
CHAMBERS GLOBAL PRACTICE GUIDES

Merger Control 2025

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Egypt: Law & Practice

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EGYPT



Law and Practice

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Contents

1. Legislation and Enforcing Authorities p.6

- 1.1 Merger Control Legislation p.6
- 1.2 Legislation Relating to Particular Sectors p.6
- 1.3 Enforcement Authorities p.7

2. Jurisdiction p.8

- 2.1 Notification p.8
- 2.2 Failure to Notify p.8
- 2.3 Types of Transactions p.8
- 2.4 Definition of "Control" p.9
- 2.5 Jurisdictional Thresholds p.10
- 2.6 Calculations of Jurisdictional Thresholds p.10
- 2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds p.10
- 2.8 Foreign-to-Foreign Transactions p.11
- 2.9 Market Share Jurisdictional Threshold p.11
- 2.10 Joint Ventures p.11
- 2.11 Power of Authorities to Investigate a Transaction p.13
- 2.12 Requirement for Clearance Before Implementation p.13
- 2.13 Penalties for the Implementation of a Transaction Before Clearance p.14
- 2.14 Exceptions to Suspensive Effect p.14
- 2.15 Circumstances Where Implementation Before Clearance Is Permitted p.14

3. Procedure: Notification to Clearance p.14

- 3.1 Deadlines for Notification p.14
- 3.2 Type of Agreement Required Prior to Notification p.15
- 3.3 Filing Fees p.15
- 3.4 Parties Responsible for Filing p.15
- 3.5 Information Included in a Filing p.15
- 3.6 Penalties/Consequences of Incomplete Notification p.16
- 3.7 Penalties/Consequences of Inaccurate or Misleading Information p.16
- 3.8 Review Process p.17
- 3.9 Pre-Notification Discussions With Authorities p.18
- 3.10 Requests for Information During the Review Process p.18
- 3.11 Accelerated Procedure p.18

4. Substance of the Review p.18

- 4.1 Substantive Test p.18
- 4.2 Markets Affected by a Transaction p.19
- 4.3 Reliance on Case Law p.19
- 4.4 Competition Concerns p.19
- 4.5 Economic Efficiencies p.20
- 4.6 Non-Competition Issues p.20
- 4.7 Special Consideration for Joint Ventures p.20

5. Decision: Prohibitions and Remedies p.20

- 5.1 Authorities' Ability to Prohibit or Interfere With Transactions p.20
- 5.2 Parties' Ability to Negotiate Remedies p.20
- 5.3 Legal Standard p.20
- 5.4 Negotiating Remedies With Authorities p.20
- 5.5 Conditions and Timing for Divestitures p.21
- 5.6 Issuance of Decisions p.21
- 5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions p.21

6. Ancillary Restraints and Related Transactions p.21

- 6.1 Clearance Decisions and Separate Notifications p.21

7. Third-Party Rights, Confidentiality and Cross-Border Co-Operation p.21

- 7.1 Third-Party Rights p.21
- 7.2 Contacting Third Parties p.22
- 7.3 Confidentiality p.22
- 7.4 Co-Operation With Other Jurisdictions p.22

8. Appeals and Judicial Review p.22

- 8.1 Access to Appeal and Judicial Review p.22
- 8.2 Typical Timeline for Appeals p.22
- 8.3 Ability of Third Parties to Appeal Clearance Decisions p.23

9. Foreign Direct Investment/Subsidies Review p.23

- 9.1 Legislation and Filing Requirements p.23

GLA & Company provides strategic, cost-effective and forward-thinking legal representation for companies seeking to do business in the Middle East. The firm's practice encompasses all legal issues companies will likely encounter in the global business environment. With extensive experience in advising clients in the Gulf Cooperation Council (GCC) states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE, it provides unique insights to companies seeking to establish or expand business opera-

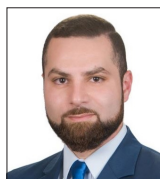
tions in these nations. The firm's emphasis is on getting deals cleared with the local competition authority and it has excellent relationships with regulators in the GCC. It has been successful in securing no objections from these bodies to clear deals. The firm's lawyers are intimately familiar with the governing sources of authority and routinely work with the relevant agencies, departments and committees on behalf of clients.

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1. Legislation and Enforcing Authorities

1.1 Merger Control Legislation

The Arab Republic of Egypt is committed to fostering a competitive economic environment that does not restrict, prevent or damage the freedom of competition. Law No 3 of 2005 on the Protection of Competition and Prohibition of Monopolistic Practice (the “Egyptian Competition Law” or the “ECL”) was therefore enacted. The Egyptian Competition Law has since been amended four times (in 2008, 2010, 2014 and, most recently, with the introduction of the ex ante merger control regime through Law No 175 of 2022 (the “Amendments”)).

On 4 April 2024, the Egyptian Prime Minister issued Decree No 1120 of 2024 to implement the Amendments issued to the ECL which made significant revisions to the executive regulations to the Egyptian Competition Law (the “Executive Regulations”). The Executive Regulations introduced the long-awaited merger control framework and established “Chapter Nine: Examining Economic Concentration”, providing the legal foundation for pre-transaction notifications and reviews.

The Egyptian Competition Authority (the “ECA”) has also published guidelines and FAQs (the “Guidelines”) to help parties navigate the newly established ex ante merger control regime.

1.2 Legislation Relating to Particular Sectors

Other specific local legislation should be taken into account when it comes to specific sectors. This includes the following.

- The National Telecommunications Regulatory Authority (the “NTRA”) applies Articles

2, 4, 24 and 25 of the Telecommunications Law, Law No 10 of 2003 to regulate competition and to ensure economic freedom in the sector. The NTRA indirectly examines and detects mergers by reviewing the licence requirements of any given operator. The NTRA will assess and evaluate any merger on the basis of its impact on competition. In the event that the NTRA foresees or detects a violation of law, they will threaten or directly block any merger by revoking the merging entities’ licences. Article 27 of the Telecommunications Law also provides the NTRA with additional tools to preserve competition. This provision allows the NTRA to temporarily authorise licensees to offer services at prices below approved tariffs, subject to strict conditions. However, this pricing flexibility is immediately revocable if the NTRA determines that the discounted pricing violates free competition rules.

- The Central Bank of Egypt (the “CBE”) acts as the regulator of the banking system. Article 74 of the Banking Law, Law No 194 of 2020 establishes a strict pre-approval regime for significant bank ownership, requiring parties to seek approval from the CBE at least 60 days before acquisitions of more than a 10% stake (and any subsequent increase) in a bank or any other percentage that will enable any natural or corporate person or their related parties to have control over the management or decision-making in the bank. If a bank fails to comply with this, the voting rights and the distribution of dividends correspondent to shares exceeding the authorised percentage will be suspended. In this event, the individual or entity in breach will dispose of the shares exceeding the percentage within six months from the date of their transfer. The CBE may request the Financial Regulatory Authority (the “FRA”) appoint a brokerage

firm to conduct the procedures for selling the shares. The proceeds of the sale of shares will be apportioned to the shareholder after the correspondent expenses are deducted.

- Economic concentrations related to activities that are regulated by the FRA are subject to a special clearance process. According to Article 19 bis e of the Egyptian Competition Law and Article 62 of the Executive Regulations, the parties involved have to notify the FRA before signing the contract, if the target operates in activities supervised and controlled by the FRA such as insurance, mortgage, financial leasing, factoring or consumer finance. The FRA will seek the opinion of the ECA before clearing the economic concentration. A decision must be issued by the ECA within 30 days from the following day of receiving a complete notification file from the FRA. Where the target person engages in more than one activity, including activities subject to the supervision and control of the FRA, the person in this case must notify the ECA of all activities according to Article 19 bis a of the Egyptian Competition Law, in addition to notifying the FRA of the activity or activities subject to its supervision and control according to Article 19 bis e of the Egyptian Competition Law.
- Additional regulatory agencies in the Egyptian market, include but are not limited to the Egyptian Electric Utility, the Gas Regulatory Authority and the Supreme Council for Media Regulation. They may also require prior approval before the conclusion of a transaction which would result in the acquisition of control over a specific company which operates in the relevant sector. The ECA's relationship with all these agencies is a complementary relationship where the primary goal is to protect consumer rights and the public interest.

The Egyptian Competition Law states that one of the responsibilities of the ECA is to co-ordinate with the sectoral regulatory agencies on matters of common interest, without prejudice to the functions of the various agencies.

In the same vein, despite the overlapping scope of the various regulators in respect of competition matters, the merger control notification regime prescribed under Article 19 of the Egyptian Competition Law remains applicable to all sectors making any economic concentration subject to the jurisdiction of the ECA.

1.3 Enforcement Authorities

The ECA is responsible for the enforcement of the Egyptian Competition Law and its Executive Regulations. The ECL established the ECA as an independent body affiliated directly with the Egyptian Prime Minister. The ECA is mandated to act as the administrative body responsible for safeguarding a climate in which competitors have equal opportunities to compete in all economic sectors.

The Egyptian Competition Law grants the ECA the power to issue the following decisions after completing the review process: dismissal of a request; non-jurisdiction; clearance; conditional clearance; or block decisions.

In order for the ECA to perform its duties, it may request the assistance, and further clarifications in certain sectors, from the relevant regulatory authorities governing these sectors. The regulatory authorities will be considered experts in the field but will not have a vote on the matter.

2. Jurisdiction

2.1 Notification

In the event a transaction falls under the scope of an “economic concentration” under the ECL, notification is compulsory.

Under the second paragraph of Article 2/g of the Egyptian Competition Law, the following transactions will not be considered an “economic concentration”.

- Temporary acquisition, by any securities company, of securities in a party for the purpose of resale within one year from the date of the acquisition, provided that they do not exercise any voting right nor take any measures that would affect the strategic decisions or commercial objectives of the acquired party. The ECA may extend this period, upon request, if the acquirer proves that the resale of the securities was not possible within one year as determined by the Executive Regulations.
- An acquisition or merger between related parties. This is considered an internal restructuring and does not trigger an obligation to notify unless there is a direct or indirect change in control or material influence.

2.2 Failure to Notify

Failure to abide by the notification requirement set out in Articles 19 bis a and 19 bis e of the Egyptian Competition Law will be sanctioned by a fine of between 1% and 10% of the total annual turnover, asset value or transaction value (whichever is higher according to the final audited consolidated financial statements).

The Egyptian Competition Law and Amendments also set out the penalties to be imposed if a calculation of these percentages is impossible.

A fine of between EGP30 million and EGP500 million will be imposed.

While the penalty framework is established under the ECL, as of May 2025, the ECA has not yet publicly enforced fines for merger notification failures.

2.3 Types of Transactions

The Egyptian Competition Law uses a general principle of “economic concentration” to identify merger control issues. The ECL defines an “economic concentration” as any change of control or material influence over one or more persons. It expressly identifies the following transactions as “economic concentrations”.

- Mergers. One person ceases to exist as a separate legal entity as per its absorption by another person, which retains its legal personality after the merger (merger by absorption) or two or more persons cease to exist as separate legal entities as they are integrated into a newly created legal entity (merger by integration)
- Acquisition. Acquisition by one or more persons, directly or indirectly, of control or material influence over the whole or part of another person whether by contract, purchase of securities or assets or by any other means, and the acquisition can be individual or collective.
- Joint venture. Establishment of a joint venture or the acquisition of an existing person by two or more persons for the purpose of establishing a joint venture that conducts economic activity independently and permanently.

However, if the acquisition of the non-controlling minority shareholdings leads to a change in material influence over another person, it will be

subject to the jurisdiction and review of the ECA, provided that the financial thresholds specified under the Egyptian Competition Law are met (see **2.1 Notification** with respect to the express exceptions under the ECL).

2.4 Definition of “Control”

Article 2/h of the Egyptian Competition Law defines “control” as the ability of one or more controlling persons to exercise decisive influence, directly or indirectly, by directing the economic decisions of another person or persons, either through acquiring the majority of voting rights, or the ability of the controlling person to block economic decisions by the person or other persons or by any other means. This includes any situation, agreement, stocks or shares ownership, regardless of their share, provided that it leads to a decisive influence on the management or decision-making.

Under the ECL, “control” can be exercised, in particular, through:

- an act that leads to the ownership of 50% or more of the total voting rights or total shares or stocks of the capital of another person;
- an act that leads to the ownership or the right to use and exploit all or the majority of the assets of another person;
- an act that leads to the acquisition of rights, which confer the ability to the controlling person to appoint the majority of the members of the board of directors or “control” the decisions of the board of directors or the general assembly meetings; and
- an act that leads to more than half of the members of the board of directors or the members of the general assembly meetings being the same persons in the acquiring person and the acquired person.

Under Article 2/i of the Egyptian Competition Law, “decisive influence” is defined as the ability to directly or indirectly influence, the policy of another person, including its strategic decisions and/or commercial objectives.

“Material influence” is established by any of the following being present.

- An act that leads to the ownership of 25% or more of the total voting rights or total shares or stocks of the capital of another person.
- An act that leads to the ownership of less than 25% of the total voting rights or total shares or stocks of the capital of another person, if it is associated with additional factors that may suggest that the acquirer exercises an influence disproportionate to its shareholding, in particular by:
 - (a) the percentage of voting rights owned by the person compared to the remaining voting rights, which enables the holder to influence the policy of another person, including its strategic decisions or commercial objectives;
 - (b) the presence of any provisions in the articles of association, the shareholders’ agreement or any other document that grants the acquirer special rights or veto rights;
 - (c) the existence of common shareholders between the acquirer and the acquired person; and
 - (d) the presence of one or more representatives of the acquirer in the board of directors of the acquired person.

“Material influence” is not established unless more than 10% of the total voting rights, shares or stocks in the capital in another person is owned, unless the acquirer is ranked among

the top three shareholders or stakeholders in the acquired person.

2.5 Jurisdictional Thresholds

According to Article 19 bis of the Egyptian Competition Law, an “economic concentration” is subject to notification if any of the following thresholds (the “Financial Thresholds”) are met.

- Domestic threshold: The combined annual turnover or assets of all the concerned persons in Egypt for the latest year of the last audited consolidated financial statements exceeds EGP900 million (approximately USD17.8 million), provided that the annual turnover in Egypt for at least two of the parties involved individually exceeds EGP200 million (approximately USD4 million) for the last year according to the last audited consolidated financial statements.
- International threshold: The combined annual turnover or assets of the concerned persons worldwide for the latest year of the last audited consolidated financial statements exceeds EGP7.5 billion (approximately USD150 million), provided that the annual turnover in Egypt for at least one of the parties involved in the last audited consolidated financial statements exceeds EGP200 million (approximately USD4 million).

For the purpose of applying the worldwide notification thresholds set out in Article 19 bis (b) of the Egyptian Competition Law, the annual turnover of the target in Egypt must exceed EGP200 million for the last year according to the last audited consolidated financial statements.

The Egyptian Competition Law and its Executive Regulations do not specify any exceptional rules for specific sectors regarding the notifica-

tion requirements for Financial Thresholds and their calculation methods.

2.6 Calculations of Jurisdictional Thresholds

Under Article 53 of the Executive Regulations, the annual turnover or the value of assets is calculated by identifying the generated annual turnover or value of assets for the last year in the last audited consolidated financial statements for each of the persons involved, excluding the sellers, conditional upon their exit from the target after the implementation of the “economic concentration”.

Where the seller(s) remain among the related parties of the target after the implementation of the transaction, the seller(s) annual turnover and that of its related parties will be included in the annual turnover of the persons concerned with the “economic concentration”.

If the generated annual turnover or value of assets in the last year are in a foreign currency, they are converted into Egyptian pounds according to the average official exchange rate for the purchase and sale of foreign currencies announced by the CBE on the last day of the financial year for the persons concerned with the “economic concentration”.

2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds

See 2.6 Calculations of Jurisdictional Thresholds.

Under Article 55 of the Executive Regulations, the obligation to notify falls on the following persons (depending on the case).

- The acquiring person(s), in the case of an acquisition that leads to sole or joint “control” or “material influence” over one or more persons.
- The merged persons in the case of a merger.
- The acquiring persons in the case of an acquisition for the purpose of establishing a joint venture.
- The persons establishing a joint venture.

2.8 Foreign-to-Foreign Transactions

Foreign-to-foreign transactions are subject to the ECL, Amendments and Executive Regulations. In the event foreign-to-foreign transactions fall under the definition of “economic concentrations” and meet any of the Financial Thresholds set out in Article 19 bis of the Egyptian Competition Law then it is compulsory for parties to file a notification prior to closing (see 2.5 Jurisdictional Thresholds).

2.9 Market Share Jurisdictional Threshold

No market share jurisdictional thresholds are specified under the merger control regime.

The Amendments and the Executive Regulations specify that national and international as well as combined and individual annual turnover of the parties involved in the transaction are applicable.

2.10 Joint Ventures

The Egyptian Competition Law does not expressly use the term “full-function joint venture” in its provisions. However, it does expressly apply these principles to distinguish between a “full-function joint venture” and a non-full-function joint venture (a “full-function joint venture” will be notifiable to the ECA. The ECA does expressly use the term “full-function joint venture” in its Guidelines.

Under the Egyptian Competition Law and Executive Regulations, joint ventures are notifiable to the ECA, if they meet the following conditions.

- Two or more persons must jointly “control” the joint venture, either as a result of establishment or acquisition.
- The joint venture must be intended to permanently operate.
- The joint venture must be intended to perform all functions carried out by independent persons operating in the same market, particularly through the presence of an independent management dedicated to handling the daily operations of the joint venture and having separate resources specific to the person, including financing, employees and assets.

In this context, independence means that the joint venture must be autonomous from an operational perspective. In order to consider the operational autonomy of a joint venture, the following factors should be met.

- The joint venture must engage in an economic activity beyond performing one specific function of its controlling persons. The joint venture must also be prepared to perform all functions carried out by independent persons operating in the relevant market. For example, if the controlling persons are active in production, the joint venture’s activity should be the production of a new product different from those produced by the controlling persons. If the joint venture is set up to perform R&D activities solely for the interest of its controlling persons, without the involvement of any other persons operating in the market, the joint venture will not be considered independent according to the Egyptian Competition Law.

- The joint venture must have independent resources, including financing, employees and assets. The joint venture must also have an independent management dedicated to handling the daily operations of the joint venture. In addition, the joint venture must have sufficient separate resources, such as financing, employees and assets enabling the joint venture to perform its activities independently.
- The joint venture's sales and purchases operations must not be limited to the controlling persons. If the joint venture's sales and purchases operations depend solely on the controlling persons, meaning that the joint venture has no or limited operations with other market players operating in the market, the joint venture is not deemed to be independent. The following must be taken into account.

(a) Concerning sales:

- (i) if the joint venture achieves 50% or more of its total sales with third parties, this will typically be an indication of the joint venture's independence;
- (ii) if the joint venture's sales with third parties do not exceed 50% of its total sales, meaning that the majority of its sales are consistently with the controlling persons, an evaluation is needed to determine if the joint venture is engaging with the controlling persons on a commercial basis, that is, under the same mechanisms and contractual terms as it does with other market players. The joint venture must therefore deal with third parties if they offer better prices or conditions than the controlling persons; and
- (iii) if the joint venture achieves less than 50% of its total sales with third par-

ties, the market structure should be assessed. For example, if the controlling persons of the joint venture hold more than 50% of the market share in the relevant market, the joint venture's dependence on the controlling persons for sales does not affect its independence, due to the market structure.

(b) Concerning purchasing:

- (i) if the joint venture relies on the controlling persons for the majority of its purchases, it is considered independent if it adds value to these purchases. For example, if the joint venture uses the raw materials that it purchases from its parents as production inputs for other products, the joint venture will be considered independent. However, if the joint venture purchases raw materials from its parents with the sole purpose of reselling them, the joint venture will not be considered independent. Except for where the joint venture distributes products of the controlling persons along with those of other market players through its own distribution channels and mechanisms, such as outlets, warehouses, transport fleets and sales personnel.

In all cases, the independence of the joint venture is not affected if all or the majority of its sales and purchases in the initial years or stages of its economic activity are with the controlling persons.

In addition, the joint venture must be prepared to operate on a lasting basis. For example, if the duration of the joint venture's operation is

not determined in the articles of association or any other agreements, the joint venture will be assumed to perform on a lasting basis. However, if the duration of the joint venture's operation has been determined, it must be assessed whether that duration is sufficient to consider the joint venture as set up to operate on a lasting basis according to the nature of the market.

2.11 Power of Authorities to Investigate a Transaction

The ECA, with the approval of the Cabinet of Ministers, reserves the right to commence an examination of an "economic concentration" that does not exceed the Financial Thresholds if it possesses evidence or indications that could restrict or harm competition within a period not exceeding one year from the date of implementing the "economic concentration".

The circumstantial evidence that can be considered is as follows:

- restriction of the technological development and innovation;
- controlling the market by any act that may lead to an increase or decrease in prices;
- reducing the quality of products; and
- creating barriers to entry or expansion in the market.

2.12 Requirement for Clearance Before Implementation

Under Article 22 bis d of the Egyptian Competition Law, a notifiable transaction cannot be implemented unless the ECA's clearance is granted. Failing to comply with the obligation to notify in line with Article 19 bis a and Article 19 bis e of the Egyptian Competition Law is punishable with a fine of between 1% and 10% of the total annual turnover, or value of assets of the parties to the notifiable "economic concentra-

tion" or value of the transaction, whichever is higher, according to the latest audited consolidated financial statements of each concerned person. The fine should not be less than EGP30 million and not more than EGP500 million.

There is no mention under the Egyptian Competition Law or the Executive Regulations of a regularisation mechanism for notifiable "economic concentrations" implemented without proper notification to the ECA.

If the ECA has concerns about implementing an "economic concentration", its parties may submit a commitments offer to make it comply with the Egyptian Competition Law during phase I or phase II of the review, in line with Articles 19 bis c and 19 bis d of the Egyptian Competition Law and Article 57 of the Executive Regulations. This offer consists of one or more behavioural or structural remedies. The ECA then evaluates whether the commitments submitted should suffice to mitigate the harmful effects on competition that may result from the implementation of the "economic concentration". If the commitments are approved, the ECA issues a conditional clearance decision that contains the terms of the agreement, the length of any applicable validity periods and a method for tracking the compliance of the parties involved.

In cases of conditional clearances, the ECA may require the parties to the "economic concentration" to appoint a monitoring trustee. The monitoring trustee will be responsible for monitoring the compliance of the parties with the commitments/conditions set out in the ECA's decision, subject to the ECA's approval.

2.13 Penalties for the Implementation of a Transaction Before Clearance

Gun jumping is prohibited under the Egyptian Competition Law (see 2.12 Requirement for Clearance Before Implementation and 2.2 Failure to Notify with respect to the penalties).

2.14 Exceptions to Suspensive Effect

The ECA may authorise the implementation of the “economic concentrations” despite its anti-competitive effect via approval from the Cabinet of Ministers in line with Article 19 bis b of the Egyptian Competition Law and Article 60 of the Executive Regulations if the:

- non-implementation of the “economic concentration” would result in the exit of one of them from the market (failing firm);
- implementation of the “economic concentration” would lead to economic efficiency that outweighs its anti-competitive effects; or
- “economic concentration” is related to the protection of national security.

Failing Firm

The conditions that have to be met to benefit from the failing firm exception are as follows:

- one of the concerned persons has financial difficulties in a way that leads to the exit of that person and their assets from the market; and
- there is no less anti-competitive alternative than the “economic concentration”.

Economic Efficiency

The conditions that have to be met to benefit from the economic efficiency exception are as follows:

- the economic efficiency must be verifiable;

- the economic efficiency cannot be achieved other than through the implementation of the “economic concentration”; and
- the economic efficiency should benefit consumers.

2.15 Circumstances Where Implementation Before Clearance Is Permitted

The circumstances where the authorities will permit closing before clearance are not addressed under the Egyptian Competition Law. However, the ECA may, on a case-by-case basis, be approached to grant clearance for a carve out arrangement to stakeholders.

3. Procedure: Notification to Clearance

3.1 Deadlines for Notification

The ECA must be notified of any “economic concentration” that meets the conditions set out in Article 19 bis of the Egyptian Competition Law before it is implemented. The notifying person must submit a written request, whether electronically or on paper, to the ECA to schedule a date for the submission of the notification file. The ECA will then set a date within a maximum of two working days from the date of submitting the request.

It is preferable to submit the notification file at any of the following phases:

- the conclusion of a memorandum of understanding or letter of intent (preliminary agreement);
- the conducting of serious negotiations regarding the “economic concentration”; and
- the announcement of the purchase offer; or

- the concluding of any other agreement that may lead to the acquisition of “control” or “material influence”.

3.2 Type of Agreement Required Prior to Notification

The concerned parties may submit a copy of the letter of intent, memorandum of understanding, sale/purchase agreement, purchase offer, due diligence report, shareholders’ agreement or any other agreements that transfer “control” or “material influence” to the person.

3.3 Filing Fees

The filing fees will not exceed EGP100,000 (approximately USD2,000). However, additional publication expenses will be payable.

The Executive Regulations specify the applicable fee categories.

- A fee of EGP80,000 (approximately USD1,600) if the combined annual turnover or value of assets in Egypt of all of the concerned parties is between EGP900 million and EGP1 billion (approximately USD17.8 million and USD19.8 million).
- A fee of EGP90,000 (approximately USD1,800) if the combined annual turnover or value of assets in Egypt of all of the concerned parties is between EGP1 billion and EGP1.5 billion (approximately USD17.8 million and USD30 million).
- A fee of EGP100,000 (approximately USD2,000) if the combined annual turnover or value of assets in Egypt of all of the concerned persons exceeds EGP1.5 billion (approximately USD30 million).
- A fee of EGP100,000 (approximately USD2,000) if the combined annual turnover or the value of the combined assets worldwide for the concerned persons exceeds EGP7.5

billion (approximately USD148 million) for the latest year of the last audited consolidated financial statements, provided that at least one of the concerned persons had an annual turnover or value of assets in Egypt exceeding EGP200 million (approximately USD4 million).

In all cases, the highest fee is paid if more than one category applies. The notifying person will bear the publication costs.

3.4 Parties Responsible for Filing

All parties directly involved in the “economic concentration” are responsible for filing with the ECA (see 2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds).

3.5 Information Included in a Filing

A complete notification file should be submitted to the ECA. The notification file will not be considered complete nor have any legal implications unless the notification form prepared by the ECA is filled out and the following data and documents are submitted.

- A scanned copy of the personal identification (national ID or passport) of the notifying person (with the original available for review upon request).
- A scanned copy of the power of attorney (POA) issued to the notifying person (with the original available for review upon request). The POA must be authenticated by the Ministry of Foreign Affairs if issued outside Egypt.
- A scanned copy from the commercial register, not more than three months old since its issuance date, for each concerned person, excluding the related parties, or its equivalent in the country of origin of the concerned person.

- A scanned copy of the articles of association (including all amendments) for each concerned person, excluding their related parties or their equivalent in the country of origin of the concerned person.
- A scanned copy of the audited consolidated financial statements or the audited individual financial statements if consolidated statements are not available, for the last year for the person(s) controlling the concerned persons, along with the supplementary explanations, including the auditor's report.
- A scanned copy of the annual report of each of the concerned persons, excluding their related parties.
- A scanned copy of the letter of intent, memorandum of understanding, sale/purchase agreement, purchase offer, due diligence report, shareholders' agreement or any other agreements that confer the person "control" or "material influence".
- A scanned copy of the minutes of the board of directors and general assembly (ordinary/extraordinary) meetings approved and related to the "economic concentration" for each of the concerned persons.
- A scanned copy of the available permits and approvals obtained for the "economic concentration", which is the subject of the notification file, whether inside or outside Egypt.
- A signed declaration by the notifying person or their legal representative confirming the validity of the information and documents provided.
- A receipt of payment of the prescribed fees for reviewing the notification file.
- A declaration to pay all publication expenses according to the decision of the ECA's board of directors.

The notifying person may also submit any other relevant documents or data related to the review

of the "economic concentration", such as any studies prepared by the concerned persons or a third party regarding the products used by these persons or for the purpose of evaluating and analysing the effects of the transaction on the markets (market structure, market shares, actual or potential level of competition, economic and financial status of the concerned persons).

3.6 Penalties/Consequences of Incomplete Notification

The ECA typically assesses whether or not the notification file is complete and will notify the notifying party of any further information required. Failure to provide a complete application may result in the ECA rejecting the application or taking another corrective action it considers appropriate.

3.7 Penalties/Consequences of Inaccurate or Misleading Information The ECA

Article 22 bis d of the Egyptian Competition Law states that any person who obtains a clearance decision to implement the "economic concentration" in line with Article 19 bis c or Article 19 bis d of the Egyptian Competition Law by deliberately submitting incorrect data, information or documents is going to be fined between 1% and 10% of the total annual turnover, or value of assets, or value of the transaction of the concerned persons, whichever is higher, according to the latest audited consolidated financial statements. If it is not possible to calculate this percentage, the fine will be between EGP30 million and EGP500 million.

The FRA

Article 22 bis d of the Egyptian Competition Law states that any person who obtains a clearance decision from the FRA pursuant to Article 19 bis e of the Egyptian Competition Law by deliber-

ately submitting incorrect data, information or documents will be fined between 1% and 10% of the total annual turnover, or value of assets, or value of the transaction of the concerned persons, whichever is higher, according to the latest audited consolidated financial statements. If it is not possible to calculate this percentage, a fine of between EGP30 million and EGP500 million will be imposed.

3.8 Review Process

The ECA will review the “economic concentration” in phase I within 30 working days. This 30-day period will start from the next working day following the date of the completed notification file being submitted. This period may be extended by another 15 working days in those cases where the concerned persons submit a commitments offer. If the legal time limit for the review lapses without a decision being issued, this will be considered to be a clearance of the “economic concentration”.

The ECA will continue to review the notification file for 60 working days, starting from the date of the issuance of a decision by one of the review committees referring the notification file to phase II. This period may be extended by 15 working days in those cases where the concerned persons submit a commitments offer.

In terms of those “economic concentrations” where the target person operates in any of the activities subject to the supervision and “control” of the FRA, the ECA will review the “economic concentration” within 30 days starting from the day following the receipt of the complete notification file and its attachments from the FRA.

Decisions Regarding Phase I

The ECA may issue any of the following decisions:

- non-jurisdiction of the ECA to review the notification file;
- dismissal of the request. In this case the concerned persons abandoned the “economic concentration”;
- clearance. If the notified “economic concentration” conforms with Article 19 bis b of the Egyptian Competition Law;
- conditional clearance. If the “economic concentration” conforms with Article 19 bis b of the Egyptian Competition Law, upon approval of the commitments offer submitted by the concerned persons; or
- referral to phase II of the review process. If the “economic concentration” raises suspicion of lessening, restricting or harming the freedom of competition.

Decisions Regarding Phase II

The ECA may issue any of the following decisions:

- dismissal of the request. In this case the concerned persons abandon the “economic concentration”;
- clearance. If the notified “economic concentration” conforms with Article 19 bis b of the Egyptian Competition Law;
- conditional clearance. If the “economic concentration” conforms with Article 19 bis b of the Egyptian Competition Law, upon approval of the commitments offer submitted by the concerned persons; or
- block. If the “economic concentration” may restrict, lessen or harm competition.

The concerned persons may lodge a grievance against the block decision within 30 days from the date of notification to the concerned persons.

3.9 Pre-Notification Discussions With Authorities

The concerned persons can discuss the “economic concentration” prior to its implementation with the competent persons at the ECA before officially submitting the notification file in cases where they have any inquiries. These discussions will not have any legal implications.

Any inquiries concerning the impact of the “economic concentration” on the market will not be discussed in the pre-notification discussions.

3.10 Requests for Information During the Review Process

Requests for information are common and expected, depending on the application submitted. Requests will effectively suspend the time otherwise imposed by the ECA to process an application.

The ECA will initially review the notification file provided and will notify the submitting party within five days of receiving the submission of whether it is complete. However, there is no indication of a specific timeframe for completing the notification form before the ECA. The review period will not commence unless the ECA provides the submitting party with a receipt confirming the completion of the notification file.

3.11 Accelerated Procedure

Simplified procedures are applied to “economic concentrations” that are unlikely to restrict the freedom of competition in the market(s).

The “economic concentrations” that are subject to the simplified procedures are exclusively as follows.

- The persons concerned with the “economic concentration” meet the domestic notifica-

tion thresholds stated in Article 19 bis (a) of the Egyptian Competition Law, if the annual turnover or the value of assets in Egypt of the persons concerned with the “economic concentration” combined do not exceed EGP2 billion for the latest year in the last audited consolidated financial statements.

- The persons concerned with the “economic concentration” meet the worldwide notification thresholds stated in Article 19 bis (b) of the Egyptian Competition Law, if the annual turnover in Egypt of the target does not exceed EGP500 million for the latest year in the last audited consolidated financial statements.
- Establishing or acquiring a joint venture that carries out an independent and permanent economic activity outside of Egypt.
- Establishing or acquiring a joint venture that carries out an independent and permanent economic activity in markets that are not horizontally or vertically related or otherwise related to the markets in which the parent companies operate.
- Conglomerate “economic concentrations” between persons operating in markets that are not horizontally or vertically related or otherwise related to each other.
- Acquisition of sole “control” over one or more persons after the acquiring person or persons exercised joint “control” over the same person.

4. Substance of the Review

4.1 Substantive Test

Under Article 19 bis (b) of the Egyptian Competition Law and Article 54 of the Executive Regulations, an “economic concentration” will be prohibited if it results in a substantial lessening, restriction or harm to competition. The ECA

evaluates the competitive impact of a transaction based on the following key factors:

- the structure of the relevant market(s), including the level of actual or potential competition from domestic and international players that could affect the market;
- the financial and economic strength of the concerned persons compared to existing and potential competitors;
- the available substitutes for suppliers, customers and consumers and their ability to access production resources or relevant markets and the patterns of supply and demand of the relevant products;
- the barriers to entry and expansion in the relevant markets;
- the potential impact on consumers (eg, prices, choice) and actual or future investments in the market;
- the potential impact of the “economic concentration” on innovation and development; and
- the overall likelihood of the “economic concentration” restricting competitive behaviour in the market is a decisive factor.

4.2 Markets Affected by a Transaction

When it comes to the definition of relevant market, the relevant market under the Egyptian Competition Law is composed of two elements: the relevant product (good or service); and the relevant geographical area.

- Relevant products are those that are effective substitutes from the consumer’s point of view. The main illustrative criteria to consider one product as a substitute for another are the similarity in the specifications or usages of those products and the likelihood that consumers will switch from one product to another for changes in price or any other

competitive factors. A secondary criterion is whether the sellers make their business decisions based on the switching of consumers from the product due to price changes or any other competitive factors.

- The relevant geographical area is the area where competitive conditions are homogeneous, taking potential competitive opportunities into account. Under Article 6 of the Executive Regulations, two criteria are taken into account:
 - (a) the ability of the buyer to move from the relevant geographical area to another in Egypt or abroad as a result of changes in pricing or other competitive circumstances; and
 - (b) the ability of the seller in Egypt or abroad to move to the relevant geographical area as a result of price changes or other competitive circumstances.

Certain factors must be taken into account to evaluate the ability of the buyers and sellers:

- transportation costs (including time spent and insurance fees); and
- customs and other non-customs restraints.

Despite the most recent amendment to the Executive Regulations, the competition concerns remain unaddressed to a large extent.

4.3 Reliance on Case Law

The ECA is proactive when it comes to references to precedents and case law. There is a reliance on case law weighting in important and strategic sectors.

4.4 Competition Concerns

Many competition concerns are connected to vertical and horizontal arrangements and abuse of dominance, particularly if the market share is

high. Local operators are struggling economically, especially with the rise of many economic challenges locally or globally. The ECA focuses its efforts on providing a more equally efficient platform for existing operators and providing a space for other operators to penetrate the relevant markets in the future. The main concern will be addressing sustainable competition in strategic sectors such as healthcare, food and national security.

4.5 Economic Efficiencies

The ECA considers economic efficiencies. However, the extent of this consideration is not apparent (see 2.14 Exceptions to Suspensive Effect).

4.6 Non-Competition Issues

Industrial policy, user/consumer interest, public interest, national security, economic efficiencies and the protection of minority shareholders are all considered when clearance and pre-approval are needed in specific sectors such as telecommunications and banking. This will also apply from a strict Egyptian Competition Law perspective as approval and clearance by the ECA are required as conditions to closing transactions.

4.7 Special Consideration for Joint Ventures

See 2.10 Joint Ventures.

5. Decision: Prohibitions and Remedies

5.1 Authorities' Ability to Prohibit or Interfere With Transactions

The ECA can take corrective actions to remedy violations of the Competition Law. These corrective actions may include divestment undertakings and behavioural actions.

In the event that the execution of the transaction requires written authorisation from the NTRA or the CBE and falls under the category triggering consent from both authorities and the written approval has neither been requested nor granted, the NTRA or the CBE in terms of practice may be entitled to block the execution of the transaction or suspend it. The NTRA and CBE may intervene in this situation and the concerned parties must carry out the required procedure. If they do not, their operational licences might be revoked.

5.2 Parties' Ability to Negotiate Remedies

The parties' ability to renegotiate remedies will be examined in practice with the implementation of the Amendments and the ECA's treatment on a case-by-case basis will be examined.

5.3 Legal Standard

The legal standard for remedies is not enshrined in the Egyptian Competition Law. It is therefore presumed that the precedents that will be made will be considered the standard practice once the Amendments are fully in force.

5.4 Negotiating Remedies With Authorities

Based on the firm's understanding of the Egyptian Competition Law as well as informal discussions with ECA officials, it is possible to remedy competition issues, eg, by giving divestment undertakings or behavioural remedies.

Violations of the Egyptian Competition Law can be settled upon the approval of the ECA's board. If the settlement was concluded before the criminal lawsuit was filed or any procedures in this respect were taken, the minimum stipulated fine will be the maximum of the settlement amount. If the settlement was made after the criminal

lawsuit was filed or any procedures in it taken, but before the final court judgment was issued, an amount of at least three times the minimum stipulated fine and no more than half of its maximum will be paid. Settlement will terminate the criminal lawsuit. Agreements that violate the Egyptian Competition Law are considered null and void for having a criminal purpose.

Private enforcement of the Egyptian Competition Law in Egypt is still at an early stage. However, in line with the general rules of Egyptian Civil Law, persons that are harmed by the violations of the Egyptian Competition Law can claim compensation from the competent court for the actions of the person committing the violation, in those cases where specific performance was not feasible. This does not have to be related to the criminal court action and the claimant can request compensation before the competent civil court even if the ECA did not refer the matter to the court. The Amendments remain silent on this point. The firm anticipates more information regarding the implementation of negotiation remedies with the ECA being released upon further application of the Amendments.

5.5 Conditions and Timing for Divestitures

The conditions for, and timing of divestitures are not enshrined in the Egyptian Competition Law or the Executive Regulations. It is anticipated that the ECA will issue guidelines related to the remedies. However, if guidelines are not issued, remedies will be considered on a case-by-case basis.

5.6 Issuance of Decisions

Formal decisions permitting or prohibiting transactions are made publicly available by the ECA and are generally published on the authority's website. A statement and summary of the trans-

action will also be published in a widely circulated daily newspaper in line with Article 56 of the Executive Regulations.

5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions

In the event that the ECA concludes that a foreign-to-foreign transaction will fundamentally affect the strategic ownership and management of locally based entities subject to the Egyptian legal and regulatory framework, no direct action may be taken against the foreign entity. However, following international precedents and together with the relevant regulatory bodies, the operating licences of the local entities might be subject to revocation or suspension for transparency, public interest or national security-related reasons. The Executive Regulations do not elaborate further on this.

6. Ancillary Restraints and Related Transactions

6.1 Clearance Decisions and Separate Notifications

To date, the scope of the Amendments and the Executive Regulations do not clearly indicate that related arrangements (ancillary restraints) are covered in an ECA clearance. Further guidance on this is expected to be developed by the ECA in the coming months.

7. Third-Party Rights, Confidentiality and Cross-Border Co-Operation

7.1 Third-Party Rights

The Egyptian Competition Law states that the ECA may seek the opinions of experts. However,

these experts will not have any decision-making powers.

7.2 Contacting Third Parties

This is part of the upcoming ECA scheme. However, there are no provisions under the Egyptian Competition Law or the Executive Regulations addressing this. It is yet to be considered under a new batch of ECA guidelines, if at all.

7.3 Confidentiality

ECA employees have a duty to keep information and sources confidential. This information and data (as well as the relevant sources) will not be used for any purposes other than those for which they were submitted.

Commercially sensitive information is not usually required for the purpose of the notification. Any ECA employee having access to commercial information of any entity is generally prohibited from working for a competitor of the concerned party for a period of two years from the date the employee gained access to the confidential information.

7.4 Co-Operation With Other Jurisdictions

The ECA has been implementing several protocols with different jurisdictions recently, such as the Kingdom of Saudi Arabia and many Arab states to establish a co-operative ecosystem.

In 2019, the ECA signed a bilateral institutional partnership with the German Federal Ministry for Economic Affairs and Energy and the Federal German Competition Authority. This has contributed to strengthening the institutional and enforcement capacity of the ECA through knowledge sharing and internal capacity building. The successful co-operation incentivised both sides to renew the Joint Declaration of Intent in 2020

to establish a more extensive level of co-operation with hands-on case handling experience sharing, policy review and guidelines development as well as more practical on-the-job work co-ordination and knowledge sharing.

The ECA also co-operates with the Common Market for Eastern and Southern Africa (the “COMESA”) Competition Commission regarding merger notifications. Article 25 (6) of the 2004 COMESA Competition Regulations states that the Commission may notify member states subject to a merger and request their written opinions. In terms of requests from the COMESA Competition Commission, the ECA reviewed 21 notifications and examined the potential impact of the mergers on the Egyptian market.

8. Appeals and Judicial Review

8.1 Access to Appeal and Judicial Review

As a general rule, ECA decisions are administrative in nature and can be appealed before the administrative court (unless the matter is referred to the prosecutor, the competence of the criminal court or, more particularly, the criminal courts which are specialised in considering economic crimes). Specifically, if the ECA decision involves a rejection of the “economic concentration”, the decision could be appealed.

8.2 Typical Timeline for Appeals

A rejection of an “economic concentration” must be appealed within 30 days of a notification of the decision being made. From a practical perspective (and in general) litigation in Egypt is a lengthy process. Given that the pre-merger “control” has been newly introduced by virtue of the Amendments, there are no related successful appeals.

8.3 Ability of Third Parties to Appeal Clearance Decisions

As a general rule, under Egyptian law, if a third party appeals a decision, the appeal is highly likely to be rejected. This is because it was filed by a person without proper legal capacity.

9. Foreign Direct Investment/ Subsidies Review

9.1 Legislation and Filing Requirements

The filing requirements for foreign subsidies follow the same filing requirements and provisions enshrined in the Egyptian Competition Law and its Amendments related to merger control.

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