

**UNITED NATIONS CONFERENCE ON
TRADE AND DEVELOPMENT**

**VOLUNTARY PEER REVIEW OF
COMPETITION POLICY: TUNISIA**

OVERVIEW



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The overview contained herein is also issued as part of the full version of the *Voluntary Peer Review of Competition Policy: Tunisia, 2006* (UNCTAD/DITC/CLP/2006/2).

UNCTAD/DITC/CLP/2006/2 (Overview)

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Introduction

This overview summarizes the most important points of the voluntary peer review of competition policy in Tunisia. After a brief recap of the political and economic context in the country, the report describes competition policy – the law, organizations and practice – in Tunisia. It also includes a review of the implementation of competition policy over the past few years in the Tunisian context (price controls, sectoral policies, etc.), as well as a set of conclusions and recommendations.

The full version of the report is published under the title *Voluntary Peer Review of Competition Policy: Tunisia, 2006* (UNCTAD/DITC/CLP/2006/2).

I. ECONOMIC AND INSTITUTIONAL CONTEXT

A. Institutional context

1. Tunisia, a north African country situated between Algeria and the Libyan Arab Jamahiriya, is a republic with a population of 10 million people with a per capita income of about US\$ 3,000. The President of the Republic, who is elected by universal suffrage, is the head of State. The legislature is organized in a two-chamber system, with a chamber of deputies and a chamber of advisers. Other institutions include the Constitutional Council, the Audit Court and the Economic and Social Council.

2. From independence to the mid-1980s, Tunisia had a centrally-planned economy. The State was omnipresent and directly controlled strategic economic sectors. In particular, it controlled sales of commodities and prices. A system of accreditation and permits enabled the Government to control private investment, regulate trade and restrict imports.

3. Towards the middle of the 1980s, the Tunisian authorities, like those in many other developing countries, were forced to acknowledge the limitations of this policy and its inadequacy for dealing with strong growth and rapid development. Since 1986, Tunisia has been engaged in an ambitious and ongoing process of economic reform aimed at, inter alia, the liberalization of internal and external trade, price liberalization and the privatization of State enterprises. The aim is to establish a really dynamic market economy based on free competition.

B. Economic context

4. In terms of competitiveness, the World Economic Forum puts Tunisia at fortieth place out of 117 emerging economies (and first

among African countries) and at thirty-first place in the field of information technology, the driving force behind development these days.

5. Recent macroeconomic results show continuous growth in per capita income, a big drop in poverty (from 12.9 per cent in 1980 to 4.2 per cent in 2000), a stable and relatively low inflation rate and relatively small, and falling, current-account and budget deficits.

6. The agricultural sector, which is highly protected and dominated by arboriculture, contributes 13 per cent of gross domestic product (GDP). The mining and energy sector in Tunisia – the world's third-biggest exporter of phosphates – accounts for about 5 per cent of GDP. Manufacturing industries, of which the biggest is the clothing industry, contribute about 17 per cent of GDP. The remainder is accounted for by services, including tourism. Sales in the service sector account for over 40 per cent of GDP.

C. The State's role in the economy

7. State intervention in the Tunisian economy is evident at a number of levels, primarily through the intervention of the institutions responsible for implementing economic policy decisions. A second form of State intervention concerns certain goods and services that are excluded from price liberalization (by setting prices or profit margins for example) and the monopolies granted to some organizations engaged in certain activities. State enterprises, which are still of considerable economic importance, with a value added representing about 13 per cent of GDP, and which account for 8 per cent of total employment in the country, represent a third form of State intervention in the economy.

8. However, since 1997 Tunisia has embarked on a programme to privatize various sectors of the economy (tourism, trade, fisheries, food-processing, cement works, telecommunications, transport, etc.).

D. Economic reforms

9. Tunisia was one of the first countries in the region to introduce a wide-ranging programme of economic reforms. Launched in 1986, the programme targeted, among other things, trade policy, exchange policy and privatization. Other reforms have included the reform of the investment and taxation framework (VAT, customs duties and income tax). Several reforms were made to the financial system to put the finances of banks and insurance companies on a sounder footing. Lastly, the Tunisian central bank is pursuing a settled exchange policy in preparation for the eventual complete convertibility of the dinar.

E. External trade

10. The Tunisian economy is a very open one, and trade represents about 92 per cent of GDP. The country mainly exports textile products and leather (which account for 37 per cent of exports), mechanical and electrical parts (4.2 per cent) and chemicals (9 per cent). Imports include textiles, agricultural products and industrial goods. Most trade (80 per cent) is with the European Union; trade with neighbouring countries and other regions in the world is still weak. Tourism accounts for about two thirds of revenue from service exports. Foreign direct investment (FDI) represents about 3 per cent of GDP; it is mainly directed at the energy sector and manufacturing industries, but the share directed at services (especially communications and information technology) is rising. FDI comes mainly from France, Italy and Germany.

F. Trade policy

11. Tunisia acceded to the General Agreement on Tariffs and Trade (GATT) in 1990. It is a founder member of the World Trade Organization, and grants at least most-favoured-nation status to all its trading partners. In July 1995, it signed an association agreement with the European Union that provides for the liberalization of trade in goods by both parties by 2008. Tunisia has also signed many free

trade agreements, including the Greater Arab Free Trade Agreement (GAFTA), the Arab-Mediterranean Free Trade Agreement (“the Agadir Agreement”), agreements with the European Free Trade Association (EFTA) and the Arab Maghreb Union (AMU), and agreements with the European Union under the Euro-Mediterranean partnership (EUROMED).

G. Competition policy

12. Economic liberalization got under way with the enactment of the Competition and Prices Act, which provided for price liberalization as well as the prohibition of anti-competitive and discriminatory practices. It also included provisions on consumer protection. The Act, which has been amended several times, reflects the Government’s determination to establish a market economy and strengthen competitiveness.

13. The main concern of the amendments to the Competition and Prices Act has been to improve control of the market, boost competition and give Tunisia a legal framework in line with international standards. With this in mind, a twin system of independent administrative authorities has been set up, with, on the one hand, the Competition Board and, on the other, the Department of Competition and Economic Investigations of the Ministry of Trade. These organs are responsible for implementing competition policy by monitoring the market, promoting competition and investigating anti-competitive practices.

Table 1

Principal amendments to the law

1993	1995	1999	2003	2005
Transparency provisions	Control of concentrations	Greater flexibility for franchising and representation contracts	Consolidation of the right to a defence	Legal personality and financial independence for the Board
Accreditation of inspectors	Strengthening of the Competition Board	Broader powers for the Board	Provision for flexibility in urgent consultations	Extension of Board's advisory function and jurisdiction
	Prohibition of exclusive franchising and representation agreements	Strengthening the organization of the Board	Introduction of leniency procedure	Relationship between the Board and the regulatory authorities defined
	Transparency provisions	Transparency provisions	Access to information held by firms and the administration	Strengthened cooperation between administrative bodies in the fight against anti-competitive practices
			Provisions on transparency and fair competition	Lifting of ban on exclusive franchising and commercial representation contracts
				Review of criteria for controlling economic concentration activities
				Broader definition of anti-competitive practices: predatory pricing
				Greater transparency in transactions between producers and distributors
				Cooperation between national competition authorities and their foreign counterparts

II. COMPETITION POLICY

A. Competition Act

14. Competition policy is based on the Competition Act of 29 July 1991. The Act enshrines the principle of freedom to set prices, sets out rules on transparency and the smooth functioning of the market and prohibits any behaviour that might undermine competition.

15. Transparency is required in relationships with consumers as well as in those between professionals. As far as consumers are concerned, the Act makes provision for informing and protecting them (prices and conditions of sale must be displayed and invoices issued; the refusal to sell and attaching preconditions to a sale are prohibited). As far as professionals are concerned, the Act is based on the promotion of the competition process and fair dealing (invoices must be issued; resale at a loss, refusal to sell, discriminatory conditions and anti-competitive practices are all prohibited).

16. Practices that undermine competition are prohibited. They include:

- (a) *Anti-competitive practices.* The new article 5 of the Act specifies that explicit or implicit collusion or understandings are prohibited where they are intended to fix prices, restrict market access, restrict or control production, opportunities, investment or technical progress, or divide up markets or sources of supplies. Any abuse of dominant position or economic dependency and any predatory pricing that might upset the balance of economic activities are also prohibited. However, the Act does not apply to practices that undermine competition if they lead to technical or economic progress or give users a fair share of the resulting benefits. Exemptions are granted by the Minister of Trade on the advice of the Competition Board;
- (b) *Restrictive trade practices.* These consist of vertical restraints imposed on the buyer by the seller, such as

exclusive representation, making the sale conditional on the purchase of a certain quantity or on resale at a fixed price. They also include restrictions imposed by the purchaser of a good or service, as illustrated in case No. 4 (2001), which pitted the National Association of Architects against the Tunisian Electricity and Gas Company (STEG): the latter had included in its call for tenders certain conditions that in the view of the National Association of Architects excluded part of their profession. The Competition Board found in favour of the association;

- (c) *Control of concentrations.* The Competition Act provides for the control of concentration activities in the name of preventing anti-competitive practices. Such control concerns any concentration likely to result in a dominant position in the Tunisian domestic market. One of the two following conditions must be met: either the companies involved in the concentration must have, between them, 30 per cent or more of the market for substitutable goods or services, or the turnover of the companies concerned must exceed 20 million dinars. The Minister of Trade must be notified of concentrations within 15 days of the date of the agreement. Companies can give undertakings designed to attenuate the anti-competitive effects of concentration. The Minister of Trade must give a reply within six months of notification.

B. Other laws relating to competition policy

17. The Competition Act is one of a series of laws aimed at ensuring the market operates smoothly. Of these laws, the law on consumer protection and the one on intellectual property protection deserve mentioning.

18. There are several laws relating to consumer protection; they cover a range of issues, such as distribution, agricultural and fisheries products, easy payment terms, and weights and measures. For

example, the Consumer Protection Act (No. 92-117) sets out the seller's obligations: products must not be harmful to the consumer or tampered with, full information must be given and the consumer must be given a guarantee. The Sales Techniques and Advertising Act (No. 98-40) prohibits misleading advertisements as well as any advertisements for unauthorized products or activities.

19. Intellectual property protection is based on Tunisia's commitments under international agreements (World Intellectual Property Organization, Paris Convention for the Protection of Industrial Property, Berne Convention for the Protection of Literary and Artistic Works, Patent Cooperation Treaty, etc.). These commitments concern, among other things, copyright and neighbouring rights, trademarks, appellation contrôlée, industrial designs and patents. Tunisian legislation provides for the prosecution of any person who violates intellectual property rights, as well as for civil and criminal sanctions. Any violation gives rise to a civil action and opens the way for a claim for damages. The courts can also order the seizure and destruction of counterfeit goods and the equipment used in their production. Moreover, anyone deliberately violating intellectual property rights is liable to a fine of between 1,000 and 100,000 dinars and a prison term of between one and six months (or, under the Criminal Code, up to two years in cases concerning manufacturing secrets).

C. Organs

1. Competition Board

20. The Competition Board is an independent administrative authority with a dual advisory and adjudicatory role. It has a president and two vice-presidents. The Board issues advisory opinions at the request of the Minister of Trade on draft legislation and on all competition-related issues. It is obligatory for the Government, through the Minister of Trade, to seek the Board's opinion on all draft regulations. The Minister of Trade may also seek the Board's opinion before ruling on applications for prior approval of economic

concentration. The Minister must seek the Board's opinion before granting exemptions for certain practices.

21. The Board also has the task of ruling on anti-competitive practices. When there is a dispute, the Board rules on applications related to anti-competitive practices such as cartels, abuse of dominant position, abuse of economic dependency and predatory pricing. It has to follow the general principles of court procedure, such as the adversarial principle and the need to give reasons for its decisions. Its decisions are open to appeal.

2. Ministry of Trade

22. The Ministry of Trade is responsible for drawing up and implementing competition policy. Its departments, notably the Department of Competition and Economic Investigations (DGCEE), enforce the relevant regulations. The DGCEE is responsible for overseeing the functioning of the market and for checking compliance with the regulations regarding pricing, consumption and competition. The department is also responsible for monitoring transparency and for conducting thorough investigations into anti-competitive practices. It is also responsible for reporting violations to the Competition Board if they are within the Board's jurisdiction or to the courts in all other cases.

23. To accomplish its tasks, the DGCEE relies on the decentralized services (regional offices) in each governorate.

3. Administrative Court

24. The Administrative Court consists of trial and appeal chambers and a plenary assembly that conducts judicial reviews. The trial and appeal chambers basically deal with applications for annulment of acts or decisions of the administrative authorities. The plenary assembly, as the review body, basically rules on applications for judicial review of judgements handed down in indemnification, fiscal, ethical and electoral matters. The appeal chambers can also be called on to hear appeals against decisions made by the Competition Board.

4. Consumer organizations

25. There is only one consumer protection organization in Tunisia: the Organisation tunisienne de la défense du consommateur (ODC), a non-governmental socio-economic organization established on 21 February 1989 and reliant on volunteers. Its aims are to help, advise and represent consumers at every level and in every sector. It also aims to ensure that national development policy takes consumers' interests and wishes into account. Where necessary, it can take legal action to enforce consumer rights.

D. Functioning of the Competition Board

26. The Competition Board has a decision-making and an advisory function. Disputes are examined by sections, each of which is chaired by the president or one of the vice-presidents and must comprise four other members, including at least one judge. The Board may have cases referred to it by an institution or take them up of its own initiative.

1. Referral

27. Cases may be referred to the Board in its advisory capacity by the Minister of Trade. In the case of disputes, cases may be referred to it by:

- The Minister of Trade and Crafts;
- Companies;
- Consumer associations;
- Chambers of commerce and industry;
- Professional organizations and trade unions;
- Sectoral regulatory authorities;
- Local authorities.

28. The Government is required to ask the Competition Board for an advisory opinion on draft regulations that would impose particular conditions on an economic activity or profession or that would restrict

market access. The Minister of Trade may seek the Board's opinion on competition-related draft legislation. Recognized consumer organizations, professional organizations, trade unions and chambers of commerce and industry may seek the Board's opinion on competition issues through the intermediary of the Minister of Trade. Petitions can be submitted to the Board by the Minister of Trade, companies, sectoral regulators, local authorities, chambers of commerce and industry, and recognized consumer organizations.

29. *Assumption of jurisdiction.* The Competition Board can assume jurisdiction de officio in cases of anti-competitive market practices. The president of the Board informs the Minister of Trade and, where necessary, the regulatory authorities concerned that it has taken this step.

2. Powers

30. The Competition Board has the power to investigate and to impose sanctions. In an investigation, the Board's rapporteurs can request that any evidence needed for the investigation be handed over. They can also conduct investigations on the spot, in accordance with the conditions set out in the regulations and with the authorization of the president; for this purpose, they have the same powers as financial inspectors. Where a case has been referred to it by the Ministry, the Board relies on the reports on inquiries conducted by DGCEE inspectors. In all other cases (those referred to it by companies, associations, chambers of commerce, etc.), the Board can itself conduct inquiries or ask the DGCEE to conduct the necessary investigations.

31. As far as sanctions are concerned, the Competition Board can, in cases where anti-competitive practices have been identified, impose sanctions of up to 5 per cent of turnover in the domestic market in the last completed financial year. The Board can also issue injunctions giving traders a deadline by which to put a stop to anti-competitive practices, or can impose conditions on the exercise of their activities. As a coercive measure, the Board has the power to temporarily close

an establishment for up to three months. It can also refer cases to the public prosecutor for prosecution.

3. Appeals and right to a defence

32. Upon completion of the investigation, the rapporteur draws up a report containing his or her comments. A copy of this report is sent to the parties, who have one month to submit a defence, either directly or through a lawyer or adviser. The parties have the right to consult or obtain copies of the evidence in the case. The Competition Board's decisions are open to appeal and judicial review before the Administrative Court.

33. *Provisional measures.* Although the Competition Board's decisions are open to appeal before the Administrative Court, the Board may, where necessary, order the provisional implementation of its decisions. More generally, the Board may, in pressing circumstances and after hearing the parties and the government commissioner, order such provisional measures as are necessary to avoid imminent and irreparable damage to the general economic interest or the sectors concerned, the interests of the consumer or the interests of one of the parties.

E. Context in which the Competition Act has been implemented

34. While the Competition Act of 29 July 1991 sets out the principles of freedom to set prices and free competition, a number of institutional constraints must be taken into account in its implementation.

1. Price liberalization

35. In theory, the prices of goods, products and services can be set freely. However, freedom to set prices does not apply to a whole range of goods, products and services considered essential or those in sectors where price competition is limited (e.g. because of monopolies, supply problems or lack of competition). In addition, the Minister of Trade is authorized to decree temporary measures valid for

a maximum of six months to stop prices from rising excessively after a crisis or disaster. In the production sector, the prices of 13 per cent of products are regulated, as compared with 20 per cent in the distribution sector. It therefore seems that a non-negligible part of the Tunisian economy is not open to free competition, and there are no signs of improvement in this respect. Further liberalization is envisaged once conditions are favourable.

2. Sectoral regulations

36. Certain sectors remain relatively closed to competition. This is the case in the electricity sector, where the Tunisian Electricity and Gas Company has a monopoly on the distribution of electricity and a share of electricity production. This State enterprise is run by the Ministry of Industry, Energy and Small and Medium-Sized Enterprises.

37. The insurance sector is still heavily regulated and closed to outside competition. The Insurance Code requires that risks located in Tunisia be insured by companies resident there.

38. In the financial sector, the State previously held a large share (46.5 per cent) of the capital of commercial banks, but privatization is now under way. The operations of the stock exchange are controlled by the Financial Market Council (CMF), an independent public body with financial autonomy. The Financial Market Council ensures the smooth operation of the stock market and checks financial information. It can also punish breaches of the regulations and supervises undertakings for collective investments in transferable securities (UCITS).

39. Telecommunications fall within the purview of the Ministry of Technology and Communication. The National Telecommunications Agency (INT) is a specialized body with legal personality and financial autonomy, and has its own resources. The Agency is responsible for regulating the telecommunications market, ensuring that telecommunications operators abide by the laws and regulations, and ensuring that the relationships between operators are non-discriminatory. In practice, the telecommunications market in Tunisia

is a monopoly as regards fixed telephone lines and a duopoly as regards mobile telephones. Internet services are open to competition, with 12 companies active in Tunisia, 5 of them private companies.

3. Relationship between the competition authorities and the regulatory authorities

40. The Competition Act governs the relationship between the competition authorities and sectoral regulators. The sectoral regulatory authorities can submit competition issues to the Competition Board for an opinion, but there is no requirement to do so. Conversely, the Board is required to request a technical opinion from the regulatory authorities when it is considering petitions that fall within their area of competence. The sectoral regulatory authorities are also required to bring to the attention of the Ministry of Trade any information on anti-competitive practices and concentration activities.

4. Public procurement commissions

41. The job of the public procurement commissions is to check that the procedures for signing public procurement contracts are properly observed. The High Commission for Markets, which reports to the Prime Minister, consists of three specialized commissions: the first is responsible for markets in the building and engineering sectors and for related studies; the second for markets in the communications, information technology, electricity and electronics sectors and for related studies; and the third for markets related to the supply of various goods and services. The High Commission for Markets checks public procurement contracts in advance.

III. COMPETITION POLICY IMPLEMENTATION

A. Implementation of the Competition Act

1. Control of anti-competitive practices

42. Table 2 shows the activities of the Competition Board. Over the past five years, there has been a steady and significant increase in the number of recorded cases: 300 per cent in four years, from 14 cases in 2001 to 43 in 2005.

Table 2

Activities of the Board over the past five years

	2001	2002	2003	2004	2005
Recorded cases	14	26	24	34	43
Disputes referred to the Board	3	11	9	19	33
Requests for opinion	11	15	15	15	10

Source: Competition Board.

43. The growth in the Board's activities can be explained by the increase in the number of disputes referred to it, which rose from 3 in 2001 to 33 in 2005. By contrast, the number of requests for an opinion in the period under review remained relatively stable at about 10. It should be noted that this represents a significant change: in the report prepared by UNCTAD in 1997, Mr. Charrier observed that the very limited number of disputes referred to the Board at that time reflected a real problem, which called for urgent measures to ensure the credibility of the Competition Board as an institution and the credibility of the system as a whole. The situation has thus developed very positively in this regard.

44. Table 3 shows the number of decisions and opinions rendered by the Board over the same period, 2001-2005. Again, a steady and very significant increase is to be observed; this is attributable to a much larger number of decisions – 24 in 2005 compared with 4 in 2001. This very marked increase was widely publicized, the press

having reproduced all decisions of the Board that resulted in a judgement against the defendant.

Table 3

Activities of the Board over the past five years

	2001	2002	2003	2004	2005
Decisions and opinions	16	20	26	27	35
Decisions	4	8	11	10	24
Opinions	12	12	15	17	11

Source: Competition Board.

45. In table 4, the number of referrals and requests for an advisory opinion of the Competition Board submitted by the competition department in the period 1995-2005 is shown.

Table 4

Referrals and requests for an opinion of the Competition Board submitted by the competition department (1995-2005)

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total
Referral to the Board	12	8	1	1	11	4	3	11	7	16	0	74
Request for opinion		6	3	17	10	8	13	15	12	11	10	105

Source: Ministry of Trade.

46. While the number of requests for an opinion is higher than the number of referrals, there is nevertheless an increase in the number of referrals towards the end of the period, particularly in 2004. Here again, the situation has changed for the better since the evaluation of competition law enforcement in Tunisia undertaken in 1997. At that time, the report emphasized that the Minister and his staff were not referring enough cases to the Board, although they had the option of doing so.

2. Control of restrictive trade practices (exemptions)

47. Until 2005, the law prohibited all forms of exclusivity, except where authorization was given by the Minister of Trade. Henceforth, the Minister will request the opinion of the Competition Board regarding exemptions. The approach to be adopted should be more in line with European law and should allow exemptions by category, as in the case of cars in the European Union.

3. Control of concentrations (mergers and acquisitions)

48. Formerly, concentration was subject to control when the combined share of the companies concerned exceeded 30 per cent of the domestic market for substitutable goods, commodities or services and their total domestic market turnover was more than 3 million dinars in the previous financial period. A decree of December 2005 changed the conditions for notifying concentrations. The threshold above which such transactions must be notified was set at 20 million dinars in total turnover, replacing the previous figure of 3 million dinars. Furthermore, only one of the two criteria – turnover or market share – will now need to be met.

49. Prior to the amendment of the Competition Act in 2005, the Ministry of Trade had the option of requesting the opinion of the Competition Board and, in practice, it generally did so. Following the 2005 amendment, the request for an advisory opinion became obligatory.

50. Between 1997 and 2006, 43 concentrations were notified to the Ministry of Trade. It is interesting to note that, of these 43 transactions, 24 were not actually notifiable, either because they involved only restructuring, or because they did not meet the notification criteria. The concentrations notified in 2005 and 2006 were indeed notifiable. This appears to demonstrate a better understanding of the rules on the part of companies and is also to be explained by broader dissemination of the Competition Act in the Tunisian business world in general.

51. Table 5 contains statistics on concentrations between 1997 and 2006.

Table 5

Statistics on concentrations

Year	Notification	No.	Decision
1997	1 merger by takeover of Société Nitragel by Société Sotemu. Manufacture of explosives	1	Favourable opinion of the Competition Board (notifiable transaction)
1998	4 concentrations: 3 mergers 1 equity investment operation	4	3 notifiable transactions (favourable opinion) 1 non-notifiable transaction
1999	4 concentrations: 2 mergers by takeover 1 merger 1 equity investment operation	4	2 notifiable transactions (opinion of the Board) 2 non-notifiable transactions
2000	1 merger 1 equity investment operation 1 link-up	3	2 non-notifiable transactions 1 notifiable transaction
2001	2 mergers by takeover 1 merger	3	2 notifiable transactions 1 non-notifiable transaction
2002	1 asset sale 1 takeover bid 7 mergers by takeover 1 operating arrangement	10	6 non-notifiable transactions 4 notifiable transactions
2003	6 mergers by takeover	6	1 notifiable transaction 5 non-notifiable transactions (restructuring only)
2004	3 asset sales 1 interlocking investment operation 3 mergers by takeover	7	2 notifiable transactions 5 non-notifiable transactions (restructuring only)
2005	2 mergers by takeover	2	2 notifiable transactions (opinion of the Board)
2006	1 equity investment operation 2 transactions currently under review	3	1 notifiable transaction

Source: DGCEE (Ministry of Trade).

52. The Competition Board consented to these concentrations, except in one case in 2005. The Ministry of Trade takes issues of competitiveness into account in analysing concentrations, bearing in mind that some such transactions can make the companies concerned more efficient through economies of scale.

53. In table 6, the matters on which the Board has been consulted since 2000 (other than concentrations) are shown according to the type of request. The majority of requests concern legislation and terms and conditions.

Table 6

**Matters on which the Competition Board
has been consulted, by subject**

Year	2000	2001	2002	2003	2004	2005	Total
Exclusive practices	1		1	5	2	2	11
Legislation	3	3	6	5	1	2	20
Terms and conditions	2	4	2	2	3	1	14
Other	1	4	3	2	1	1	12
Total	7	11	12	14	7	6	

Source: Reports of the Competition Board.

54. *Investigative powers.* The Competition Board may request the DGCEE to carry out inquiries on its behalf. In such cases, it is for the Ministry to conduct the investigation and to transmit the results to the Board. While the Board has only eight rapporteurs, the DGCEE has 750 staff members, distributed throughout the country. Central and regional structures and a sufficient number of staff members are thus available to meet the Board's requests.

55. *Fines and appeals.* Fines are set by the Board on the basis of four criteria: the seriousness of the offending practice, the damage done to the economy, the profit accrued by the economic operators concerned, and their cooperation with the Board during the investigation. The maximum fine is fixed at 5 per cent of turnover.

Almost all decisions involving the imposition of a financial penalty have been appealed. Given that launching an appeal has the effect of suspending payment of the fine, it is in companies' interests to do so. Up to 2000, two appeals had been dismissed on procedural grounds. To date, only one appeal has resulted in a judgement on the merits, the others having been rejected on procedural or jurisdictional grounds. The frequent imposition of heavy fines does not appear to be a preferred practice of the Board: between 1991 and 2001, two or three fines at most were imposed.

56. *Recent cases.* Until 2004, the most frequently challenged practices related to activities by cartels in the fields of cement transportation and maritime transport and by training institutions in connection with invitations to tender for Government contracts. Most of the cases referred by the Ministry to the Competition Board thus involved collusion between companies. This is mainly because it is much easier for DGCEE inspectors to detect agreements. These inspectors, who continuously monitor the operation of the market, can readily detect the existence of an agreement.

57. In 2004-2005, the Competition Board dealt with several cases, the most important of which are summarized in table 7. They include a banking services case in which the offending practice involved an agreement between the banks, within the framework of their professional association, to fix cheque commissions. The Board granted an injunction ordering that the practice be halted and imposed penalties. It should be pointed out that the banks had not realized that, in fixing the cheque commissions collectively, they were breaking the law; this demonstrates that the culture of competition needs to be further developed.

58. In the ceramics (construction materials) case, the offending practice was the abuse of dominant position by a Spanish company, which sought to eliminate the sole local manufacturer. Specifically, it engaged in unfair practices in relation to importation and distribution in the Tunisian domestic market. The Competition Board fined the company concerned.

Table 7

Cases dealt with by the Competition Board, 2004-2005

Sector	Offending practice	Decision of the Board
Training	Collusion between training institutions on tenders for Government contracts	Fine imposed on the firms concerned
Banking services	Collusion between banks, within the framework of their professional association, to fix cheque commissions	Injunction granted ordering that the practices be halted; penalties
Construction materials	Abuse of dominant position by a Spanish company with a view to eliminating the sole local manufacturer. Unfair practices in relation to importation and distribution in the domestic market	Fine
Government contracts	Resale at a loss by a caterer with a view to eliminating competitors in the context of invitations to tender	In progress
Car accessories	Abuse of dominant position	In progress

Source: WTO, 2005.

B. Promotion of competition

59. In a recently liberalized economy like Tunisia's, economic operators do not always have a very clear understanding of the difference between anti-competitive practices and practices that are acceptable from a competition policy standpoint. There is also a great deal of confusion between the concept of anti-competitive practices, as defined in competition policy, and unfair trade or activities. Many Tunisian companies are particularly vulnerable to parallel imports and competition from businesses in the informal sector and believe that such matters come within the scope of competition policy.

60. In principle, healthy competition should enable markets to operate more efficiently, so that goods and services are available in sufficient quantities, at fair prices, and are of acceptable quality.

61. However, in Tunisia, competition is still perceived, to a certain extent, as complementary to State intervention. Indeed, competition is in part a complementary tool, and one which can replace State control once a system of ex-post monitoring of abuses (cartels, abuse of dominant position, etc.) has been established.

62. In addition, the long history of State intervention still influences the mindsets of economic operators to some degree, even in liberalized markets. When competition is intense, companies are inclined to act in concert or to request the State to intervene. Furthermore, companies continue to apply the profit ratios set by the Government for certain products subject to distribution margin controls, even when their own products are not affected by the regulations.

C. International cooperation

63. Within the framework of the programme of support for the association agreement signed between Tunisia and the European Union and pursuant to article 36 of that agreement, a twinning programme has been established to assist the Tunisian authorities. This programme, which will be financed by the European Commission, is aimed at supporting Tunisia's efforts to improve its economic competitiveness, particularly by strengthening the institutional capacities of the bodies responsible for applying competition policy.

64. In the light of France's experience with twinning projects, the French Department of Competition, Consumption and Fraud Prevention (DGCCRF) and Competition Council have been entrusted with carrying out the programme.

65. In addition, the DGCEE (Tunisia) and the DGCCRF (France) have been cooperating bilaterally since 1989. This cooperation is implemented under a triennial agreement.

66. Such cooperation is intended to strengthen the capacities of the DGCEE with respect to competition, consumption, quality, security and so forth.

67. The cooperation between France and Tunisia encompasses several areas:

- Exchange of information and expertise in market regulation, competition, quality, security, etc.;
- Organization of workshops and seminars in Tunisia by French experts;
- Hosting of training courses in France for Tunisian civil servants;
- Assistance in drafting legal documents;
- Participation in the initial training provided by the National College of Competition, Consumption and Fraud Prevention (ENCCRF).

IV. CONCLUSIONS AND RECOMMENDATIONS

68. The main legal instruments necessary for competition policy to be able to function are now in place in Tunisia. However, a number of changes or adjustments could be contemplated in order to strengthen economic competition. Here, we will present a summary of the desired improvements in the form of recommendations addressed to the Tunisian authorities. In addition, some changes to the law are proposed.

A. Strengthening the culture of competition among consumers and companies

69. In a recently liberalized economy like Tunisia's, economic operators do not always have sufficient understanding of the differences between anti-competitive practices and practices that are acceptable from a competition policy standpoint. Confusion persists between the concept of anti-competitive practices, as defined in competition policy, and unfair trade or activities. Many Tunisian companies are particularly concerned about parallel imports and competition from businesses in the informal sector and believe that such matters come within the scope of competition policy.

70. The public, for its part, sometimes perceives competition as a greater threat than price regulation, which reassures consumers. Likewise, consumers may actually enjoy cheaper prices as a result of informal imports. The current situation thus calls for large-scale awareness-raising regarding the role of competition policy, so as to ensure that its benefits in terms of price, quality and variety are better understood by the Tunisian people and Tunisian companies.

Recommendation 1: Initiatives targeting the public should be launched in the press and on television to ensure that the benefits of competition policy for consumers are better understood and more widely known.

Recommendation 2: More seminars for companies on anti-competitive practices should be organized by specialists and academics and by experts from the Ministry of Trade and the Competition Board.

Recommendation 3: Brochures clearly explaining the implications of the Competition Act could be prepared and made available to companies.

B. Strengthening competition policy in the public sector and sectoral ministerial departments

71. In Tunisia, a certain number of goods and services are excluded from the liberalized price regime, either because they are “essential” goods whose prices are subsidized or because there is little competition with respect to the activities concerned. Moreover, the influence of public sector companies remains quite significant, and the State is present not only in network industries, such as telecommunications, energy, transport and banking, but also in other sectors that are generally private in the developed economies, such as fertilizers, mining, electricity, construction materials and so forth.

72. The ministerial departments that manage the various sectors have a rough understanding of competition policy and the benefits it provides in terms of the functioning of the economy. Given that these ministerial departments are in direct contact with the real economic world and the companies in their respective sectors and given their considerable influence on the functioning of the Tunisian economy, it is absolutely essential to increase their awareness of the market economy.

Recommendation 4: Training seminars on the culture of competition and the importance of the market economy should be set up for civil servants with significant economic responsibilities. Competition policy should not remain solely a matter for the specialized services of the Ministry of Trade and

the Competition Board, and these services should make their experience available to the other ministries, as well as to companies.

Recommendation 5: A forward-looking analysis should be undertaken of the possibility of opening up new sectors to competition. Such an analysis ought to facilitate the gradual transition to a market economy; it should be conducted with the participation of the Ministry of Trade, the officials responsible for the sectors concerned and the highest national authorities.

C. Greater emphasis on penalties

73. Penalties should play (a) a preventive role, to ensure that the behaviour punished does not recur in future; (b) an educational role, to help companies to better understand their obligations under competition policy; and (c) a punitive role, since it is also a question of penalizing anti-competitive behaviour. Admittedly, there has been progress in this area since the 1990s, and the percentage of cases in which a penalty was imposed has increased from 17 per cent in the years 1990-2000 to 50 per cent in 2004.

74. However, it appears that fines are not a priority for the Competition Board and that the amount of the fines is still often symbolic. This situation cannot continue, since the lack of penalties risks indirectly encouraging criminal behaviour. A change in the policy on fines should also be envisaged.

75. The Ministry has never intervened, although compromises are resorted to in other matters and in other countries.

Recommendation 6: The Board should gradually increase the level of fines while giving clear reasons for their imposition, so as to guarantee that the persons concerned are able to defend themselves and to emphasize the educational aspect of the penalties. In particular, price-fixing agreements between economic operators should be very strongly discouraged. In order for an economy like Tunisia's, where companies remain psychologically influenced by price controls, to make the

transition to a highly competitive market economy, a strong signal must be sent regarding the unacceptability of certain practices.

Recommendation 7: If the level of fines is increased, the reasons for their imposition must be clearly understood. This presupposes that economic operators are aware of the criteria for establishing the amount of fines (seriousness and duration of the offence; the attitude of the company during the investigation). In some jurisdictions, these principles and criteria have been put in writing and made public. The Board could draft an explanatory document along these lines in order to prepare companies for a tougher policy on fines.

Recommendation 8: Article 59 of the Competition Act should be amended to preclude the Ministry from “compromising” on the amount of the fines decided on by the Board. Any concession of this sort would enable companies to go to the Ministry to have the fines set by the Board reduced. Besides, the parties concerned have the option of launching an appeal before the judicial bodies.

D. Establishment of an internal information, documentation and training system for the institutions responsible for applying competition policy

76. The institution of a culture of competition will also require the establishment of an information and documentation system for the specialized staff who apply competition policy. In addition, notices and guidelines would be particularly helpful, as they would enable newly recruited staff of the Ministry of Trade or the Competition Board to become familiar with the manner in which the rules are applied; today, training of new staff takes place mainly through oral communication. These internal communication tools have proved their worth in institutions specializing in the field of competition.

77. Specialized training courses on competition and consumer policy should be organized for Tunisian students, and it would be

helpful if the specialized staff of the Competition Board and the Ministry of Trade inspectors dealing with competition matters could receive advanced in-service training on a regular basis. Such training could be provided through international cooperation, particularly with the French authorities, since the association agreement with the European Union includes a support programme that provides for access to training, among other things. The establishment of a training centre would also be very useful.

Recommendation 9: A documentation centre specializing in competition matters should be established. It should be supplied with academic reference works and located within the Ministry or the Board.

Recommendation 10: Clear and practical documentation, in the form of guidelines covering every anti-competitive practice, should be made available.

Recommendation 11: The introduction of competition law in university training programmes would be of great benefit for future generations.

E. Reconciling the regulatory approach and the competition-based approach

78. The relations between the competition authorities and regulators are not always straightforward. It is very quickly apparent that greater cooperation is necessary, so that positive synergies can emerge from the dialogue between these two institutions, which differ in terms of both their approach – ex post versus ex ante – and their professional background, which is somewhat legalistic in the case of the regulators and economic in the case of the competition authorities. Of course, the relations between the institutions are also relations between people, who can get to know and value one another. Cooperation and collaboration between the competition and regulatory authorities is highly desirable in order to enhance the monitoring of competition in the market.

79. In Tunisia, the telecommunications regulator, INT, is obliged to inform the Ministry of Trade of anti-competitive practices and concentrations in that sector (art. 52 bis).

Recommendation 12: The Ministry should be required to refer competition-related complaints to the Competition Board as soon as they are filed with the INT.

F. Difficulties encountered in conducting investigations and collecting information

80. Taking into account the limited means available, the competition authorities have difficulty in collecting sufficient evidence of anti-competitive practices, particularly in a country in which the statistical system is not adequately developed. Investigations and inquiries on the ground do not always allow all the necessary information to be gathered. There is thus a real need for a reliable database for each sector to facilitate the work of the Ministry and the Council.

Recommendation 13: Databases could be developed or could easily be made available, notably by drawing on the investigations conducted by the Ministry and the statistical offices, in order to facilitate the work of the Ministry and the Council.

G. Choice of sectors and priorities

81. The choice of sectors for investigation is very important. In some jurisdictions, a number of major inquiries have recently been launched in sectors in which the competition authorities suspect anti-competitive practices. Such inquiries allow vast quantities of information to be gathered from questionnaires sent systematically to every company in the sector concerned. Such inquiries enable the competition services to have a deeper understanding of the sector and the type of practices employed by companies.

Recommendation 14: An in-depth study along the lines of a sector-wide inquiry conducted in key sectors of the Tunisian economy in which there are problems with competition could send a very strong political signal regarding the importance of competition policy. This priority activity could be undertaken by the Ministry in cooperation with the Competition Board, on the basis of proposals made by the Board.
