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**Voluntary Peer Review of Competition Law and Policy in Egypt**

**Presentation**

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# Voluntary Peer Review of Competition Law & Policy in Egypt

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# Structure

- Methodology
- History, Legal & Economic Context: The Evolving Legal Framework
- Rethinking Institutional Design
- Substance of Competition Law
- The scope of ECL & ECA's jurisdiction
- ECA: Enforcement record, resources, independence

# Methodology

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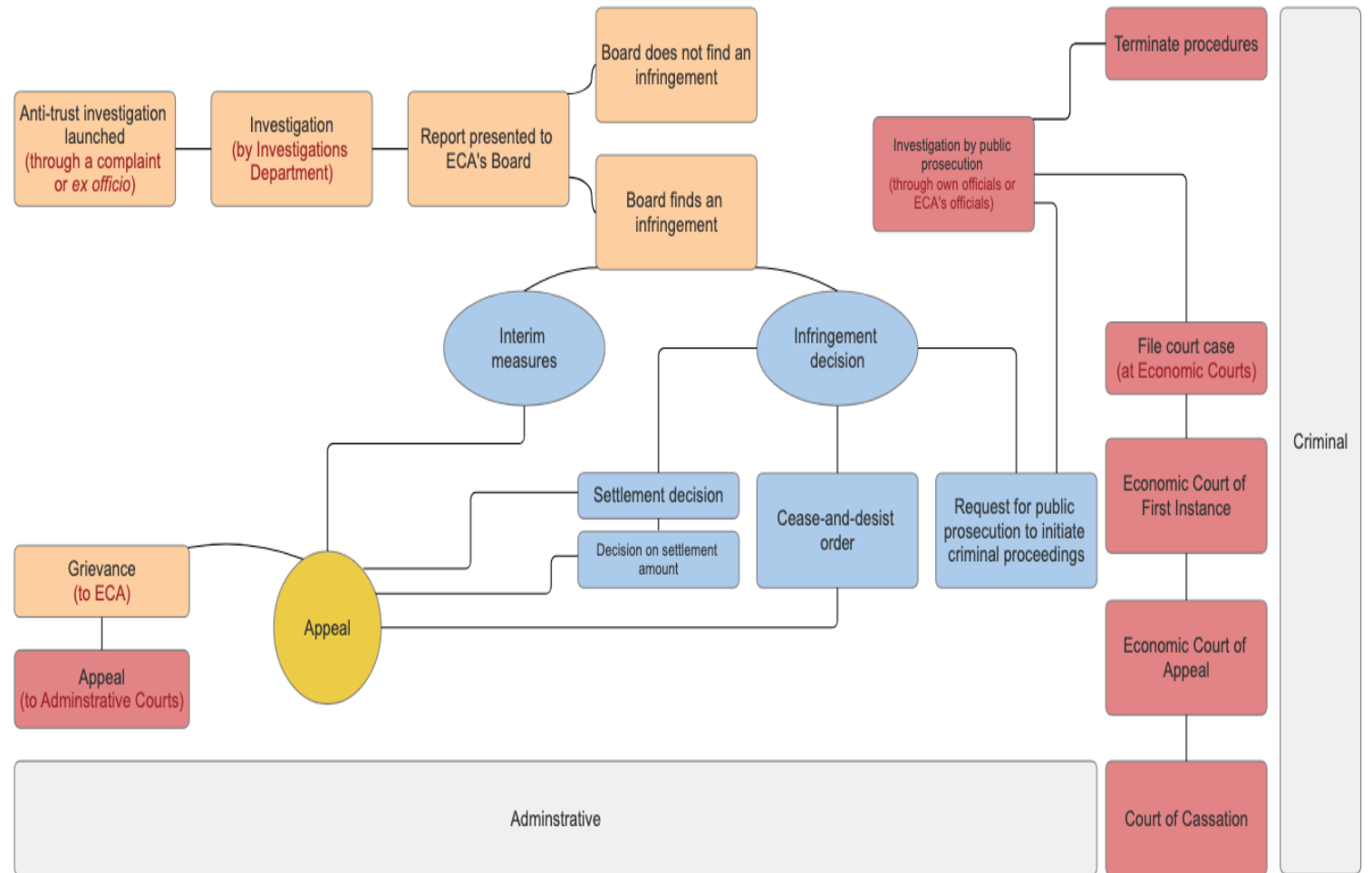
- Mixed methods approach
- Desk-based research
- Literature review
- Semi-structured interviews with stakeholders
- Challenges: continuous evolution of the legal framework
  - On 4 April 2024, the new Executive Regulations were published in the Official Gazette, and went into effect on 1 June 2024, enacting the *ex ante* merger control regime

# History, Legal & Economic Context

- Competition Law: a Legal Transplant?
  - Conditionality
  - Informal economy
- Criminal debuts: Articles 345 and 346 of the Egyptian Penal Code
- Law No. 241 of 1959 on the Prevention of Monopoly on the Distribution of Locally Produced Goods
- Economic Reform and Structural Adjustment Program 1991
- Trade Agreement with the European Union (2001): Art. 72
- Adoption of Egyptian Competition Law (ECL) (Law No. 3 of 2005)
  - Establishment of separate competition and consumer authorities
- 2014 Amendments to the Egyptian Constitution: Article 27
- 2008 & 2014 amendments to the ECL
  - Ex-post merger notification regime
  - Leniency program
  - Powers regarding anti-competitive state measures
- 2022 Amendment and the establishment of an *ex-ante* merger control regime
- 2024: New Executive regulations completing the transformation of ECL from a post-closing notification system to a premerger filing system

# Rethinking Institutional Design

- From a Criminal-based enforcement system
  - Dual/two-tier institutional regime: economic prosecutor, ECA
  - Criminal (individual) fines issued by Economic Courts
  - Administrative process for ECA: interim measures, infringement decisions, settlements
- Towards building an Administrative enforcement system
  - Introduction of ex-ante Merger control
  - Duplication of investigative resources
  - The economic prosecutor's prosecutorial discretion in filing cases involving criminal fines
  - A risk of underenforcement?
  - Organizing the interaction between ECA and the economic prosecutor
  - Expertise and Technocracy: escaping the business tort model trap



# Substance of ECL

- Article 6 ECL and horizontal “hardcore” agreements: an exhaustive list of “horizontal” conduct that is prohibited by object
  - A rather formalistic definition of the concept of “contract or agreement”
  - List does not include types of agreements that may constitute by object restrictions of competition
  - By object restrictions and the definition of the relevant market (art. 6 & 11 ECL)
  - Economic efficiency defence: Art. 6(2) & 2(e) ECL
  - Proposals for reform
- Articles 7 & 12 ECL and non-horizontal/cooperation agreements: by effects analysis
  - RPM and the development of presumptions
  - Article 8 (abuse of dominance) and vertical restraints
  - Proposals for reform
- Article 8 (Art 4 ECL & Art. 13 ECLER) and Abuse of Dominant Position
  - Evaluation of a dominant position
  - The need for a rebuttable presumption to establish dominance
  - Collective/joint dominance? Ecosystems?
  - An exhaustive list of abusive practices
  - Proposals for reform
- Merger control (briefly)

# The scope of ECL and ECA's jurisdiction

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- Powers of the Central Bank of Egypt
  - Anticompetitive conduct and merger control
- Powers of FRA
  - Merger control
- The telecom sector
- Advantages and Disadvantages of Competition Authorities or Sector Regulators with Jurisdiction over Competition Law matters
- Proposals

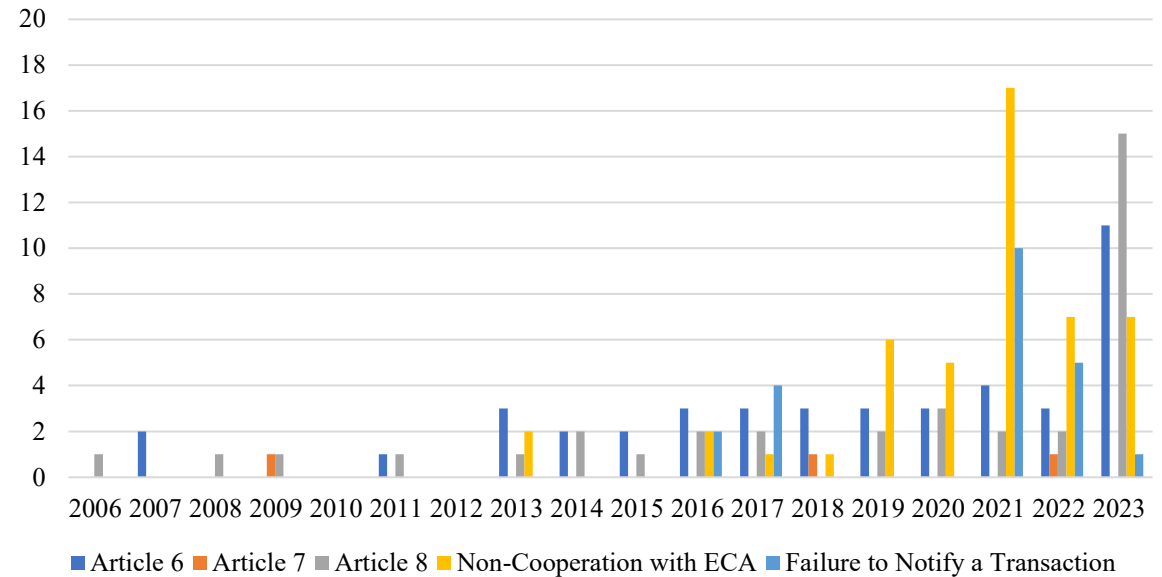




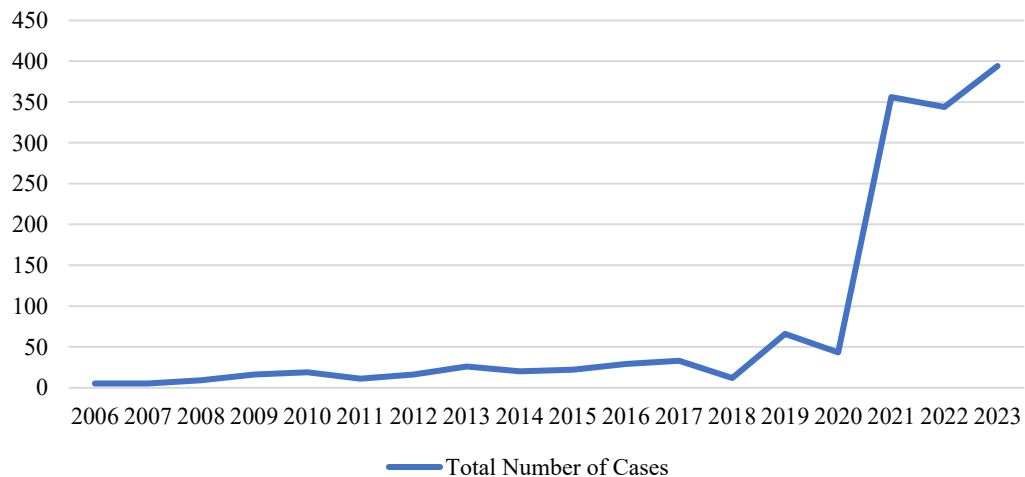
# Enforcement record, resources, independence

- Institutional independence: Art. 215 & 216 Egyptian Constitution
- Stagnating human resources
- Market monitoring & competitive neutrality
- Pecuniary admin. sanctions; alternative sanctions
- International cooperation and influence

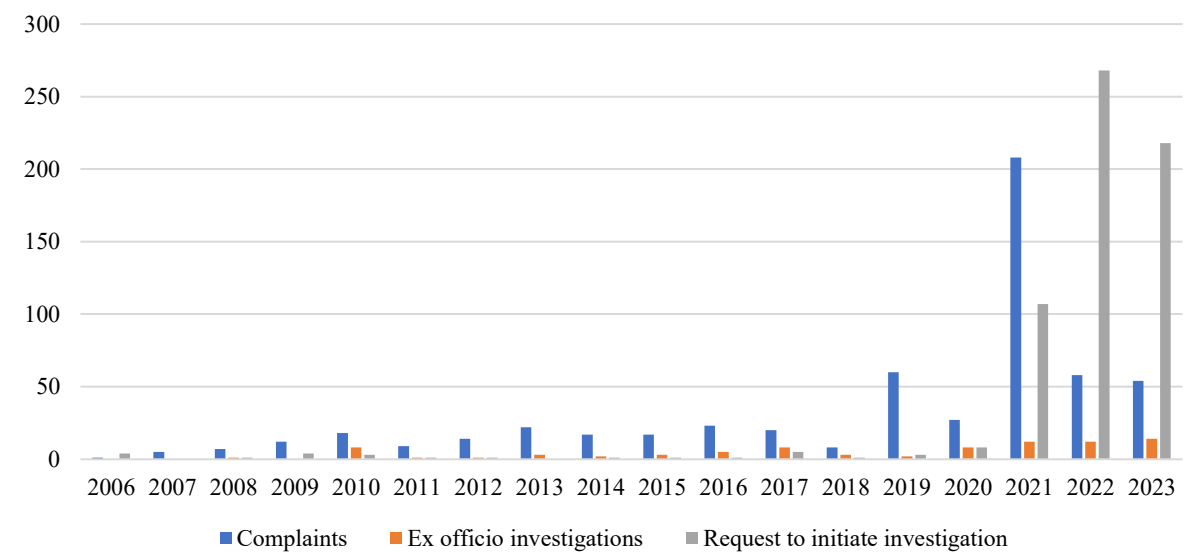
Graph: Infringement Decisions (2006-2023)



Graph: Total Number of Cases



Graph: ECA Cases by Type of Trigger (2006-2023)



# Recommendations

