



## Competition Law & Policy Webinar

### Competition Law & Policy During and in the Aftermath of the Covid-19 Pandemic, Reflections from the Arab Region

16 July 2020

Online Webex Live Event, Streamed on YouTube Channel

Watch it on: <https://www.youtube.com/watch?v=QoUwOT8L0aw>

#### SUMMARY OF DISCUSSIONS

Mr. Mounir Tabet, ESCWA, welcomed the attendees from the Arab States, OECD, UNCTAD, ESCWA and all other participants. He also thanked the attendees for their notable commitment and participation. He mentioned that he would prefer to interact with all participants face to face but COVID-19 has forced the world to change the format of meetings.

He spoke about the impact of COVID-19 on the Arab region that has imposed new methods of thinking, new approaches and new business models. He also asserted that the post-COVID-19 world will not be like our world before COVID-19. The pandemic has disrupted the global economy, tested institutional capacities and effectiveness, and wrecked businesses and supply chains. He emphasized that the world is still in the middle of the crisis and at the beginning of the road to the new normal.

He continued to state that, during the webinar, all participants have a chance to make their own modest contributions to show how competition and consumer protection are a positive force in front of potential stronger protectionist practices.

He assured participants that the 2030 Agenda, and its Sustainable Development Goals, continues to be the roadmap that guides the reflections on the new normal. He explained that it is important to remember the 2030 Agenda and its commitment to equality, inclusion, and sustainability. He furthermore stated that it is necessary to reflect on how competition can contribute to the emerging production and consumption patterns, what policy measures governments can consider, how the roles of the private sector will change, and which new players and technologies will emerge.

Following this general introduction, Mr. Tabet stated that the webinar is an opportunity for Arab competition authorities to share their experiences since the beginning of the crisis, the obstacles they have faced, and the measures they have taken to protect competition in their countries. Also, the webinar offers participants an opportunity to exchange information and to learn from best practices. During this webinar, he added, experts from the OECD, UNCTAD, and ESCWA will discuss the importance of regional and international cooperation during these times and illustrate how regional and international organizations can support competition authorities in adjusting to the new challenges.

Mr. Tabet concluded his introduction by thanking all the organizers and attendees once again for their commitment and participation.

Within a period of 1 week, the webinar had around 500 viewers on YouTube from all over the world with 76 participants having registered for the webinar in advance and around 60 participants viewing it live. Eleven speakers made contributions to the webinar.

## Competition Law & Policy Webinar

### **Panel 1: What are the main challenges faced by competition authorities around the world and best measures taken to protect and promote competition since the beginning of the COVID-19 pandemic?**

Ms. Nathalie Khaled, ESCWA, introduced the first panel of the meeting which included presentations from international experts about the main challenges that competition authorities around the world have faced since the beginning of the crisis and the response measures they have taken to mitigate the impact on competition. She introduced the first speaker, Prof. Frédéric Jenny, Chairman of the OECD Competition Committee, to elaborate on this topic.

Prof. Jenny, in his turn thanked Ms. Khaled, ESCWA, UNCTAD and OECD for the collaboration and gave an introduction about the pandemic which has presented a challenge for the market in two ways: It has created a huge spike of demand and a collapse of supply. Prof. Jenny continued to explain that markets are usually considered as places where the price mechanism adjusts the system of supply and demand, but the current pandemic has broken down this mechanism. He emphasized the importance of ensuring that prices remain at the competitive level instead of the monopolistic level.

He continued his presentation by presenting the four types of challenges faced by competition authorities since the start of the pandemic. He first explained the challenge concerning the scope of competition law and the role that competition authorities play in advocating competition. Second, he highlighted the challenge of enforcement and any necessary adjustments that are needed to enforce competition law regarding pricing abuses, horizontal cooperation, and mergers. Third, he explained that there is a challenge of making competition law consistent with other policy actions that have an impact on competition. Finally, he emphasized that there is a challenge that will be faced in the future concerning the lasting impact of the crisis on industrial structures and market structures and the role of competition in a period of recession.

Next, he gave two examples of two different situations for exemptions from or suspensions of competition law. In some countries such as South Africa, governments have passed a law suspending the application of competition law in part or in whole to some sectors. In other countries such as Australia, UK and New Zealand, the competition authority may grant temporary exemptions from competition law.

He stated that competition authorities have a big role to play in trying to ensure that governments do not unduly restrict competition while exempting or creating regulations for sectors. Competition authorities could also advocate the lifting of regulatory obstacles when such obstacles actually prevent the smooth adjustment of supply and demand.

Above and beyond the advice to governments on emergency regulations, competition authorities must send a clear message to the business community on how the principles of competition law enforcement will apply in the context of the crisis so that business firms can have a clear idea of what is allowed and what is prohibited during this time.

After explaining the importance of competition authorities' role in advocacy, Prof. Jenny continued to explain the first issue competition authorities have faced during this crisis: excessive prices and cases of price gouging. In many markets where there was a considerable increase in demand and a collapsing source of supply, price gouging resulted. He presented different responses of competition authorities to this effect. In some jurisdictions, such as the United States, there is the notion that competition law should not intervene on prices. In other jurisdictions, such as the European Union, there is a legitimate way for competition authorities to intervene in cases of price abuses. In some other jurisdictions, including South Africa, the competition law has been modified to facilitate the possibility for competition authorities to intervene in cases of excessive prices.

There are different types of responses to excessive pricing. Responses depend on several factors: whether there is a public interest goal in the nation's competition law; whether the excessive prices are considered legitimate or not; whether the competition authority has other functions such as consumer protection; and/or whether the law allows the competition authority to intervene at an earlier point in the process. In summary, competition authorities can intervene in this issue by monitoring prices, issuing warnings or by intervening directly.

## Competition Law & Policy Webinar

Following the explanation of the competition authorities' responses to price gouging, Prof. Jenny discussed the differences between horizontal agreements during the pandemic and in normal times. He talked about two specific dimensions of cooperation between competitors in the context of the crisis. The first one is about cooperation among competitors to increase or restore aggregate supply rather than to reduce aggregate supply or maintain prices, as horizontal agreements usually attempt to do in normal times. The second method of cooperation is increasing the supply of goods to prevent the spread of the pandemic and thus diminish the social and economic cost of the crisis (i.e. the cost of lost lives and/or the cost of confinement). Thus, horizontal agreements during a pandemic can have temporary social benefits due to a positive externality which should be weighed against the cost of reducing competition.

The next important matter explained by Prof. Jenny is the coordination among competitors in the European Union and the United States. He stated that a lot of competition authorities have allowed some kinds of cooperation among firms to try to restore or allocate supply when there was great scarcity. Competition authorities have also offered some arrangements, previously considered anti-competitive in normal times, to benefit from the positive effect of increased supply. This has been published by the European Commission in a Communication on the establishment of a temporary framework for assessing antitrust issues related to measures to be taken to adapt production, stock management and distribution. This cooperation can be considered acceptable under a number of conditions: The measures need to be objectively necessary to actually increase output, be temporary in nature, and must not exceed what is strictly necessary to achieve the objective of addressing or avoiding the shortage of supply.

He also mentioned that the joint United States FTC-DOJ statement makes clear that "there are many ways firms, including competitors, can engage in procompetitive collaboration that do not violate the antitrust laws". Furthermore, the agencies announced that they will account for "exigent circumstances" in evaluating efforts to address the spread of COVID-19 and its aftermath.

The next challenge discussed concerned merger control and the failing firm defence that may need to be revisited in an economic crisis. Many firms will go bankrupt, and as a result, some of those firms will be tempted to merge with others since there will be overcapacity in some industries and reduced supply in others. Traditionally competition authorities have been very resistant in allowing anti-competitive mergers on the basis of the failing firm defence. The failing firm defence argues that if the acquired asset is a failing firm then there is not much reduction in competition and the merger should be allowed. These mergers are allowed but with very strict conditions and standards of proof monitored by competition authorities. The parties have to show that the failing firm would be forced out of the market, that there is no less anti-competitive alternative for the merger, and that the assets of the merging firm would leave the market. Some commentators propose the introduction of a truncated and simpler administrative procedure with respect to the application of the failing firm defence which would not require a change in the EU merger regulation but would simply require a lighter burden of proof on each of the three elements required for a successful defence.

Following the elaboration on the failing firm defence, Prof. Jenny presented other challenges that might arise due to the governments' measures outside the field of competition policy which still have an impact on competition.

The first example he discussed is the European Union's Temporary Framework for State Aid which allows state aid to alleviate the liquidity crisis faced by firms and victims of the confinement. This aid enables member states to accelerate the research, testing and production of coronavirus-relevant products to fight the spread of the virus; to allow public support in the form of equity and/or hybrid capital instruments to undertakings facing financial difficulties; and, to allow lossmaking small businesses to receive COVID-19 support. Competition authorities have a huge role to play in monitoring governments who offer state aid to firms and individuals so that this aid does not disrupt competition.

The second example is the necessity of screening of foreign investments to prevent predatory takeovers of key European companies struggling due to the COVID-19 pandemic. Prof. Jenny questioned whether or not foreign

## Competition Law & Policy Webinar

firms need to be screened if strategic interests are at play, especially since these screenings can diminish competition.

Third, he highlighted the fact that the revision of public procurement rules can negatively reduce competition. This revision calls for Europe to undertake a review of European Union public procurement market rules to allow for a more thorough examination of the role of foreign bidders in critical markets – in particular when it comes to state-owned and/or state-supported companies. Prof. Jenny emphasized that these rules should not be too detrimental to competition.

Prof. Jenny concluded his presentation by reminding his audience that the principles of competition law should not be changed, but only slight adjustments might be needed to adapt to the changed environment and reality of enforcement. Second, the rise in state aid, industrial policy, and protectionism can restrict competition and so competition authorities must advocate against going too far and restricting competition in markets.

Following Prof. Jenny's presentation, Ms. Teresa Moreira, Head of the Competition and Consumer Policies Branch at UNCTAD, was introduced. She first thanked her colleagues from ESCWA and the OECD and began by saying that she wished to continue the discussion begun by Prof. Jenny. She started her presentation by saying that the COVID-19 crisis disrupted markets and the lives of citizens all over the world. Because of the devastating impacts of the pandemic, governments have implemented measures to tackle the negative consequences of the pandemic as well as possible. Since March 2020, very strong government interventions have been seen to legitimately aid public interest. Ms. Moreira emphasized that competition authorities need to assert themselves and be actively involved in all discussions regarding the design, drafting and implementation of sector specific measures in order to ensure that markets will remain open and fair and to prepare for the transition to the post-COVID-19 situation. She also mentioned that after gathering information by UNCTAD from all over the world with their 195 members states, UNCTAD has noted that not only developed countries have been adopting measures to face the negative impact of the pandemic, but also several developing countries.

After her introduction, Ms. Moreira explained that there were four major issues related to action and reaction from competition authorities across the world:

First, there were enforcement-related actions in a number of jurisdictions where excessive price increases and other abusive business practices were sanctioned within or under consumer protection legislation or general economic legislation that forbids speculation. It is important that competition authorities remain very vigilant with market monitoring and interact with businesses and business representatives through warning letters, recommendations, and guidance that encourage compliance all over the world. She believes this dual approach, that is to say, strong enforcement combined with a dialogue with market players, is extremely important during normal times and has become even more important during this pandemic.

Competition authorities during the pandemic were occasionally asked to be more flexible in the applications of deadlines of submission as well as the presentation of documents regarding pending proceedings.

Second, the case for exemptions: there was a very quick response from competition authorities across the world concerning the exceptional temporary authorisation of horizontal agreements between competitors due to the public interest to maintain regular supply of essential goods. These horizontal agreements were also especially necessary in research and development efforts focused on the fight against the pandemic, including research for new vaccines, pharmaceuticals, and medical supplies. But also, to maintain an enabling sector-specific framework for sectors seriously hit by the pandemic, such as retail and hospitality; or to support SMEs.

Ms. Moreira's third point concerns the issue of merger control during the pandemic. In a number of countries, including developing and developed countries, planned layoffs and subsidized employment by governments have been extended until October, and consequently, this has will probably postpone the mergers that will take place due to the bankruptcy of small firms and due to the eagerness of big market players to conquer market shares. Merger control and market concentration, especially in sectors that have been affected most severely

## Competition Law & Policy Webinar

such as tourism, retail, entertainment, the automobile industry, air transport, digital economy, will need to be closely monitored by competition authorities to ensure that the economic recovery does not create an opportunity for abuses of market power. And to contribute for a level playing field with opportunities for SMEs.

Fourth, Ms. Moreira explained that the most relevant role for competition authorities in the near future is advocacy. All over the world Governments have strongly intervened by launching economic recovery packages, including state aid, in order to ensure that businesses return to normal functionality as much as possible and maintain employment. She emphasized that it is extremely important for competition authorities to be closely involved in government discussions in order to advocate a pro-competitive approach to be translated into specific commitments and conditions imposed upon the targeted companies and economic sectors to promote a fair and healthy competition in the market. She adds that UNCTAD has 195 member states and counterparts who are government representatives, so UNCTAD is very well situated to reach out to governments and recommend that they interact with competition authorities since there is a collective responsibility to the global nature of this pandemic.

Also, she mentioned that UNCTAD has released news items on these issues that share information and suggest measures to encourage cooperation between neighbouring jurisdictions and between less experienced and more experienced competition authorities. These publications provide suggestions and inspiration on how to better deal with the pandemic.

Furthermore, Ms. Moreira reminded the audience that the 8th United Nations Review Conference on Competition and Consumer Protection will be held this year and gladly notes that UN Set on Competition celebrates its 40th anniversary. She expects the conference, among other issues, to adopt guiding policies and procedures under section F of the UN Set that is devoted to international cooperation and to facilitate enforcement cooperation in competition law between jurisdictions and competition authorities across the world. The conference will also discuss the strengthening of consumer protection and competition in a digital economy, combatting cross-border cartels, competitive neutrality, and the implementation of technical assistance and capacity building. Even though these topics were agreed upon last July, she believes they still remain extremely relevant in the current context. She expects to have in-person sessions combined with remote attendance and she looks forward to the participants' attendance.

Ms. Moreira concluded that since UNCTAD has a double mandate, both for competition and consumer protection, UNCTAD was able to observe a strong response from consumer protection agencies immediately after the increase in cases of price gouging, misleading advertisements, online fraud, and abusive behaviours by digital players. She noted that it is interesting to observe the huge potential of collaboration between competition authorities and consumer protection agencies. Although some countries such as Australia, the United Kingdom, and United States combine both responsibilities, she stated that it is not necessary for consumer protection and competition to be conferred to the same agency to facilitate cooperation. She furthermore believes that working with sectoral regulators, procurement authorities and data protection authorities has become increasingly important. She summarized her final remarks for post COVID-19 crisis as follows:

- Competition authorities should interact further with other public bodies.
- Competition authorities should focus on close market monitoring and maintain vigorous law enforcement against anti-competitive and abusive practices while paying increased attention to digital platform behaviours.
- Competition authorities should increase and improve cooperation by exchanging information and experiences, identifying best practices, and cooperating against cross-border anti-competitive practices.
- Most importantly, advocacy of competition is crucial throughout all economic recovery plans to ensure that markets remain open and dynamic.

## Competition Law & Policy Webinar

**Panel 2: National competition authorities from all four Arab sub-regions (Mashreq, Maghreb, GCC and LDC) are going to share their experiences regarding the challenges they faced since the beginning of the COVID-19 crisis and the remedial measures they took to protect and promote competition in their countries (such as reactions to cases of price gouging and abuses of dominance, merger control, relaxation of competition laws through exemptions from the law and temporarily allowing for coordination agreements between companies, cooperation with other authorities/organizations, and others).**

Ms. Khaled introduced the second panel of the meeting which included experiences from the national perspectives of four competition authorities from Egypt, Palestine, Kuwait, and Tunisia. They shared their experiences regarding the challenges they have faced since the beginning of the COVID-19 crisis and the remedial measures they have taken to protect and promote competition in their countries. Examples of such measures include reactions to cases of price gouging and abuses of dominance, merger control, relaxation of competition laws, and cooperation with other authorities.

Ms. Khaled introduced Dr. Amir Nabil, Chairman of the Egyptian Competition Authority (ECA), and asked him about the main challenges faced in Egypt since the beginning of the crisis and the measures taken to protect and promote competition.

Dr. Nabil, in his turn thanked Ms. Khaled, ESCWA, the OECD and UNCTAD for the collaboration and discussed the competition concerns during this time of crisis. These concerns include shortages in essential goods and services, the exit of smaller firms from the market, increased barriers to entry due to importation restrictions, reduced access to essential facilities, reduced ability to expand for stronger incumbents, reduced foreign direct investment (FDI), and increased unemployment.

Then, he discussed the impact of COVID-19 on the Egyptian economy.

First, he discussed the striking contrast between the formal labour market and the informal economy in the Arab region. The latter is directly linked to limited social protection and unstable revenues. Given the pandemic and the associated confinement measures, there has been an immense pressure on informal workers to choose between complying with government-imposed health measures or maintaining an income. More often than not, this has led to substantial layoffs.

Second, the obstruction to demand shocks and supply chains led to shortages in several key products such as food and medical products. Many producers have decreased their production capacity utilization given lower demand of non-essential goods.

Third, health systems were also severely impacted because of shortages in human resources. Egypt's healthcare system was unable to accommodate the growing number of infected patients. In addition, abuses of dominance by large hospital chains pose a significant risk to consumers.

Fourth, investment and trade have been affected given the stagnation of several sectors in tandem with reduced investment capacities of foreign investors. FDI is becoming increasingly unlikely in the coming period and abuses of dominance by current incumbents is becoming increasingly likely. Such conduct would render Egypt an unfavourable investment destination and may lead to further abuses of monopoly power.

Fifth, the tourism sector has been negatively affected due to domestic and travel restrictions and this will affect the economy since tourism accounts for five percent of Egypt's GDP.

Sixth and last, the inflow of remittances from abroad has decreased since most amounted from Gulf countries, which are heavily affected by the decline in oil prices.

Dr. Nabil also spoke about the ECA's efforts in remedying the adverse effects of the pandemic by developing its enforcement and competition policy in the upcoming period. These efforts include habitually addressing supply chain and import restrictions, offering ad-hoc guidance and preliminary competition assessments on

## Competition Law & Policy Webinar

horizontal cooperation agreements, closely monitoring any considerable price changes in the market, clarifying the appraisal process for efficiencies in high risk sectors during the crisis, using advocacy powers under Art. 11 ECL, and spreading competition culture in a general sense.

Ms. Farah, Dr. Nabil's colleague at the ECA, explained that the ECA has begun to address several key factors to encourage parties' early engagement and discussion with competition authorities during the current circumstances and beyond. One of their priority projects is the introduction of an ex-ante merger control regime in early 2021 among other law amendments in order to enhance Egypt's productive capacity and thus its international performance indicators. The proposed reform program has resulted in significant changes in Egypt's economic landscape.

Moreover, in times of major crises, the careful assessment of failing firm defences is often discussed. In the aftermath of the pandemic and following the law amendments, the ECA shall support firms that are in financial difficulty and are falling slightly short of the failing firm criteria until the market can effectively recover.

Also, the ECA has also introduced a public interest derogation (only in exceptional circumstances) as an amendment to the competition law in order to ultimately safeguard the economic interests of the state, public order, and national security. The ECA will continue to evaluate dynamic efficiencies and reflect on supply chain considerations with policy objectives in mind to avoid long-term costs for short-term benefits.

The ECA has also drafted public procurement guidelines to ensure efficient and effective spending, to apply standards of openness, transparency, integrity, freedom of competition and equal opportunities, to avoid conflicts of interest, to provide fair treatment for business community players with administrative authorities, and finally to prevent collusion, fraud, corruption and monopolistic practices.

As stated previously, the ECA continues to monitor horizontal cooperation agreements and offers guidance to proposed agreements submitted by parties in order to increase production capacity utilization, labour retention, and the quantity supplied in the market.

Striking a balance between under-enforcement and over-enforcement is necessary to ensure that actors do not abuse their position and undermine the competitive process. Insofar as developing economies are concerned, the overarching objective of reform should be achieving market plurality.

Additionally, the ECA recognises the need to strengthen domestic supply chains given the likelihood of foreign takeovers that may endanger competition and divert supply chains during and following the crisis.

Finally, Dr. Nabil, thanked all attendees for listening.

After that, Ms. Khaled posed the same question to Mr. Jamal Abu Farha, Director General of the Competition General Directorate in Palestine, concerning the main challenges faced in Palestine since the beginning of the crisis and measures taken to protect and promote competition.

Mr. Abu Farha thanked the three partner organizations, then started the presentation by giving a general, brief idea about the Palestinian economy, listing the GDP and GDP growth of the last seven years. He stated that the Palestinian economy is as small as its population. He continued by describing the elements of the Palestinian economy as 95 percent of the economy is formed of small and medium-sized enterprises. Mr. Jamal Abu Farha informed the participants that Palestine does not have a competition law at the moment. Palestinian authorities adopted the open market policy and signed several trade treaties with a number of countries like Turkey, the USA, and EU countries. Mr. Abu Farha elaborated on the difficulties the Palestinian economy faces with political challenges being the main obstacle. He stated that Palestine is still not an independent state and that they are suffering more than any country in the world regarding all different types of aspects. Since the Palestinian authorities are following the Israeli economy and procedures, they are controlling their daily lives and borders and putting restrictions on Palestinian trade. Mr. Abu Farha stated that the Palestinian situation is very harsh and complicated and that aside from the Palestinian-Israeli conflict, the political situation within Palestine is worsening the country's economic situation.

## Competition Law & Policy Webinar

The first draft of Palestinian competition law had been made in 2003. The difficult internal political situation makes it harder to complete the passing of the law. The process has been delayed since the start of the political crisis in 2006. The draft has been reviewed a second time in 2010 and submitted to the Ministerial Council but in 2013 the Council did not adopt the draft as it needs additional review. A general director for competition was appointed within the Ministry. However, an independent body for implementing competition was not established for the lack of financial resources. Mr. Abu Farha expressed his hopes that Palestine can establish an independent competition enforcement body in the future. In 2015-2018 Palestine engaged in the regional competition and consumer program for the MENA countries offered by UNCTAD. This program was important and encouraged Palestine to take steps in the competition field and enhance awareness on the topic. In 2016, the national committee was formed to revise the competition draft law. In 2017, the draft was under consideration once again, when the process stopped as a result of discrepancies between Palestine and the US. The national committee finalized the draft in 2019 and it was submitted to the Ministerial Council. It is currently under consideration.

Mr. Abu Farha explained that they are facing challenges with the COVID-19 pandemic regarding price gouging and increased market concentration. The authorities have received many complaints from consumers through the hotline for consumer protection. Furthermore, quarantine has negatively affected the economy and the daily life of Palestinians with workers being the most affected economically. For this reason, the government has created a special fund to support affected workers.

Mr. Saqer Al Saqer, Competition Protection Agency in Kuwait, stated that in times like these times we should support each other. This webinar is a wonderful opportunity to benefit from the neighbouring countries' experiences in dealing with the crisis.

The first challenge that Kuwait faced since the start of the COVID-19 pandemic is having 90 percent of the Competition Protection Agency's employees work from home, which made it challenging to grant access to authorized employees' personal computers. The Kuwaiti Competition Protection Agency has furthermore faced glitches on their website due to the overload of complaints.

According to Mr. Al Saqer, the greatest challenge the announcement of the full lockdown which resulted in the delay of most of the Agency's active cases as the agency could not conduct sufficient investigation and interviews in a state of lockdown. Also, all the courts were closed during the lockdown which created difficulties in dealing with the cases.

Several actions have been taken by the Agency such as the three task forces created to assist in the response to antitrust-related matters, to assist the Ministry of Commerce in competition-related matters, and to assist in government legislations on competition-related topics. Mr. Al Saqer explained that many new laws have been issued by the government during the pandemic and the Competition Protection Agency makes sure that the laws do not contradict with competition protection matters. The Agency formed a team of experts that are in charge of addressing the issues that might arise from these laws. For example, permission was given to competing companies in different market sectors to meet under the supervision of the government in order to cover the shortage of essential products and services that has resulted from the crisis. The Agency does not mind if these companies are going to meet under the banner of research and development, but these companies are going to meet and share sensitive information such as production cost, capacity, and contracts. These types of information should be restricted to the government in order to prevent any type collusions in the future. It was noticed that since the beginning of the pandemic, pharmaceutical companies decided to restrict the flow of face masks into the market in order to increase the prices. However, the government intervened and fixed the prices. The Kuwaiti Competition Protection Agency is against the fixation of prices but under these unusual circumstances it is necessary that the government intervenes.

Ms. Fathia Hammed, Second Vice President of Tunisian Competition Council, thanked the organizers of the webinars. Ms. Hammed started by giving a brief explanation on how the COVID-19 crisis started in Tunisia and the measures that the Tunisian government took. The Tunisian Competition Council took part in these



## Competition Law & Policy Webinar

national efforts. The Council's first priority was to ensure the supply of goods and health care services. The second priority was to guarantee the protection of consumer welfare. While the Council faces numerous challenges with the lockdown, its staff has continued working in order to maintain minimal service level. The market destruction caused by the pandemic has led to difficulties in the production and distribution of a number of essential products. This led in some cases to shortages because of the substantial increase in demand of certain products. Moreover, the Tunisian antitrust legal framework has been strengthened during the crisis. In fact, the Tunisian Competition Council suggested heavier sanctions on producers and retailers that engage in excessive pricing of essential goods and health products. Ms. Hammed agreed with Prof. Jenny that abuses of dominance can lead to abuses of prices.

After the lockdown, the biggest challenge has been to enhance the enforcement of the competition law in order to overcome the post-COVID-19 market difficulties. As strict enforcement will be necessary in the domestic market to compensate for the potential loss of foreign competition, the Council could play a major role in the coming period. The Council is also planning to review if full or partial relaxation of the competition rules may result in anti-competitive practices and thus have an adverse effect on industries and consumers. Ms. Hammed concluded by stating that this crisis created a great opportunity for competition authorities around the world to share their best practices and she emphasized the importance of international exchange and cooperation.

### **Panel 3: The role of regional and international cooperation**

Ms. Nathalie Khaled thanked the participants from the Arab countries and moved to the third panel to discuss with experts from ESCWA, the OECD, and UNCTAD the role of regional and international cooperation in supporting competition authorities adjusting to the new challenges. Ms. Khaled explained that ESCWA is collaborating with the OECD and UNCTAD in a joint initiative to improve competition, competition policy, and consumer protection in the Arab region. The initiative is centred on advocacy, technical assistance, and capacity building with the overall objective to facilitate the sharing of information between competition authorities and strengthen the enforcement of competition policies. The organization of the First Competition Forum for the Arab Region became a very important milestone and created a platform for engaging on a multilateral level, sharing expertise, learning from best practices, and developing joint projects and initiatives in the region.

Mr. Khaled Al Moualem, Economic Affairs Officer, Regional Integration Section, ESCWA welcomed the participants and presented an overview of ESCWA's work. He explained that the organization has been working on regional cooperation in the Arab region for fostering regional and sub-regional economic integration and advocating the regional implementation of the Sustainable Development Goals. ESCWA is contributing to bridging economic, social and environmental gaps among member states and sub-regions, in addition to promoting multilateral dialogue, original knowledge sharing and networking. Furthermore, ESCWA is promoting intra- and inter-regional cooperation both among member states and through collaboration with other regional organizations. All these points mentioned can be applied while trying to find a regional response to the economic devastation that the COVID-19 pandemic has produced. Mr. Al Moualem continued by explaining the impact of the crisis on the region's economies covering estimations on the increase of poverty, the decline in GDPs, and decrease of job opportunities in the Arab region. As poverty is rising, consumers are finding themselves cornered by producers and even producers are experiencing difficulties with the supply chains.

ESCWA is currently implementing the ongoing joint initiative with the OECD and UNCTAD. ESCWA has a strategic position in promoting a regional enabling business environment. Many countries in the region already have antitrust laws and institutions. The role of the international organizations is to strengthen these already existing mechanisms or already existing tools, and if there are no mechanisms or tools, it is their duty to support member countries in addressing competition matters and looking at best practices around the world.

Mr. Al Moualem continued by explaining that when different countries in the region do not collaborate on synchronizing their competition frameworks, this will halt regional trade and integration which again will affect both regional and national economies. He furthermore explained the importance of implementing and enforcing trade agreements, which can enhance competition in the economies of the region.

## Competition Law & Policy Webinar

Mr. Al Moualem showed a snapshot of the Arab Trade Facilitation Gateway that ESCWA is developing. The gateway aims to provide information on market access, economic integration performance, trade negotiations, and policies. According to Mr. Al Moualem, if information were provided to traders, it could help them to identify trade and competition barriers. He concluded that, since the consequences of the pandemic are still not clear, it is necessary for regional organizations to bring together best practices and countries that can benefit from enhanced competition.

Mr. Juan Luis Crucelegui, Chief of Capacity Building and Technical Assistance, Competition and Consumer Policies Branch at UNCTAD, thanked the organizations and the representatives of the competition authorities attending, then he explained that this webinar is an example of sharing knowledge and promoting efficient competition policies around the world. The COVID-19 pandemic brought along a wide range of competition issues. The health crisis increased the demand on essential goods and the lockdown has led to the closure of many companies due to inactivity. Competition authorities all over the world are facing similar challenges. One of the most useful ways of international cooperation is sharing experiences on similar issues and anti-competitive practices. The enforcement against anti-competitive practices could be implemented in a more effective manner in the light of regional and international cooperation. UNCTAD and the OECD encourage cooperation by providing a forum for discussions and information exchange. The world is in a period of transition and cooperation at the regional and international levels will be the key to a faster recovery.

Ms. Lynn Robertson, Competition Expert at the OECD Competition Division, thanked ESCWA and UNCTAD for the shared effort in the organization of this webinar. There is a growing number of multi-jurisdictional cases emphasizing the need for cooperation and coordination. OECD has now more than 120 countries that have competition laws and effective competition authorities. Effective enforcement of competition laws increasingly depends on cooperation with other competition authorities and jurisdictions.

A survey that OECD and the International Competition Network (ICN) carried out jointly showed that there was significant cooperation undertaken but there were legal and practical limitations that often made cooperation very burdensome and limited in scope. The OECD Recommendation Concerning International Co-operation on Competitive Investigations and Proceedings is regarded as an essential instrument to foster enforcement. It is often used by both OECD member and non-member countries as a template to establish agreements with other authorities and countries.

Results of the COVID-19 pandemic include close borders, increasing calls for more state interference, loosening of competition rules, and unseen challenges for the organization of agencies and their enforcement. Authorities are turning to each other to learn and support each other in implementing temporary solutions and overcoming these challenges.

The OECD has three competition centres and hopes to work one day with ESCWA and UNCTAD to create more capacity building mechanisms for the MENA region. Ms. Lynn Robertson explained what the three centres are doing and which competition issues they have been dealing with since the start of the pandemic. The opportunity that COVID-19 gave is to really recognize the importance of cooperation which should extend beyond the crisis period. The OECD believes that cooperation within a region is the most promising because there is a sharing of language and culture and there is an economic imperative for regional cooperation. Ms. Robertson concluded by saying that she is glad to work with ESCWA and UNCTAD to foster regional cooperation across the MENA region.

Ms. Nathalie Khaled thanked the speakers and ended the third panel by giving a few remarks and allowing the invited experts to also share their final remarks.

Prof. Jenny talked about what is stored for the future as the world is going through a period characterized by overcapacity in some industries in which the demand is decreasing. Lots of bankruptcies are going to increase market concentration and therefore reduce competition. The crisis will entail many long-lasting effects which will impact competition. Competition authorities have to think about how they are going to maintain the pre-

## Competition Law & Policy Webinar

COVID-19 level of competition in this adverse environment. Prof. Jenny explained that the world is going through an economic depression which is raising the question whether competition is equally important, more important, or less important in times of an economic depression compared to times of economic expansion.

Ms. Teresa Moreira stated that it is very important to continue sharing the experiences as well as follow the impact and effects of the pandemic. At least two and a half years of economic depression lie before us, which pose serious challenges to markets, consumers, and governments. Ms. Moreira advised competition authorities and experts from the Arab region to remain very active and reach out to their governments. It is extremely important that competition policy is advocated by experts who have the knowledge on how markets work in their jurisdictions and regions. UNCTAD is one of the UN agencies that are working in a UN COVID-19 response project aimed at supporting SMEs, led by ESCWA and in which the UNCTAD team is providing inputs from the angle of competition law and policy.

Ms. Khaled moved to the final stage of the webinar with a short Q&A session and asked the experts from the OECD and UNCTAD to briefly answer two questions submitted by the webinar participants.

Ms. Nathalie Khaled elaborated on a study that has been done at ESCWA that shows the gaps in the legislations with varying degrees between sub regions. Many countries have basic competition laws with no implementation decrees, while others completely lack legislative frameworks related to competition. ESCWA also found out that when there are laws, there are gaps in enforcement practices and many countries do not outline the institutions and their responsibilities. For those countries who do have generally strong legislation and institutions on paper, liberalisation of regulated sectors like natural resources, public entities, military and security is not in practice.

Ms. Khaled concluded by stating that this webinar is an example of a platform of knowledge sharing. Then she thanked all the experts, speakers and participants that attended the webinar.

ANNEX 1: CONCEPT NOTE & AGENDA

**Competition Law and Policy Webinar**

- A collaboration between ESCWA, OECD and UNCTAD –

**“Competition law and policy during and in the aftermath of the COVID-19 pandemic,  
reflections in the Arab region”**

16 July 2020

**Time:** 11:00 am – 01:00 pm (UTC+03:00, Beirut time)

You can find your local time here:

<https://www.timeanddate.com/worldclock/converter.html?iso=20200611T180000&p1=34&p2=87>

**Logistics:** The webinar will be conducted in English on Webex.  
Speakers only should join by clicking the link below:

[Join meeting](#)

Participants will be able to attend the webinar live on YouTube. Translations from English to Arabic will be available via YouTube comments.

**Facilitator:** Ms. Nathalie Khaled, Economic Affairs Officer, UNESCWA

**Speakers:** Experts from ESCWA, OECD and UNCTAD  
Representatives from Arab competition authorities

**Target audience:** National competition authorities in the Arab region  
The webinar will be open to the public and run live on ESCWA’s YouTube channel.

## Competition Law & Policy Webinar

### **Background and relevance of the subject:**

The coronavirus (COVID-19) pandemic has provoked a public health crisis without precedent in living memory. In addition to causing large-scale loss of life and severe human suffering, the pandemic has also set in motion a major economic crisis that will burden our societies for years to come. As restrictions are eased and economic activities gradually resume, governments are faced with shrinking GDPs and growing unemployment that cause increasing uncertainty. Arab states' GDP is expected to decline by at least USD 42 billion in 2020 with an estimated increase in the regional unemployment rate by 1.2 percent<sup>1</sup>. In response, governments have implemented various stimulus programs in parallel with measures to contain the virus.

In the Arab region, competition, which is nascent in many countries, is facing several unexpected challenges. Markets in the Arab region have seen an intensification of government intervention, including measures to protect employment due to business shutdowns, subsidies, and price controls. Many countries have enforced export bans on a range of essential consumer goods due to the need to provide for consumers' demand. The region has witnessed a sharp increase in cases of price gouging, which is the result of shocks in both demand and supply of certain goods and of ineffective supply chains. Failing businesses depend on mergers as a survival tactic, potentially resulting in decreased competition adversely affecting consumers.

Competition authorities struggle to remain effective in the face of containment measures that have impeded interventions, investigations, and assessing mergers. The functioning of courts has slowed down and in certain cases even stopped entirely.

Enforcement activities by competition authorities have suffered across the board. While mergers continue to be notified, some of them will be rather urgent since they may involve firms in severe economic distress. Competition authorities may have difficulties processing these notifications efficiently using normal procedures and standards. Investigations of cartel and abuse of dominance cases will be ongoing. However, the suspension of courts' activities and difficulties with performing investigative activities during the pandemic will affect the ability of enforcers to effectively pursue cases.

Since governments are poised to support economic recovery through public funds in order to restore markets' functioning and to maintain employment, competition policy should play an important role in the post-COVID-19 context for the sound development of resiliency. Through strong advocacy, competition authorities need to help the overall policy response of

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<sup>1</sup> UNESCWA Covid-19 Economic Cost to the Arab Region

<https://www.unescwa.org/news/least-17-million-jobs-will-be-lost-arab-region-due-coronavirus-pandemic>

## Competition Law & Policy Webinar

governments to deal with this crisis in a pro-competitive and sustainable way. Governments in the Arab region need to understand the importance of promoting and protecting competition across the economy both domestically and through strengthened regional co-operation. Governments need to involve competition authorities in the design of economic recovery packages and in the monitoring of their implementations to make sure that competition principles are duly considered and contribute to help pave the way to recovery.

Post-COVID-19 crisis, competition authorities may need to adapt their enforcement practices by, for example, giving more consideration to public interest concerns rather than pure efficiency gains and therefore, grant the exemptions needed and impose the mergers' conditions required.

In this webinar we discuss the challenges faced by competition authorities in the Arab region during the COVID-19 crisis and its aftermath and discuss measures authorities can take and already have taken in some cases in order to protect and promote competition. We furthermore discuss the importance of regional and international co-operation among jurisdictions, as well as the collaboration within jurisdictions. The webinar will illustrate the role of regional and international organizations and how they can support competition authorities in adjusting to the new challenges.

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### Agenda:

- Introductory remarks by Mr. Mounir Tabet, Deputy Executive Secretary, UNESCWA (ca. 5 min)

### Panel 1

- What are the main challenges faced by competition authorities around the world and best measures taken to protect and promote competition since the beginning of the COVID-19 pandemic?  
Each speaker is given 10 minutes to elaborate on the topic from an international perspective.

#### Speakers:

- Prof. Frédéric Jenny, Chairman of the OECD Competition Committee
- Ms. Teresa Moreira, Head of the Competition and Consumer Policies Branch, UNCTAD

### Panel 2

- National competition authorities from all four Arab sub-regions (Mashreq, Maghreb, GCC and LDC) are going to share their experiences regarding the challenges they faced since the beginning of the COVID-19 crisis and the remedial measures they took to protect and promote

## Competition Law & Policy Webinar

competition in their countries (such as reactions to cases of price gouging and abuses of dominance, merger control, relaxation of competition laws through exemptions from the law and temporarily allowing for coordination agreements between companies, cooperation with other authorities/organizations, and others).

Each competition authority is given 10 minutes to present their case from a national perspective.

Speakers: Arab countries Competition Authorities;

- Egypt: Mr. Amir Nabil,  
Chairman, Egyptian Competition Authority
- Palestine: Jamal Abu Farha,  
D.G. of Competition General Directorate
- Kuwait: Mr. Saqer AlSaqer  
Competition Protection Agency
- Tunisia: Ms. Fathia Hammed  
Second Vice President of Tunisian Competition Council

### Panel 3

- What is the role of regional and international cooperation in this context? (And how can regional and international organizations support competition authorities in adjusting to the new challenges?)

Each speaker is given 5-10 minutes to elaborate on the question.

Speakers:

- Mr. Khaled Al Moualem, Economic Affairs Officer, Regional Integration Section, UNESCWA;
  - Mr. Juan Luis Crucelegui, Competition and Consumer Policies Branch, UNCTAD;
  - Ms. Lynn Robertson, Competition Expert and project manager in the OECD Competition Division, OECD
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- Final remarks by UNESCWA, OECD, UNCTAD (10 minutes)
  - 10 minutes for questions from the public (participants are able to ask questions during the webinar through the chat function in YouTube but are advised to submit their questions in advance through the registration form)

### ANNEX 2: INSTRUCTIONS

#### Instructions for Online Meeting via Webex

The webinar will go live on Thursday 16 July 2020 at 11:00 am Beirut time; however, we will start it earlier at 10:30 am, **Beirut Time**, to allow speakers to test their setup (Microphone, Speakers and Camera) by our technical experts. Below are some instructions that will help you prepare for the meeting.

#### **Getting Ready - Preparing for the Meeting**

**Use the same workstation and browser you intend to use for the actual meeting.**

**NOTE:** If you have **difficulty joining a meeting with one browser, try using a different browser** as one may work better than another depending on local browser settings (i.e. Firefox, IE, and Chrome) on the device used.

You may be prompted to **download/install the Webex software**, if it is not already installed on your device or computer. On a work computer, you may not have the administrative privileges to install the plug-in and will have to contact the administrator (ESCWA technical expert). Mr. Sami Daouk; Email: [daouk@un.org](mailto:daouk@un.org). Tel.: +9611978836

**NOTE:** If you do not have the correct privileges or time to download and install the software, there will be a link on the WebEx set-up screen in order to join immediately. If you click that link, the WebEx Meeting window will display without the plug-in being installed.

#### **Joining the Meeting**

1. **Locate the WebEx Meeting Link: Click on the meeting link**, which should take you directly to the meeting.
2. **Join the Meeting**
  - **If the host has not yet started the meeting**, you may not be able to enter the meeting. Whether or not attendees can join before the host is dependent upon the settings applied to that particular meeting.
  - The **Meeting Center window, the online meeting place, will open**, if your browser plug-in has been pre-tested and is working,
3. **Make Audio Selection:** You will be prompted to make your selection about how you will participate in the audio portion of the meeting.
  - **Use Computer for Audio:** The “Use Computer” option requires that you have a headset or can use the computer’s microphone and speakers. We recommend this option to avoid toll charges incurred if you use a phone to participate.
  - Before clicking the “Connect to Audio” button, you can test the speakers and microphone by clicking “Test speaker/microphone” found under the Audio Using Computer button.



## Competition Law & Policy Webinar

- 4. Verify Audio Setup:** After you join the actual meeting, you will be prompted to **setup the audio portion** and given the opportunity to test your computer's audio setup (microphone and speakers).
- 5. Verify Video Setup:** Once in the meeting, click on the start my video (Camera Icon) to start your video.

### Tips and Advice

We strongly recommend to:

- **Use your laptop or desktop computer instead of your phone, which allows you to easily take notes and have a stable image.**
- **Choose a quiet location to prevent distraction or noise.**
- **Use a headset with microphone or a laptop's built-in microphone and speakers.**
- **Make sure you have a working integrated camera or USB external camera connected to your system.**
- **Ensure your webcam is at eye-level.**
- **If you have any comments, questions, or meetings tips, it would be better to take notes and place them in the comment section.**
- **Mute your microphone when you are not speaking, to avoid background noises and then unmute when speaking.**
- **Do not interrupt others when they are speaking.**

### ANNEX 3: LIST OF SPEAKERS AND ORGANIZERS

#### **Egypt**

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Kuwaiti Competition Protection  
Agency  
E-mail: Saqr.Alsaqr@cpa.gov.kw

#### **Palestine**

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Director of Competition  
Ministry of National Economy  
E-mail: jamalf@met.gov.ps

#### **Tunisia**

Fathia Hammed  
Second Vice President of Tunisian  
Competition Council  
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#### **OECD**

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