

Middle East & North Africa Competition Law

Middle East & North Africa Competition Law: An overview of regional case law

JOINT-VENTURE, SANCTIONS / FINES / PENALTIES, FOREWORD, THRESHOLDS, MERGER (NOTION), REFORM, COOPERATION BETWEEN NCAS, EGYPT, MOROCCO, UNITED ARAB EMIRATES, ISRAEL, GUN JUMPING, CONSUMER WELFARE, DJIBOUTI, SAUDI ARABIA, KUWAIT, ALGERIA, BAHRAIN, IRAQ, JORDAN, LEBANON, LIBYA, OMAN, PALESTINE, QATAR, TUNISIA, YEMEN

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I. Introduction

The Middle East and North Africa (**MENA**) region with its diverse economies and complex markets, presents a unique landscape for competition law. This Special Issue by Concurrences offer invaluable insights into the regulatory challenges and developments within this vibrant area. This Foreword aims to provide a concise overview of notable cases and trends, underscoring their impact on the legal frameworks in the MENA region. It is important to underscore the fact that many of these jurisdictions are in the early stages of their anti-trust and competition regimes. We anticipate there to be some growing pains, but we also anticipate these jurisdictions to closely look to more mature jurisdictions to foreshadow the way forward and avoid pitfalls. By examining key decisions and enforcement actions, we can appreciate the evolving nature of competition policies in these countries, reflecting both global influences and local particularities.

In the subsequent sections, we will explore significant cases that exemplify the region's approach to addressing antitrust issues, merger controls, and anti-competitive practices. These cases not only illustrate the application of competition law but also highlight the growing emphasis on economic modernisation and regulatory alignment with international standards.

II. General Antitrust Overview

In the realm of competition law, antitrust regulations play a crucial role in maintaining market equilibrium by curbing anti-competitive practices and fostering fair competition. This *Special Issue* provides a comprehensive examination of recent antitrust enforcement actions and trends within the MENA region. The cases reviewed reveal a growing commitment to tackling anti-competitive conduct, reflecting an alignment with global standards and the unique economic contexts of the region.

III. Antitrust Enforcement Trends

The recent surge in antitrust enforcement across the MENA region underscores a proactive approach by regulatory authorities to address market distortions caused by anti-competitive practices. These enforcement actions focus on a range of issues, including abuse of dominance, cartel activities, and restrictive agreements. The following are key trends observed:

- **Strengthening Legal Frameworks:** Many MENA countries have updated their competition laws to enhance enforcement capabilities and align with international best practices. This includes the introduction of stricter sanctions and clearer definitions of anti-competitive behaviours.
- **Increased Cross-Border Cooperation:** Regional collaboration among competition authorities has improved, facilitating the exchange of information and coordinated actions against multi-national entities engaging in anti-competitive practices.
- **Focus on Consumer Welfare:** There is a noticeable shift towards prioritizing consumer interests, with enforcement actions increasingly aimed at practices that harm consumer welfare through price-fixing or limiting market access.
- **GCC Merger Control Regime Fines:** Led by the Saudi Arabia General Competition Authority ('GAC'), the Gulf Cooperation Council ('GCC') region is currently experiencing a noticeable surge in imposing and enforcing merger control-related fines, proportional to the frequency of such violations. This is a very specific and rather niche form of fines that might indicate that the merger control landscape in the region is becoming one of its critical indicators of competition neutrality.

IV. Case Study: The GAC's Pure Merger Control Fine Imposed for Failure to Notify an Economic Concentration

The GAC has imposed fines on 2 companies for failing to submit a merger control filing for an economic concentration that met the relevant financial thresholds. This action aligns with a broader trend of increased scrutiny and enforcement by the regulator. On February 25, 2024, the GAC announced fines totalling SAR 800,000 (approximately US\$ 213,000) against Panda Retail Company and Atabet Elbab for Telecommunications and IT for not notifying the GAC about their transaction. [1] Panda Retail, a leading retail chain in the Middle East, acquired Atabet Elbab, a provider of delivery services through electronic platforms.

According to Article 7 of the Saudi Arabia Competition Law, enacted in 2019, transactions which constitute an 'economic concentration' and exceed certain annual turnover thresholds must be notified to the GAC for clearance prior to closing. Failure to comply can result in significant fines, up to 10% of the total value of the annual sales of the parties involved in the economic concentration or SAR 10 million (approximately US\$ 2.66 million) if the annual sales cannot be determined. In the case of Panda and Atabet Elbab, the GAC found that both companies violated Article 7 and fined each SAR 400,000 (approximately US\$ 106,000).

This decision marks the first time the GAC has imposed a fine solely for failure to file a merger control notification. Previously, in 2020, the GAC fined PepsiCo Services LLC and a Saudi bottling plant SAR 20 million (US\$ 5.3 million), later reduced to SAR 5 million (US\$ 1.3 million) each on appeal, for failure to file amid other antitrust violations.

The GAC's decision also emphasizes the responsibility of both the purchaser and the target entity to ensure compliance with filing requirements. This is in line with the GAC Merger Review Guidelines, which stipulate that the obligation to submit a pre-closing merger control filing falls on all parties participating in an economic concentration.

The GAC has been increasingly active in its merger control docket. In 2023, the GAC reviewed 313 transactions, issuing unconditional approvals for 172 and, for the first time, conditional approvals for three transactions that included structural and behavioural remedies. Additionally, the GAC blocked two transactions in 2021 and 2022. The regulator also updated its notification financial thresholds, introducing a local nexus requirement in November 2023.

Beyond merger control, the GAC's enforcement activities have intensified across various sectors. For instance, an investigation into the cement sector resulted in fines totalling SAR 140 million (approximately US\$ 37.3 million) against 14 companies. [2] Another investigation in the automotive sector led to criminal proceedings against 43 car agents and distributors. [3] Ongoing, GAC board approved, investigations are currently targeting sectors such as Information Technology, pharmaceuticals and Healthcare.

Looking ahead, the GAC's enforcement efforts are expected to increase, bolstered by collaborations with other regional competition authorities through the Arab Competition Network ('ACN'). The GAC's recent election to lead the ACN for a two-year term further underscores its expanding role in regional competition enforcement.

In conclusion, since the implementation of the Saudi Competition Law in 2019, the GAC has significantly strengthened its merger control regime and escalated its enforcement activities. The recent fines for failure to submit a merger control filing, along with other enforcement actions, highlight the importance for companies engaging in transactions in Saudi Arabia to diligently comply with merger control regulations and seek appropriate legal counsel to navigate these requirements. It is important to note that although the current financial threshold added an element of local nexus to trigger a filing, physical presence is nonetheless not a requirement to trigger a merger control filing.

V. Major Developments in the Region

In the realm of competition law, antitrust regulations play a crucial role in maintaining market equilibrium by curbing anti-competitive practices and fostering fair competition. This *Special Issue* provides a comprehensive examination of recent antitrust enforcement actions and trends within the MENA region. Saudi Arabia has led the way with their competition law, followed by Kuwait, and now the region awaits as the UAE's new competition law executive regulations are anticipated to be issued in June 2024, which include newly established financial thresholds. In addition, Egypt's newly revamped merger control regime has come online as of 01 June 2024. The new trend in the region has been to establish a strong competition law that allows the competition authorities broad discretion while attempting to filter out foreign to foreign-transactions via practical financial thresholds. While the intended objectives of these governments in issuing new competition laws have been properly placed, they have faced some challenges in putting together the right formula from a policy perspective. However, even the most mature jurisdictions (UK, US) continue to face this very same issue.

i. Egypt Following the Steps of the MENA Region with an All-New Ex-Ante Merger Control Regime in Force [4]

While some countries in the region are yet to develop a more powerful merger control regime, Egypt has enacted its ex-ante merger control regime coupled with updated filing forms and various guidance efforts by the Egyptian Competition Authority ('ECA'), marking a significant development since the amendments to the Egyptian Competition Law ('ECL') in 2022 and the Executive Regulations issued in 2024.

The new regime focused on picking up on where other leading merger control regimes have developed. This comes in various forms of Egypt competition-friendly practices. For instance, on the notification thresholds under the regime, the regime allows for two methods of calculating the notification thresholds; **(i) Domestic Thresholds:** Combined annual turnover or asset value in Egypt exceeds EGP 900 million with at least two parties each having an annual turnover in Egypt of more than EGP 200 million; and **(ii) International Thresholds:** Combined annual turnover or asset value worldwide exceeds EGP 7.5 billion with at least one party has an annual turnover in Egypt of more than EGP 200 million (this party must be the acquisition target).

The merger control regime also made available an internationally recognized form of pre-notification discussions, through informal discussions with the ECA to determine if a transaction qualifies as an economic concentration and if notification thresholds are met. These discussions do not address the economic effects of the contemplated transaction and are intended for initial guidance only.

The merger control regime also came with interesting new mechanics and procedures, among others, which include the following:

- **Simplified Filing Procedures:** The ECA has introduced expedited 'simplified procedures' for certain transactions with minimal impact on Egyptian markets. Transactions eligible for simplified procedures include: **(i)** Domestic economic concentrations with a combined turnover or asset value in Egypt under EGP 2 billion; **(ii)** International economic concentrations where the target's annual turnover in Egypt is under EGP 500 million; **(iii)** Establishing or acquiring a joint venture with independent and permanent economic activity outside Egypt, meeting notification thresholds; **(iv)** Establishing or acquiring a joint venture with no horizontal or vertical market relation to the parent companies; **(v)** Conglomerate economic concentrations; and **(vi)** Acquisition of sole control over entities previously under joint control.

Simplified procedures offer a faster review period of 20 days, compared to up to 90 days for standard procedures, and require fewer documents.

- **Multi-Authority Approvals:** For transactions involving Financial Regulatory Authority ('FRA')-regulated entities, the regime mandates that the FRA must clear the transaction following the ECA's recommendations. Parties must notify both the FRA and the ECA if the target exercises FRA-regulated activities. The FRA communicates the application to the ECA, which then has 30 days to issue a decision.

- **Full-Functioning Joint Ventures:** Only fully functioning joint ventures ('JVs') must be notified. A full-functioning JV operates independently of its parent companies, with its own resources, financing, employees, and management. It must not primarily conduct business with its parent companies. Non-full-functioning JVs, dependent on parent companies, become notifiable once they fulfil these criteria.

We note that the regime, influenced by global practices, provides guidance through the ECA's infographic, guidelines, and roundtables, helping navigate through this new landscape. The ECA's openness to discussion suggests ongoing updates to the guidelines as merger control practices evolve in Egypt.

ii. African Competition Authorities Cooperation for a Competition-Friendly Africa, How Egypt Built its Capacity Prior to the Effect of the 2024 Ex-ante Merger Control Regime

The past few years saw the fruit of various African competition authorities' labour in what seems to be a joint set of efforts for promoting Africa's competition-friendly atmosphere. At one end, back in November 2018, the United Nations Conference on Trade and Development ('UNCTAD') and Egypt's Competition Authority inaugurated the Regional Training Centre for Competition in Cairo, Egypt. This centre aims to enhance the knowledge and capabilities of competition agencies in the MENA region, addressing the need for a cohesive understanding and enforcement of competition laws. The training programs at the centre cover various aspects of competition law and economic

issues, including the relationship between competition and regulation and the enforcement challenges posed by the digital economy. Dr. Amil Nabil, chairman of the ECA, stated that the centre would enhance regional cooperation and elevate the capacities of competition agencies across the region. The establishment of this centre marks a significant development in the MENA region's approach to competition law and policy. It is one of four such centres in the region, with Egypt hosting two. One of these centres focuses on consumer protection, while the new centre specializes in competition law and policy. [5]

We note that this seems to have sparked an interest in compiling a continent-wide development of competition law practices. Notably, the ECA has been in an ongoing endeavour to develop its competition policy in a manner consistent with both the Middle East and Africa. On the latter, in 2022, the Competition Commission South Africa ('CCSA') and the ECA signed a Memorandum of Understanding ('MOU') to establish a comprehensive framework for bilateral communication and cooperation in competition law, policy, and enforcement. This MOU was signed during the 16th Annual Competition Law, Economics, and Policy Conference in Sandton, Johannesburg, highlighting its significance as part of broader multilateral competition initiatives. The MOU aimed at strengthening bilateral ties through enhanced technical cooperation and information sharing. The MOU also paved the way for establishing working groups to conduct joint studies on matters of common interest. With economies increasingly digitizing and moving towards greater integration within Africa, competition law and enforcement are becoming more cross-border in nature. The CCSA Commissioner noted that global competition law authorities recognize that increased cooperation is crucial for more effective competition law enforcement. Hence, the MOU between the CCSA and ECA represents a significant step towards enhanced bilateral cooperation, technical assistance, and information sharing, ultimately aiming to strengthen competition law enforcement and address common economic challenges in the region. [6]

It is also clear that cooperation with its African neighbours has helped Egypt develop more relevant and commercially viable practices. For instance, in February 2022, the ECA was part of the Africa Heads of Competition Authorities Dialogue on Digital Markets where the heads of competition authorities from Egypt, Kenya, Mauritius, Nigeria, and South Africa convened and issued a joint statement. Building on the consensus and understandings from that initial meeting, these authorities, along with the COMESA Competition Commission, Gambia Competition and Consumer Protection Commission, Moroccan Competition Council, and Competition and Consumer Commission of Zambia, gathered for a second meeting in Cairo in 2023 to further discuss the matter of regulating digital markets from a competition-perspective. It must be noted that the 2022 meetings in question led to various key agreements that helped the African landscape pioneer such a market. At one end, a working group was formed to address competition issues in digital markets. The leadership of this group will rotate among member authorities. The meeting also resulted in an enhanced creation of enforcement capabilities in digital markets among African competition authorities through mutual cooperation and utilizing their resources, among other arrangements. The authorities reaffirmed their previous commitments and recognized the regulatory challenges posed by digital markets in Africa. They emphasized the importance of competition policy in fostering economic growth and the necessity of a collaborative approach to regulate digital markets. This collaboration aims to ensure that African jurisdictions can share knowledge and strategies for developing significant markets effectively. Finally, these authorities attending and leading the digital markets regulation efforts confirmed their commitment to expanding and deepening dialogue among competition authorities across the continent, ensuring a cohesive and cooperative approach to the regulation and development of digital markets in Africa. [7]

iii. Arab Competition Authorities Launch Arab Competition Network in an effort to Sustain Regional Cooperation in that regard [8]

The cooperation between Arab countries in the landscape of competition has been brought to the forefront of the initiatives table. On March 16, 2022, the MENA region competition authorities officially launched the ACN. This network aims to enhance cooperation among Arabic-speaking antitrust authorities and support countries within the MENA region in enacting or developing their own antitrust legislation and enforcement activities.

Key Points

The establishment of the ACN follows significant growth in antitrust cases in the MENA region, alongside increased awareness of antitrust laws. The network is designed to foster cooperation among its members and provide support to countries seeking to develop their antitrust frameworks. Additionally, the ACN will assist its members in investigating and monitoring sectors impacted by the COVID-19 crisis and Russia's invasion of Ukraine. The creation of the ACN may heighten antitrust enforcement risks for companies operating in the region.

Structure of the ACN

As of its launch in March 2022, the ACN includes 17 member countries: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, Tunisia, United Arab Emirates, and Yemen. The network is organized into various working groups, each focusing on key antitrust law topics or broader objectives, such as:

- Horizontal agreements
- Vertical agreements
- Abuse of dominant positions
- Mergers & acquisitions
- Awareness of competition policies
- Institutional efficiency of competition bodies
- Regional Cooperation and Harmonization of Antitrust Rules

The ACN was created to increase awareness of existing antitrust law practices among its members and to pool their experiences to identify best practices, similar to the International Competition Network (ICN) and the European Competition Network ('ECN'). The ACN aims to promote effective cooperation on common interests and ensure regular exchanges of experiences and developments in antitrust law. According to the Cooperation Protocol in the Field of Competition Among Arab Countries, the ACN will facilitate regional workshops and training for its members, hold annual meetings, and enable officials to work at fellow agencies within the network. Additionally, the ACN will provide legal support to members wishing to enact or amend their antitrust laws or establish new regulatory bodies.

Increased Antitrust Scrutiny

The ACN's support could lead to a stronger regulatory landscape and more rigorous antitrust enforcement policies in the MENA region over the mid-to-long term. Enhanced collaboration may encourage existing antitrust authorities to expand their activities and motivate other countries to establish new antitrust agencies. This cooperation may lead to harmonized decisions in parallel reviews of anti-competitive behaviours or proposed mergers, as seen in the Uber/Careem transaction in 2019, which received conditional clearances in both Egypt and Saudi Arabia.

In the short term, the ACN aims to assist its members in investigating and monitoring sectors affected by the COVID-19 crisis and the Russia-Ukraine conflict. During the ACN launch, Egyptian Minister of Trade and Industry Nevine Gamea highlighted the economic challenges posed by these events and emphasized the need for joint efforts among Arabic-speaking countries to implement antitrust laws and combat cross-border monopolistic practices.

Building Sustainable Economic Growth

One of the ACN's objectives is to overcome potential barriers to economic integration in the region. The Cooperation Protocol emphasizes the importance of antitrust policies in fostering commercial exchanges between member countries and creating an attractive investment environment. The ACN aims to promote sustainable economic growth in the MENA region by ensuring an economic environment based on free competition, leading to increased production efficiency, improved product and service quality, and enhanced consumer protection.

Implications for Market Players

The exact scope of the ACN's activities remains to be seen. However, the network's ambitions extend beyond increased cooperation among national antitrust authorities to create a stronger common economy in the MENA region. Companies operating in the Middle East and Africa can expect increased antitrust scrutiny, but there may also be opportunities for investors looking to enter specific markets in the region. The ACN's efforts to encourage competition and overcome barriers to economic integration could make the region more attractive for investment. International cooperation between antitrust authorities is a growing trend that is expected to continue.

VI. Conclusion

The landscape of competition law in the MENA region is undergoing a dynamic transformation, driven by robust enforcement actions, significant regulatory updates, and enhanced regional cooperation. As documented in the latest cases and trends reported by Concurrences, MENA countries are increasingly aligning their competition policies with global standards while addressing the unique economic challenges of their markets.

As MENA countries continue to refine their competition laws and enforcement mechanisms, businesses operating in the region must stay vigilant and adapt to the evolving regulatory environment. Compliance with merger control requirements, adherence to fair market practices, and proactive engagement with competition authorities will be essential for navigating the complexities of this increasingly sophisticated antitrust landscape.

Note from the Editors: although the e-Competitions editors are doing their best to build a comprehensive set of the leading EU and national antitrust cases, the completeness of the database cannot be guaranteed. The present foreword seeks to provide readers with a view of the existing trends based primarily on cases reported in e-Competitions. Readers are welcome to bring any other relevant cases to the attention of the editors.

[1] **Asad Ahmad, Khaled Al-Khashab**, *The Saudi Arabian Competition Authority fines 2 companies for concluding a merger without notification (Panda/ Atabet Elbab)*, 25 February 2024, *e-Competitions February 2024*, Art. N° 117683; **Tamer Nagy, Nazly Khedr, Reem Albakr**, *The Saudi Arabian Competition Authority fines companies for failure to file a merger control notification (Panda/ Atabet Elbab)*, 25 February 2024, *e-Competitions Middle East & North Africa Competition Law*, Art. N°

117533; **Saudi Arabian Competition Authority**, *The Saudi Arabian Competition Authority fines 2 telecommunication companies for gun jumping (Panda/ Atabet Elbab)*, 25 February 2024, *e-Competitions February 2024*, Art. N° 118670.

[2] See **Saudi Arabian Competition Authority**, *The Saudi Arabian Competition Authority fines 14 companies in the cement sector for price-fixing and market sharing (Arabia Cement / Riyadh Cement / Saudi Cement...)*, 11 April 2023, *e-Competitions April 2023*, Art. N° 112102.

[3] See **Saudi Arabian Competition Authority**, *The Saudi Arabian Competition Authority conducts comprehensive investigations into the automotive sector*, 16 August 2023, *e-Competitions August 2023*, Art. N° 113743.

[4] **Tamer Nagy, Nazly Khedr**, *The Egyptian Competition Authority publishes a landmark merger control guideline to establish a fast-track process for notifications*, 26 May 2024, *e-Competitions May 2024*, Art. N° 118987; **Mohamed ElFar, Hania Negm, Mohamed El Baroudy**, *The Egyptian Competition Authority narrows jurisdictional thresholds and establishes a simplified procedure for merger notifications*, 26 May 2024, *e-Competitions May 2024*, Art. N° 118986.

[5] **UNCTAD - UN Conference on Trade and Development**, *The UNCTAD and Egyptian Competition Authority launch regional training centre for competition in Cairo for 7 national competition authorities in the Middle East and North Africa region*, 21 November 2018, *e-Competitions Middle East & North Africa Competition Law*, Art. N° 94929.

[6] **South African Competition Authority**, *The South African Competition Authority and the Egyptian Competition Authority join forces to strengthen anti-monopoly competition laws*, 31 August 2022, *e-Competitions Middle East & North Africa Competition Law*, Art. N° 108634.

[7] **COMESA Competition Authority**, *The COMESA Competition Authority publishes a Joint Statement of the African Heads of Competition Authorities Dialogue on the regulation of digital markets*, 8 February 2023, *e-Competitions Middle East & North Africa Competition Law*, Art. N° 113926.

[8] **Hugh Hollman, Jürgen Schindler, Milosz Cywinski, Samantha Zakka**, *The Middle East and North Africa Competition Authorities launch the Arab Competition Network*, 16 March 2022, *e-Competitions Middle East & North Africa Competition Law*, Art. N° 106380.