



## **First Joint ESCWA-UNCTAD-OECD Competition Forum for the Arab Region**

**23-24 January 2020, UN-ESCWA, Beirut, Lebanon**

### **Summary of Discussions**

**Thursday, 23 January 2020**

#### **Welcome & Opening Session**

Ms. Rola Dashti, Under-Secretary General of the United Nations and Executive Secretary of ESCWA, opened the Forum by welcoming the participants and thanking the organizers and all contributors for their commitment to implement the Forum after it had to be postponed in October 2019 due to the prevailing conflicts in Lebanon. She explained, though, that the political, social, and economic changes Lebanon is undergoing at the moment highlight the importance and relevance of this Forum.

Ms. Dashti emphasized the significance of the topics addressed by the Forum as she believes effective competition, competition policy, and consumer protection to be vital for sustainable development in the Arab region. The Forum aims to improve the participants' understanding of the link between competition and the 2030 Agenda and to pave the way for accelerated progress towards economic governance reforms. Ms. Dashti furthermore stated that she hopes to establish the Forum on an annual basis in the future and concluded by thanking Egypt and Oman for offering to host the next two fora.

**Lebanon:** Ms. Alia Abbas, General Director of Economy and Trade at the Ministry of Economy in Lebanon, pointed out that the Forum takes place during a very difficult time in Lebanon as the country suffers from major problems at the economic, financial, and social level. Since the start of the Arab Spring in 2010, Lebanon has been experiencing a decline in foreign investments and economic growth and also a high unemployment rate. It is therefore imperative that Lebanon introduces structural reforms in order to achieve the required economic growth that can create new job opportunities.

Small and medium-sized enterprises (SMEs) account for the majority of new jobs created. However, the Lebanese market cannot support SMEs due to anti-competitive practices exerted by monopolies. For this reason, the country needs to create a business environment that fosters SMEs and protects investors.

Ms. Abbas stressed the importance of competition in the economy as competition promotes economic growth, encourages the improvement of products and services, and also protects

consumers by displaying products at the appropriate price. According to Ms. Abbas, competition laws need to be considered as a priority by developing countries since they represent an important defense tool for developing countries to protect their national economies from multinational corporations (MNCs).

Ms. Abbas pointed out that the legal framework currently in force in Lebanon is not sufficient to eradicate anti-competitive practices and is therefore unable to regulate competition in the market. One month ago, the Lebanese Ministry of Economy and Trade sent out a draft competition law to the Council of Ministers after having received assistance from ESCWA, UNCTAD, and the OECD in formulating a comprehensive legislation. Other laws and possible future projects have also been discussed, such as a public accountability law to rationalize government spending.

Ms. Abbas concluded by emphasizing that Lebanon is still in need of external support to overcome this difficult stage and welcomes all help and recommendations resulting from this Forum.

Ms. Teresa Moreira, Head of the Competition and Consumer Policies Branch at UNCTAD, was unfortunately prevented from attending the Forum in person but welcomed the participants by means of a video recording. She stressed the importance of the cooperation of the three leading development institutions ESCWA, UNCTAD, and OECD and pointed out the opportunity to build on the achievements and synergies of UNCTAD's recent technical cooperation program in the Middle East and North Africa (MENA) region, which aims to promote regional integration through enhanced competition and consumer policies.

Mr. Antonio Capobianco, Acting Head of the OECD Competition Division, noted that the Arab region faces many different challenges, including political instability and economic challenges. He emphasized, though, that the Arab region is a region with a great prospect of economic growth. For this reason, he believes that competition policy will become increasingly important for Arab countries in the near future.

Mr. Capobianco explained the importance of competition for fostering innovation, supporting entrepreneurial activity, creating new jobs, improving women's access to economic activities, and dealing with corruption. He specifically pointed out the importance of public procurement and the need to promote private sector participation as the state is still very present in many Arab economies.

Mr. Capobianco continued by calling attention to the great diversity of the Arab region as the various countries have very different competition frameworks in place. While some countries already have established legislations, others are still in the process of adopting suitable laws, tools, and institutions. He encouraged the participants to use the Forum as an opportunity to engage on a multilateral level, share expertise, learn from best practices, and to develop projects and initiatives together. The Forum also allows the three international organizations (ESCWA, UNCTAD, and OECD) to share their expertise, which may be beneficial for all participating countries.

Lastly, Mr. Capobianco stated that the Competition Forum provides the OECD with an opportunity to learn more about each of the participating countries in the Arab region, which will enable the organization to better support these countries according to their needs.

Ms. Denise Sumpf, Acting Chief of the Economic Governance and Planning Section at ESCWA, thanked the participants for attending the Forum despite the difficult situation in Lebanon at the moment. She introduced her colleagues Moctar El Hacene and Mounir Tabet from ESCWA and

informed the participants about the restructuring that ESCWA is undergoing at the time to become a more flexible and agile organization. Lastly, she expressed her hopes that the member countries together with the three international organizations will be able to formulate project proposals during the Forum and mobilize resources for the implementation of these projects along the way.

Mr. Mounir Tabet, Deputy Executive Secretary for Programme at ESCWA, continued by inviting ESCWA's member countries and ESCWA's partner organizations to express their expectations from ESCWA, so the organization can better adjust its services according to their needs.

Mr. Tabet made clear that he understands that competitiveness is not the focus of most countries in the Arab region because they are dealing with more severe issues and conflicts. He then explained that the lack of competition in the region has contributed to these conflicts, though, and emphasized how a competitive business environment can improve the situation in the Arab region by creating jobs, including women in the workplace, ending corruption, and benefitting consumers.

### **Session 1: Competition and Economic Development**

Prof. Frédéric Jenny, Chairman of the OECD Competition Committee, set the stage for the first session with a comprehensive presentation on the role of competition in a market economy and the relevance of competition to the Arab region in particular.

Prof. Jenny began his presentation by explaining the mechanism of a market economy that links supply and demand. He emphasized the need for a competition law, a set of rules on how to behave on the markets, in order to make the markets as efficient as possible and the need for a competition authority to administer those rules and make sure there are no abuses of the rules. He furthermore explained that competition laws alone are not sufficient and that there need to be complementary laws that focus on deregulation, privatization, trade liberalization, the rule of law, etc.

Prof. Jenny continued his presentation by pointing out the benefits of competition and the social cost of anti-competitive practices. Competition protects the citizens' standard of living by ensuring that the prices are as low as possible and by offering a number of options to consumers. It forces firms to be innovative and efficient, which again is beneficial for a country's development and progress. Competition furthermore prevents abuses of market power and guarantees economic freedom.

An anti-competitive environment, however, affects all stakeholders negatively. Consumers face a welfare loss as they have fewer choices and have to pay higher prices. Many economic opportunities are lost in such a scenario as competitors are excluded from the market. Firms themselves are also victims of anti-competitive practices as they are oftentimes also customers and suppliers of other firms and are thus negatively affected by the higher prices.

Such an anti-competitive environment is typically the result of the creation of monopolies. Prof. Jenny explained that firms establish monopolies either through exclusionary tactics, exploitative practices (e.g., formation of cartels), legal protection, or by merging with their competitors. To prevent and deal with such abuses of market power, competition laws are needed.

Prof. Jenny continued by introducing the general components of a competition law but emphasized that there is no "one-size-fits-all" approach to competition law. The law must always be adapted to the level of economic development, the legal system, and the socio-political circumstances of the respective country.

Prof. Jenny then elaborated on the macro-economic impact of competition and explained that competition increases productivity, innovation, and economic growth while also reducing poverty

at the same time. Countries with a solid competition law furthermore attract more direct investments compared to countries where the rules of the market are very uncertain and where investing is very risky as a consequence.

Prof. Jenny's presentation went on to take a look at competition in the Arab region specifically. He described the competition challenges that small economies in the Arab region face, including the interconnectedness of the business and the political environment, a high concentration of firms due to the small size of the markets, the prevalence of monopolies and anti-competitive practices, barriers to entry for new and for foreign firms, and corruption among bureaucrats. All of these challenges create obstacles to competition, though competition authorities can alleviate some of these problems by promoting transparency in decision-making, advocating the benefit of competition and the social cost of anti-competitive practices, eliminating barriers to entry and advocating the liberalization of international trade, introducing regulatory reforms to facilitate foreign direct investment (FDI), introducing merger control and rules against cross holdings to reduce the concentration of the market, and by focusing on primary enforcement of bid rigging cases to effectively fight corruption. However, competition authorities in the Arab region experience challenges in imposing those measures due to their small size. An important function of competition authorities is to convince their national government to change the legislation. Competition authorities in the Arab region experience a deficiency to advocate, though, as they have difficulties of being heard by their respective government. Prof. Jenny suggested that Arab competition authorities should try to build a track record over time to improve their ability to advocate and to focus on simple but effective enforcement measures, such as publishing guidelines, at first. They should moreover resort to simple and clear cases at first and seek international assistance for acquiring qualified staff.

Since the Islam plays a central role in the Arab region, Prof. Jenny moved on with his presentation to determine whether the ideas of competition are congruent with the religious beliefs of the region. He came to the conclusion that the concept of competition is consistent with the Islam, as the Islam recognizes the value of trade and competition and encourages a free market system with interventions by the state only in cases of market failure.

Prof. Jenny continued by elaborating on the issue of the high level of state ownership, which is a characteristic of all Arab countries. In many of these countries state-owned enterprises (SOEs) tend to be protected from competition as the government sees them as strategically important for the nation and thus does not want them to suffer from competitive pressure. This exclusion of SOEs from competition creates inefficiency, though. For this reason, Prof. Jenny suggests establishing a competitive neutrality framework as a complement to competition law. Such a framework should ensure tax neutrality, regulatory neutrality, and a level playing field in the area of public procurement, so that SOEs do not have a competitive advantage over private firms.

Prof. Jenny criticized the lack of independence of competition authorities in the Arab region. He explained that by law they are typically independent but in practice they are frequently influenced by the government as the government nominates people for the board of the competition authority in many cases and can review and overturn the decisions made by the authority. In some cases, the competition authority does not even have the power to make any decisions but can only give advice to the ministers.

By referring to a study conducted by ESCWA in 2015, Prof. Jenny then compared the competition laws and competition authorities of the Arab region to those of OECD member countries. He pointed out that the Arab region is lagging behind in terms of competition as Arab countries rank lower in the scope of their competition laws compared to the international community and their

competition authorities are less competent and only have very limited advocacy powers compared to the competition authorities of the OECD region.

He furthermore emphasized that the Arab region is the least integrated in the world and that the region would really benefit from more economic integration through trade. He pointed out that while there is some regional cooperation, such as the Competition Experts Committee at the Arab League, it is still embryonic and does not really address competition law issues.

Prof. Jenny ended his presentation with a short case study on Egypt to illustrate that competition law is an evolutionary process. Prof. Jenny explained that competition laws are still a relatively new phenomenon in the Arab region as most laws have been adopted after the year 2000. He stated that amendments to the laws are completely normal as no country gets its competition laws right immediately from the start and that improving a competition law framework takes several years of experience.

**Egypt:** Mr. Amir Nabil Ibrahim, Chairman of the Egyptian Competition Authority (ECA), thanked the organizers for the opportunity to speak at the Forum and underlined that the event should have taken place much earlier in the development history of competition law and policy in the Arab region. He began his presentation by giving an overview of the present situation in Egypt. For years now, the ECA has worked closely alongside the OECD and UNCTAD. The ECA regularly attends the annual Competition Committee meetings and the Global Forum of Competition. In 2010, the OECD conducted a peer review on the status quo of the ECA and the Egyptian competition policy framework and based on that suggested the 2014 amendments, which were a great success. Nevertheless, Mr. Ibrahim stressed that Egypt is still facing many challenges. Last year Egypt moved forward with a third wave of amendments in hope to achieve more independence for the ECA by removing government and business representatives from the board of the authority. They are currently still testing how these amendments are perceived by the parliament and other stakeholders affected by them. In cooperation with UNCTAD, the ECA furthermore established a regional training center on competition law and policy in the last year. Currently, the ECA is developing a new law that aims to tackle anti-competitive state regulation in Egypt.

Mr. Ibrahim emphasized the importance of domestic rivalry as the foundation of international competitiveness and economic development. He pointed out the benefits of competition for consumers, as competition results in a larger pool of goods and services at lower prices for them, and for society as a whole, as competition fosters innovation and economic growth and thus maximizes social welfare. He also elaborated on the challenges of the Arab region, including the skewed distribution of productive resources which contributes to the high unemployment rate in the region, the exclusion of SOEs from competitive pressure, the high barriers to entry for new firms, the influence of elite firms on policy makers, and the weak competition law enforcement mechanisms of some of the countries in the region. Mr. Ibrahim emphasized the responsibility of competition authorities to ensure better allocative efficiency and to achieve competitive neutrality, a concept that is still absent in most economies in the region.

Mr. Ibrahim moreover stressed the importance of regional cooperation. All Arab countries share common cultural, economic, and social ties. However, lack of appropriate regional integration and cooperation is still one of the main issues of the Arab region. The foundation of the competition policies in the Arab region should not be to solely protect national competition but rather to collectively improve consumer welfare and increase employment opportunities in the Arab region as a whole. Competition authorities in the Arab region should work together to achieve the ability

of competition authorities to impose administrative fines. According to Mr. Ibrahim, uniformity and harmonization of a regional competition law system is paramount. For this reason, one of ECA's key objectives is to develop an extensive network of cooperation between competition law authorities and welfare institutions across the Arab region.

Mr. Ibrahim ended his presentation by elaborating on two recent cases of the ECA.

The first case was related to the merger of Uber and Careem. The ECA cooperated with several competition authorities across the region that were affected by the merger, which led to the harmonization of the remedies that were imposed on the merging companies.

The second case concerned the anti-competitive agreements between Glovo and Delivery Hero, two key players in the delivery market. The ECA detected two cartels and 2,500 jobs were restored because of the ECA's intervention. Both cases can be considered a great success and illustrate the importance of competition authorities for the Arab region.

**Syria:** Mr. Majd Merza, General Manager at the General Commission for Competition and Anti-Monopoly in Syria, explained that competition has been neglected for some time in Syria since the start of the civil war in 2011 and the ongoing crisis in the country. However, in the last two years the Syrian government increased its efforts to promote competition and the General Commission for Competition and Anti-Monopoly in Syria, which was established in 2008, has gained in importance. The Commission's powers include the preparation of legislations, the coordination with the relevant entities, and the investigation of anti-competitive practices.

Mr. Merza emphasized the importance of economic development for Syria as it is essential for the social welfare of its people. Additionally, he pointed out that they are pursuing three objectives of economic development in Syria. First, they try to achieve broader economic goals such as price stability, a high employment rate, and sustainable growth through efforts such as monetary policy, regulation of financial institutions, and infrastructure programs. Second, they attempt to improve the business environment and thus create new job opportunities by supporting SMEs and promoting technology and innovation. Third, they seek to develop Syria's rural economy in the future as the focus has been primarily on Damascus, Syria's capital, in the past.

Mr. Merza explained that one of the unintended consequences of economic development is social competition, a competition between societies, states, and nations for projects. This competition intensifies as countries strive for economic development. For this reason, the Syrian government needs to promote fair economic competition through various incentives (e.g., tax incentives, incentives relating to land) as competition is vital to rebuild Syria's economy. Syria is in need of fair regulations that are not discriminatory for new entrants to the business environment.

Mr. Merza described that some sectors in Syria are still dominated by monopolies imposed by the state. While there is an acceptable range of market concentration, too much concentration hinders competition. Competition is an essential prerequisite for productivity and efficiency, though, and also protects the interests of consumers and provides more favorable conditions for investors. For this reason, he suggests to implement the competition law transparently in all sectors in Syria. Exclusionary measures for SOEs are to be stopped and instead SOEs should be encouraged to compete in the market with private firms.

The General Commission for Competition and Anti-Monopoly in Syria plans to assist the Syrian government in amending its competition framework in order to put an end to all anti-competitive practices in the country. It also hopes to increase the national awareness of the competition legislation and the Commission's role by organizing workshops, forums, and seminars.

**Morocco:** Ms. Jihane Benyoussef, Vice President of the Conseil de la Concurrence du Maroc, gave a presentation on competition in the Moroccan e-commerce sector. She stressed the enormous and increasing value of electronic commerce and gave an overview of the current situation in Morocco. E-commerce is a fast-growing market in Morocco and of increasing importance in the whole Arab region. New actors from emerging countries are entering the market – however, the digital gap is still widening. Emerging economies are lagging behind as three out of four Africans still do not have access to the internet while industrialized economies have very advanced e-commerce platforms and are widely equipped with technological tools.

The growing e-commerce sector brings along several challenges for Morocco and the whole Arab region. For example, Morocco is experiencing a disappearance of small shops. Moreover, it is experiencing a new generation of anti-competitive practices as there exist no standardized laws and regulations for the e-commerce sector yet.

Ms. Benyoussef emphasized the importance of e-commerce for achieving growth in Morocco but also explained that some countries in the Arab region are still preventing regional development in e-commerce. She pointed out the usefulness of trainings in e-commerce to raise awareness of the topic, increase understanding, and close the knowledge gap in the region. She also suggested to promote the involvement of regional e-commerce businesses on an international level in order to reduce the prevailing digital gap.

Ms. Benyoussef moreover pointed out the security concern related to e-commerce. She stressed the need for proper governance in the e-commerce sector and the need to protect national security and personal information of consumers on the internet. Resources need to be made available for the regulation of this sector, especially for the Fintech subsector.

Ms. Benyoussef explained that the Conseil de la Concurrence du Maroc has become an established institution in Morocco over the last couple of years. The country has recently reinforced its legal framework and established several new authorities, including a digital authority which serves as a sectoral regulator and enforces the state's strategy in digital development.

Ms. Benyoussef emphasized the continuing central role of the Conseil de la Concurrence du Maroc as it tries to harmonize the strategies of the various other authorities and as it remains the main authority to ensure free competition in the market. In areas where there is no legal framework in place, such as the e-commerce sector, the board of the Conseil de la Concurrence needs to intervene to ensure fair competition. For these reasons, the competition authority needs to be independent. Additionally, the relationship between the Conseil de la Concurrence and the sectoral regulators needs to be defined and the different authorities need to cooperate.

**Yemen:** Ms. Gharam Aman, Director General of the General Department of International Trade Relations of the Ministry of Industry and Trade in Yemen, gave an overview of the competition environment in Yemen. Since 2011 the country has been facing numerous economic and social problems, though even before that Yemen was already one of the least developed nations in the region. The civil war, along with its political conflicts, has entailed a halt of the economy and its development.

Ms. Aman stressed that the war they are currently facing is not only a political and military war but also a humanitarian war that has brought along many issues on the humanitarian and also on the economic level. Facing negative economic growth, the Yemeni economy is in a very bad situation at the moment. Ms. Aman referred to an “economy of war” as Houthi rebels act outside of the law and exert control over Sanaa, Yemen's capital, and certain northern and western regions of the country. Warlords are smuggling weapons and oil to benefit themselves and have established

custom points to unjustly collect taxes from businessmen and small business shops. This causes an increase in prices which eventually hurts consumers because it decreases their purchasing power. This again affects companies as they have to lay off some of their employees or even completely close down in the worst case.

According to Ms. Aman, Yemen is currently trying to reclaim legitimacy and working together with Saudi Arabia to improve its economy and the situation for its citizens. Its main challenges thereby include high unemployment, poverty, destruction of the country's infrastructure, and the devaluation of its currency. The country is trying to adopt a free trade policy and already has several laws relating to competition and antitrust in place. However, many sectors are not functioning properly anymore because of the war and many of the existing laws are not implemented. For this reason, Ms. Aman stressed the importance of an intervention from different international actors to find a plan to support Yemen and to establish peace in the country.

## **Session 2: Effective Competition Frameworks**

Ms. Sumpf opened the second session by explaining that it is one of ESCWA's objectives to address the knowledge and capacity gaps relating to competition policy in the Arab region. She pointed to a survey which ESCWA, in collaboration with the OECD, conducted in 2015 to identify national legislative gaps and highlight current institutional arrangements across the Arab region through indicator assessment. One of the findings of the analytical assessment of the region was that while Lebanon has no legislation and no competition authority in place yet, their draft competition law is one of the most comprehensive in the region.

Ms. Sumpf suggested repeating the survey after the Forum to measure and track the progress that has been made since 2015 and to allow policy makers to assess their position in an international and intraregional comparison. The result of the survey may provide indications where there are capacity gaps and in which areas ESCWA, UNCTAD, and the OECD can support the countries with capacity-building and advice.

Ms. Sumpf ended her presentation by giving the participants of the Forum some food for thought. First, she emphasized that the different countries in the Arab region are at very different development stages with regards to competition law and policy. Some countries are still in the process of setting up a legislation, while other countries are already more advanced. Ms. Sumpf invited the participants to use the Forum as a platform to share knowledge, experiences, and lessons learned on an intraregional basis.

Second, she pointed out that the legal and procedural frameworks that underpin national competition policy have undergone multiple reforms in the past decade, increasing the scope of activity of competition authorities in the Arab region.

Third, she advocated the need to improve the independence of competition authorities in the region. This is specifically important in Lebanon in view of its current political conflicts.

Lastly, she expressed her concerns with respect to transparency and fairness. Decisions on antitrust infringements need to be made publicly available and communicated in a way in which they can be understood at the broader stakeholder level.

Prof. William Kovacic, Global Competition Professor of Law and Policy at the George Washington University Law School, USA and Director of the School's Competition Law Centre, continued with a presentation on the challenge of policy implementation and the relationship between competition authorities and politics.

He began by emphasizing the importance of law enforcement. He explained that there is a tendency of competition authorities to focus on policy design. However, in recent years an increasing number of concerns have emerged about the disappointing accomplishments of these regulations in reality. He therefore advised the participating competition authorities to focus on implementation as there is no use in formulating policies if they are not properly taken into action. The institutional design of the competition authority plays a central role in its ability to enforce the law. Prof Kovacic explained that there are several questions that every country has to answer when setting up a competition authority, one of the most important of them being the relationship of the authority to the political process. According to Prof. Kovacic, political scrutiny is inevitable and competition authorities have to find a way to effectively deal with the political pressure they are facing. He presented three values that should be considered in the relationship between competition authorities and the political process. First, a competition authority needs autonomy to be able to enforce its decisions. Second, a competition authority needs to be transparent with regards to the decisions it makes. Only that way a competition authority can be considered legitimate. Third, there needs to be a dialogue between the competition authority and the politicians of the respective country in order for the authority to be effective. Otherwise the authority may not receive any power or resources.

Prof. Kovacic pointed out that no competition authority is completely independent as each authority faces political pressure in some way. Political pressure points include appointments, budget, investigations, and routine oversight. Prof. Kovacic gave the attendant competition authorities some suggestions on how they can build the autonomy they need. His suggestions included hard measures, such as imposing limits on removal and having a dedicated income stream, and soft measures, such as creating a respected brand through technical proficiency, information disclosure, and accountability. According to Prof. Kovacic, many young competition authorities start out as a part of a ministerial department with very close political control but then continuously gain more independence over time with the overall objective to become a stand-alone body not under the supervision of the government.

In 1989, there existed about 30 jurisdictions with competition laws while there exist more than 130 today. In the last 30 years different approaches and legislation and institution designs were tested, which resulted in a lot of new insights in the field of competition law and policy. The common advice that was given to jurisdictions in the 1990s was that you only have one chance to get things right and pass a comprehensive law. Now we know that this advice turned out to be false and that there are possibilities to make amendments and improve the legislation. According to Prof. Kovacic: “Regular updates are not just sustainable, they are essential”, as in every system there will be setbacks. Success is a function of gradual improvement and experience and for this reason the legislative framework should be reviewed and reflected upon every five years or so.

Prof. Kovacic concluded by stating that there is an enormous benefit from looking at similarly situated agencies since institutions learn and improve collectively. For this reason, it is important to build coalitions and to exchange know-how between agencies. Lastly, he pointed out the immense value of having support from international organizations.

Ms. Akari Yamamoto, who is a Competition Expert at the Japan Fair Trade Commission at UNCTAD, joined the Forum remotely via WebEx and gave a presentation on the “Guiding Policies and Procedures” under Section F of the “UN Set on Competition”.

Ms. Yamamoto began by introducing the “Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices” (the UN Set), which is a set of rules against anti-competitive business practices that was adopted by the United Nations in 1980.

Section F of the UN Set emphasizes the importance of collaboration at the international level to effectively deal with restrictive business practices adversely affecting international trade and economic growth and provides principles and tools for international cooperation.

Ms. Yamamoto explained that competition authorities face several obstacles when it comes to international cooperation, such as legal restrictions, a lack of awareness of possible cooperation, and a lack of mutual understanding, trust, and interaction between competition authorities. She pointed to the Guiding Policies and Procedures of the UN Set as a guide for competition authorities on how to communicate with other authorities and how to cooperate in competition cases.

Lastly, Ms. Yamamoto pointed out the ways in which UNCTAD can assist competition authorities in the Arab region by promoting mutual trust between competition authorities, providing interpretation of the UN Set provisions, maintaining a list of contact persons who may facilitate international cooperation, providing publicly available legal texts and guidelines that are relevant to cooperation, providing guidance with regard to confidentiality assurances, etc.

**Oman:** Mr. Rashid Al-Bulushi, Board Member of the Competition Protection and Monopoly Prevention Center (CMC), introduced the CMC and its objectives.

In 2014, the first law on anti-monopoly and competition protection was introduced in Oman. In 2018, the law was amended and the CMC was established to administer the law. The CMC enjoys financial and administrative independence and aims to create an open and liberal economy in Oman that encourages the free practice of economic activity. The center prohibits any type of monopoly in the Omani market. The objective of the CMC is in line with the Islamic religion, as the Islam encourages the creation of open and liberal markets and prohibits the existence of monopolies.

Functions of the CMC include the protection of the Omani market from anti-competitive practices, the application of laws and regulations relating to competition protection and monopoly prevention, the investigation of anti-competitive practices and the taking of appropriate action, and the education of the community about the importance of free competition.

**Algeria:** Mr. Mohammed Tayeb Medjahed, Permanent Member of the Algerian Competition Council, gave a presentation on the importance of capacity-building with regards to competition law and policy in the Arab region.

Mr. Medjahed explained that the field of competition policy is rapidly growing and exceeding the resources of many competition authorities in the Arab region as many countries in the region have a lack of specialized competition law experts. Those countries have a need for technical assistance and advice that can support them in building capacities in the field of competition law and policy. This assistance is necessary to promote competition in their national economies and it is in particular essential for young competition authorities.

Mr. Medjahed thanked UNCTAD and the Swedish government as Algeria has received assistance and training in competition law and policy from the international organization as part of its MENA support program. Thanks to the program, Algeria was able to learn from the experience of experts, which helped the country efficiently increase its institutional capacity and significantly improved the performance of its competition authority.

Mr. Medjahed highly recommended UNCTAD's program and introduced the participants of the Forum to the program's objectives, which include the promotion of good governance and consumer protection and the fight against corruption, monopolies, and poverty in the Arab region. UNCTAD offers trainings to achieve institutional capacity-building, support in the formulation of comprehensive competition laws, workshops to increase the understanding of competition policy frameworks, guidelines that contribute to the proper application of the formulated laws, and also promotes regional integration by helping to establish a dialogue between the different institutions and stakeholders. Most importantly, though, it bases its advice on the needs of the respective beneficiary country.

The program provided significant added value for Algeria by establishing training centers, offering workshops to train the trainers, publishing guidelines on good governance, organizing workshops and seminars for all affected stakeholders, etc.

Mr. Medjahed expressed his suggestions and recommendations for the future of the program, including the creation of a website and a newsletter dedicated to the program, the establishment of a permanent forum that allows Arab countries to exchange their experiences, and the launch of an e-learning training course. He also expressed his wishes for topics to be discussed in future workshops and seminars, including investigation techniques, the problem of SOEs in competition law, assessing the efficiency of competition, and laws regarding merger control.

Mr. Medjahed concluded by stressing once again the importance of UNCTAD's program for countries in the Arab region. He hopes that the program will be extended and that many other Arab countries will also be able to benefit from it. He furthermore confirmed Algeria's willingness to actively collaborate and to share its expertise with other countries in the region.

**Jordan:** Mr. Jamil Zayed, Director of the Competition Directorate at the Ministry of Industry, Trade and Supply in Jordan, gave an overview of competition policy in Jordan and the current institutional structure of Jordan's competition authority.

Jordan introduced its competition law in 2002 and started banning monopolies and enforcing the law shortly after the law's introduction. According to Mr. Zayed, it took some time to spread the culture of competition in the country as there was some resistance at first.

UNCTAD, ESCWA, and the OECD supported Jordan in the establishment of a competition authority. The Competition Directorate is part of the Ministry of Industry, Trade and Supply and thus not independent from the Jordanian government. Mr. Zayed acknowledged that an autonomous department that is separate from the ministry would be more efficient but emphasized that a competition authority can still be efficient in enforcing the law even if it belongs to the ministry. Mr. Zayed furthermore explained that the institutional structure of Jordan's Competition Directorate was chosen deliberately, as an independent authority would need additional funding. For this reason, establishing an independent competition authority is currently not among the Jordanian government's priorities.

Lastly, Mr. Zayed pointed out that the Jordanian competition law encourages an ongoing learning process by giving violators a chance to correct their infringements in the enforcement process.

**Lebanon:** Ms. Marlene Nehmeh, Head of the Legal Studies Department at the Ministry of Economy in Lebanon, presented Lebanon's newly revised legislation that is currently being evaluated by the Lebanese parliament.

The main aim of the new legislation is to better protect consumers. The new legislative framework promotes free competition and legitimates government intervention only in the case of a crisis.

Ms. Nehmeh introduced the participants of the Forum to some of the changes that were made to the legislation, such as the prohibition of both horizontal and vertical anti-competitive agreements between firms, the newly introduced boycott measures, and the added chapter on economic concentration. While the old legislation protected certain sectors such as water, electricity, and the banking sector from competitive pressure, the new law makes no such exceptions. In addition to that, implementation decrees are included in the new legislative framework.

The newly established competition authority includes an independent investigative body and is under the supervision of the ministry. However, the competition authority possesses inclusive power and makes the final decision regarding all issues related to competition. The government or other authorities do not have the right to intervene in these decisions.

The competition authority is partly funded by the Lebanese public budget but also resorts to other sources of funding. Ms. Nehmeh considers this essential for the authority's independence and autonomy.

**Morocco:** Mr. Hassan Abouabdelmajid, Vice President of the Conseil de la Concurrence du Maroc, gave a presentation on the competition authority in Morocco.

Mr. Abouabdelmajid explained that a new constitution was established in Morocco in 2011. The new legislative framework promotes a free market economy and a competitive business environment with improved conditions for SMEs. The overall objective of increasing competition in the Moroccan economy is to create new jobs.

In 2014, two articles with regards to competition were introduced. Additionally, the Conseil de la Concurrence du Maroc was established in the same year and finally started operating in 2018. The Conseil de la Concurrence is an independent entity that ensures fair competition and transparency. It oversees the market and aims to put an end to illegal practices such as monopolies.

The Conseil de la Concurrence has two main functions: a reporting and an advisory role. It advises the government in the development of new laws and on all issues concerned with competition and the freedom of prices. The government issues a request when it seeks the advice of the Conseil de la Concurrence. Out of the four requests the Conseil de la Concurrence has received so far, three were made by the prime minister. This sends a strong signal to other entities to consult the Conseil de la Concurrence and seek its advice.

Mr. Abouabdelmajid furthermore explained that the Conseil de la Concurrence du Maroc makes use of the media and social media platforms to engage its citizens and to raise awareness of the existence of the authority and the importance of competition and the freedom of prices.

**Palestine:** Mr. Omar Qabaha, Director of the Communication and Information Department of the General Directorate of Competition that is part of the Ministry of National Economy, gave a presentation on the advancements of competition law and policy in the State of Palestine.

Mr. Qabaha described that the State of Palestine has adopted an open market policy and signed trade agreements with the European Union, the United States, Canada, Turkey, and the countries of Latin America. The country is currently negotiating a free trade agreement with China. Palestine is furthermore preparing to join the World Trade Organization (WTO) and is establishing a competition law for this reason.

Mr. Qabaha continued by giving an overview of the development of the Palestinian competition law. In 2003, the first draft was presented. In the following years, the draft was revised several times. In 2010, a comprehensive review of the draft was carried out, though the political conflicts in Palestine caused some interruption and delays. Another round of amendments followed in 2013

and the draft was again submitted to the Council of Ministers. The Directorate of Competition was established in the same year. To this day, the Directorate is part of the Ministry of National Economy due to the lack of financial resources.

Over the last couple of years, the State of Palestine has restructured its national economy. Palestine has received international support and technical assistance from various international organizations such as the Arab League, UNCTAD, and ESCWA. In cooperation with UNCTAD, Palestine organized its first workshop on adopting the competition law in 2017. Currently, it is reviewing the draft law and paving the way for its introduction.

The law is already being taught at Palestinian universities and all institutions are being encouraged to adopt the competition law. The private sector furthermore seems to be very interested and willing to adopt the law.

The Palestinian Directorate of Competition is presently trying to raise awareness with regards to this law and spreading a culture of competition while also working on the creation of a database for the different economic sectors. The law has been presented to all relevant institutions and ministries and is currently under consideration. Mr. Qabaha expressed his hopes that the competition law will be approved and enforced by 2020.

## **Friday, 24 January 2020**

### **Opening Session: A Partnership for Development Through Competition Law and Policy**

The second day of the Forum began with a session on the importance and future of the partnership between the different countries of the Arab region and the three international organizations. Ms. Moreira joined the Forum remotely via WebEx and stressed the importance of annual planning for the partnership and for future fora. Since the countries have different competition legislations and are at different stages of the development process, they also have different concerns. For this reason, it is important that the countries express their needs, preferences, interests, and challenges they face, so the next fora can be specifically tailored to that. Ms. Sumpf encouraged the participants to complete the survey they sent out to help the three international organizations determine which steps to take next.

Ms. Lynn Robertson, a Competition Expert at the OECD, continued by emphasizing the need for a partnership between the different Arab countries and the three international organizations and the need for a continuous dialogue. She explained that the OECD is not a donor but a member-based organization that thrives from mutual dialogue. The OECD shares its expertise with its member and partner countries but also encourages the countries to do the same with the OECD. The learnings the OECD makes from this are incorporated in their guidelines, which again are then disseminated to their member and partner countries. For this reason, the dialogue with the Arab region is very important for the OECD to provide holistic international guidance.

Ms. Robertson explained that the OECD has very little funds available for non-member countries. She suggested to the Arab countries that they should present specific projects, that they would like to undertake, to donors in the region as this has proven to be a very effective approach among Latin American countries.

Ms. Sumpf expressed her optimism about the mobilization of the necessary resources for future initiatives as ESCWA has already initiated partnerships with various organizations, including the European Bank for Reconstruction and Development and the International Monetary Fund.

Mr. Robertson continued by emphasizing the importance of competition assessment, the analysis of laws and regulations for anti-competitive barriers. She explained that laws may unintendedly create anti-competitive barriers and that the OECD can assist countries in implementing similar laws that do not create such barriers as they have a methodology toolkit for that. Ms. Robertson suggested that a medium- to long-term objective could be to develop a competition assessment framework specifically for the Arab region that takes into consideration the distinct conditions of this region.

Mr. Juan Luis Crucelegui, who works in the Competition and Consumer Policies Branch at UNCTAD, pointed out that since the Forum assembles competition authorities from many different countries of the Arab region, it represents a good opportunity for the authorities to get to know each other and to exchange best practices. He emphasized that the long-term goal of this platform is to create a community of competition authorities that collaborate for the benefit of all. Ms. Hanan Saab, Chief Executive Officer at Pharmamed, pointed out the need to create awareness on the existence of competition authorities in the different countries and to transmit this knowledge to the private sector. Ms. Robertson agreed on the importance of engaging the broader community and other stakeholders in the discussion. She suggested to establish an open conference day each time before the Competition Forum for the Arab Region takes place and to invite other stakeholders interested in competition to join the discussion. She also suggested to develop tools that help competition authorities engage other stakeholders and to assist them in developing initiatives to raise awareness of the topic of competition.

### **Session 3: Competition Policy and Private Sector Development**

As part of Session 3, the participants of the Forum were able to choose between attending one of two dedicated expert meetings. Session A was dedicated to exploring the relationship between competition and employment and competition and gender. Session B focused on the relationship between competition and corruption.

#### **A. Competition, Employment, & Gender**

Mr. Crucelegui opened the session with an introduction on the interaction of competition and employment. He elaborated on the benefits of competition but noted that there exists a controversy on whether a competitive environment decreases or increases the unemployment rate. On the one hand, competition leads to the creation of new products, which has a positive effect on the creation of employment opportunities. On the other hand, competition also leads to innovation and automation, which again leads to the destruction of employment opportunities. Jobs may furthermore be destructed in the short term by firms that are uncompetitive and have to leave the market as a consequence. Firms therefore have to make efforts to be competitive in order to be able to stay in the market by increasing the quality of their products and services, by lowering prices, and by coming up with new innovations. All of these factors have an effect on a country's unemployment rate.

Mr. Crucelegui believes there are many measures that competition authorities can undertake to increase the number of employment opportunities in the economy. For example, they could enhance regulations that pose barriers to entry for new firms and try to eliminate such barriers to entry. They could also modify regulations that pose barriers to exit and thus ensure that inefficient

firms leave the market. Moreover, competition authorities could try to amend employment regulations for the better as employment regulations also affect competition.

Mr. Crucelegui furthermore explained that unemployment benefits systems, job protection systems, and salary determination systems have a direct effect on job creation and thus must be examined and analyzed by competition authorities.

He concluded by stating that economists generally agree that while competition may destroy some jobs in the short run, a competitive environment creates many more employment opportunities than it destroys in the long run.

Mr. Crucelegui continued with a short introduction on the relationship between competition and gender, the second subject of the session. He stated that competition encourages the participation of women in the market economy.

He pointed to a report on the topic of competition and gender in the Arab region, which was published by UNCTAD. UNCTAD furthermore recently supported the introduction of a new regional competition legislation in Central Africa that requires competition authorities in the region to have female representatives and thus promotes the equality of genders.

Mr. Chris Pike, a Competition Expert of the OECD, joined the session remotely via WebEx and continued with a presentation on competition policy and gender. He stated that gender equality is still a great problem in our world, both from a human rights and an economic perspective. It is vital that policies try to address and counter this problem. Some countries such as Canada already do so by utilizing gender-based analysis and gender mainstreaming to identify the potential impacts of any planned action, such as legislation and policy changes, on women.

According to Mr. Pike, competition policy is traditionally gender-blind as it thinks in terms of consumers and firms. He believes that a gender lens can improve the effectiveness of competition policy, since it can improve the accuracy of market definition, the effectiveness of consumer remedies that are recommended by market studies, and the effectiveness of whistleblowing programs. More effective competition policies can furthermore help us address gender inequality. A more competitive market can, for example, lower prices in markets that are disproportionately important for women as consumers or workers (e.g., care services such as childcare). It can also remove anticompetitive barriers to entry for women entrepreneurs, create more board diversity in firms, and reduce the scope for gender-based discrimination by employers.

Mr. Pike introduced the participants to the situation in Japan. Gender inequality is still an issue in the Japanese labor market as women on average earn less than their male coworkers. Studies show that inequality also prevails within the household since women spend significantly more time than men on housework and childcare within married couples with children. For women to join the labor force, substitute services related to childcare must be efficiently provided in competitive markets. For this reason, Japan's Prime Minister Shinzo Abe launched the "Zero Childcare Waiting List Acceleration Project" in 2013.

Mr. Pike concluded his presentation with several suggestions for competition authorities. Agencies should prioritize activities in markets where women consume and work, investigate regulatory barriers to women entrepreneurs and workers, ensure diversity of decision-makers, and work with governments to increase the number of firms with gender-balanced boards.

**Jordan:** Mr. Zayed continued with a presentation on the link between competition and employment in Jordan.

He explained that previously SOEs were protected from competition in Jordan and that it was difficult for new competitors to enter the market. Many of the Jordanian SOEs were inefficient and wasted resources. They were suffering from an excess of employees as the government insisted on keeping employees even though fewer employees could have completed the same amount of work.

Mr. Zayed described that foreign companies are now taking over the Jordanian market and taking away jobs from locals. He mentioned the merger of Uber and Careem as an example, which caused strikes in favor of local taxis in Jordan. Mr. Zayed proposed as a solution to raise the prices of an Uber or Careem, so they are higher than the prices of local taxis. That way Jordan can promote domestic firms and protect local jobs.

## **B. Competition and Corruption/Good Governance**

Ms. Mona Caroline Chammas, Attorney and Integrity Director at Govern & Law, opened the session by explaining the link between competition, anti-corruption, and good governance. She explained that competition alone is not sufficient to achieve objectives such as improved conditions for SMEs and the creation of new job opportunities and that anti-corruption and good governance are essential for that.

Antitrust and anti-competitive agreements are the top two allegations among companies. As a consequence, these two issues have to be tackled deeply, both from a business and a government perspective.

Ms. Chammas introduced the participants of the session to the Corruption Perceptions Index and the Global Competitiveness Index to give the countries an idea on where they rank on the scale. The countries in the Arab region generally rank rather high with regards to corruption. Libya, Syria, and Yemen are particularly struggling. She underlined the need to criminalize corruption as in some countries it is not yet considered a crime.

Ms. Chammas continued by explaining that there is no effective enforcement of the law without good governance. She pointed out the link between good governance and business integrity. The main reason why companies try to prevent misconduct is the risk of reputational damage in the case of an infringement. Good governance is about governing yourself and is not only important for businesses but also for governments.

Classical competition law address issues on the business side, such as cartels, abuses of dominance, and anti-competitive mergers. Wider competition policies address issues on the government side, such as grants in public procurement, preferential subsidies (state aid), anti-competitive regulation, and SOEs, and try to create competitive neutrality.

Ms. Chammas continued by giving examples of corruption, including bribery, gifts and invitations, conflicts of interest, misuse of power or assets, and clientelism. Key elements of good governance include the rule of law, accountability, transparency, equity, and risk management. The law requires firms to map their risks and to monitor them. Anti-corruption authorities do not only have the power to investigate cases of corruption but can also investigate companies' risk management efforts irrespective of a suspicion of corruption.

Ms. Chammas explained that companies engage in cartels, bribery, etc. to achieve quick growth. However, the objective should be to achieve long-term growth as such short-term benefits are not sustainable. Both businesses and governments can be infringers. Examples of business infringements include cartels, exploitative abuse, private bribery, and personal gifts. Examples of government infringements include public corruption, clientelism, anti-competitive regulation,

preferential subsidies, and collusion in public procurement. Ms. Chammas advised the attendant competition authorities to first get a grasp of which environment the company or government is operating in (e.g., B2B, B2C, G2B) and which risks it is exposed to in that environment. This helps enforcers to spot infringements. Enforcers thereby include competition authorities, anti-corruption authorities, prosecutors, and courts.

Ms. Chammas continued by presenting two examples of cartels: the Volkswagen emissions scandal and a case of price fixing in the air transportation industry.

The aim of both competition and anti-corruption is to provide fair market conditions and a level playing field. This eventually benefits all stakeholders: consumers, businesses, the government, the economy, and society as a whole.

A country with corruption and no competition is unattractive for foreign investors, its business is lazy as no innovation takes place, and consumers are being exploited. Ms. Chammas explained the interdependence between competition and corruption. More competition makes it harder for corruption to emerge and fighting corruption promotes competition, too. Corruption, however, stifles competition and anti-competitive conduct can be strengthened or facilitated by corruption.

Ms. Chammas also pointed out the need for good governance within the competition and anti-corruption authorities before they monitor businesses and governments. She furthermore emphasized the link between compliance and good governance.

She concluded her presentation by noting that authorities first need to ask themselves why a certain law exists and not what it says. She also stressed that enforcers themselves can be corrupt and that this is a very critical problem that needs to be solved first.

**Sudan:** Ms. Mahasin Ali Yagoub Nozal, Director General of the Greeter Free Trade Arab Agreement at the Ministry of Economy and Industry in Sudan, introduced the participants of the session to the current situation in Sudan.

Sudan has been facing a crisis for years that is the result of various conflicts within the country. While the country has not been successful at enforcing a competitive market economy yet, Ms. Nozal emphasized that they are aware of the importance of competition and free trade and a legislation that promotes both.

In 2009, a competition law was first introduced in Sudan and in 2013 a council was formed to monitor the application of the law. However, these efforts were insufficient for the establishment of a competitive environment in Sudan due to the interference of many different parties and the formation of monopolies (e.g., in the electricity sector).

Ms. Nozal continued by explaining one of the major issues in Sudan. The government is highly involved in the country's economy and as a result there is a lot of public procurement. The problem is that the Sudanese government prefers to import foreign products from abroad over buying locally produced products due to private interests. This negatively affects Sudanese companies as it limits their abilities to develop, grow, and innovate. Many factories have been closed, employees have been laid off, and the unemployment rate has increased immensely as a result of these practices.

Ms. Nozal stressed the importance of revising the legal framework, including its antitrust and competition law, to be able to overcome these challenges and to ensure free trade and competition for the Sudanese economy.

Lastly, she expressed her hopes for the harmonization of competition laws in the Arab region and pointed out that Sudan seeks regional cooperation, since the country is in need of support and would appreciate to benefit from the expertise of other countries.

**Tunisia:** Mr. Ridha Ben Mahmoud, President of the Tunisian Competition Council, continued with a presentation on the anti-corruption law in Tunisia.

Mr. Mahmoud began by explaining that the Tunisian Competition Council is an independent legal entity. He emphasized the importance of the independence of the Council from the government as some members of the Tunisian parliament are smugglers and traffickers and depending on them would make it impossible for the Council to tackle the issue of corruption within the country.

Corruption is one of Tunisia's main issues since it is increasing in the country, even after the Tunisian Revolution of 2010-2011. Tunisia aims to attract FDI in order to develop but struggles to do so as it is perceived as a very corrupt country by the international community.

Mr. Mahmoud pointed out that Tunisia has a very comprehensive legislative framework in harmony with the European legislations but experiences enormous difficulties in enforcing the law because its government lacks the will to fight the prevailing corruption in the country.

Tunisia's legislation rewards and offers protection for whistleblowers that report corruptive practices and exempts them from certain charges even if they were involved in the crime.

Tunisia's main field of corruption on the political level is the public procurement market. **For this reason, the Tunisian law sanctions people that were informed about fraudulent procurement practices and decided not to report them, even if they themselves were not involved in the actual crime.**

Mr. Mahmoud explained that Tunisia was able to end the dictatorial regime in its country through the revolution and finally achieved freedom. He emphasized, though, that while dictatorship encourages corruption, freedom alone does not prevent it. For this reason, he again underlined the importance of law enforcement.

#### **Session 4: Competition and Public Procurement**

Mr. Capobianco opened the session by promoting public procurement as an area where competition authorities can quickly achieve great results, both in terms of advocacy and enforcement. Engaging in the public procurement market allows competition authorities to get in touch with many different government departments and agencies, as they all do public procurement, and thus provides them with the opportunity to raise awareness on the importance of competition in public procurement. Public procurement is moreover a rather transparent activity, since there exists a lot of data and information on it, and competition authorities can use that as evidence to apply sanctions in the case of infringements.

Mr. Capobianco continued by explaining why public procurement matters from a policy perspective. First, public procurement can be considered as a significant economic activity since it accounts for 12% of GDP and 29% of total government expenditure in the OECD area. Second, the public procurement market represents an interaction between the private and public sector. This, however, also exposes public procurement to great risks, including collusion, corruption, fraud, conflicts of interest, manipulation of information, waste and abuse of organizational resources, and others. As a consequence, public procurement is the government activity most prone to criminal misconduct, which again results in the declining trust of citizens in their governments. Third, public procurement represents a core policy tool for governments across the globe as it pursues multiple objectives and can immensely affect citizens' lives. Pursuing different policy objectives at the same time may create some trade-offs, though. Procurement officials have a large impact on the public procurement process with their decisions on the overall objectives but often

lack professionalization as they do not receive proper training in many jurisdictions. As a consequence, they are not aware of the risks associated with public procurement and do not know which solutions to put in place to limit those risks.

Mr. Capobianco described the benefits that competition creates. Due to the great economic significance of public procurement, it is important for competition authorities to focus on this area and establish a competitive environment in this market in order to reap the benefits.

Mr. Capobianco introduced the participants to the OECD's comprehensive approach to public procurement which consists of three pillars: procurement rules, advocacy, and enforcement. The OECD aims to develop best practices and publish and disseminate guidelines based on this. The organization moreover offers trainings and seminars for procurement officials and other stakeholders on how to design effective tenders and how to detect cases of bid rigging. Lastly, Mr. Capobianco stressed the importance of enforcing the competition law, systematically imposing strong sanctions, and developing inter-agency cooperation in cases that go across borders.

**Romania:** Mr. Bogdan Marius Chirițoiu, President of the Romanian Competition Council, joined the conference remotely via WebEx.

Mr. Chirițoiu began his presentation by describing the public procurement process and how bid rigging occurs. The more intense the communication between the companies involved in the process, the more likely it comes to cases of bid rigging.

He continued by describing the objectives and functions of competition authorities. Competition authorities aim to ensure competition between companies and to create lower prices that are close to the actual cost of production. The role of competition authorities thereby is to introduce and enforce policies to increase competition, liberalize trade, increase transparency, and eliminate barriers to market entry. Competition authorities moreover conduct sectoral studies to detect distortions on the market that help them to determine where interventions should take place. With regards to the public procurement process, the task of competition authorities is to fight corruption and to prevent and detect anti-competitive agreements.

Mr. Chirițoiu introduced the participants of the Forum to the interventions the Romanian Competition Council undertakes with regards to public procurement. The Council attempts to prevent bid rigging through various efforts such as ensuring a legal framework in public procurement that discourages and prevents anti-competitive agreements, developing and disseminating guidelines on how to follow the competition rules and on how to detect and discourage anti-competitive practices in public procurement procedures, and excluding suspected violators from public tenders. The Council furthermore monitors markets with structures that are prone to collusion. It aims to identify bid rigging through cooperating with various institutions and through quickly exchanging information on an expert level. The latest developments of the Council's anti-bid-rigging efforts include the use of algorithms and artificial intelligence to detect patterns and unusual behavior in the public procurement process. The Council also investigates infringements in the public procurement process and imposes sanctions.

Mr. Chirițoiu listed several bid rigging indicators, including competitors submitting identical offers and price increases that cannot be explained by rising costs.

He concluded by presenting several bid rigging cases which the Romanian Competition Council investigated and successfully sanctioned by applying fines in the past.

**Turkey:** Mr. Recep Gündüz, Head of the Department of External Relations and Competition Advocacy at the Turkish Competition Authority (TCA), gave a presentation on the legal framework in Turkey and the role of the TCA in the public procurement market.

Mr. Gündüz began his presentation by stressing the importance of establishing efficiency and transparency of public spending. He explained that bid rigging is a form of bad allocation of resources, which increases inefficiency and the inequality of income and may cause political unrest. He pointed out the opportunity for competition authorities to step up and do something for the wellbeing of their society by ensuring efficiency in the public procurement process.

Mr. Gündüz furthermore emphasized the importance of competition in public procurement. Public procurement is vital for the economy as it constitutes a high share of national GDPs. Ensuring an effective and efficient public procurement process is not only a challenge for developing economies but for all nations as anti-competitive agreements in the public procurement process are not an issue limited to the developing world.

Mr. Gündüz continued by explaining the two dimensions of the legal framework in Turkey. The prohibitions incorporated in the Competition Act are similar to the ones in European legislations. Main prohibitions include anti-competitive agreements, such as price fixing and bid rigging, abuses of dominant positions, and mergers significantly restricting competition. The Criminal Code furthermore suggests that bid rigging constitutes a crime and is thus subject to criminal prosecution.

Mr. Gündüz also explained the role of the TCA in the public procurement market. As an administrative body the TCA can conduct administrative investigations and impose administrative fines. Mr. Gündüz furthermore stressed the importance of the competition advocacy role of the TCA. The TCA not only reveals anti-competitive practices but also tries to address the roots of the problem by supporting public procurement agencies in improving the procurement process and pointing out common mistakes to them. Some public institutions do not see the shortcomings of their own tender processes or do not have the expertise and tools to prevent and detect bid rigging. For this reason, raising awareness of the anti-competitive practices that can arise in the public procurement process is very important. The TCA offers trainings for public institutions and agencies on how to design tenders more effectively and provides assistance in how to eliminate requirements that create unnecessary barriers to entry and reduce competition.

According to Mr. Gündüz, the law can easily be applied and enforced when anti-competitive agreements are uncovered. The main problem is to detect such infringements. For this reason, collaboration and information sharing between agencies is vital. The TCA cooperates with public prosecutors and the Turkish Public Procurement Agency (PPA), which allows for deeper investigations. Additionally, the TCA is currently working on the creation of a system that allows them to analyze big data and detect infringements of the competition law.

In recent years, the TCA has successfully completed cases on a very broad spectrum, including the banking sector, the constructions industry, and the chemotherapy medicine industry. Mr. Gündüz presented two case examples to show how the TCA applies the competition law in practice.

The first case involved investigations on companies that operate in the field of chemotherapy medicine preparation. The TCA found out that the competing companies involved in the public tender process were engaged in bid rigging practices at the stage where the procuring hospital was trying to collect information on the approximate costs. The key learning of this case was that collusion does not only happen at the stage of carrying out the tender but can also happen in the preparational stages. For this reason, authorities should take into account every step of the

procurement process when conducting investigations, since any stage can be subject to collusive behavior.

The second case involved salary promotions offered to employees by banks. The TCA found that eight banks were involved in anti-competitive agreements and imposed a very high amount of fines on them. The case received high media coverage in Turkey and raised awareness within the Turkish society on how competition authorities can play an important role in the fight against bid rigging and improve the wellbeing of society.

**Tunisia:** Mr. Mahmoud continued with a presentation on the fight against corruption in public procurement in Tunisia and the role of the Tunisian Competition Council in that fight.

Mr. Mahmoud emphasized that public procurement is very important economically as it accounts for a large share of government expenditure. The Competition Council tries to fight corruption in public procurement since public procurement makes up such a large part of government expenditure and also because it is an area where corruption frequently occurs.

The Competition Council submits an annual report to the Prime Minister of the parliament to continuously improve the Tunisian legislation. Mr. Mahmoud emphasized the importance of enforcement but also acknowledged that enforcing the law is a challenging task. He explained that many of the Council's decisions deal with corruption in the public procurement process and that they put a lot of resources in the enforcement of such cases for this reason.

Mr. Mahmoud continued by explaining the two roles of the Competition Council. On the one hand, the Council is concerned with the prevention of anti-competitive agreements and gives advice on public procurement transactions. On the other hand, the Council is tasked with the investigation of anti-competitive practices and looks into violations on competition.

Mr. Mahmoud described that there exist different authorities and governmental bodies that deal with competition and public procurement in Tunisia. The anti-corruption body, for example, looks into complaints submitted by whistleblowers. The challenge is to coordinate the actions and measures of the different entities.

Mr. Mahmoud emphasized that anti-competitive practices, such as corruption and collusion, can happen anywhere and in any country. He continued by elaborating on the influence of design and specifications in the outcome of public tenders, as specifications can be exclusionary and direct the contract to a specific company. Some specifications can only be found in European cars, for example. If the government requests those features, it has to buy from one of those brands.

Mr. Mahmoud presented a case the Tunisian Competition Council recently dealt with. They found that the same family-owned enterprise wins the bidding in the public procurement process every year. Several companies participated in the tender to cover up the bid rigging. The winner would be a different family member based in a different country each year, so they also tried to make it look like separate companies while it was actually one entity.

Mr. Mahmoud furthermore explained that the Tunisian law blacklists companies that have been convicted of collusion from the public procurement process for five years. Public tenders are moreover now placed online for greater transparency.

Mr. Mahmoud ended his presentation by explaining that dictatorship fosters corruption but that a free democratic system alone is not sufficient to fully prevent corruption. He invited the other participants of the Forum to unite against corruption.

Following Tunisia's presentation, a discussion on the blacklisting of firms emerged. Mr. Capobianco explained that blacklisting has a strong deterrent effect on companies since companies

want to avoid being excluded from the public procurement as this equals a large cost for them. However, if companies are excluded for a long period of time from participating in public tenders, competition is reduced. Mr. Chirițoiu and Mr. Gündüz described the issue of blacklisting firms in Romania and Turkey respectively and Mr. Capobianco concluded the discussion by emphasizing the importance of finding a balance between blacklisting companies but at the same time remaining the competitiveness of the market, otherwise the prices of bids will go up as a consequence of the reduction of the competition.

Mr. Capobianco closed the session by stating that despite the differences in the state of the development of the economy, the legal system, and the enforcement culture, the challenges the various countries face are very similar. He pointed out that a lot of lessons can be learned from the experiences of other countries.

### **Evaluation and Future Work**

Ms. Sumpf closed the Forum by expressing her hopes that the Forum created some food for thought that the participants can take back to their respective authorities and countries. She introduced the participants to the steps that will be taken following the First Competition Forum for the Arab Region.

ESCWA, UNCTAD, and the OECD plan to repeat this successful conference and make the Competition Forum for the Arab Region an annual feature. The next Forum is planned to take place in Egypt in January 2021. Ms. Sumpf thanked Egypt and Oman for preliminary offering to host the next two fora and stated that the three organizations will internally work on organizing the Second Forum's program. She expressed her hopes that they will be able to focus more on the content of the Forum in the future and encouraged the participants to participate in the survey to get an idea what topics are important to them and should be followed up on in the future. Participating in the survey will help the three organizations to develop a tailored program for the next Forum. Ms. Sumpf furthermore asked the participants to fill out the evaluation on the organization of the overall meeting to be able to improve future conferences based on the participants' feedback. She also invited the participants to share which areas they have expertise in and in which areas they could support other authorities and countries. The three organizations will try to develop technical assistance programs together with the participants and in parallel attempt to mobilize the necessary resources for that.

Ms. Robertson and Mr. Capobianco from the OECD and Mr. Crucelegui from UNCTAD thanked the participants for participating in the Forum and for their contributions, which also enabled the three international organizations to learn a lot about the region. They invited the participants to contact them any time they face issues regarding competition and need support or suggestions, or in case they would like to receive more information on a specific topic or discuss that topic.

Ms. Sumpf pointed out that all material from the conference will be made available on the Forum's website and that they will also create a report which summarizes the presentations given at the conference, which they will then share with the participants.

Ms. Sumpf also thanked the participants for their contributions, their engagement, and their interest in the topic and wished the participants safe travels back to their respective countries. She furthermore thanked the interpreters for facilitating the conference and her colleagues at ESCWA, the OECD, and UNCTAD for helping her organize this Forum.

Last but not least, she stated that she is happy that the Forum finally took place after it had to be cancelled in October and that she thinks that this Forum is a strong signal that the Arab region really can achieve something if they want to.

\*\*\* End all \*\*\*

**Important note:**

Unfortunately, some speakers were not able to attend the Forum in January 2020, which was originally planned to take place in October 2019. Contributing materials prepared by Kuwait, Libya, Theodor Thanner from the Austrian Federal Competition Authority, and Lorenzo Ciari from the European Bank for Reconstruction and Development can be found on the Forum's website.

<https://www.unescwa.org/events/1st-joint-escwa-unctad-oecd-competition-forum-arab-region>

## ANNEX 1: AGENDA

Thursday, 23 January 2020	
Arrival and Registration	
08:30 to 09:30	<p>The meeting will be held at the United Nations House in the MZ Conference Room (MZ level).</p> <p>Sponsored participants are kindly asked to bring their passport, visa stamp and airline ticket stub to the meeting.</p>
Welcome & Opening Remarks	
09:30 to 10:30	<ul style="list-style-type: none"> <li>• Rola Dashti, Executive Secretary, United Nations Economic and Social Commission for Western Asia (ESCWA)</li> <li>• Alia Abbas, General Director of Economy and Trade at the Ministry of Economy, Lebanon</li> <li>• Teresa Moreira, Head, Competition and Consumer Policies Branch, Division on International Trade and Commodities, UNCTAD (via video recording)</li> <li>• Antonio Capobianco, Acting Head of Division Competition, OECD</li> <li>• Denise Sumpf, Acting Chief, Economic Governance and Planning Section, ESCWA</li> <li>• Mounir Tabet, Deputy Executive Secretary, ESCWA</li> </ul>
<b>10:30 to 11:00</b>	<b>Group picture &amp; coffee break</b>
Session 1	
11:00 to 13:00	<p><b>COMPETITION AND ECONOMIC DEVELOPMENT</b></p> <p>Effective competition bolsters economic growth and productivity by promoting dynamic markets. A competition framework coherent with international standards contributes to the international competitiveness of a jurisdiction's business sector generating confidence amongst potential investors. Competition drives innovation leading to new products and new production technologies. While encouraging firm efficiency, competition provides wider choice for consumers, lower prices and better quality. Effective enforcement of competition law can also reduce inequality and poverty, making markets work for the people and supporting governments' efforts to implement the UN Sustainable Development Goals.</p> <p>The session will explore both the benefits and limitations of competition to national economies.</p> <p><i>Speaker and Session Chair:</i></p> <p>Prof. Frédéric Jenny, (Chairman, OECD Competition Committee)</p> <p><i>Country presentations:</i> Egypt, Syria, Morocco, and Yemen</p> <p>Additional material provided by Kuwait</p>

<b>13:00 to 14:30</b>	<b>Lunch</b>
<b>Session 2</b>	
14:30 to 17:00	<p><b>EFFECTIVE COMPETITION FRAMEWORKS</b></p> <p>Institutional design is a critical component of competition law and policy. Good competition laws on the books are meaningless without well-designed institutions to enforce them. At the same time, many different models for institutional design exist, making the process of choosing the optimal structure complex. Many authorities have found success with very different designs, and what works well in one jurisdiction may not always work well in another. This session will explore options available, and the key characteristics of effective competition institutions, highlighting successful experiences. The session also introduces the “Guiding Policies and Procedures under Section F of the UN Set on Competition” agreed at the 18th Session of the IGE on Competition Law and Policy.</p> <p><i>Session Chair:</i> Denise Sumpf, Acting Chief, Economic Governance and Planning Section, ESCWA</p> <p><i>Speakers:</i> William Kovacic, Global Competition Professor of Law and Policy and Director of Competition Law Center at George Washington University Akari Yamamoto, Japan Fair Trade Commission (via remote access)</p> <p><i>Country presentations:</i> Oman, Algeria, Jordan, Lebanon, Morocco, and Palestine</p> <p>Additional material provided by Lorenzo Ciari, European Bank for Reconstruction and Development</p>
<b>18:30 to 20:00</b>	<b>Reception at the Radisson Hotel Verdun (courtesy of the OECD)</b>

Friday, 24 January 2020			
09:00 to 09:30	Arrival		
Opening Session			
09:30 to 10:30	<p><b>A PARTNERSHIP FOR DEVELOPMENT THROUGH COMPETITION LAW AND POLICY</b></p> <p>The session discusses the rationale and objective of the LoU between ESCWA, UNCTAD and OECD to better serve the Arab countries and explains the envisaged modalities of the annual MENA Competition Forum (e.g. rotation, ownership, engagement). It also seeks ideas from the countries on specific projects related to competition to be addressed jointly.</p> <p><i>Speakers: Denise Sumpf (ESCWA), Lynn Robertson (OECD), Teresa Moreira (UNCTAD, via remote access), and Juan Luis Crucelegui (UNCTAD)</i></p>		
10:30 to 11:00	Coffee break and move to the break-out rooms		
Session 3			
<p>11:00 to 13:00 with calls for contributions</p> <p style="color: #0070c0; text-align: center;"><i>Includes a Coffee Break from 10:00 to 10:15</i></p>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;"> <p><b>A. Competition, Employment, &amp; Gender</b></p> <p>The session merges two topics:</p> <p>It addresses the impact of competition on fostering innovation and supporting entrepreneurial activity, especially to create jobs for the youth.</p> <p>It also discusses the impact of competition on improvement of women's access to economic activities and active participation in markets.</p> <p><i>Moderator:</i> Juan Luis Crucelegui, UNCTAD</p> <p><i>Speaker:</i> Chris Pike, OECD (via remote access)</p> <p><i>Country presentation:</i> Jordan Additional material provided by Theodor Thanner (Austria)</p> <p>Room: MZ Level Meeting Room</p> </td> <td style="width: 50%; vertical-align: top;"> <p><b>B. Competition and Corruption/ Good Governance</b></p> <p>The session addresses the relationship between competition and the fight against corruption.</p> <p><i>Speaker/Moderator:</i> Mona Chammas, Attorney &amp; Integrity Director at Govern &amp; Law</p> <p><i>Country presentations:</i> Sudan and Tunisia Additional material provided by Libya</p> <p>Room: B-1 Level Committee Room II</p> </td> </tr> </table>	<p><b>A. Competition, Employment, &amp; Gender</b></p> <p>The session merges two topics:</p> <p>It addresses the impact of competition on fostering innovation and supporting entrepreneurial activity, especially to create jobs for the youth.</p> <p>It also discusses the impact of competition on improvement of women's access to economic activities and active participation in markets.</p> <p><i>Moderator:</i> Juan Luis Crucelegui, UNCTAD</p> <p><i>Speaker:</i> Chris Pike, OECD (via remote access)</p> <p><i>Country presentation:</i> Jordan Additional material provided by Theodor Thanner (Austria)</p> <p>Room: MZ Level Meeting Room</p>	<p><b>B. Competition and Corruption/ Good Governance</b></p> <p>The session addresses the relationship between competition and the fight against corruption.</p> <p><i>Speaker/Moderator:</i> Mona Chammas, Attorney &amp; Integrity Director at Govern &amp; Law</p> <p><i>Country presentations:</i> Sudan and Tunisia Additional material provided by Libya</p> <p>Room: B-1 Level Committee Room II</p>
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## ANNEX 2: LIST OF PARTICIPANTS

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## ANNEX 3: PARTICIPANTS' FEEDBACK FORM

### General information

This questionnaire aims to assess the relevance, effectiveness and added value of the meeting you attended. It will be used for **internal purposes**, to improve the services and impact of ESCWA's activities.

Your honest and open feedback is crucial for our learning and continuous improvement. Your responses will be shared with the meeting's organizer. Therefore, providing your name and email address is optional. However, it would help us to follow up with you should we have any further questions for clarification of your opinion.

Thank you for your time & feedback!

Name: \_\_\_\_\_

E-mail: \_\_\_\_\_

### Purpose of Meeting

ESCWA-UNCTAD-OECD have combined their expertise to better support key actors across the Arab region in the development of competition frameworks, and this Forum is the inaugural meeting of our joint undertaking. Our goal is to develop the Arab Competition Forum into a regional multi-stakeholder platform on the coordination and implementation of competition-related initiatives at the national and regional levels, in line with the commitments of Arab countries to the implementation of the Agenda 2030.

### 1. Content/ Presentations Assessment

Please evaluate the following items and check the relevant box:

Meeting content/Presentations	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Not applicable
The overall <b>quality</b> of the meeting met my expectations.						
The meeting achieved its <b>purpose</b> .						
The meeting was <b>relevant</b> and the topics <b>critical</b> to advance discussion and action in the region.						
There was balance among thematic topics of the sessions.						
The content of each session was <b>clear</b> and <b>well structured</b> .						
The time allocated for the meeting and each session was appropriate						
There was enough time for interactive discussion(s).						
There was <b>clarity</b> of conclusions reached/next steps of action(s).						

The presentation style/moderation of the sessions/ meeting was <b>interactive</b> and <b>engaging</b> .						
Please provide any <b>comment(s)/suggestions</b> to improve the overall quality, content and presentations of the meeting:						

Thinking of the quality of the presentations provided and the facilitation of the discussion, please evaluate each session of the meeting (optional):

Title of Session	Poor	Fair	Good	Excellent
Session 1: <b>Competition and Economic Development</b>				
Session 2: <b>Effective Competition Frameworks</b>				
Session 3: <b>Competition Policy and Private Sector Development</b>				
Session 4: <b>Competition and Public Procurement</b>				
If you rated any session / agenda item <b>less than "good"</b> , please explain <b>why</b> :				

## 2. Organization of the meeting

Please evaluate the following items and check the relevant box:

Organizational Questions	Strongly	Agree	Neutral	Disagree	Strongly disagree	Don' t know
I received the meeting invitation in a <b>timely manner</b> .						
I received substantive communication and updates in <b>preparation</b> for the meeting in a <b>timely manner</b> .						
My role in the meeting was clearly communicated.						
The meeting was overall <b>well organized</b> and <b>structured</b> .						
The interpretation/ translation was of good quality.						
The meeting was managed efficiently.						
The venue, where the meeting took place was appropriate.						
Please provide any <b>comment(s)/suggestions</b> to improve the overall quality, content and presentations of the meeting:						

## 3. Next steps

Please specify any follow-up that you may wish from the meeting type and programmatic area for follow-up action

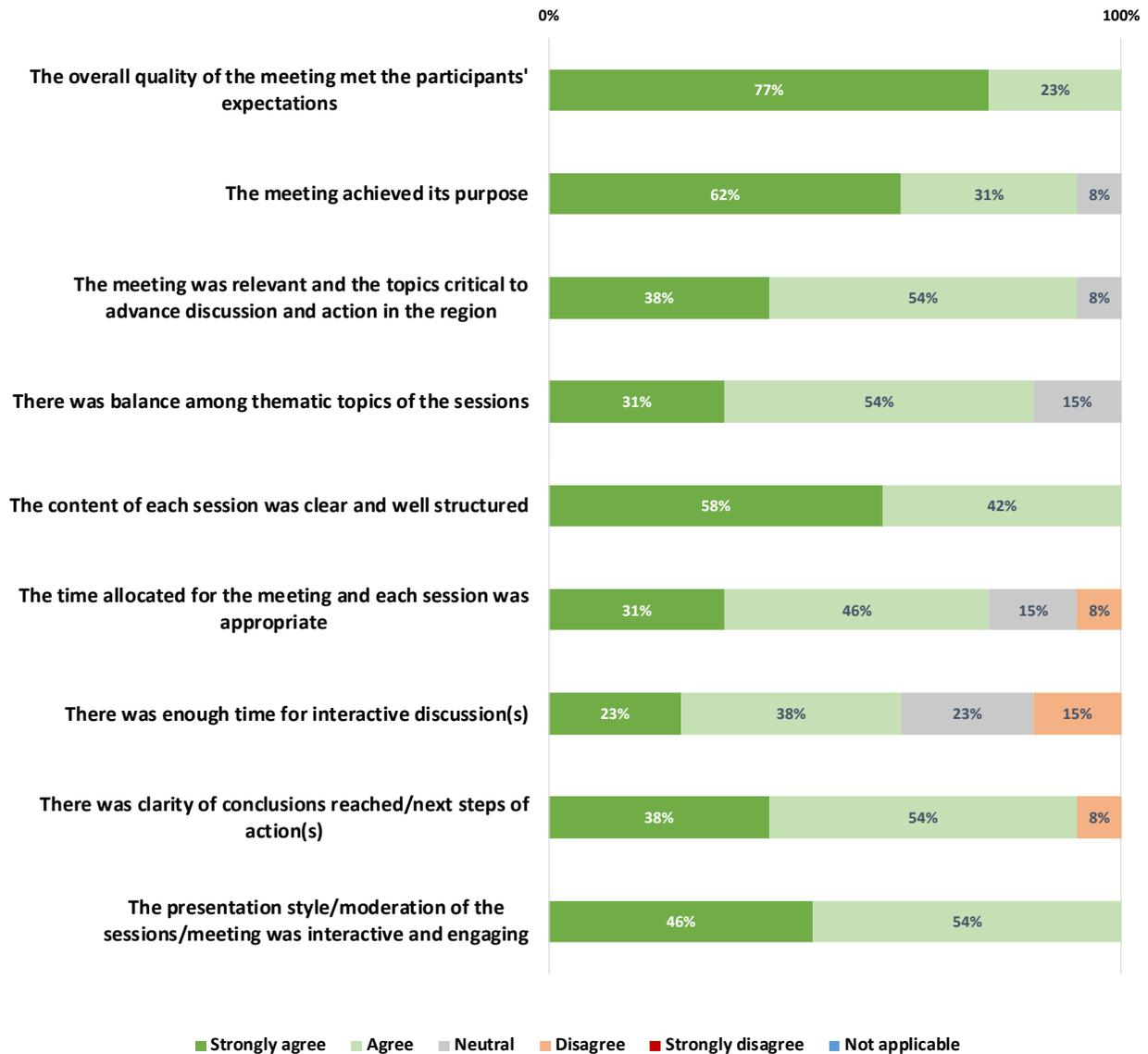
Do you have any additional **comment(s)/suggestion(s)** on how we can improve similar UN-ESCWA meetings in the future?

*Thank you!*

## ANNEX 4: PARTICIPANT FEEDBACK

### 1. Content/Presentations Assessment

#### The Participants' Satisfaction with the Meeting Content and the Presentations

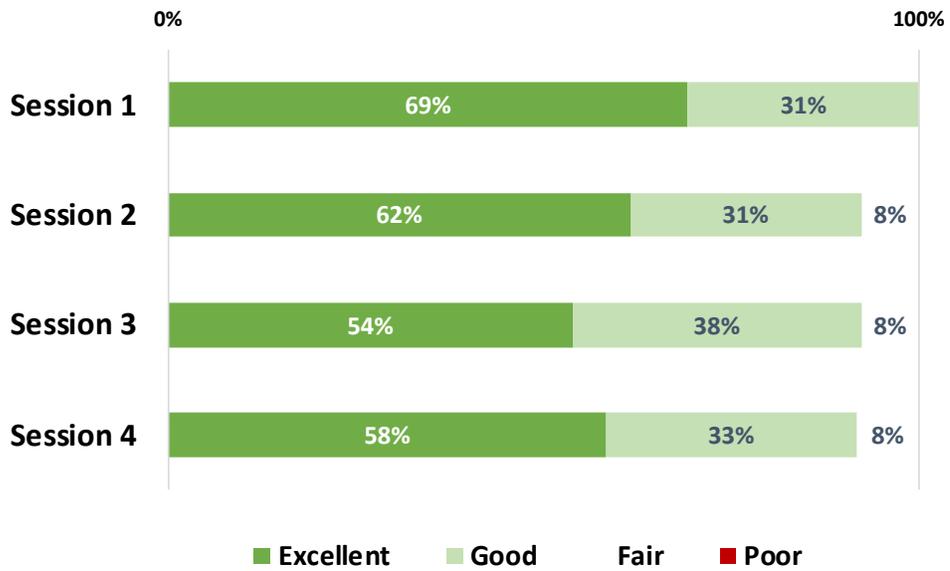


#### Additional written remarks by the participants:

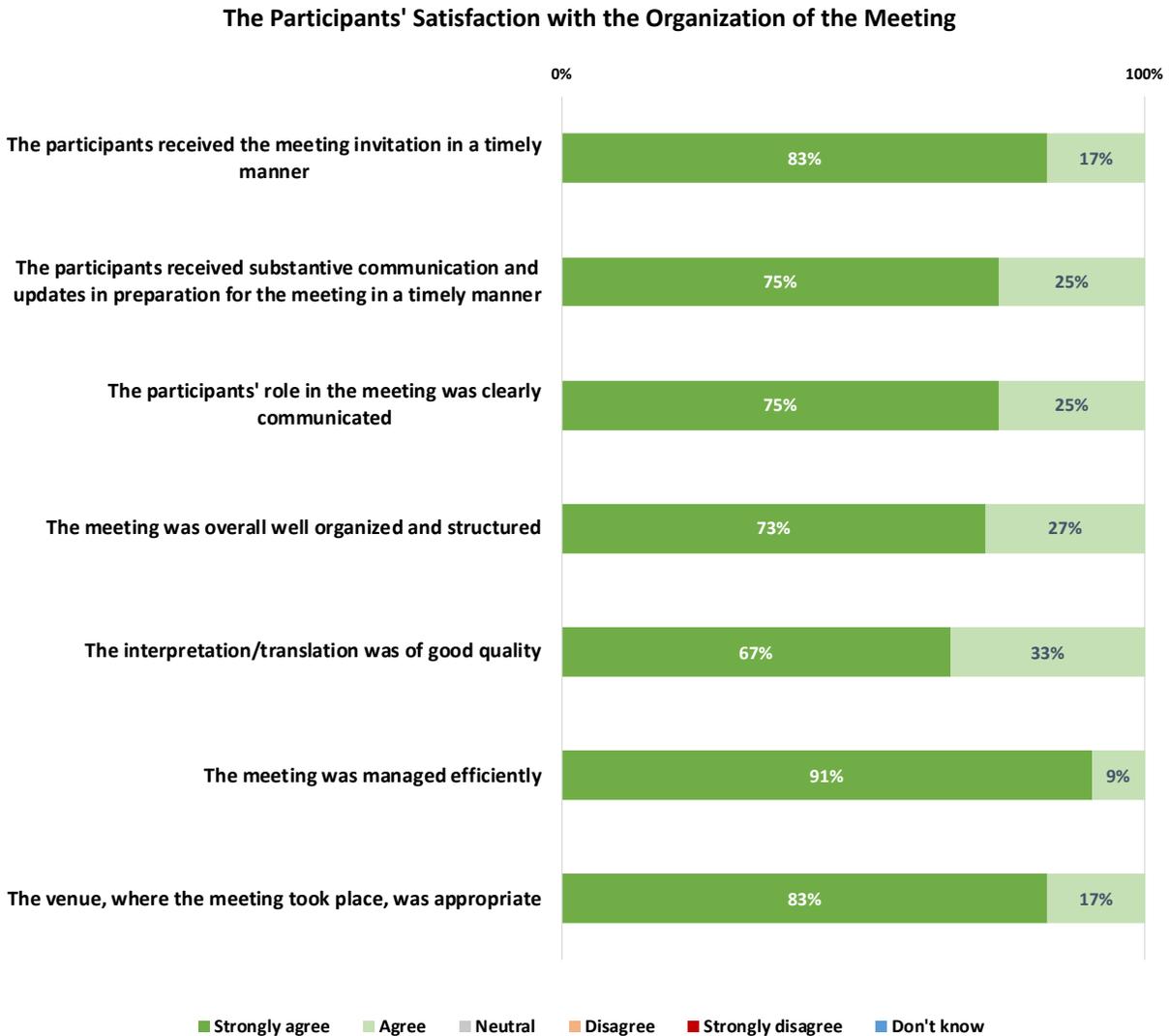
Some participants wished for more time for each session and for some more breaks not to lose concentration during the presentations.

One participant suggested to come up with a conclusion at the end of each session and to write it down in order to reach clarity.

## The Participants' Satisfaction with the Quality of the Sessions



## 2. Organization of the Meeting



## 3. Next Steps

The participants wished for assistance for young competition authorities from the Arab region. They moreover stated that they wished for a second Forum to follow up in the near future and for a good platform for future communications. One participant furthermore expressed the wish for follow-up action in the area of gender discrimination and competition.

### **Comments on how to improve similar UN-ESCWA meetings in the future:**

Several participants raised the concern that the format of the Forum needs more time than two days in the future, also to be able to cover more issues. The last session should moreover be finished by 3 pm in order not to lose concentration.

One participant suggested to send out some pre-readings before the meeting, so the participants can prepare themselves and the meeting will be more effective and efficient.

One participant furthermore suggested to include group work that allows the participants to collect ideas and makes the meeting more interactive.

### **Voices of the Participants:**

“Despite being in business since many years, I was not aware of the competition authorities present across the region and other territories. This is such an important foundation which when exploited and efficiently adopted would lay the foundation for fair competition between different companies (bidders) across various sectors, thereby leading to enhance the citizen and state welfare.

I would be interested in participating in such forums, and would appreciate to keep me posted as you move forward in planning forums related to business topics as well as women in business.

Furthermore, I would be ready to provide guidance on women networks that might be worthwhile to include in order to increase awareness on the efforts that are invested by the UN, OECD, ESCWA, & UNCTAD.”

**Hanan Saab, Chief Executive Officer at Pharmamed**

“Thank you again for the successful organization. As we discussed, I already agreed with my IR team on our engagement plan with ESCWA and OECD for this year. We stand ready to host and organize the second version of the MENA Competition Forum. As you know, we are celebrating this year our 15<sup>th</sup> birthday and we want to exploit this to launch many activities including a Competition Day. Further, we stand ready to help our colleagues and partners in the region on all fronts. We are also happy to work with the Embassy in Beirut to raise the awareness among the business community in Lebanon to support the attempts of adopting the competition law. I already met, with the Embassy, the head of the Lebanese-Egyptian Businessmen Association. It was a very successful meeting and I believe if we continued such efforts the law will be successfully adopted. I will continue this on the road-show planned for Lebanese businesses in their visit to Cairo soon. It is in Egypt’s interest to establish strong awareness and robust competition regimes across the region.”

**Amir Nabil Ibrahim, Chairman at the Egyptian Competition Authority**