



Strengthening Staff Capabilities and Building Institutional Capacity for Effective Implementation of Competition Policy – Capacity-Building Final Report

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INTRODUCTION

1. U.S. AID has requested an assessment of the training needs of the Egyptian Competition Authority. The assessment should form the backbone of a program designed to enhance the capabilities of the Authority. The ultimate goal, of course, is to assist the Authority's mission and ensure its ultimate success.
2. The Egyptian Competition Authority [ECA or Competition Authority] is the agency charged with enforcing Egypt's competition law.¹ The law reflects Egypt's commitment to and increased reliance on market forces and competitive discipline to organize its economy.
3. The Competition Authority's mission is to support and enable this process of transition and reform by vigorously opposing any attempts for private and public sector firms to short-change the process by curtailing practices that restrain competition. Interpreted broadly, the Competition Law is a mandate investing the ECA with the obligation to act on behalf of consumers and competition. The authority's activities stand to enhance the benefits of competition unencumbered by anticompetitive practices.
4. As a result of the relative novelty of competition policy within the Egyptian Legal tradition the administration of competition policy faces

¹ Law No. 3 of 2005. Law on the Protection of Competition and the Prohibition of Monopolistic Practices.

many challenges. US AID can best ensure the success of the competition policy program by focusing on securing competition policy's broader appeal and institutional support and on the efficient administration of the competition law by the authority. I elaborate on these two points here. Specifically, the focus of this report is on two interrelated ones: (a) strengthening the stature of the agency; and, (b) enhancing the capabilities of the authority's staff.

5. US AID should actively work towards enhancing the stature of the Authority within the government, within the private sector and among the associated institutions that ensure the efficient administration of competition. A competition agency accomplishes its objectives in two ways: enforcing the law and competition advocacy.
6. As with all law enforcement its value lies in no small part on its deterrent impact. Deterrence enables the agency to extend its reach beyond the immediate targets of its investigations. But effective law enforcement and the resulting benefits of deterrence requires that the agency be the centrepiece of an integrated web of stakeholders that both actively support and constrain its functions. Neither effective law enforcement nor deterrence will emanate from an isolated, docile agency.
7. To be an effective advocate of competition also requires a web of stakeholders. An advocate challenges anticompetitive practices of government ministries, agencies, programs, initiatives. This challenge can very quickly lead to confrontations with powerful ministries or influential individuals within the government. Confrontations of this nature routinely intimidate competition agencies in other jurisdictions.

Not surprisingly, this type of conflict ultimately relegates the agency to a live-and-let-live mode and one that only targets the politically unconnected. Clearly, the agency needs to build its political and professional support network. The lynchpin of a strong competition advocate must be its highly professional and technical capabilities but one firmly embedded in a system of supporting institutions.

STRENGTHENING THE STATURE OF THE AGENCY

8. Competition policy has two elements, a law enforcement component and a competition advocacy component; I address both in this section.
9. Competition policy is a novel policy embraced by the Egyptian government. There is no historical natural constituency or support group in Egypt for the ECA; the agency must work assiduously to develop a constituency capable of providing a strong political base to ensure an effective competition agenda. The cultivation of stakeholders can not only assist the agency in its mission but is almost indispensable for its success.
10. Consumers are a natural constituency because they benefit directly from a successful competition policy agenda. And indeed, the agency should strive to reach out to consumers, to tell them specifically how they benefit and implicitly and explicitly appealing for support for the agency's mission. By conflating the competition policy with the interests of consumers the process of developing a political base is likely to be less lengthy.

11. Because of the natural connection to the public at large, the ECA should quickly establish contacts with the local business press, a function naturally undertaken by the ECA's communications officer. In addition, reporters on the business beat should routinely be invited to attend dissemination workshops and training programs. Special efforts should be made to systematically submit commentary to the press. The business press in many jurisdictions is a truly effective means of reaching a wide audience with great clarity; this free publicity enable the agency to diffuse its mission to a wider audience.

12. The press could be a very effective means of clarifying popular misunderstandings as to the mission and objectives of the competition authority. For example, as Egypt increasingly progresses on its route to market economy it will undoubtedly attract more foreign investment. This "foreign" competition is a destabilizing source of competition to local cartels and monopolies and is welcomed by the ECA. Foreign competition may be encouraged to enter the Egyptian market because it commands higher productivity and is thereby more competitive; a competitiveness that often translates into lower prices for consumers. But such price competition threatens less efficient domestic businesses and is often viewed in many business quarters with suspicion and resentment. Local businesses are likely to label foreign entry as unfairly predatory, calling attention to the resulting impact on jobs to solicit sympathy and political attention.

13. Clearly, market processes may engender faux competition issues, issues that are likely to eliciting demands that the competition agency intervene, demands from the business sector and from the public encouraged by the afflicted business groups. The media provides a

medium through which the competition agency can “educate” the public and the government as to the economic realities that benefit consumers, underscoring a market economy. The agency should be proficient in divulging information of this nature.

14. Egypt recently passed consumer protection legislation and is presently establishing a consumer protection agency to enforce consumer protection laws. Consumer protections can, for the most part, offer vital guarantees against the most visible abuses inflicted on the populace by injudicious commercial interests. However, the immediate agenda of the consumer protection agency is not one necessarily based on economic efficiency, the guiding rationale underscoring the administration of the competition law by the ECA.

15. For example, supply shocks may generate price spikes in retail products impinge on consumer’s pocketbooks and creating demands that the government “take action.” It is not likely that the ECA will intervene beyond confirming that no anticompetitive behaviour is responsible for the price spike – a politically unpopular conclusion. The consumer protection agency has no consumer efficiency criteria guiding it to reach a similar conclusion and is likely to intervene, opting for the more politically attractive alternative of seeming to “respond” to consumers. In many jurisdictions, such an event often turns into an opportunity for grandstanding for the administrators of the consumer protection agency, often at the expense of the competition authority.

16. Accordingly, the ECA should quickly and promptly establish a dialogue with the consumer protection agency charging the ECA’s communications director with the function. The immediate task of the

liaison should be to ensure the ability of the two agencies to understand the proper roles assigned to each. This could be accomplished by inviting representatives of the consumer agency to participate in the ECA's training sessions, among other avenues.

17. The business community is an important participant and stakeholder in a market economy; but it presents a twofold challenge. On the one hand, the professional enforcement of competition laws and solid competition advocacy may command the respect and attention from the business community. The competition agency's motives cannot be impugned in the face of an impartial and unbiased attention to professional law enforcement. The agency must provide methodological and operational transparency. However, by its very nature, law enforcement is adversarial. The possibility of being the target of an agency investigation is an unwelcome prospect everywhere. A clear commitment to professionalism and transparency may enable the agency to overcome the business sector's natural reticence or dislike of government activism.

18. More specifically, the ECA and its sponsors should periodically conduct awareness campaigns amidst the business groups to guarantee understanding of the ECA's operational and law enforcement principles and its mission. For example, there is not now among many sectors a clear understanding of "competition" among the various stakeholders; often, issues of "competitiveness" are frequently confused with issues of "competition". Whereas actions by a competition authority ultimately impact competitiveness, the more direct focus of the agency is, and should be clearly on preventing anticompetitive practices, which directly impair competition.

19. The ECA should signal its commitment to transparency and professionalism by openly publicizing its procedures and operational principles and objectives; on its web site and via brochures and printed materials, speeches and press releases. These actions will offer clarity to the business sector and counter misinformation and uncertainty.
20. Other natural supporters of the ECA are the academic community and the bar. Connections to academia and the bar are likely to occur naturally, as the agency draws on the expertise of academic experts in economics and law and the talents of established practitioners.
21. An explicit commitment to continuing and enhancing these links with local law schools is clearly beneficial. Academic commentary and criticism can only enrich the competition policy process. In addition, given the relative scarcity of competition-related jurisprudence in Egypt's civil code tradition, the attention of the legal community can hasten the development of relevant commentary. Similarly, with notable exceptions little appears to be written by legal scholar and practitioners on competition policy; we expect this scarcity will be remedied as the law school and professional legal associations get involved.
22. Going forward, it will be particularly important, to support ongoing continuing legal education to the judges who will be the last line of defence in the implementation of an effective competition policy. It is my understanding that US AID is presently active in this area; to add a competition policy component to ongoing training of judges should be neither costly nor difficult, at the margin.

23. Similar liaison entreaties should be made with the local bar. The bar will necessarily play an important role if the competition program is to succeed. Joint workshops with the bar should be the first step; workshops that publicize the ECA's operational and administrative procedures. ECA directors should solicit invitations to speak in bar functions; the latter are natural forums for discussion and policymaking.
24. A similar commitment to continuing and enhancing links with local economics departments is highly beneficial. Academic commentary and criticism can only enrich the competition policy process. The attention of the economic community can hasten the development of relevant commentary. Similarly, with notable exceptions little appears to be written by professional Egyptian economists on competition policy; we expect this scarcity will be remedied as the Economics Department and professional associations get involved. To contribute to this evolution, the ECA should actively support in-house research and commentary by both its legal and economics staff that could be published as working papers; these works constitute also an active element of the ECA's advocacy role – more on this below.
25. Cultivating links with economics departments and law schools will ultimately elicit the critical commentary and support necessary for efficient law enforcement. But these links are also vital for the ECA's advocacy role.
26. Competition advocacy programs are designed to analyse and highlight the costliness and implications of government-sponsored regulations.

In the view of many, the advocacy function commands a key role for the competition agency, especially during its early period, because it entails public relations and informative functions as well as pointed commentary on government practices deemed anti-competitive. Presumably, information on the tradeoffs involved in implementing regulations or projects that entail conflicting impact on consumer welfare will result in better-informed decision-making and one that can steer the Egyptian economy towards efficient markets and ensure benefits for consumers.

27. Advocacy programs exist in most competition agencies around the world. Agency economists and attorneys prepare comments on proposed policies of other government agencies. These comments bring the expertise of the staff, acquired through work on antitrust enforcement matters, to bear on regulatory questions of interest to other government agencies. In this manner, the competition agency ensures that the public and the various stakeholders are aware of the competitive consequences of decision makers proposed actions.

INTERNAL CAPACITY CAPABILITIES- Professional Requirements

28. As of the date of this writing the Authority has a professional staff of 8: four attorneys and four economists and is managed by a director who is also an attorney. Although young, the staff is experienced and knowledgeable. Importantly, some staffers have worked for the

Egyptian public sector and are well-versed in navigating the bureaucratic procedures that characterize the Egyptian Administrative apparatus.

29. To develop and ensure the professionalism and technical know-how required to successfully administer the competition law, a training program with a strict focus on a conventional consumer welfare-maximization methodology should be adopted.
30. The success of an economic efficiency-based competition policy program entails a careful understanding of the microeconomic theory underlying the policy. Detailed exposure to antitrust economics will also be keenly useful because of the level of economic specialization in the field.
31. Financing should be made available to provide ECA staffers with a short-term stint in a foreign enforcement jurisdiction (either in an OECD member country, the European Union or in the United States). The focus should be on operational procedures aimed at law enforcement but also on competition advocacy. Similarly, support for the ECA staff to attend organized regional and international training programs should be considered.
32. Additionally, I recommend that support be made available to obtain a full-time, foreign consultant with enforcement experience to assist the Commission and Secretariat in developing an initial enforcement and advocacy agenda, and to assist with initial investigations and surveys.

33. Capacity training program should cover the following topics in the various *fora*: handling of complaints, case selection, conducting investigations and gathering economic and other evidence, research and analytical methods, evaluating effects on competition and consumer welfare of various anticompetitive practices/situations, preparation of firm and industry specific analyses and reports, recommend remedial actions, fines, and other measures to address anticompetitive business and unfair trade practices.
34. Methodologically, I recommend that any proposed interventions by trainers or consultants should be based on a careful understanding of the ECA's ongoing investigations and difficulties. Put differently, the ECA and US AID should refuse the typical "canned" presentation typically trotted out by visiting consultants and trainers. This distinction enhances the benefits derived by those taking the workshops although it may require the invited expert to invest more time in preparation. The ideal expert is one who is well versed in the practice of antitrust and commands both a sound knowledge of economics and law, especially of Egypt's legal setting.
35. Despite their professionalism and experience the ECA's economic staff is poorly trained in industry microeconomics and quantitative methods. This is not surprising and should not be considered a reflection of the economist's capabilities. Heretofore, Egypt has had little need for training industrial organization and antitrust specialists. In fact, to my knowledge, there is not a single course in industrial economics taught in an economics program in any of the nation's colleges. Accordingly, U.S. AID should sponsor an in-house course in applied industrial organization and one in quantitative methods. A third course as well, if

possible: a cost-benefit analysis course designed to enhance the consumer advocacy role of the agency should be offered as well. This training will enable ECA economists to proactively discern the inefficiencies and transactions costs embedded in the economic system and address them accordingly.

36. I have discussed the need for resources with US AID-Egypt. The ECA sorely needs textbooks in industrial organization, in antitrust economics, legal horn-books in antitrust, various copies of E-Views (an econometric package), web-based access to Lexis-Nexis and other similar databases. These limitations should be remedied as soon as possible.

CONCLUDING COMMENTS

37. The success of Egypt's competition policy program turns on its ability to engage its naturally evolving constituency. In other countries, involving the business community, academia, the bar, consumers, the press and other government agencies with the development and implementation of the competition program has been a key ingredient of agency success.

38. In summary, to maximize the opportunity to diffuse the presence and dimensions of the novel Egyptian competition law and its administration US AID should assist with the following programs:

- Structure a joint workshop or seminar on competition policy economics with the Department of Economics of the various institutions of higher learning in Egypt.

- Structure a joint workshop or seminar on competition policy law with the Law Schools of the various law schools present in Egypt.
- Structure a joint workshop or seminar on competition policy with Egyptian chamber of commerce and with the chambers of commerce in several other regional cities across the country.
- Structure a joint workshop or seminar with journalists, especially those covering business.
- Assistance to the Department of Economics of the various local Universities with the development of a course or curriculum in industrial organization and competition policy. No economics program in the entire country offers a course in industrial organization.
- Assistance to the Law Schools with the development of a course or curriculum in antitrust law and economics.
- Assistance to the bar association in developing networks among other international bar associations to assist with continuing legal education in competition.
- Developing an advocacy program blueprint for Commission/Secretariat. An active training program grounded in solid microeconomic analytical skills is essential for a proactive effort in this area.
- Provide the ECA with bibliographic resources; these are key needs required for sound competition analysis and practice.

39. Last, it would be a good idea to support the holding of at least two competition conferences with government, business and academic stakeholders and foreign experts over the course of the first three years of the implementation of the competition law.

40. The first event should be directed at strengthening the international and domestic stature and “credibility” of the enforcement agency, and

increasing understanding of the basic elements of “competition”, competition law and economics. A second event, the following year could get into more detail, and to discuss actual cases from Egypt or other similarly situated countries. The involvement of enforcement officials and other stakeholders such other countries would be a significant benefit.

APPENDIX I - Report Author

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Dr. Rodriguez is an Associate Professor in the Department of Economics and Finance of the *University of New Haven*. He specializes in domestic and international competition policy. He has taught, written and lectured widely in these fields and is the author of various papers published in refereed and professional journals. Dr. Rodriguez is also an experienced economist with substantial experience advising private sector firms, multilateral agencies and government agencies.

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