

EGYPT



Law and Practice

Contributed by:

Alex Saleh, Asad Ahmad, Khaled al-Khashab and Salma Farouq
GLA & Company

Contents

1. Legislation and Enforcing Authorities p.5

- 1.1 Merger Control Legislation p.5
- 1.2 Legislation Relating to Particular Sectors p.5
- 1.3 Enforcement Authorities p.6

2. Jurisdiction p.6

- 2.1 Notification p.6
- 2.2 Failure to Notify p.7
- 2.3 Types of Transactions p.7
- 2.4 Definition of "Control" p.7
- 2.5 Jurisdictional Thresholds p.8
- 2.6 Calculations of Jurisdictional Thresholds p.9
- 2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds p.9
- 2.8 Foreign-to-Foreign Transactions p.9
- 2.9 Market Share Jurisdictional Threshold p.10
- 2.10 Joint Ventures p.10
- 2.11 Power of Authorities to Investigate a Transaction p.11
- 2.12 Requirement for Clearance Before Implementation p.12
- 2.13 Penalties for the Implementation of a Transaction Before Clearance p.12
- 2.14 Exceptions to Suspensive Effect p.12
- 2.15 Circumstances Where Implementation Before Clearance Is Permitted p.13

3. Procedure: Notification to Clearance p.13

- 3.1 Deadlines for Notification p.13
- 3.2 Type of Agreement Required Prior to Notification p.13
- 3.3 Filing Fees p.13
- 3.4 Parties Responsible for Filing p.14
- 3.5 Information Included in a Filing p.14
- 3.6 Penalties/Consequences of Incomplete Notification p.15
- 3.7 Penalties/Consequences of Inaccurate or Misleading Information p.15
- 3.8 Review Process p.15
- 3.9 Pre-notification Discussions With Authorities p.16
- 3.10 Requests for Information During the Review Process p.16
- 3.11 Accelerated Procedure p.17

4. Substance of the Review p.17

- 4.1 Substantive Test p.17
- 4.2 Markets Affected by a Transaction p.17
- 4.3 Reliance on Case Law p.18
- 4.4 Competition Concerns p.18
- 4.5 Economic Efficiencies p.18
- 4.6 Non-competition Issues p.18
- 4.7 Special Consideration for Joint Ventures p.18

5. Decision: Prohibitions and Remedies p.19

- 5.1 Authorities' Ability to Prohibit or Interfere With Transactions p.19
- 5.2 Parties' Ability to Negotiate Remedies p.19
- 5.3 Legal Standard p.19
- 5.4 Negotiating Remedies With Authorities p.19
- 5.5 Conditions and Timing for Divestitures p.20
- 5.6 Issuance of Decisions p.20
- 5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions p.20

6. Ancillary Restraints and Related Transactions p.20

- 6.1 Clearance Decisions and Separate Notifications p.20

7. Third-Party Rights, Confidentiality and Cross-Border Co-operation p.20

- 7.1 Third-Party Rights p.20
- 7.2 Contacting Third Parties p.20
- 7.3 Confidentiality p.20
- 7.4 Co-operation With Other Jurisdictions p.21

8. Appeals and Judicial Review p.21

- 8.1 Access to Appeal and Judicial Review p.21
- 8.2 Typical Timeline for Appeals p.21
- 8.3 Ability of Third Parties to Appeal Clearance Decisions p.21

9. Foreign Direct Investment/Subsidies Review p.22

- 9.1 Legislation and Filing Requirements p.22

10. Recent Developments p.22

- 10.1 Recent Changes or Impending Legislation p.22
- 10.2 Recent Enforcement Record p.22
- 10.3 Current Competition Concerns 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 advising clients in the Gulf Cooperation Council (GCC) states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE, it offers unique insights for companies seeking to establish or expand business operations in

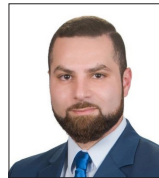
these nations. The firm's emphasis on deals is to get them cleared with the local competition authority and it has excellent relationships with regulators in the GCC. GLA has been successful in securing no objections from these bodies to clear deals. The firm's lawyers are intimately familiar with the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

Authors



Alex Saleh is the managing partner of GLA & Company and takes a leading regional role in the firm concerning its M&A and private equity practice. With over 25 years of experience in

both the GCC and the US, he has accumulated sizable expertise in the areas of banking and finance, M&A, capital market deals, and infrastructure projects. His experience garners praise from the leading legal directories, and his transactions regularly win Deals of the Year from the same institutions and organisations.



Asad Ahmad is the head of the antitrust & competition practice at GLA & Company and has been involved in a number of transactional and advisory works in various industries,

including logistics, construction, finance, healthcare and education. His practice has involved comprehensive representation with regard to M&A, conducting extensive due diligence exercises in relation to complex transactions, as well as distribution and agency arrangements. Asad has an extensive background in advising on the marketing of securities, corporate governance issues, policies and regulatory compliance, and he has expanded his expertise to include advising on data protection and regulation.

EGYPT LAW AND PRACTICE

Contributed by: Alex Saleh, Asad Ahmad, Khaled al-Khashab and Salma Farouq, **GLA & Company**



Khaled al-Khashab is an associate of GLA & Company's Cairo office. He takes a role within the GCC-focused M&A, capital markets, and finance teams. Khaled's experience with

high-profile clients in different sectors includes F&Bs, hospitality, pharmaceuticals, technology and banking. He also acted as a counsel for the multimillion-dollar start-up Trella, a fast-growing trucks and shipment management tech company. With four years of experience, Khaled advises numerous businesses on corporate governance, commercial negotiations, transactions, and M&As in addition to positioning himself in niche fast-developing practices, including banking and non-banking fintech, data privacy regulations, IP, and equity and debt financing.



Salma Farouq is an associate at GLA & Company in the corporate commercial department. Her expertise spans a diverse spectrum, primarily focusing on M&A and

commercial advisory. She has been regularly involved in several transactional and advisory works in various industries including telecommunication, banking, food, healthcare and education. Salma's experience includes conducting extensive due diligence exercises primarily in Kuwait and the UAE in relation to complex transactions, as well as drafting a wide range of transaction arrangements in addition to distribution and agency arrangements. She has also delivered legal advice pertaining to merger control filings and data protection matters.

GLA & Company

Hyde Park
HPO/B3-1/119 &120
New Cairo
5th Settlement
Cairo
Egypt

Tel: Kuwait +965 669 55516 / UAE +971 54 997 4040
Email: alex.saleh@glaco.com
Web: www.glaco.com



1. Legislation and Enforcing Authorities

1.1 Merger Control Legislation

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

On 4 April 2024, the Egyptian Prime Minister issued Decree No 1120 of 2024, which made significant revisions to the executive regulations of the Egyptian Competition Law (“Executive Regulations”), introducing the long-awaited regulations that enact Egypt’s ex ante merger control regime, aiming to modernise and strengthen the existing provisions of the ECL – notably, “Chapter Nine: Examining Economic Concentration” was established.

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

1.2 Legislation Relating to Particular Sectors

Other specific local legislation should be taken into consideration with respect to certain sectors, as follows.

- The National Telecommunications Regulatory Authority (NTRA) applies Articles 4 and 24 of the Telecommunications Law No 10 of 2003 to regulate competition and to ensure

economic freedom in the sector. The NTRA examines and detects mergers indirectly through reviewing the licence requirements of any given operator. The NTRA would 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 would threaten or directly block any merger by revoking the merging entities’ licences.

- The Central Bank of Egypt (CBE) acts as the regulator of the banking system. The Banking Law No 194 of 2020, provides in Article 74 that the CBE shall approve the applications to own more than 10% stake (and any increase thereof) in a bank or any other percentage that would enable any natural or corporate person or their related parties to have control over the management or decision-making in the bank. Failing to abide by the aforementioned, the voting rights and the distribution of dividends correspondent to shares exceeding the authorised percentage shall be suspended. In this event, the individual or entity in breach shall dispose of the shares exceeding the percentage within six months from the date of their transfer, the Central Bank may request from the Financial Regulatory Authority (FRA) the appointment of a brokerage firm to conduct the procedures for selling the shares. The proceeds of the sale of shares shall be apportioned to the shareholder after deducting the correspondent expenses.
- 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 Executive Regulations, the concerned parties are obliged to notify FRA before signing the contract, if the target operates in activities supervised and controlled by FRA. The FRA shall seek the opinion of Egypt

Competition Authority before clearing the economic concentration. In case the target person engages in more than one activity, including activities subject to the supervision and control of FRA, the person in this case must notify Egypt Competition Authority of all activities according to Article (19 bis a) of the Egyptian Competition Law, in addition to notifying 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, including but not limited to the Egyptian Electric Utility and Gas Regulatory Authority, 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 Egyptian Competition Authority's relationship with all these agencies is a complementary relationship where the primary goal is to protect consumer rights and the public interest.

It is worth noting that the Egyptian Competition Law provides that one of the functions of the Egyptian Competition Authority is to co-ordinate with the sectoral regulatory agencies in 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 Egyptian Competition Authority.

1.3 Enforcement Authorities

The Egyptian Competition Authority (ECA) is responsible for the enforcement of the ECL and Executive Regulations. The ECA was established by virtue of the Egyptian Competition Law 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 such sectors, whereby such regulatory authorities would be considered experts in the field without having a vote on the matter.

2. Jurisdiction

2.1 Notification

In the event a transaction falls under the scope of an "economic concentration" as defined under the ECL, notification is compulsory.

Pursuant to the second paragraph of Article (2/g) of the Egyptian Competition Law, the following transactions shall 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 as internal restructuring, and does not trigger an obligation to notify unless there is a change in control or material influence either directly or indirectly.

2.2 Failure to Notify

Failure to abide by the notification requirement set forth in Articles (19 bis a) and (19 bis e) of the Egyptian Competition Law shall be sanctioned by a fine ranging 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 forth penalties in the event a calculation of the said percentages is impossible. A fine of no less than EGP30 million shall be imposed and not exceeding EGP500 million.

In this respect, it is worth highlighting that the application of such penalties has not been tested as the merger control regime has just come into force on 1 June 2024.

2.3 Types of Transactions

The Egyptian Competition Law uses a general principle of economic concentration to identify merger control issues. The Egypt Competition Law define an “Economic Concentration” as any change of control or material influence over one or more persons. The ECL expressly identifies

the following transactions as Economic Concentrations.

- Merger – 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 of a joint venture that conducts economic activity independently and permanently.

By way of exception, 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 ECA, provided that the financial thresholds specified under the Egyptian Competition Law are met. Refer to **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 portion, 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 influence, directly or indirectly, the policy of another person, including its strategic decisions and/or commercial objectives.

Material Influence is established by presence of any of the following.

- 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 grant 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.

In any case, material influence is not established by owning less than 10% of the total voting rights, shares or stocks in the capital in another person, 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 are met (“Financial Thresholds”).

- 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 (approx-

mately USD18.5 million), provided that the annual turnover in Egypt for at least two of the concerned parties individually exceeds EGP200 million (approximately USD4 million) for the last year according to the last audited consolidated financial statement.

- 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 USD155 million), provided that the annual turnover in Egypt for at least one of the concerned parties in the last audited consolidated financial statements exceeds EGP200 million (approximately USD4 million).

For the purpose of applying the worldwide notification thresholds set forth 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 statement.

The Egyptian Competition Law and its Executive Regulations did not specify any exceptional rules for specific sectors regarding the notification Financial Thresholds and their calculation methods.

2.6 Calculations of Jurisdictional Thresholds

Pursuant to Article (53) of the Executive Regulations, the annual turnover or the value of assets is calculated by summing the generated annual turnover or value of assets for the last year in the last audited consolidated financial statements for each of the concerned persons, excluding the sellers, conditional upon their exit from the target after the implementation of the economic concentration.

In event 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 are included in the annual turnover of the concerned persons 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 EGP 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 concerned persons with the Economic Concentration.

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

See 2.6 Calculations of Jurisdictional Thresholds.

Pursuant to Article (55) of Executive Regulations, the obligation to notify falls on the following persons, according to each 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 an Economic Concentration and meet any of the Financial Thresholds

set forth 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

There is no market share jurisdictional thresholds provided under the merger control regime.

The Amendments and the Executive Regulations currently provide that national and international, combined and individual annual turnover of the parties involved in the transaction are applicable.

2.10 Joint Ventures

The Egypt Competition Law does not expressly use the term “full-function joint venture” in its provisions. However, it does expressly apply the same principles to distinguish between a full-function joint venture and a non-full-function joint venture, wherein a full-function joint venture would be notifiable to the ECA. Further, the ECA does expressly use the term “full-function” joint venture in its Guidelines.

Under the Egypt Competition Law and Executive Regulations, joint ventures are notifiable to the ECA, if they meet 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 fulfilled.

- The joint venture must engage in an economic activity beyond performing one specific function of its controlling persons – the joint venture must 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 involvement of other persons operating in the market, then the joint venture is not considered independent according to the Egyptian Competition Law.
- The joint venture must have independent resources, including financing, employees and assets – the joint venture must have an independent management dedicated to handling the daily operations of the joint venture. Additionally, 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 on the market, then the joint venture is not deemed to

be independent. The following must be taken into consideration:

(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. Consequently, the joint venture must deal with third parties if they offer better prices, or conditions than the controlling persons.
- (iii) If the joint venture achieves less than 50% of its total sales with third parties, the market structure should be assessed. For instance, 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 par-

ents 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 the case 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.

Moreover, 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 the 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.
- 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 pursuant to Article (19 bis a) and Article (19 bis e) of Egyptian competition Law is sanctioned with fine of no less than 1% and not more than 10% of the total annual turnover, or value of assets of the parties to the notifiable economic concentration, or value of the transaction, whichever is higher, according to the latest audited consolidated financial statements of each concerned person. Such a fine should not be less than EGP30 million and not exceeding EGP500 million.

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

Note that 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 dur-

ing phase I or phase II of the review, in accordance with Articles (19 bis c) and (19 bis d) and Article (57) of the Executive Regulations. This offer consists of one or more behavioural or structural remedies such as structural remedies and behavioural cures. 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, responsible for monitoring the compliance of the parties with the commitments/conditions set in ECA's decision, subject to ECA's approval.

2.13 Penalties for the Implementation of a Transaction Before Clearance

Gun jumping is prohibited under the Egyptian Competition Law.

Refer to **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 the approval of the Cabinet of Ministers in any of the following cases.

- If the non-implementation of the economic concentration would result in the exit of one of them from the market (failing firm).

- If the implementation of the economic concentration would lead to economic efficiency that outweighs its anti-competitive effects.
- If the economic concentration is related to the protection of national security.

Failing Firm

The required conditions to benefit from the failing firm exception 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.
- There is no less anti-competitive alternative than the economic concentration.

2.15 Circumstances Where Implementation Before Clearance Is Permitted

This circumstance is addressed under the Egyptian Competition Law. However, based on the authors' experience, the ECA may, on a case-by-case basis, be approached to grant the stakeholders its clearance of a hold a separate agreement.

3. Procedure: Notification to Clearance

3.1 Deadlines for Notification

The ECA must be notified of any Economic Concentration that meets the conditions set forth in Article (19 bis) of the Egyptian Competition Law before its implementation. 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 shall 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).
- Conducting serious negotiations regarding the Economic Concentration.
- The announcement of the purchase offer.
- Concluding 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 confer the person Control or Material Influence.

3.3 Filing Fees

The filing fees shall not exceed EGP100,000 (approximately USD2,000) in addition to publication expenses.

The Executive Regulations specify the applicable fees categories:

- A fee of EGP80,000 (approximately USD1,500) if the combined annual turnover or value of assets in Egypt of all the concerned parties range between EGP900 million and EGP1 billion (approximately USD18.5 million and USD20.5 million).
- A fee of EGP90,000 (approximately USD1,800) if the combined annual turnover or value of assets in Egypt of all the concerned parties range between EGP1 billion and EGP1.5 billion (approximately USD20.5 million and USD31 million).

- A fee of EGP100,000 (approximately USD2,000) if the combined annual turnover or value of assets in Egypt of all the concerned persons exceeds EGP1.5 billion (approximately USD31 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 USD155 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).
- A scanned copy of the Power of Attorney (POA) issued to the notifying person, with the original available for review upon request. 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 equivalence in the country of origin of the concerned person.
- A scanned copy of the articles of association, including all its amendments, for each concerned person, excluding their related parties, or its equivalence 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 subject of the notification file, whether inside or outside Egypt.

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

3.4 Parties Responsible for Filing

All parties directly involved in the Economic Concentration are responsible for filing before the ECA.

Refer to **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 shall 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.

- Signed declaration by the notifying person or their legal representative confirming the validity of the information and documents provided.
- Receipt of payment of the prescribed fees for reviewing the notification file.
- Declaration to pay all publication expenses according to the decision of 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

Typically, the ECA assesses whether or not the notification file is complete and will notify the notifying party of any requested information. Otherwise, failure to provide a complete application may result in the ECA rejecting the application, or other corrective action the ECA deems appropriate.

3.7 Penalties/Consequences of Inaccurate or Misleading Information ECA

Article (22 bis d) of the Egyptian Competition Law states that the any person who obtains a clearance decision to implement the Economic Concentration pursuant to either Article (19 bis c) or Article (19 bis d) of the Egyptian Competition Law by deliberately submitting incorrect data, information or documents is sanctioned with a fine of no less than 1% and not exceeding 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 shall not be less than EGP30 million and not exceeding EGP500 million.

FRA

Article (22 bis d) of ECL states that the any person who obtains a clearance decision from FRA pursuant to Article (19 bis e) of ECL by deliberately submitting incorrect data, information or documents is sanctioned with a fine of no less than 1% and not exceeding 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 shall not be less than EGP30 million and not exceeding EGP500 million.

3.8 Review Process

The ECA shall review the Economic Concentration in Phase One within 30 working days, starting from the following working day of the date of submitting the complete notification file. This period may be extended by 15 working days in case the concerned persons submit a commitments offer. If the legal time limit for the review lapses without issuing a decision, this will be considered as clearance of the Economic Concentration.

The ECA shall continue to review the notification file for 60 working days, starting from the date of issuance of a decision by one of the review committees referring the notification file to Phase Two. This period may be extended by 15 working days in case the concerned persons submit a commitments offer.

Regarding Economic Concentrations where the target person operates in any of the activities subject to the supervision and control of FRA, the ECA shall review the Economic Concentration within 30 days starting from the day following the receipt of the complete notification file and its attachments from FRA.

Decisions Regarding Phase One

The ECA may issue any of the following decisions.

- Non-jurisdiction of the ECA to review the notification file.
- Dismissal of the request – in case the concerned persons abandoned the Economic Concentration.
- Clearance – if the notified Economic Concentration is in conformity with Article (19 bis b) of the Egyptian Competition Law.
- Conditional clearance – if the Economic Concentration is in conformity with Article (19 bis b) of the Egyptian Competition Law, upon approval of the commitments offer submitted by the concerned persons.
- Referral to Phase Two of the review process – if the Economic Concentration raises suspicion of lessening, restricting or harming the freedom of competition.

Decisions Regarding Phase Two

- Dismissal of the request – in case the concerned persons abandoned the Economic Concentration.
- Clearance – if the notified Economic Concentration is in conformity with Article (19 bis b) of the Egyptian Competition Law.
- Conditional clearance – if the Economic Concentration is in conformity with Article (19 bis b) of the Egyptian Competition Law, upon approval of the commitments offer submitted by the concerned persons.

- Block – if the Economic Concentration may restrict, lessen or harm competition.

The concerned persons may lodge 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 case they have any inquiries. These discussions shall not have any legal implications.

It is worth noting that 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 ECA to process an application.

Note that the ECA will initially review the provided notification file 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 timeline for completing the notification form before the ECA. Note that the review period shall 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.

- In case the persons concerned with the Economic Concentration meet the domestic notification 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.
- In case the persons concerned with 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

When considering an application, the Egyptian Competition Authority considers the following standards, which will soon be supported by the Executive Regulations:

- maintaining and encouraging effective competition amongst competitors in the market;
- examining whether or not the economic concentration will result in certain negative effects on economic growth and efficiency, and whether or not it will impact the considerations connected to the protection of national security;
- maintaining diversity of operators providing products or distributing products in a certain market;
- maintaining price, product, and services diversity;
- enhancing technological development and innovation;
- avoiding market control and market concentration by increasing or decreasing prices; and
- maintaining high-quality products and/or avoiding any market-entry obstacles or blocks, or any market expansion obstacles.

4.2 Markets Affected by a Transaction

Regarding the definition of 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 would 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 geographical scope is the area where competitive conditions are homogenous, taking into consideration potential competitive opportunities. Under Article 6 of the Executive Regulations, two criteria are taken into consideration:

- 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
- 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 consideration to evaluate the ability of the buyers and sellers:

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

Per the most recent revision of the Executive Regulations, the authors note that the competition concerns remain rather unaddressed.

4.3 Reliance on Case Law

The Egyptian Competition Authority is proactive when it comes to references to precedents and case law. The authors anticipate 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 and the struggle faced by local operators in the Egyptian economic scene, especially with the rise of many economic challenges whether in the local or global arena. The Egyptian Competition Authority focuses its efforts on providing a more equally efficient platform for the existing operators and allowing a space for other operators to penetrate the relevant markets in the future. The main concern would be addressing sustainable competition in strategic sectors such as healthcare, food, and products of national security.

4.5 Economic Efficiencies

The Egyptian Competition Authority considers the possible influence on economic efficiencies; however, the extent of such consideration is not apparent.

4.6 Non-competition Issues

The industrial policy, the user/consumer interest, the public interest, national security, economic efficiencies, and the protection of minority shareholders are all factors considered when clearance and pre-approval are needed in specific sectors such as telecommunications and banking. The firm anticipates that the same would apply from a strict Egyptian Competition Law perspective since the approval and clearance of the Egyptian Competition Authority is required as a combined condition 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 Egyptian Competition Authority can take corrective actions for violations of the Competition Law. Such 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 both authorities' necessary consent and the said 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 special regulators, the NTRA and CBE, may intervene in such circumstance and the concerned parties must undertake the required procedure or else their operational licences might be revoked.

5.2 Parties' Ability to Negotiate Remedies

This would be further examined in practice with the implementation of the new Amendments and examination of the Egyptian Competition Authority's treatment on a case-by-case basis.

5.3 Legal Standard

The legal standard for remedies is not enshrined in the Egyptian Competition Law. In this respect, it is presumed that the precedents that will be made will be deemed 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, and informal discussion

with Egyptian Competition Authority 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 by the ECA's board. If the settlement was concluded before filing the criminal lawsuit or taking any procedures in this respect, the minimum stipulated fine shall be the maximum of the settlement amount. If the settlement was made after filing the criminal lawsuit or taking any procedures in it, but before issuance of the final court judgment, an amount of no less than three times the minimum stipulated fine and no more than half of its maximum shall be paid. Settlement shall 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, as per 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 case specific performance was not feasible. This does not have to be related to the criminal court action, and the plaintiff can request compensation before the competent civil court even if the Egyptian Competition Authority did not refer the matter to the court. The Amendments remain silent on this point. The firm anticipates witnessing more information regarding the implementation of negotiation remedies with the Egyptian Competition Authority, upon further application of the Amendments.

5.5 Conditions and Timing for Divestitures

The conditions and timing for divestitures are not enshrined in the Egyptian Competition Law or the Executive Regulations that are yet to be published. It is anticipated that the Egyptian Competition Authority will issue a guideline related to the remedies. If not, it 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 Egyptian Competition Authority and are generally published on the authority's website and, per Article (56) of the Executive Regulations, a statement and summary of the transaction in a widely circulated daily newspaper.

5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions

In the event that the Egyptian Competition Authority concludes that a foreign-to-foreign transaction would fundamentally affect the strategic ownership and management of the locally based entities subject to the Egyptian jurisdiction, no action may directly be taken against the foreign entity but following the international precedents and in co-ordination with the relevant regulatory bodies, the operating licences of the local entities might be subject to revocation or suspension for reasons related to transparency, public interest or national security. The authors note that the Executive Regulations do not further elaborate on this matter.

6. Ancillary Restraints and Related Transactions

6.1 Clearance Decisions and Separate Notifications

Till 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 the same is expected to be developed by the ECA in the upcoming months.

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

7.1 Third-Party Rights

The Egyptian Competition Law provides that the Egyptian Competition Authority may seek experts' opinions. However, such experts shall not have any powers in the decision-making process.

7.2 Contacting Third Parties

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

7.3 Confidentiality

The employees of the Egyptian Competition Authority have a duty to keep information and sources confidential. This information and data, as well as the relevant sources, shall not be used for any purposes other than those for which they were submitted.

Furthermore, commercially sensitive information is not usually required for the purpose of the

notification. Generally, any Egyptian Competition Authority employee having access to commercial information of any entity is prohibited from working for a competitor of the concerned party for a period of two years from the date the said employee gained access to the confidential information.

7.4 Co-operation With Other Jurisdictions

The Egyptian Competition Authority has recently been implementing several protocols with different jurisdictions, such as the Kingdom of Saudi Arabia and many Arab states, for the establishment of a co-operative ecosystem.

In 2019, the Egyptian Competition Authority signed a bilateral institutional partnership with the German Federal Ministry for Economic Affairs and Energy, and the Federal German Competition Authority, which has contributed to strengthening the institutional and enforcement capacity of the Egyptian Competition Authority through knowledge sharing and internal capacity building. The valuable and 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 a more practical on-the-job work co-ordination and knowledge sharing.

The Egyptian Competition Authority also co-operates with the Common Market for Eastern and Southern Africa (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. Regarding the requests from the COMESA Competition Commission,

the Egyptian Competition Authority 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, the decisions of the Egyptian Competition Authority 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 decision of the Egyptian Competition Authority entails a rejection of the economic concentration, the decision could be appealed.

8.2 Typical Timeline for Appeals

Appealing a rejection of an economic concentration shall take place within 30 days from being notified of such decision. From a practical standpoint 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 successful appeals in relation.

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 as it was filed by a person without a 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.

10. Recent Developments

10.1 Recent Changes or Impending Legislation

There are no recent developments worth noting, save for the ex ante merger control regime coming into effect as of 1 June 2024.

10.2 Recent Enforcement Record

While the statistics of enforcement records are not generally disclosed and published on the Egyptian Competition Authority's website, major decisions of the Authority may be released. Below, the firm has set out an example of a major decision which affected the merger control regime in the recent years.

Typically, mergers/acquisitions between competitors are not regarded by the Egyptian Competition Law as horizontal agreements which are prohibited by the Egyptian Competition Law, unless approved by the Egyptian Competition Authority.

In 2018, the Egyptian Competition Authority adopted a different approach regarding mergers/acquisitions between competitors (in this case both have a significant share covering almost the whole market). The Egyptian Competition Authority regarded the potential acquisition between Uber and Careem (two of the biggest transportation companies using ride-hailing

apps) to be a horizontal agreement and, as such, violating Article 6 (a) and (d) of the Competition Law. As a result, the Egyptian Competition Authority issued Decision No 26 on 23 October 2018, whereby it obliged said companies and their related parties, including the companies participating in their shareholdings, to obtain its approval prior to concluding any agreement related to a merger, establishing joint ventures, and the purchase or sale of shares or assets of either company directly or indirectly.

By virtue of the Amendments, the ECA will have a wider discretion to investigate transactions once the filing takes place. However, given the lack of elaboration by the Executive Regulations, the enforceability of the Amendments remains unclear as it has not been tested yet.

Sources other than the official site of the Egyptian Competition Authority reveal that the Authority took decisions for more than 344 matters in different sectors and markets during 2022.

- The healthcare sector constituted the biggest record, with 283 matters having been studied, representing 82% of the total.
- The real estate sector came second for the enforcement record, comprising 16 matters.
- The food and beverage sector came third in line with 12 matters.
- Seven matters were examined for cars and automobiles.
- Four matters were studied for electricity, power, infrastructure elements, and education.
- Two matters were considered for each of the areas of telecommunication, media, and agriculture.

The Egyptian Competition Authority approved 267 economic concentrations, detected 16 violations, started criminal procedures in seven

cases, rejected three requests for exemption and approved two, and issued settlements for 15 cases. Similar numbers could not be found for the year 2023.

10.3 Current Competition Concerns

The Egyptian Competition Authority currently faces great challenges regarding economic concentrations taking place in the country. One of the main goals of the Egyptian Competition Authority is to set safe grounds for local and domestic economic operators to compete in the Egyptian market. We will see the implementation and effects of the merger control notifications and the merger control system once the Executive Regulations are issued.

The Egyptian Competition Authority's official statement assured that those Amendments are drawn for the purposes of alignment with Egypt's vision towards 2030 which mainly focuses on sustainable economic growth and compliance with the state strategic policies for a more prosperous environment in all sectors and the economy as a whole.