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 25,000 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

Source: Institute of Mergers, Acquisitions and Alliance, Statistical Data
Number of Mergers Notifications Received by ECA in 2006-2016

Number of Notification

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<th>Year</th>
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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.