sup>9</sup> O’Sullivan, Rey and Mendez (2012): Opportunities and Challenges in the MENA Region By <http://www.oecd.org/mena/investment/49036903.pdf>

<sup>10</sup> The World Bank (2013): Jobs for Shared Prosperity - Time for Action in the Middle East and North Africa

("natural"/strategic monopolies), telecommunications, media and others. Furthermore, recent privatisation processes across the region favoured a replacement of public monopolies with private monopolies or oligarchies that are run by individuals with close ties to the political regimes. The widespread perception of failure of privatisation processes made privatisation a less desirable policy choice.<sup>11</sup>

### Current initiatives in the MENA region

Multiple initiatives originating from within the region or from international organizations are ongoing to encourage competition in the MENA region and across linking to other regions:

Firstly, the **United Nations Conference on Trade and Development (UNCTAD)** announced in April 2014 the launch of a new competition and consumer protection program for the MENA region to be implemented between 2014 and 2019 (Box summarises its main purposes). UNCTAD follows the success of implementing a competition and consumer protection program (COMPAL) in Latin America, which has already been exported to Africa. In Latin America, where the program has been running for nearly ten years, it has been regarded highly (Beginning with 5 member countries, they now number 13, where the majority of new members asked to join, "even at their own expense.") Two independent audits of the program lauded it has having improved institutions in Latin America and having a positive impact.<sup>12</sup>

Moreover, UNCTAD's Intergovernmental Group of Experts (IGE) on Competition Law and Policy as a standing body established under the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (UN Set) monitors the application and implementation of the Set. The UN Set is a multilateral agreement on competition policy, which was negotiated and adopted by General Assembly resolution 35/63 on 5 December 1980. The Set: i) provides a framework for international operation and exchange of best practices; ii) recognizes the development dimension of competition law and policy; and iii) provides for equitable rules for the control of anti-competitive practices. As such the Intergovernmental Group of Experts could support UNESCWA Member Countries in the following areas: Competition policy and public procurement, knowledge and human resource management for effective competition law enforcement, cross-border anti-competitive practices: The challenges for developing countries and economies in transition, discussion of revised chapter III (Restrictive agreements and arrangements) and chapter VIII (Some possible aspects of consumer protection) of the UNCTAD Model Law on Competition Legislation, as well as with tripartite peer review of competition law and policy in selected countries.

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<sup>11</sup> Saidi & Ahmad (2011): The Arab Spring emphasises better corporate governance of state-owned enterprises. <http://dx.doi.org/10.1787/9789264169111-4-en>

<sup>12</sup> <http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=548>

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**Box 1: UNCTAD MENA Compal**

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1. “To enhance MENA countries’ effective capacities to adopt and implement regional competition programmes, through the introduction of national competition policy and legal frameworks, institution building including the establishment of competition agencies, training of enforcers and regional cooperation initiatives.
2. To enhance MENA countries’ effective capacities to adopt and implement regional consumer protection programmes, through the introduction of national consumer protection policy and legal frameworks, institution building including the establishment of consumer protection agencies, training of enforcers and regional cooperation initiatives.
3. To help companies and business associations comply with competition and consumer protection laws and regulations, through advocacy for voluntary compliance, for integrating the informal sector into the formal economy and for eliminating unfair trade practices, as well as through workshops, and the publication of guidelines on the substantive application of competition and consumer protection laws and regulations and guidelines on leniency programmes.
4. To assist MENA countries in the establishment of an effective dialogue between policymakers for coherence between competition, consumer and other public policies, in the adoption of competition neutrality frameworks, and in the implementation of Regulatory Impact Analyses so to avoid unnecessary burdens to competition.
5. To enhance cooperation among MENA countries in competition and consumer protection issues through the establishment of an Advisory Group of Experts for COMPAL MENA and of a knowledge management platform to facilitate experience and knowledge sharing.”

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Sources: Cited from UNCTAD (2014): COMPAL GLOBAL: support to MENA countries (Source: [http://unctad.org/meetings/en/SessionalDocuments/CCPB\\_Event230414\\_Note\\_ICNSide\\_EN.pdf](http://unctad.org/meetings/en/SessionalDocuments/CCPB_Event230414_Note_ICNSide_EN.pdf))

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Secondly, the six members of the **Cooperation Council for the Arab States of the Gulf (GCC)** agreed to develop a “Standard GCC Competition and Anti-Monopoly Law” as an extension to the GCC Unified Commercial Policy Law (see Annex). For example, the recent law on Anti-trust and competition in the UAE is considered a “positive development to the UAE’s regulatory environment and is part of a wider GCC anti-trust legislative effort”.<sup>13</sup> The overarching GCC legislation for comprehensive anti-monopoly laws would be broad reaching and cover all economic activity in the GCC. The scope of the law applies to all practices that affect competition within one or more GCC country. Although some GCC countries have expressed reservations about the law, it is currently under revision in the hopes of reaching a consensus.<sup>14</sup>

Thirdly, the **International Monetary Fund (IMF)** in their report Arab Countries in Transition (ACTs) in the region stipulates – among other reforms - as a medium-term challenge the need for “a more transparent and competitive environment for doing business through the new investment code, competition law, bankruptcy law, and trade facilitation measures”.<sup>15</sup> Competition is deemed particularly important to improve public procurement. The IMF thus continues its work in the region on trade competitiveness and growth as well as on financial sector improvement. Overall, the IMF, in their analysis of transitioning

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<sup>13</sup> Momany (2012): UAE Legislative Update – The UAE Promulgates a Competition Law

<sup>14</sup> <http://www.timesofoman.com/News/Article-22697.aspx>

<sup>15</sup> IMF (2014): Arab Countries in Transition - An update on Economic Outlook and Key Challenges (<http://www.imf.org/external/np/pp/eng/2014/040914.pdf>)

countries, has stressed the need for quicker reforms in order to combat persistent weak growth, low levels of investment, and high unemployment. A laundry list of recommendations has been made, including identified need for multiple reforms aimed at improving the competitive climate of target countries: As discussed earlier, business regulations and startup procedures need to be relaxed in order to encourage business creation and investment. As well, this enabling environment should be coupled with strengthening of current anti-monopoly regulations and institutions in order to open up markets to more competition, new business opportunities, and integration into the global marketplace.<sup>16</sup>

And last but not least, the **Organisation for Economic Co-operation and Development (OECD)** has prepared “Guidelines on Corporate Governance of State-Owned Enterprises”<sup>17</sup>, which – among other points – stipulates that State-owned Enterprises (SOEs) should not be subject to any preferential treatment, i.e. exemption from the application of laws. However, it is recognized “[...] that in some countries SOEs may be exempt from a number of laws and regulations, especially where statutory corporations and other SOEs operating in a non-standard corporate form are concerned. *Derogations from competition law sometimes occur, which is generally justified where natural and legal monopolies are concerned but which can become problematic if the same SOEs engage in competitive activities in other market segments.* SOEs are also in some cases not covered by bankruptcy law and creditors sometimes have difficulties in enforcing their contracts and in obtaining payments. Such exemptions from the general legal provisions should be avoided to the fullest extent possible in order to avoid market distortions and underpin the accountability of management”<sup>18</sup>. While these draft guidelines address the OECD Member Countries, they were drafted with input from the Task Force on Corporate Governance of State-Owned Enterprises in MENA, in which UNESCWA is an active member. With competition policies and institutions in the region being relatively new, the investigation of SOEs poses a specific challenge.<sup>19</sup>

## The Way Forward...

The present Expert Group Meeting is an opportunity to review the current state of play on antitrust and competition in the Arab region and to chart a path for Governments, international organizations and other stakeholders concerning related short-term, medium-term and long-term priorities and plans for action.

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<sup>16</sup> IMF (2014): Arab Countries in Transition: An Update on Economic Outlook and Key Challenges. <http://www.imf.org/external/np/pp/eng/2014/040914.pdf>

<sup>17</sup> The OECD has invited comments on the draft by September 2014: <http://www.oecd.org/daf/ca/public-consultation-guidelines-for-soes-2014.htm>

<sup>18</sup> Draft Guidelines on Corporate Governance of State-Owned Enterprises, p. 23, OP 95 (<http://www.oecd.org/daf/ca/public-consultation-guidelines-for-soes-2014.htm>)

<sup>19</sup> OECD (2013): State-Owned Enterprises in the Middle East and North Africa - Engines of Development and Competitiveness? (see: [http://www.oecd-ilibrary.org/governance/state-owned-enterprises-in-the-middle-east-and-north-africa\\_9789264202979-en](http://www.oecd-ilibrary.org/governance/state-owned-enterprises-in-the-middle-east-and-north-africa_9789264202979-en))

## Annex 1 - Selected country examples

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### Box 2: Bahrain – Integration of “competition” concept in other legislation

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The country is ranked highly in terms of its “effectiveness of Anti-Monopoly Policy” even without specific antitrust regulation, but by means of explicitly referencing the concepts of “competition” and “antitrust” in other legislations:

- “Article 117 of the Constitution stipulates that a monopoly can only be awarded by law and for a limited time.
- The Civil Code provides that a contract which is assumed either for no consideration or for consideration which is contrary to public order or morality is void.
- Articles 59 to 64 of the Law of Commerce apply to traders and to all commercial activities undertaken by any person, even if an individual is not a trader. The Law has a section on unfair competition which includes the following provisions:
  - the owner of a trade name and trade mark is protected. A trader is prohibited from fraud and cheating when marketing his goods and prohibited from disseminating false or misleading information, or using methods with regard to the origin/description of his goods or importance of his trade or credentials, which might have damaging effects on his competitors or might attract the customers of a competitor;
  - a trader is prohibited from inducing the workers or employees of a competitor to assist him in attracting his rival's customers or to leave their employment with a view to learning the secrets of his competitor; and
  - a person engaged in the business of supplying information to commercial houses about conditions of traders is prohibited from supplying untrue statements about the behaviour or financial standing of a trader.
- The Telecommunications Law (Decree 48 of 2002) contains competition law provisions that only apply to the telecommunications industry.”

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Sources: Cited from: <http://us.practicallaw.com/9-500-6281#a862183>

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### Box 3: Jordan’s Competition Law

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Jordan is a country in the Mashreq region with a lower level of development than the UAE and much more pressing economic issues. Overall unemployment hovers around 12%, but sits above 20% for youths and above 40% for women. As well, GDP growth has stagnated to just over 2% over the past few years. However, Jordan is also ranked 40th in the world and best outside the GCC for the region in enabling trade. Through good governance and encouragement of competition, Jordan could seize on these opportunities to work towards fixing the challenges of growth, unemployment and inequality within the country.

Jordan instituted its Competition Law in 2004, establishing a wide-reaching, detailed law to encourage “free prices, free competition and a market economy.” The comprehensive law applies to activities both within Jordan and outside affecting Jordan’s economy, created a Directorate of Competition to oversee implementation, and included consumer protection. Without looking at implementation and enforcement, this law, similar to European anti-trust regulations, addresses a broad range of issues and has the potential to have large positive effects on competition and markets in Jordan.

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Sources: Lawrence, R. Z., Hanouz, M. D., & Moavenzadeh, J. (2014). The global enabling trade report 2014. World Economic Forum. Geradin, D. (2004). Competition law and regional economic integration: an analysis of the Southern Mediterranean countries. World Bank Publications.

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**Box 4: United Arab Emirates inequality, competition law and SOEs**

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The UAE, one of 6 GCC member countries, is one of the wealthiest nations within the GCC and the Arab region as a whole. Relative to their neighbors, they have made significant strides capitalizing on their resources to reduce inequality in the country. In the 2011 Human Development Report, they were the highest ranked country in the region with regards to inequality adjusted HDI, and on the issue of gender inequality, the 2013 Global Gender Gap Report puts them again on top, particularly thanks to a perfect score in Education equality, although the UAE, along with other regional nations, lagged in most other areas such as Economic Opportunity and Participation and Political Empowerment. This inequality of income, however, fails to capture a lack of competitiveness with the UAE marketplace. Looking at SOE shares among top ten firms by country, the UAE comes second only to China with an astonishing 88%.

The new 2012 Competition Law does nothing to help reduce these levels and enhance competition, as all publicly owned companies or related entities are excluded from coverage by the law, as all are firms operating in the industries of oil and gas, electricity and water, financial services, pharmaceuticals, transportation, telecommunications, and waste management. The law as well does not provide any provisions against entities with a dominant market share (only punishes those who take advantage of their large market share; i.e. predatory pricing) and the scope of the law leaves large discretion to the Ministry of Economy. The result is a failure to address issues of collusion and concentration of economic resources among the elite in the UAE, particularly those with political power and connections.

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Sources: Hausmann, R. (2013, October). The Global Gender Gap Report 2013. In *World Economic Forum. Web.* (Vol. 12).; Klugman, J., Medalho, I., & United, P. (2009). Human Development Reports. Kowalski, P., Büge, M., Sztajerowska, M., & Egeland, M. (2013). *State-owned enterprises: Trade effects and policy implications* (No. 147). OECD Publishing.

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**Box 5: Egypt - Corruption and Collusion amongst the Elite**

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Back in the early 2000s, it took Egypt from 2000 until 2005 to eventually pass an anti-trust and competition law. Three main reasons for the law not passing in a timely fashion were: 1. ministries within the government were unwilling to relinquish to power to another, thus delaying any adoption, 2. a fear by firms that competitors with political connections would be able to abuse the law and charge them with anti-competition practices, and 3. corruption and profiteering itself may have played a role.

After the fall of the Mubarak regime, corruption within the Egyptian government was hoped to be on the decline, however, with the rule of the military regime, reports of corruption have begun to abound again. The Egyptian military, which during privatization in 1990s diversified its holdings, has obtained top executive posts at public and private firms throughout the country. During corruption crackdown campaigns in 2011 and 2012, businessmen with military connections were passed over while still giving the public appearance of justice.

This type of corruption passes a shadow of doubt over the enforcement of the 2005 Competition Law, and other governance measures meant to ensure a free market, competitive economy. This highlights the need for better analysis of implementation and enforcement by the Egyptian Competition Authority, which failed in 2012 to prove any violations and has a history of leniency on repeat offenders, such as Ezz Steel.

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Sources: Geradin, D. (2004). *Competition law and regional economic integration: an analysis of the Southern Mediterranean countries*. World Bank Publications.; Marshall, S. (Spring 2012) *Egypt's Generals and Transnational Capital*. Middle East Report, MER 262.; The African and Middle Eastern Antitrust Review 2014, Egypt chapter

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## Annex 2 - Tables

**Table 2: UN-ESCWA Member Countries – Ranking of Anti-trust/Competition Laws**

Country:	Law & Year of Implementation	Effectiveness of Anti-Monopoly Policy: Global ranking	Effectiveness of Anti-Monopoly Policy: Member States ranking
Bahrain	No specific competition/antitrust law <sup>20</sup>	35	5
Egypt	2005 Competition Law; COMESA 2013	132	11
Iraq	2010 Competition and Monopoly Law	N/A	N/A
Jordan	2004 Competition Law	45	6
Kuwait	2007 Protection of Competition Law	119	10
Lebanon	No competition/antitrust law <sup>21</sup>	115	9
Libya	No domestic law; COMESA 2013	144	13
Morocco	2000 Competition Law <sup>22</sup>	65	7
Oman	No specific competition/antitrust law <sup>23</sup>	19	3

Source: World Economic Forum, Global Competitiveness Report 2013-2014, <http://www.weforum.org/reports/global-competitiveness-report-2013-2014>

<sup>20</sup> Certain laws refer to the concept of competition though, for details see: <http://us.practicallaw.com/9-500-6281#a862183>

<sup>21</sup> “As part of its strategy aimed at integrating Lebanon into the global economy and modernizing the domestic economy, the Ministry has been working on revamping its competition policy to be in-line with international practices. Hence the Ministry [of Economy and Trade] has developed an action plan which calls for a new modern competition law, the establishment of a competition authority, and the creation of a new enabling environment to ensure the proper implementation of the law” ( <http://www.economy.gov.lb/index.php/subCatInfo/2/15/5/1>). See also: [http://www.economy.gov.lb/public/uploads/files/8404\\_8262\\_8333.pdf](http://www.economy.gov.lb/public/uploads/files/8404_8262_8333.pdf)

<sup>22</sup> Morocco just recently went through a review vis-avis its competition regulation, for more information refer to the paper on “Inefficacité de la régulation concurrentielle au Maroc: Les tenants et aboutissants institutionnels” ([http://www.meda-comp.net/wp-content/uploads/2014/02/MCB\\_09-Extra\\_2014.pdf](http://www.meda-comp.net/wp-content/uploads/2014/02/MCB_09-Extra_2014.pdf))

<sup>23</sup> “The Oman Law Digest 2009 - MONOPOLIES, RESTRAINT OF TRADE AND COMPETITION : Law of Commerce [RD 55/90] and Law of Commercial Trademark, Data, Trade Secrets and Protection Against Unfair Competition Law [RD 38/00] prohibits dissemination of misleading information or information inconsistent with facts in relation to origin or nature of goods or any other trade matter, with intention to draw away clientele of competitor. Other sector specific laws have related provisions on restraint of trade and competition. Consumer Protection Law [RD 81/02] requires the Government to curtail monopolies or over-dominance in the market but does not specify what action must be taken and vests discretion in the relevant Minister to formulate rules. The Law also requires the issuance of rules for controlling excessive price increases and prohibits suppliers from hoarding commodities which would result in an artificial price rise. Although there is no separate competition authority in Oman, the Law is implemented by the MCI.” (<http://omanlawblog.curtis.com/2008/06/oman-law-digest-2008-monopolies.html>)

**Table 2 (cont'd): UN-ESCWA Member Countries – Ranking of Anti-trust/Competition Laws**

<b>Country:</b>	<b>Law &amp; Year of Implementation</b>	<b>Effectiveness of Anti-Monopoly Policy: Global ranking</b>	<b>Effectiveness of Anti-Monopoly Policy: Member States ranking</b>
Palestine	Draft form of competition law	N/A	N/A
Qatar	2006 Competition & Monopoly Law	2	1
Saudi Arabia	2004 Competition Law	21	4
Sudan	No domestic law; COMESA 2013	N/A	N/A
Syria	2008 Competition and Anti-Trust Law	N/A	N/A
Tunisia	1991 Competition Law	74	8
UAE	2012 Federal Competition Law <sup>24</sup>	7	2
Yemen	1999 Competition Promotion Law	135	12

Source: World Economic Forum, Global Competitiveness Report 2013-2014, <http://www.weforum.org/reports/global-competitiveness-report-2013-2014>

<sup>24</sup> “Competition Law (Federal Law No. 4 of 2012) came into force in February 2013: The implementing regulations are expected to set out the detail on the regulation of anti-competitive agreements, abuse of a dominant position and economic concentrations, including the thresholds at which an offence will be committed. Companies regulated by the Competition Law have a grace period until August 2013 to ensure their practices are compliant.” (Source: Linklater’s GCC Quarterly Review. GCC Quarterly Review – Q1 and Q2 201)

**Table 3: UN-ESCWA Member Countries - Ease of Doing Business Ranking**

<b>Country:</b>	<b>Doing Business: Global</b>	<b>Doing Business: Member States</b>	<b>Startup Ease: Global</b>	<b>Startup Ease: Member States</b>
Bahrain	46	3	99	7
Egypt	128	11	50	3
Iraq	151	14	169	15
Jordan	119	10	117	10
Kuwait	104	8	152	14
Lebanon	111	9	120	11
Libya	187	16	171	16
Morocco	87	7	39	2
Oman	47	4	77	5
Palestine	N/A	N/A	N/A	N/A
Qatar	48	5	112	8
Saudi Arabia	26	2	84	6
Sudan	149	13	131	12
Syria	165	15	135	13
Tunisia	51	6	70	4
UAE	23	1	37	1
Yemen	133	12	114	9

Source: World Bank. 2013. Doing Business 2013. Washington, DC: World Bank Group.

### Draft GCC Unified Commercial Policy

Based on the Decision of the Supreme Council taken at the 23th session held in the city of Doha (Qatar) in December 2002 concerning "Unification of Commercial and Economical Laws and Policies "which stipulates the following, "The Commercial Cooperation Committee shall be assigned to set a unified commercial policy for the states of the Gulf Cooperation Council. Such a policy shall be submitted to the supreme Council in the coming session. The General Secretariat shall be entrusted with implementing the policy in consultation and coordination with the Member States, after being approved by the Supreme Council",

Pursuant to the Economical Agreement among the states of the Gulf Cooperation Council, which was signed at the session (22) held in the city of Muscat (Oman) in December 2001, providing the foundations of economic relations among the GCC states and between such states and the outside world, including the unification of the economic policy as well as the commercial and industrial legislations and the applicable customs regulations among the GCC states, and promotion of their economies in the light of global economic developments and the necessity of achieving integration among such states to strengthen the negotiating position and competitiveness in the international markets, in the light of the global trend towards the establishment of economic blocs and promotion of the existing markets. For these reasons, it was necessary to adopt a unified commercial policy among the GCC states to coordinate transactions with the other partners and economic blocs,

Corresponding to the provisions of Article (1) of the Economic Agreement concerning the Customs Union, as well as Article (2) concerning the International Economic Relations, and Article (5) concerning the Investment Environment,

And based on the decision of the Gulf Cooperation Council concerning the importance of collective action towards the commercial partners of the GCC states and the adoption of a unified strategy in the economic relations with the other countries and the international economic organizations and blocs.

The GCC Unified Commercial Policy has been approved as follows:

### First: The Unified Commercial Policy Objectives

The GCC Unified Commercial Policy aims at achieving the following objectives:

1. Unification of the foreign commercial policy of the GCC states to deal with the outside world as well as the World Trade Organization(WTO), and the other international and regional organizations as a single economic unit.
2. Activation of the commercial and investment exchange with the outside world and expansion of markets that export the products of the GCC states.
3. Promotion of the competitiveness of exports of the GCC states.
4. This includes the endeavor to promote the national products, defend them in the foreign markets, and protect the domestic markets in accordance with the requirements of the World Trade Organization and the international economic agreements.

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<sup>25</sup> Source:

<http://www.mci.gov.sa/en/LawsRegulations/SystemsAndRegulations/StandardTradePolicySystemOfGCC/Pages/15-2.aspx>

5. Activation of the role of the private sector with regard to the development of the GCC's exports of goods and services.
6. Adoption of a domestic commercial policy by the GCC states to unify the commercial and economical laws and procedures applied by the Member States, facilitate the flow of citizens, goods, services, and transportation, and take into account the preservation of the environment and consumer protection.

## **Second: The Unified Commercial Policy Foundations**

The GCC Unified Commercial Policy is based on the following principles and foundations:

1. The GCC states shall act as a single economic bloc before the outside world.
2. The commercial exchange between the GCC states and the outside world shall be conducted as stipulated in the provisions of the Economic Agreement, the decisions of the Supreme Council, the implementing regulations and decisions and as stipulated in the agreements of the World Trade Organization.
3. Revision and amendment of the commercial agreements concluded before the adoption of this policy by any of the Member States in accordance with their provisions.
4. The GCC states shall negotiate collectively with the other countries and economic blocs on the agreements and commercial facilitation, including the free trade agreements.
5. When proposing any commercial agreement between the GCC states and other economic blocs, the agreement must bear tangible benefits to the GCC states and not cause harm to their economies. The transaction must be also balanced among the parties of the agreement.
6. The priority in commercial agreements signed between the GCC states and the outside world shall be given to develop and expand the production and service bases in the GCC states, as well as developing their manpower and technical capacity, transferring and nationalizing technology therein, supporting the exports of such states, including the reduction of tariffs imposed on the products of the GCC states, and abolishing the tariff and non-tariff restrictions and procedures that restrict access of the exports to the foreign markets.
7. Development of the practical mechanisms needed to support the cooperation of the Chambers Of Commerce and Industry with their counterparts in the states and the other economic blocs.
8. Adherence to the principle of transparency in the application of the commercial policy among the GCC states and its implementing regulations thereof.

## **Third: The Unified Commercial Policy Application Mechanisms**

1. The Commercial Cooperation Committee as well as the Industrial Cooperation Committee shall be assigned to reach a unified agreement to encourage the national products in the GCC states, defend them collectively in the markets, and propose mandatory laws to achieve this purpose by the end of 2006 as maximum, including the following laws:
  - a) Unified law to encourage national industry in the GCC states.
  - b) Law for combating dumping and compensatory and preventive measures.
  - c) Unified law for illegal competition and protection of trade secrets.
2. The Member States shall adopt unified standards and specifications for all goods. The Member States shall act pursuant to the principle of "Mutual Recognition" with regard to the national specifications and standards and importation procedures applied in any Member State until such standards and specifications are unified.
3. The Commercial Cooperation Committee shall develop the practical mechanisms needed to support the cooperation of the Chambers of Commerce and Industry with their counterparts in the states and the other economic blocs.

4. The Member States shall, before the end of 2006, develop practical mechanisms to deal with foreign goods for which no Gulf or national specifications and standards are provided.
5. The bilateral commercial agreements that have been entered into prior to the adoption of this policy shall be re-negotiated, so that the other GCC states can be included.
6. Revision of laws (regulations) as well as commercial procedures applied to the Member States and guidance laws, with the aim of completing the drafting of unified commercial laws (regulations) to be applied with each other according to a specific timetable.
7. Establishment of unified mechanisms for the application of laws (regulations) and business procedures in the Member States, and coordination between each other with the aim of development and standardization.
8. A Council's Committee called "Unified Commercial Policy Committee" shall be formed comprising representatives from the Ministry of Commerce, and Ministry of Finance. The Committee may seek the help of those seen as fit to perform its duties. In the framework of the implementation of this policy, the Committee shall be entrusted with the following:
  - a) Proposing the necessary measures to unify the policies of commercial exchange with the outside world, as mentioned in Article (2) of the Economic Agreement, in the light of the objectives and principles referred to above, for approval within a period not exceeding the end of 2006.
  - b) Proposing and reviewing the necessary measures to unify procedures and laws of import and export stipulated in Article (2) of the Economic Agreement in coordination with the relevant committees for approval within a period not exceeding the end of 2007.
  - c) Proposing the necessary measures to apply the GCC Unified Commercial Policy.
  - d) Developing the necessary mechanisms for the protection of the whole national products against dumping and dumping suits in other states.
  - e) Studying the commercial agreements entered into by the Member States with commercial partners outside the Gulf Cooperation Council and submitting the results of these studies to the Commercial Cooperation Committee to take the relevant necessary decisions.
  - f) Proposing the type and level of commercial agreements and facilitations as well as the agreements of establishing the required free trade zones with the other states and economic blocs, and submitting such proposals to the Commercial Cooperation Committee to take the necessary action in accordance with the procedures followed in the Gulf Cooperation Council.
  - g) Studying the commercial exchange between the GCC states and any other commercial partner or bloc concerning the commercial agreements and facilitations entered into with the other states and economic blocs, and studying the expected effects of any commercial agreement proposed in this regard.
  - h) Any other task related to the unified commercial policy or the other tasks submitted by the Commercial Cooperation Committee or the Industrial Cooperation Committee or any other committee.
9. The Commercial Policy Committee shall submit its recommendations to the Commercial Cooperation Committee which shall be liable for following up the implementation of the unified commercial policy in accordance with the procedures followed in the GCC states, in coordination with both the Industrial Cooperation Committee and the Financial and Economic Cooperation Committee.
10. The General Secretariat in consultation with the "Unified Commercial Policy Committee" shall be entrusted with the implementation of the decisions of the unified commercial policy after being approved by the Commercial Cooperation Committee.

## Speakers Bios

### Dina Waked

- Dina Waked earned a PhD and LLM from Harvard Law School and a LLB and a BA in Economics from the Cairo University Law School. Specialities: Law and economics/Comparative competition law
- With the support of the **Kuwait Foundation for the Advancement of Sciences**, she joined the Law School and the Paris School of International Affairs (PSIA) of Sciences Po. Since 2007, she has also been involved in the Sciences Po University as well as the SKEMA Business School – ESC Lille and the American University of Cairo. She teaches courses on Comparative Competition Law and Economic Policy, Global Antitrust and Development, Law and Economics, International Business Law, International Trade Law, and Law in the Middle East.
- Her research explores issues linked to competition, development and economic growth in the global south and she acts as consultant in matters of respect and evaluation of competition law in various developing countries.
- Her recent works aim to assess the measures combating ententes in a sampling of 50 developing countries and to use econometric tools to evaluate the effectiveness of competition law application in said countries, thereby evaluating the effect of the application of law on growth.
- Dina Waked uses growth analysis as an alternative to the evaluation of law application which concentrates on traditionally static political objectives in order to create an original concept of economic growth and development better adapted to countries in the global south.



Her doctoral thesis received the **Harvard Law School 2012 John M. Olin Law & Economics Prize**.

### Recent Publications

- What Affects Antitrust Enforcement in Developing Countries? Reasons for Enforcement & Non-Enforcement Using Actual Antitrust Enforcement Data (2012), available at [http://www.law.harvard.edu/programs/olin\\_center/prizes.php](http://www.law.harvard.edu/programs/olin_center/prizes.php)
- Do Developing Countries Enforce their Antitrust Laws? A Statistical Study of Public Antitrust Enforcement in Developing Countries (2011), available at: <http://ssrn.com/abstract=2044047>
- Antitrust Enforcement in Developing Countries: Reasons for Enforcement & Non-Enforcement Using Resource-Based Evidence(2010) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1638874](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1638874)
- Competition law in the developing world: The why and how of adoption and its implications for international competition law, 1 *Global Antitrust Review*, 69-96 (2008).
- The Laws of Competition: The Debut of Antitrust Legislation in Egypt; A Proposal for a Comparative Study, *The Chronicles AUC Press* (January 2006).



## **Khalifa Tounakti**

- Co-author of the The African and Middle Eastern Antitrust Review 2014
- Former General Director of Competition and Economic Investigations, Ministry of Trade, Tunisia. In this capacity he represented Tunisia at the ICN, the OECD and the Arab League.
- Mr Tounakti took a master's degree in economics at the Faculty of Economic Sciences in Tunis and a diploma of higher studies from the National School of Administration. He subsequently held a number of senior appointments within the Ministry of the Economy, the Ministry of International Cooperation and the Ministry of Trade.
- As an expert in competition, Mr Tounakti has been invited to lead seminars with the EC, the WTO, UNCTAD and the Arab League countries.

