

Intergovernmental Group of Experts on Competition Law and Policy

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Afternoon Session

Agenda Item 3b. Challenges faced by young and small competition agencies in the design of merger control

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Egypt's First Merger Control: Prospects and Challenges





Egypt's First Merger Control

- Merger Control in Egypt
 - Historically
 - Notification
 - Sanctions
- The Need to Enhance Merger Control
 - Loopholes
 - Increasing Mergers and Acquisitions
- Proposal for a new Merger Control Regulation
- Challenges Facing ECA in Drafting and Adopting the First Merger Control



Merger Control in Egypt: Historically

- Egyptian Competition Law Act No.3 for the year 2005.
- Legal framework:
 - Law
 - Executive Regulation
- structure of ECL: Agreements, Dominance, Mergers?..



Merger Control in Egypt: Notifications and Sanctions

- The **2005 Act**
 - Non-compelling “requirement” to notify
 - No sanction
- **Amendment in 2008**
 - Notification obligation – Threshold
 - Sanction in case of non-notification
 - However: no substantive examination of the anti-competitive
- **Amendments in 2014**
 - Increased the Sanctions
 - Initiated actual enforcement



- Currently: information is shared between ECA and other authorities to learn about the number of actual mergers and acquisitions (enforcement)



Merger Control in Egypt: Sanctions

➤ **Fine** of minimum 20.000 EGP pounds (almost 1000 USD) and maximum 500.000 EGP pounds (almost 25000 USD).

- For failure to notify a merger that meets the thresholds of the law

➤ Criminal proceedings

- For non-compliance with Egyptian competition act





- The Need to Enhance Merger Control
 - Loopholes
 - Increasing Mergers and Acquisitions



Loopholes

- **No obligation to notify before merger takes place**
 - Notification after transaction
- **No obligation of prior approval of the Competition Authority**
 - No substantive test
 - No procedural framework



Loopholes

- But: information is shared between ECA and other authorities in Egypt re number of actual mergers and acquisitions (enforcement)
- Incomplete merger regulation
 - Notification only
 - No control.

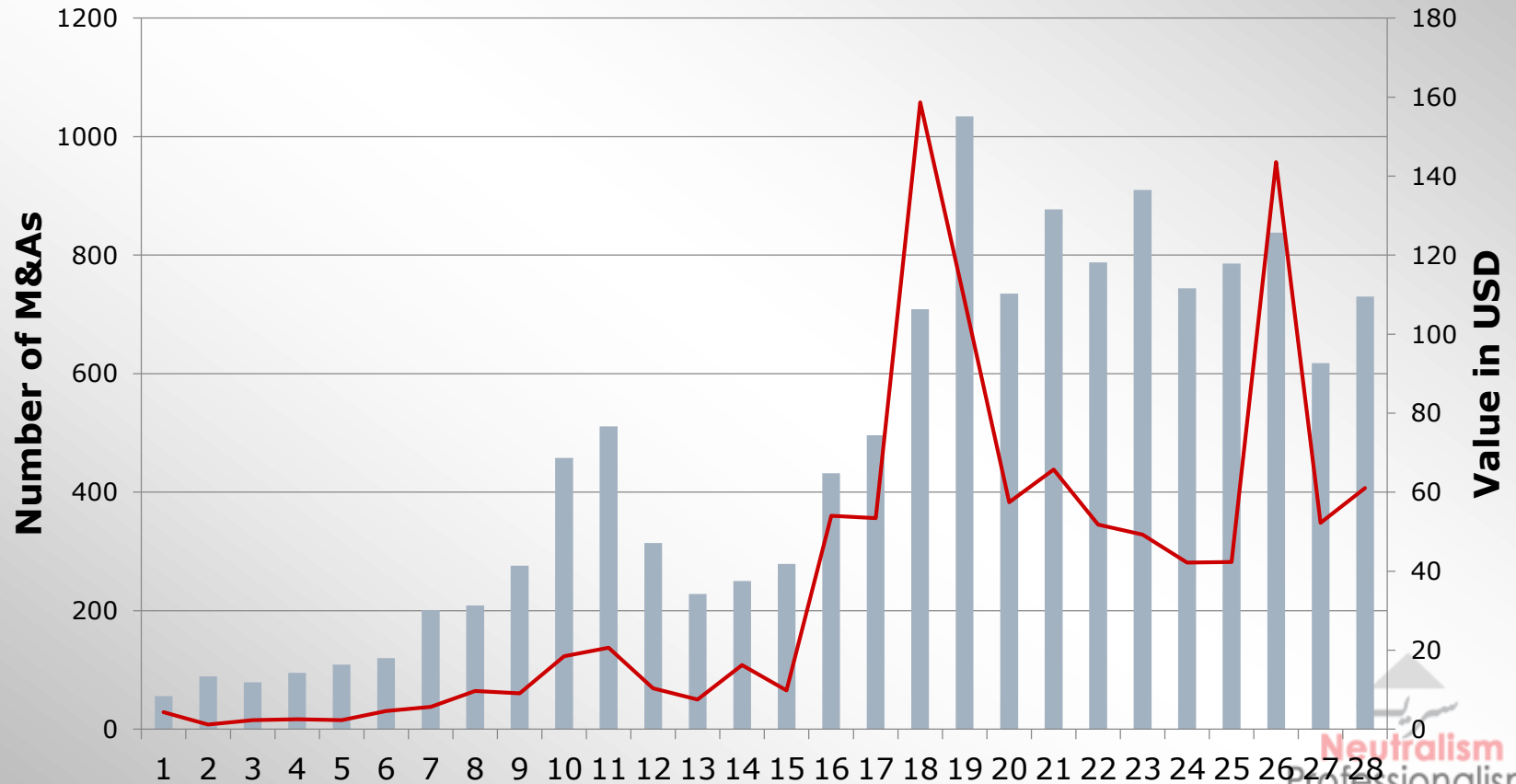


Increasing Mergers and Acquisitions

- Trend: increase of concentrations
- International cooperation calls for effective merger control
- Importance of Merger Control in developing economies.



Number of Mergers in the Middle East and North Africa

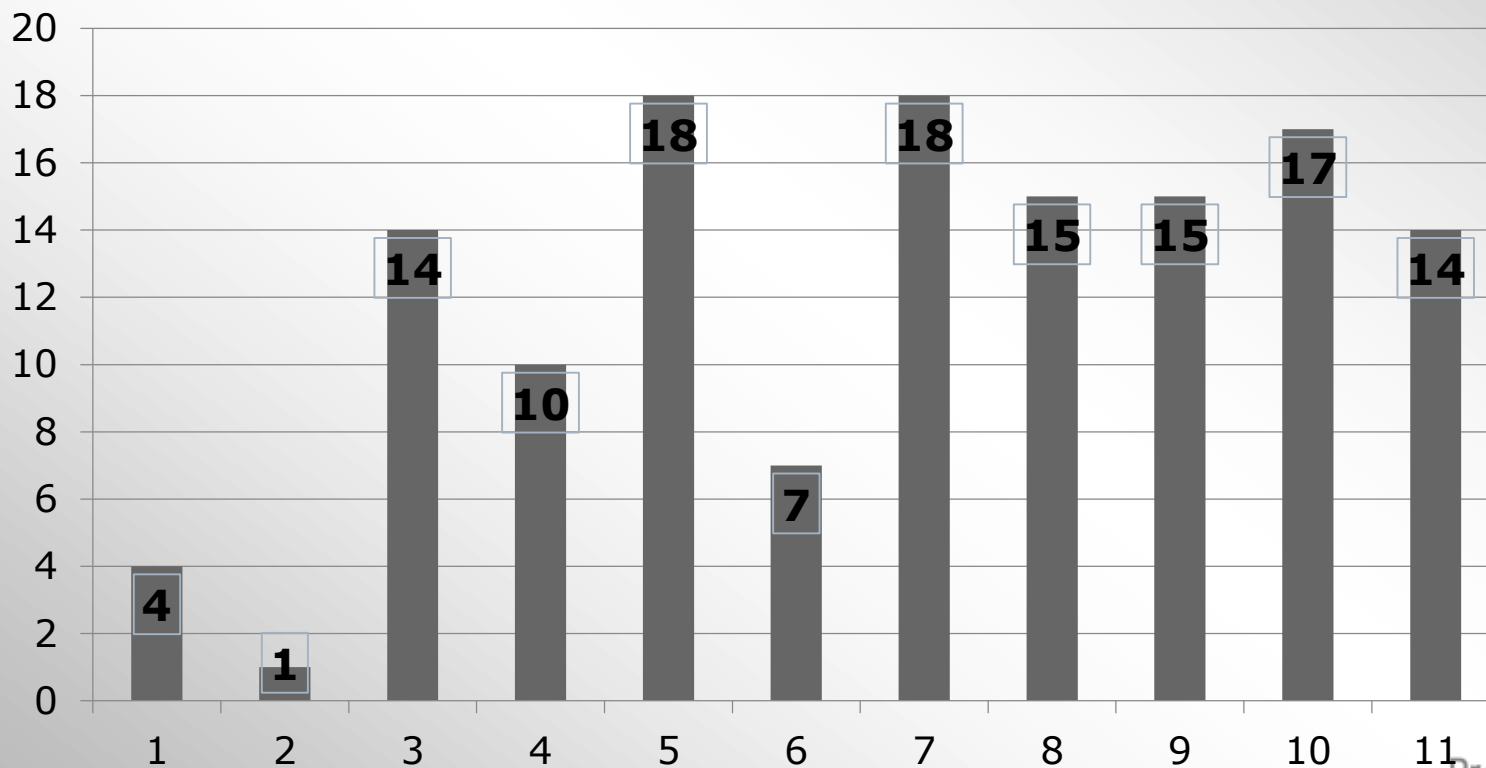


Institute of Mergers, Acquisitions and Alliance, Statistical Data :Source

Neutrality
 Professionalism
 حيادية
 شفافية
 Confidentiality
 استقلالية
 Individualism
 مهنية
 شفافية
 Professionalism
 حيادية
 شفافية

Number of Mergers Notifications Received by ECA in 2006- 2016

Number of Notification





Proposal for a new Merger Control

- Scope of application
 - Turnover vs Market share Threshold
 - Turnover Threshold
 - Local + Worldwide
- Substantive test
 - Lessening Competition, especially in case of creating or enforcing a dominant position.
- Procedural - Two phases
 - Phase one
 - Phase two
- Authority to look into mergers below the threshold if there is enough evidence that they lessen competition.



Proposal for a new Merger Control Regulation

- Remedies
 - Structural
 - Behavioral

- Failing Firm Defense

- Sanctions
 - Fines
 - Nullity
 - Decisions of ECA concerning Mergers are administrative decisions and therefore under the jurisdiction of the State Council (Administrative Court).
 - The sanctions are applied through criminal proceedings in front of the Economic Court.



Challenges Facing ECA when Drafting and Adopting a Merger Control and how to overcome them

- Drafting:
 - Defining the Threshold: vibrant market
 - Procedural aspect: duration of Phase I and Phase II
 - Presenting Ministerial Overrides
 - Lengthy legal proceedings
- Procedures for adopting a new law
 - Raising awareness with different stakeholders, including legislative authority.
- Human Capacity
 - Recruiting high profile employees and experts



Challenges Facing ECA when Drafting and Adopting a Merger Control and how to overcome them

- Fear of the Business Sector
 - Awareness raising seminars
 - Meetings with stakeholders presenting the proposed amendment and its advantages
- Existence of a big informal sectors
- Relationship with other sectorial bodies
 - Cooperation with other sectorial bodies
 - Signing memorandum of understanding organizing the cooperation.



Thank you for your attention.

