

Globalized Competition Agenicification: The Story of Egypt's Competition Authority *

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1- Abstract:

In 1990, Egypt started in collaboration with the World Bank and International Monetary Fund structural economic reforms aiming at following the track of a market-oriented economy rather than its four-decade state-directed one. As a result, there was a need to reconsider the role of government in such an economic system; many questions were raised on the scope of government intervention and the mechanisms of such interventions. One of the most vital questions was how the government would be able to develop a competitive market where government-business policies are fair and just, access by new market players is not risky, exit from the market is not a source of distortion, and consumers' rights of wide-located and diversified-based market products are maintained. The final outcome of such a debate was the adoption of Egypt's Competition Law No. 3 of 2005 which first established The Competition Protection Authority known as The Egyptian Competition Authority "ECA" as an independent authority with financial autonomy. This paper mainly focuses on the impact of the global trend of competition enforcement agencification on Egypt's competition regime and the role the international institutions played in the establishment and evolution of the ECA, especially its governance and autonomy.

Keywords: Competition, Antitrust, Regulatory, Law, Constitutional Law, Regulation, Administrative Law, Public Administration, Governance, Public Policy, Economy, IRAs, Financial Autonomy, Egypt, Reforms, Market Economy.

2- Literature Review:

The establishment of Independent Regulatory Authorities, in general, and Competition/Antitrust Authorities, in particular, provided scholars with a debate on many questions; What is the definition of such authorities? What are the characteristics distinguishing them from any other public institution? What are the reasons justifying their creation? A high volume of writings is available to answer such questions. Moreover, a significant number of policy analysis papers are available on the economics of competition policy such as the impact assessment of such policies on a definite economy or a definite sector. However, the political economy perspective of the establishment of the Egyptian Competition Authority was concerned by a very limited number of scholars.

While Ali El-Dean and Moheieldin ¹ were, to my knowledge, the first to discuss the need and obstacles of formulating a competition law in Egypt, Ghoneim ² discussed how they mixed up between the need of competition policy and the need of competition law, asserting that a set of other economic policies should be adopted before thinking of competition law. Five years after its establishment, the Egyptian Competition Authority was assessed for its independence and some recommendations were made in that respect by Afifi. ³ Additionally, both Abdellatif and AlShennawy ⁴ offered a comprehensive comparative cross-sectoral qualitative study of the legal aspects of the regulatory role of state in Egypt, including many legislative insights on the ECA. Moreover, Zaki and Youssef ⁵ were interested to offer a decade-analysis of competition laws in MENA region and an economic impact assessment of competition policies in such a region. Furthermore, ElFar and Momtaz dedicated most of their research activity to analyze the enforcement of the competition law in Egypt through tracing the decisions and practices of the ECA.⁶

¹ Bahaa Ali El Dean and Mahmoud Mohieldin, 'On the Formulation and Enforcement of Competition Law in Emerging Economies: The Case of Egypt.' [2001] The Egyptian Center for Economic Studies, Working Paper No. 60

² Ahmed Farouk Ghoneim, 'Competition Law and Competition Policy: What Does Egypt Really Need?' [2002] BOLETÍN LATINOAMERICANO DE COMPETENCIA BOLETIM LATINO-AMERICANO DE CONCORRÊNCIA, 46

³ Yasmine Afifi, 'Independence of the Egyptian Competition Authority: Assessment and Recommendations' [2010] Global Antitrust Review.

⁴ *Economic Public Law: the Indirect State's Intervention in the Economy* (Dar Al Nahda Al Arabia 2012); 'The Regulatory Role of Administration In The Economy' (PhD in Law Thesis, Law School, Mansoura University, Egypt 2008).

⁵ 'A Decade of Competition Policy in Arab Countries: A De Jure and De Facto Assessment.'; 'Between Stabilization and Allocation in the MENA Region: Are Competition Laws Helping?' [2019] Economic Research Forum, Working Paper No. 1319

⁶ A list of Mohamed ElFar publications is available at:

https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1018906

And a list of Mahmoud Momtaz publications is available at:

https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=2264936

Given that, this paper is an attempt to study, neither the competition law nor its enforcement, but an agency perspective, through which the author is trying to figure out what role the globalization competition regimes played in the formulation and the structure of the ECA, mandating its powers, enhancing its governance and supporting its autonomy.

3- Introduction:

The Great Depression in 1930s and The Financial Crisis 2007-2008 were certainly too enough to re-consider the existing system governing the microeconomic and macroeconomic sectors and public and private activities related thereto.

Thus, a reaction public policy was needed to be taken towards the failure of classic public administration methods to forecast such crises and by extension the failure to limit their disastrous consequences. It seems that such a reaction policy was the expanded creation of Independent Regulatory Authorities (IRAs).

Such authorities –that could be defined as *public central unelected authorities delegated with wide range of powers and granted independence from all actors related to be enabled to formulate and monitor the implementation of regulatory policies in different sectors*– are now the most common frame of exercising the function of decision-making in almost all developed countries with an increasing emerge of such authorities in the developing ones.

The failure of political institutions in making the most appropriate decisions in the technical issues may constitute a very logic reason for the need to expertise policy-making bodies. Nowadays, the regulatory process is not only called to the economic sectors (financial market, monetary policy, banking sector ... etc.), but also in many other service and social sectors such as: media, communications, electricity, food, pharmaceuticals, transportation and environment. In the era of the regulatory state, economic, financial, and monetary indicators are significantly influenced by performance of regulatory agencies.

Given that, The World Bank developed the project of “Global Indicators of Regulatory Governance”, while the OECD has a dataset on “Indicators of Regulatory Policy and Governance.” Such projects offer both cross-sector and cross-country analysis and assessment of a number of regulatory governance and policy topics.

Historically, The United States of America was almost the first to have federal authorities – outside the classic bureaucracies– monitoring variety of economic activities. In 1887, the congress established the first regulatory body: The Interstate Commerce Commission to regulate railroad rates.

Later, the regulatory experience began to rise in Europe, Latin America, Asia and Africa in a trend named by scholars as "*Institutional Isomorphism*", "*Cross-national Policy Transfer*" or "*Transplanting IRAs*".⁷

Nevertheless, the creation of such authorities in some countries is much more related to a larger context: the political decision of the adoption of comprehensive economic and administrative reform measures. Brazil is an example.⁸

The infant yet rapidly evolving Egyptian regulatory experience is replete with a great number of newly-established regulatory agencies to perform the function of regulating, monitoring, and wisely controlling almost all economic and services sectors: The National Telecommunications Regulatory Authority "NTRA" (since 2003), The Egyptian Competition Authority "ECA" (since 2005), The Consumer Protection Agency "CPA" (since 2006), The Financial Regulatory Authority "FRA" (since 2009), The Egyptian Electric Utility and Consumer Protection Regulatory Agency "EgyptERA" (since 2015), The Supreme Council for Regulating Media (since 2016), Gas Regulatory Authority (since 2017), The Internal and International Transportation Regulatory Agency (since 2019), and The Egyptian Drug Authority (since 2020), etc.

The author through such a paper is trying to shed light on the role the international organizations and globalization of national political economies played in the establishment of the Egyptian Competition Authority and its evolution. That said, this paper is of two sections as follows:

- I- The Role of International Institutions in The Establishment of Egypt's Competition Authority.
- II- The Role of International Institutions in The Evolution of Egypt's Competition Authority.

⁷ Robert Elgie, 'Why Do Governments Delegate Authority to Quasi-Autonomous Agencies The Case of Independent Administrative Authorities in France.' (2006) 19 Governance Journal 207; Mariana Mota Prado, 'Presidential Dominance from a Comparative Perspective the Relationship between the Executive Branch and Regulatory Agencies in Brazil.', *COMPARATIVE ADMINISTRATIVE LAW*, S. Rose-Ackerman, P. Lindseth eds. (2010th edn, Edward Elgar 2010).

⁸ Prado (n 7).

I- The Role of International Institutions in The Establishment of Egypt's Competition Authority:

A- Competition Policy Vs. Competition Law: Who Wins the Controversy? (1991-2005):

Having been recognized as one of the basic market failures, failures of competition form a rationale for government intervention in the market-oriented economy.⁹ The question is what governance model should such an intervention follow? In fact, such a question seems to have a model answer; there is a globally-based experience that affirms the regulatory governance model to be the most effective mechanism for the enforcement of competition.¹⁰

Returning to the Egyptian case, we still have two questions not answered yet; what are the failures Egypt experienced that needed government intervention? And should such an intervention include the adoption of a competition policy and/or a competition law?

Firstly, It was recognized that Egypt in a four-decade period of time from 1950s to 1990s had suffered structural deficiencies in its economy; deficits in budgets and balance of payments, failure to attract Foreign Direct Investments in labor-intensive productive sectors, increasing unemployment and inflation rates, foreign debt accumulation were the symptoms diagnosed by both scholars and International Financial Institutions. The major reason for such failures lied in the socialist economic policies since President Nasser's era. It was a Public-sector-led economy that was no longer capable of providing social services to the population. **In 1991, over 50% of GDP and about two thirds of non-agricultural GDP were the production of the public sector.**¹¹

As a response to such an economic crisis, Egypt started in 1990 the Economic Reform and Structural Adjustment Program (ERSAP) in collaboration with both the IMF through a Standby Agreement in May, 1991 and the World Bank through a Structural Adjustment Loan (SAL) in October of the same year. The economic aims of such a program were the following:

- **Macroeconomic Reform:** targeting inflation, budget deficits, and economic growth.
- **Public Enterprise Reform:** targeting privatization.
- **Domestic Price Liberalization:** targeting government pricing system.
- **Foreign Trade Liberalization:** targeting custom tariffs and export restrictions.
- **Private Sector Reform:** targeting entry, exit, and production control.
- **Social Fund for Development:** targeting the reform effects on the poor.

⁹ Joseph Stiglitz and Jay Rosengard, *Economics of The Public Sector* (Fourth Edition, W W Norton & Company, Inc 2015).

¹⁰ UNCTAD, 'The Role of Competition Policy in Promoting Economic Development: The Appropriate Design and Effectiveness of Competition Law and Policy' (2010).

¹¹ Simon Bromley and Ray Bush, 'Adjustment in Egypt? The Political Economy of Reform' (1994) 21 Review of African Political Economy; The World Bank, 'Egypt - Structural Adjustment Loan Project'.

Such economic aims, apparently, urgently needed a limited yet vital role of government to achieve promotion of competition and prohibition of monopolies.¹² **Secondly**, we come to the question of what form of intervention should the government follow to achieve the competition pillar of Egypt's newly established market economy? The answer to such a question fueled a heated debate; while some scholars affirmed that Egypt did need in that phase a competition policy rather than a competition law, they criticized others for mixing up between both competition policy and competition law.

A decade after the ERSAP, some scholars developed an in-depth analysis of the case of Egypt regarding challenges of the formulation and enforcement of a Competition Law. They asserted that a differentiation should be basically made between pre-1990s and post 1990s in Egypt; while during pre-1990s the government was the source of monopoly power due to the state-led-inward economy so that no one could expect the government to adopt a competition policy to limit itself, during post-1990s the ERSAP based on privatization resulted in the private sector to replace the public one in the dominance of production and distribution of most goods and services so that allegations of antitrust practices were numerous. Estimations, they mentioned, that **in 2001 the private sector was responsible for 72% of GDP**, the competition rules compliance required for the Association Agreement that had been about to be signed between the European Union and Egypt in 2002, concerns of international cartels to replace the government control of the economy after liberalization of trade were the grounds that led such scholars to conclude that an effective competition policy was urgently needed in Egypt and that such a policy required a competition law and a competition agency.¹³

On the contrary, other commentators criticized mixing up between competition policy and competition law, not only by scholars but also by developing countries governments. They explicitly emphasized that competition policy is a full comprehensive process of many institutional applications and policy measures, and that competition law is only a single element of such a process. Many other policies should be prioritized before considering the adoption of a competition law; free-trade policy, intellectual property policy, tax-related investment policy, and other measures were recognized to be much more effective for the emerging market economy than the adoption of a competition law whose costs would be far more than its benefits in a non-competitive atmosphere.¹⁴

¹² The World Bank (n 11).

¹³ Ali El Dean and Mohieldin (n 1).

¹⁴ Ghoneim (n 2).

Moreover, other scholars implicitly affirmed that competition policy is of a much wider scope than competition law. They suggested that state's policy in granting licenses, subsidies, and state aids should also be fettered by fair competition considerations. Additionally, they asserted that, in the Egyptian case, the failure of competition law enforcement before 25th of January 2011 revolution should be associated with political influence of the business elite "power-money relations," lax of rule of law, and political pressures over the competition authority. Thus, their hypothesis is that democratization of the government intervention in the market economy is essential to establish a competitive market and this hypothesis clearly assumes that the competition law alone could never be seen as the core of the competitive market.¹⁵

While the UNCTAD itself seems to have partially mixed up between the competition policy and the competition law when it considered that competition policy is of only two major instruments: competition law and competition advocacy ¹⁶, the World Bank and the OECD, as cited by Ghoneim backed up his observation, affirming that competition law should in some cases come at the bottom of the list of competition policy measures that should be promoted.¹⁷

Furthermore, the author truly agrees with Ghoneim that Ali El Dean & Mohieldin had mixed up between competition policy and competition law ¹⁸, especially when they discussed that competition law could have two objectives; they suggested that competition law in emerging economies must aim at maintaining and, where absent, creating competition. Actually, here comes the dissent; in emerging economies, competition policy measures rather than competition law play the *largest* role to initially create a competitive market to replace a concrete monopolistic one, and thereafter the enforcement of competition law through competition agency comes to play the *largest* role to maintain such a competitive market. In light with this, some scholars argued that the cross-specific regulators and regulatory laws would be essential to establish and promote a competitive market while the competition authority and competition law would be essential to guard and maintain such a market.¹⁹

¹⁵ Amir N Ibrahim and Mohamed ElFar, 'Constitutionalising the Egyptian Competition Policy in the Post Revolutionary Reforms'.

¹⁶ UNCTAD (n 10).

¹⁷ Ghoneim (n 2).

¹⁸ *ibid.*

¹⁹ AlShennawy (n 4).

However, the author totally disagrees with Ghoneim's conclusion that the adoption of competition law should have been delayed as Ghoneim himself asserted that progressivity was proven to be a balanced track to introduce competition laws in emerging economies; that is, allowing the economic system, stakeholders, and the competition authority to gradually apply control instruments over anti-competitive behavior so that the more the competition foundations were developed for all the stakeholders, the more control instruments were incorporated in the competition law. Such a hypothesis, apparently, assumes that the earlier the government adopts a competition law, the sooner it is capable to have a well-established effective one. In fact, my observance here is supported by Ali El Dean & Mohieldin when they stated that implementing a sophisticated competition legislation could only be a long-term objective and that Western regulatory agencies had taken much long time to reach their level of sophistication.

B- The Fruit of A Fourteen-Year (De)bate/lay (2005):

The first draft of Competition Law in Egypt was prepared by the Ministry of Economy and Foreign Trade in 1995 and it was pending for approval by the Legislature since 1997.²⁰ However, the Egyptian Competition Law had not been issued until February, 2005, leading to the fact that Egypt was one of the latest developing country to adopt a specific Competition Law.²¹

Before we shed light on the final outcome of around 15 years of delay, we should point out to some findings about the reasons for such a delay. While Ghoneim affirmed that government, businesses and consumers in Egypt did not have the incentive to adopt a competition policy²², Ali El Dean & Mohieldin formulated a set of explanations to such a delay. They assumed that private sector, not the state this time, had a role to play in resisting the issuance of a Competition Law due to the following concerns:²³

- Government intervention allegedly justified by the need to protect competition.
- Manipulative abuse of law by particular firms against their rivals.
- Exclusive application over formal sector and inability to affect the informal sector.
- Lack of knowledge of the staff responsible for enforcing the law.
- Corruption implications on the just implementation of the law.

Moreover, an ESCWA report, in reasoning such a delay, affirmed some of these grounds and added another reason; that is, government ministers were unwilling to give up their powers.²⁴ While such grounds seems highly logical, the author truly believes that in developing countries, like Egypt, where lack of transparency and politicization prevails in almost all areas of policy decision-making process, no one could offer an accurate explanation on why such a law had been delayed. Additionally, such a delay, as we will see in this paper, is not the only one related to law-making process of the Competition Law.

Anyway, now we have come, finally, to the outcome of the first Competition Law and Competition Agency in Egypt; The Competition Protection Authority known as The Egyptian Competition Authority “ECA” was firstly established by the Law No. 3 of 2005 on The Protection of Competition and The Prohibition of Antitrust Practices. For the purpose of this paper, we will limit our description to the provisions related to the ECA.

²⁰ Ali El Dean and Mohieldin (n 1); Ghoneim (n 2).

²¹ Dina I. Waked, ‘ADOPTION OF ANTITRUST LAWS IN DEVELOPING COUNTRIES: REASONS AND CHALLENGES’ (2016) 12 Journal of Law, Economics & Policy 193.

²² Ghoneim (n 2).

²³ Ali El Dean and Mohieldin (n 1).

²⁴ Economic and Social Commission for Western Asia (ESCWA), ‘Competition and Regulation in the Arab Region’ (2015) E/ESCWA/EDID/2015/5.

The legal texts organizing such an authority exist in Articles 11 to 21 of such a law as shown in the following table:

Article	Subject
11	The Authority legal qualification and functions
12	Board structure and term of office
13	Board meetings and votes policy
14	The Authority budget
15	The Authority CEO and his authorities
16	The Authority staff confidentiality obligation
17	The Authority staff members law enforcement power
18	The fees obtained by the Authority
19	Business entities obligation to post notice the authority on their assets alterations (Mergers & Acquisitions)
20	The Authority power to suspend antitrust violations
21	The Competent Minister power, later granted to the Authority Board, on the referral of antitrust related criminal charges and reconciliation on such charges.

Each of these articles could be a subject of an in-depth analysis of its law-making-related grounds, examination of its compliance with the related constitutional provisions, and its implications on the independence, accountability and well-functioning of the ECA.

This paper is more to analyze the political economy circumstances in which the ECA has evolved than to offer a comprehensive legal analysis of its independence and accountability. However, some of these articles are deeply associated with the political economy process, so further comments on a major set of these article will be made through this paper.

II- The Role of International Institutions in The Evolution of Egypt's Competition Authority:

A- The Era of Global Regulatory Governance: Egypt Promises International Institutions to Enhance Governance of its Competition Authority (2016-2018):

“The impact of the Euro-Med Agreement signed between Egypt and the EU is not emphasized in the rhetoric surrounding the adoption of the [competition] law.”²⁵ In this way, a scholar discussed what she had called “The Push by International “Supranational” Bodies to Adopt Competition Laws” as a main justification of the widespread adoption of such laws in the developing countries, including Egypt.²⁶

In the era of the global regulatory governance, economic, financial, and monetary indicators are significantly influenced by performance of regulatory agencies, which in turn are a reflection of where they stand from independence and accountability *de facto* and *de jure* factors. The World Bank developed the project of “Global Indicators of Regulatory Governance,” while the OECD has a dataset on “Indicators of Regulatory Policy and Governance.” Such projects offer both cross-sector and cross-country analysis and assessment of a number of regulatory governance and policy topics.

In this respect, competition laws, policies, and regulations are no exception. Based on a fact that more than 130 countries have adopted competition laws or similar regulatory frameworks, some scholars have mentioned the term “*globalization of competition regimes*” to express the significant level of global competition law convergence. To relate this globalization to the Egyptian case, they highlighted the fact that Egypt is a member of the Common Market for Eastern and Southern Africa (COMESA) whose treaty has a competition section embodied in Article (55), whose statutory language is in turn inspired by the European competition provision embodied in Article (101) of the Treaty on the Functioning of the European Union. Moreover, they concluded that the ECA successfully managed to effectively cooperate with the COMESA in the scope of extraterritorial application of competition law when the COMESA announced conducting an investigation in cooperation with the ECA. Such an announcement came after the ECA’s decision against the Confederation of African Football regarding its abuse of dominant position in granting exclusive broadcasting rights.²⁷

²⁵ Dina I. Waked, ‘Law, Society and the Market: Living with Egypt’s Competition Law 2005-2015’ [2018] Forthcoming in LAW AND SOCIETY IN POST-REVOLUTION EGYPT, Amr Shalakany ed. (AUC Press).

²⁶ Dina I. Waked (n 21).

²⁷ Dong-Hwan Kim and Yo Sop Choi, ‘Modernization of Competition Law and Policy in Egypt: Past, Present and Future’ (2020) 64 Journal of African Law 107.

Given that, Egypt experienced, following 2011 political and regional instabilities, macroeconomic imbalances, which drove to request, in 2016, a three-year extended agreement of 12 billion dollars from the IMF. In November 2016, such an agreement was approved by the Executive Board of the IMF under “Extended Fund Facility Program.”²⁸ Moreover, Egypt entered into three loan agreements with the European Bank for Reconstruction and Development “EBRD” upon which Egypt was granted a total of 3 billion and 150 million dollars in 2015, 2016, and 2017.

This part of the paper emphasizes how the governance of the ECA has been always at the core of the financial support programs between the international financing institutions and the Egyptian government.

Regarding the EBRD-Egypt loan agreements, such loans were granted by the EBRD under a program titled “Financing the Program of Development Policies of Financial Support, Sustainable Energy, and Competitiveness.” The three mentioned loan agreements were published in the Egyptian Official Gazette and included the following:

- 1- According to the agreement of the First Program Loan, Published in Issue (2) of the Official Gazette on 12th of January 2017, Egypt agreed, as part of the program, to issue the executive regulations of the aforementioned 2014 amendments of the Competition Law. (Clause 1 – Para. 10)
- 2- According to the agreement of the Second Program Loan, Published in Issue (37) of the Official Gazette on 14th of September 2017, Egypt fulfilled, as part of the program, its commitment of the first program by issuing The Prime Minister Decision No. 2509 of 2016 on the executive regulations of the aforementioned 2014 amendments of the Competition Law. Additionally, Egypt agreed that the ECA shall approve 2015 Regulations to enhance the enforcement policy of anti-trust practices. (Table 1 – Clause 1 – Para. 10 “a & b”). No more clarifications were made upon which the author could define which regulations were meant precisely.
- 3- According to the agreement of the Third Program Loan, Published in Issue (17) of the Official Gazette on 26th of April 2018, the ECA, representing Egypt, has agreed, as part of the program, in the ECA Board meeting No. (113) on 12, September, 2017 to issue the following guidelines (Table 1 – Clause 1 – Third Pillar – Para. 8 “a, b, c, and d”):

²⁸ International Monetary Fund (IMF), ‘Arab Republic of Egypt: Request for Extended Arrangement Under the Extended Fund Facility-Press Release; Staff Report; and Statement by the Executive Director for the Arab Republic of Egypt’ (2017) Country Report 17/17.

- a- A Guideline on the exclusions from the Competition Law under Article (6) and Article (9). (Article (6) grants the ECA, upon the request of the concerned parties, the power to exclude certain horizontal agreements from the competition law if they have consumer benefits more than anti-competitive losses. Article (9) grants the ECA, upon the request of the concerned parties, the power to exclude from the competition law the public utilities indirectly run by the state, through private law firms.)
- b- A Guideline on Leniency program, created by Article (26) of the 2014 amendments.
- c- A Guideline on reconciliation in anti-trust cases.
- d- A Brief Guideline on an Analysis of the Impact of Legislations on Competition.

It is worth mentioning that, to the knowledge of the author, none of these guidelines has been published by the ECA except for that on the Leniency Program.²⁹

As for the IMF-Egypt loan agreements, the IMF report released on the third review for the agreement with the Egyptian Government included a Memorandum of Economic and Financial Policies intended to be implemented by the Egyptian side. The subsection “... **Structural Reform**” of such a Memorandum provided that: “... **we will strengthen the institutional, financial, and operational independence of the Egyptian Competition Authority (ECA) ..., while also enhancing its accountability...**” Effectiveness of such promises could not be reached without amending the Competition Law.³⁰ According to the aforementioned Memorandum, such amendments were supposed to be submitted to the Parliament by 30th of October 2018. In fact, such amendments have not been adopted, yet. However, the Cabinet of Ministers announced, in January 2019, approving amendments to the Competition Law for submission to the Parliament that included the affiliation of the ECA to the Prime Minister and granting the ECA the power to impose administrative fines.³¹ In line with that, a report submitted by Egypt to the OECD Global Forum on Competition stated that the ECA had been developing new amendments to the Competition Law of two main aims; the first was to grant the ECA a power to pre-control mergers and acquisitions, and the second was to establish a quasi-judicial committee to settle antitrust-related criminal actions instead of the Economic Courts.³²

²⁹ ‘ECA Leniency Guildlines’

<http://www.eca.org.eg/ECA/upload/Publication/Attachment_A/129/Leniency%20Guildlines%20ECA.pdf>.

³⁰ International Monetary Fund (IMF), ‘Arab Republic of Egypt: Third Review Under the Extended Arrangement Under the Extended Fund Facility, and Requests for a Waiver of Nonobservance of a Performance Criterion and for Modification of a Performance Criterion-Press Release; Staff Report; and Statement by the Executive Director for the Arab Republic of Egypt’ (2018) Country Report 18/213.

³¹ Al Borsa News Newspaper, ‘The Cabinet of Ministers Approves The Competition Law Amendments’ (9 January 2019) <<https://alborsaanews.com/2019/01/09/1168347>>.

³² OECD, ‘INDEPENDENCE OF COMPETITION AUTHORITIES - FROM DESIGNS TO PRACTICES “Contribution from Egypt”’ (2016).

Earlier in November 2016 and July 2017, The ECA Chairperson announced twice that such amendments were being finalized for submission to the Cabinet of Ministers.³³ However, the Cabinet of Ministers itself announced, in June 2017, the approval of a draft amendment to the law, including only harsher punishments for non-compliance of Government decisions on fixing prices of essential products prices issued in accordance with Article (10) of the Competition Law.³⁴ In fact, only such a single amendment was issued in April 2019.³⁵ Thus, the destiny of the amendments said to be processed by the ECA remains unknown.

Consequently, this part of the paper is to analyze what I consider internationally motivated amendments promised by Egypt to the IMF and to assess how far the main aspects of such amendments would truly enhance independence and accountability of the ECA in three respects.

Firstly, the Government proposed, for the sake of institutional independence, that “... *the ECA reports directly to the Prime Minister...* .” In fact, such proposal does not dramatically change the current situation of the Authority’s institutional affiliation; the current version of the law provides that “...the Authority shall be affiliated to the Competent Minister... ,” and that “... the Competent Minister in terms of such a Law is the Prime minister... .” Nonetheless, such an amendment could enhance the status quo due to fact that, since the establishment of the ECA, the Minister of Trade and Industry has been always delegated to substitute the Prime Minister in this context.³⁶ However, the proposed amendment did not include what would legally constrain the track of delegation. Whereas the previously mentioned Articles (215) and (216) of the Egyptian Constitution provide that the legislature is authorized to establish independent bodies and oversight agencies with technical, financial, and administrative independence, the Government and the Legislature did insist on the affiliation of the Authority to the Prime Minister rather than granting the Authority the formal legal qualification as “independent body” from other state’s powers. Such a qualification would result in significant institutional independence factors, especially the constitutionally provided President-House appointment mechanism for the Head of the Authority instead of the present case of vesting the power to appoint the Authority’s Chairperson and Board members to the Prime Minister.

³³ Al Borsa News Newspaper, ‘The Competition Law Amendments are to be Noticed to Business Organizations within a Month’ (15 November 2016) <<https://alborsaaneews.com/2016/11/15/929958>>; Al Borsa News Newspaper, ‘The ECA Submits the Competition Law Amendments to the Minister of Trade within 45 Days’ (31 July 2017) <<https://alborsaaneews.com/2017/07/31/1040923>>.

³⁴ Al Youm Al Sabae’ Newspaper, ‘Cabinet Approves Draft Amendments of Ministers Approves The Competition Law Amendments’ (19 June 2017).

³⁵ Al Youm Al Sabae’ Newspaper, ‘President AlSisi Issues the Competition Law Amendments’ (10 April 2019).

³⁶ Afifi (n 3).

Secondly, it is skillfully proposed, regarding the Authority's Board structure, to “... *eliminate the representation of the government and increase the representation of the judiciary and the technical experts... .*”

Nevertheless, there may be an impediment that would constrain increasing representation of judicial members in the Authority's Board or may even strictly suspend such a representation. The transitional provisions of the 2014 amendments of the Egyptian constitution included Article (239) which stipulated that “**The House of Representatives shall issue a law regulating the rules for the secondment of judges [...], ensuring the cancellation of [...] secondment to non-judicial bodies [...], unless for “managing justice affairs” or overseeing elections**” Although such a legislation has not been adopted yet, it would extremely compromise the judicial representation in the regulatory agencies' boards generally, which is one of the most critical factors of organizational independence of such agencies. Unless judges' service in regulatory agencies boards would be included as a case of “managing justice affairs” by the prospective legislation, such a proposed amendment would be of no value.

Thirdly, in terms of independence, it is strongly believed that unless the regulatory agency is empowered with legislative tools to force its decisions, it would never be able to effectively impose its regulatory rules on the regulated sectors. In that respect, the drafter of such amendments has done well when suggested to “... *provide the ECA with administrative fining powers.*” However, the weakened institutional independence of the ECA would make such a grave power a matter of concern; it would need a transparent guidelines and checks and balance system to guarantee the fair implementation of such a power. In fact, such concerns naturally lead to the debate on the accountability-related proposed amendments. For the sake of strengthening the accountability of the ECA, the Memorandum included well-suggested legislative changes to guarantee the transparency considerations. Some of these amendments were the following:

- 1- *to establish clear criteria for assessing the performance of the ECA and its chairperson.*
- 2- *to update ECA's website to include:*
 - a. *non-confidential versions of all previous and future cases and decisions with supporting analyses;*
 - b. *the regulation clarifying procedures and conditions to receive exemptions from the prohibitions of the competition law;*
 - c. *the guidelines to calculate fines and settlements;*
 - d. *the guidelines to grant leniency on cartel cases.*

Having discussed the impacts of the proposed amendments on the independence and accountability, serious questions should be raised on the proposal to ***“provide the ECA with an earmarked budget as a single digit subject to the review of the Administrative Control Authority”***; how could the single-digit budget serve the independence of the ECA while the serious impediment to the ECA financial autonomy, as will be further discussed, lies in its ineffective diversified-funded budget? And how could such a proposal support the accountability of the ECA while the status quo is that the ECA affirms in its reports that its budgets are annually audited by the Central Auditing Organization? Moreover, the transparency considerations presume a detailed disclosure of the revenues and expenditures of such an unelected agency to the people and a rigorous observation over such numbers by the Parliament. It was criticized that the ECA implementation of its commitment to publish its acts had been too summarized to be sufficient to allow the public, the media, and the academia to scrutinize its decisions or to have a real debate over them.³⁷

Additionally, two observations should be noted here from the US practice of regulatory agencies' self-funding. Firstly, a question was asked on the accountability concerns; “who would watch the guardians?” The answer to such a question was simply that the Congress has maintained accountability mechanisms to oversee the agencies in that respect.³⁸ Secondly, it was concluded that the Congress [the Legislature] choice to give up its control over agency budget, through excluding agencies from the usual appropriations process, has granted the President [the Executive], through his appointment power, more control over the agencies.³⁹

³⁷ *ibid.*

³⁸ Joel Seligman, ‘Key Implications of the Dodd-Franck Act for Independent Regulatory Agencies’ (2011) 89 Washington University Law Review.

³⁹ Charles Kruly, ‘Self-Funding and Agency Independence’ [2013] 81 George Washington Law Review 1733.

B- A Second Wave of Pushing by The IMF: What Would It Be Without COVID-19? (2020-2022):

“The COVID-19 pandemic has drastically disrupted people’s lives, livelihoods, and economic conditions in Egypt. The global shock has resulted in a tourism standstill, significant capital flight, and a slowdown in remittances, resulting in an urgent balance of payments need,” said Mr. Geoffrey Okamoto, First Deputy Managing Director and acting Chair on 11th of May 2020. On such a day, The IMF released a statement that: “The Executive Board... approved Egypt’s request for financial assistance of US\$ 2.772 billion to meet the urgent balance of payments needs stemming from the outbreak of the COVID-19 pandemic.”⁴⁰

Such a financial assistance was approved under the IMF’s financing instrument known as “The Rapid Financing Instrument.” According the IMF’s factsheet on this instrument, it provides rapid financial assistance to help member countries facing an urgent balance of payments need. What should be noted, in this regard, that such a factsheet also states that: **“Financial assistance under the RFI is provided in the form of outright purchases without the need for a full-fledged program or reviews.”**⁴¹

Almost a month later, on 26th of June, 2020, The IMF released another statement that the Executive Board approved 12-month US\$ 5.2 billion Stand-By Agreement for Egypt to “help Egypt cope with challenges posed by the COVID-19 pandemic by providing Fund resources to meet Egypt’s balance of payments needs and to finance the budget deficit.” According to such a statement there is a “fund-supported program” that includes structural reforms to “...improve governance and transparency, and reduce barriers to competition to ensure a path towards sustainable and inclusive private sector-led growth.”⁴²

Under Section “C. Structural Reforms” of the program supported by the SBA, as stated in The IMF Staff Report, the Egyptian government commitments included the submission of a draft amendments of the Egyptian Competition Law by end-December 2020 to ensure “the competitive

⁴⁰ International Monetary Fund (IMF), ‘IMF Executive Board Approves US\$2.772 Billion in Emergency Support to Egypt to Address the COVID-19 Pandemic’ (2020) PRESS RELEASE NO 20/215 <<https://www.imf.org/en/News/Articles/2020/05/11/pr20215-egypt-imf-executive-board-approves-us-2-772b-in-emergency-support-to-address-the-covid19>>.

⁴¹ International Monetary Fund (IMF), ‘The IMF, Fact Sheets: Rapid Financing Instrument (RFI)’ (2022) <<https://www.imf.org/en/About/Factsheets/Sheets/2016/08/02/19/55/Rapid-Financing-Instrument>>.

⁴² International Monetary Fund (IMF), ‘IMF Executive Board Approves 12-Month US\$5.2 Billion Stand-By Arrangement for Egypt’ (2020) PRESS RELEASE NO 20/248 <<https://www.imf.org/en/News/Articles/2020/06/26/pr20248-egypt-imf-executive-board-approves-12-month-us-5-2billion-stand-by-arrangement>>.

neutrality.” Such a commitment came under the Memorandum of Economic and Financial Policies “MEFP” as MEFP ¶27. Among the aims of such amendments was to “empower the Egyptian Competition Authority (ECA) to regulate mergers and acquisitions... and enable businesses to request the ECA to issue opinions on the competitive impact of certain public regulations. These provisions will apply equally to all market participants including state-owned enterprises.”⁴³

It is noteworthy to highlight that the MEFP was attached to a Letter of Intent signed by Egypt’s Central Bank Governor and Minister of Finance sent to the Managing Director of the IMF on 17th of June, 2020. The two Egyptian officials affirmed in the MEFP that: “We have already submitted a draft to amend the Egyptian Competition Law to Parliament; additional amendments concerning the Egyptian Competition Authority (ECA)’s power to scrutinize mergers and acquisitions would be submitted to Parliament by end-December 2020.”⁴⁴ According to MEFP ¶27, there were two amendments; “current amendments” already submitted to the Parliament and “additional amendments” to be submitted to The Parliament by end-December 2020. Such amendments were detailed as below:⁴⁵

- The current draft law includes:
 - (i) provisions that ensure the institutional independence of ECA, making its decision making more efficient by reducing the number of government and business representation in the board of directors, enabling ECA’s members to carry out market investigation efficiently, and empowering ECA to enact administrative fines and/or measures subject to judicial review;
 - (ii) provisions to enlarge the scope of exemption afforded to businesses.

- The additional amendments will include:
 - (i) provisions that empower ECA to regulate mergers and acquisitions that meet certain thresholds. These transactions shall be subject to prior notification and standstill obligations enabling ECA to review concentrations before their consummation and assess their competitive impact and if necessary, impose the adequate measures to protect the competitive structure of the market;

⁴³ International Monetary Fund (IMF), ‘ARAB REPUBLIC OF EGYPT REQUEST FOR A 12-MONTH STAND-BY ARRANGEMENT—PRESS RELEASE; STAFF REPORT; AND STATEMENT BY THE EXECUTIVE DIRECTOR FOR THE ARAB REPUBLIC OF EGYPT’ (2020) Country Report 20/266
<<https://www.imf.org/en/Publications/CR/Issues/2020/08/10/Arab-Republic-of-Egypt-Request-for-a-12-Month-Stand-By-Arrangement-Press-Release-Staff-49683>>.

⁴⁴ *ibid.*

⁴⁵ *ibid.*

- (ii) provisions to ensure protection for SMEs against certain forms of takeover, and that acquisition of minority shareholdings does not adversely affect the competitive structure of the market. These provisions shall apply equally to all market participants including SOEs and ensure smooth disposal of failing assets or the restructure of existing ones;
- (iii) measures to ensure a transparent and neutral review that respect the parties' due process rights;
- (iv) provisions that will enable businesses to request ECA to issue opinions on the competitive impact of certain public regulations. They shall include the measures and remedies that ECA may recommend in this regard. ECA will issue guidelines on public procurement processes to ensure competitive neutrality of procurement operations, encourage the establishment of fair, non-discriminatory procedures and neutral tendering processes, and establish a transparent, fair and open tendering procedures.

On the contrary, according to "Table 2" attached to the MEFP, the policy measure that should be concluded in line with MEFP ¶27 was to "submit to Parliament amendments to the competition law to add a new chapter on mergers and acquisitions."⁴⁶

After the IMF approval in 26th of June, 2020, The Executive Director for Egypt made a statement to which a text box was attached to highlight "Three Pillars of Egypt's Economic Policy Priorities." In line with the second priority to "deepen structural reforms to encourage investment and enhance private sector led growth," it is among Egypt's priorities to "Enhance independence, ability and capacity of Egyptian Competition Authority."⁴⁷

According to the IMF Staff Report for the First Review of the SBA completed on 4th of December, 2020, MEFP ¶27 was not met⁴⁸, but the IMF Staff Report for the second review completed on 7th of June, 2021 marked MEFP ¶27 as "met."⁴⁹

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ International Monetary Fund (IMF), 'Arab Republic of Egypt: First Review Under the Stand-By Arrangement and Monetary Policy Consultation-Press Release; Staff Report; and Statement by the Executive Director for the Arab Republic of Egypt' (2021) Country Report 21/7 <<https://www.imf.org/en/Publications/CR/Issues/2021/01/07/Arab-Republic-of-Egypt-First-Review-Under-the-Stand-By-Arrangement-and-Monetary-Policy-49993>>.

⁴⁹ International Monetary Fund (IMF), 'Arab Republic of Egypt: 2021 Article IV Consultation, Second Review Under the Stand-By Arrangement-Press Release; Staff Report; and Statement by the Executive Director for the Arab Republic of Egypt' (2021) Country Report 21/163 <<https://www.imf.org/en/Publications/CR/Issues/2021/07/22/Arab-Republic-of-Egypt-2021-Article-IV-Consultation-Second-Review-Under-the-Stand-By-462545>>.

While the proposal of enhancing the institutional independence of the ECA and granting the ECA the power to impose administrative fines were previously discussed in this paper in the context of analyzing Egypt's promises to the IMF under 2016 Extended Fund Facility Program, they seem to be duplicated by the Egyptian government in its undertakings towards the IMF in 2020 Stand-by Agreement Program. However, major events, following the Stand-By Agreement, should be highlighted when analyzing the role of the IMF in the evolution of the ECA. Such events are the approval of draft amendments to the Competition Law to grant the ECA more powers over mergers and acquisitions, the unexplained replacement of the ECA Chairperson before the end of his term, the Prime Minister's take-back of his powers over the ECA, and the establishment of the High Commission of Competitive Neutrality. The first event was praised for supporting the ECA effective role for the sake of maintaining a competitive market.⁵⁰ However, the other updates were not paid much attention despite their serious implications on the independence of the Authority.

- **ECA's Power to Control Mergers and Acquisitions:**

The competition law in Egypt has always been criticized for the lack of an effective system of merger control; Egypt was ranked at the bottom of a list of 11 Arab Countries regarding the sufficient merger control system.⁵¹ The original version of competition law only required a post-notification for mergers and acquisitions without any criminal sanction for non-compliance with such a commitment. Additionally, the ECA power to issue temporary orders to suspend *prima facie* antitrust practices was not associated with a criminal sanction in cases of non-compliance. Such a loophole was seen that ECA decisions lacked any "effective impact."⁵² Also, the ECA staff members empowered with the right to access any documents or records required for the investigative process was not backed up with criminal sanctions.

In 2008, the Law No. 190 of 2008 was issued to amend some articles of the original Competition Law No. 2 of 2005. Such amendments were initially proposed by the ECA and referred to the competent minister (Minister of Trade and Commerce) to be submitted to the Legislature.⁵³

⁵⁰ Tamer Nagy, Ahmed Ashraf, and J. Mark Gidley, 'Egyptian Cabinet Approves Its First Pre-Merger Notification Regime' (8 December 2020) <<https://www.whitecase.com/publications/alert/egyptian-cabinet-approves-its-first-pre-merger-notification-regime>>.

⁵¹ Economic and Social Commission for Western Asia (ESCWA) (n 27).

⁵² Abdellatif (n 4).

⁵³ ECA, 'ECA's Annual Report - 2008' (2008) <<http://eca.gov.eg/ECA/Publication/List.aspx?CategoryID=2>>.

Here comes the significance of the amendments of 2008; they incorporated highly significant changes to guarantee the enforcement of the ECA decisions and functions. Criminal fines, with a minimum of 10,000 and a maximum of 100,000 EGP, were adopted to be judicially imposed in cases of non-compliance with merger notifications or providing access to the ECA staff, and a criminal fine, with a minimum of 20,000 and a maximum of 500,000 EGP, to be judicially imposed in cases of non-compliance with the ECA suspension orders.

As mentioned earlier in this paper, the ECA, in 2016, stated to the OECD, that it had been working on an amendment to the Competition Law to grant the Authority the power to pre-control mergers and acquisitions. However, no one could know the destiny of such amendments since 2016 till the end of 2020.

On 25th of November 2020, the Egyptian Cabinet of Ministers announced its approval of new amendments to the Competition Law to grant the ECA more effective powers to pre-control “Economic Concentrations,” including in its definition mergers and acquisitions.⁵⁴ Such a step is remarkably a move forward in the evolution of the ECA to efficiently function its powers over the market entries and exists to ensure avoiding distortions of dominant positions or any other antitrust practices. It is worth mentioning that, however, the amendments are in fact still in the course of discussions at the House of Representatives and were announced in July 2022 to be adjourned to next House’s session that regularly convenes in October.⁵⁵

That said, the efficacy of the promises of the Egyptian government to the IMF in the sphere of enhancing the efficiency of the ECA in protecting the market from antitrust practices, especially in cases of mergers and acquisitions is under scrutiny and the push by the international institution in this sphere seems to be fruitless. As explained, Egypt since 2016 has been branding granting its competition authority the power to control M&As. However, this seems to be a story of failure when considering the fact that such a power will be debatable and unconcluded till at least October, 2022.

⁵⁴ The Egyptian Cabinet of Ministers, ‘Press Release on Cabinet Meeting No. 119’ (25 November 2020) <<https://cabinet.gov.eg/Meeting/Details/3535>>.

⁵⁵ Al Mal News, ‘The House’s Economic Commission Adjourns Competition Law Amendments to the Upcoming Session’ (20 July 2022).

- **ECA's Independence from the Executive:**

The dismissal of heads of competition authorities is usually seen as one of the major indicators of their institutional (in)dependence. Article (12) of the Competition Law, as amended by the Law No. 56 of 2014, stipulates that the tenure of Board Members including the Chairperson is a four-year term that shall not come to an end except by resignation or in case of criminal conviction of a misdemeanor or a felony that compromises his/her reputation or trust. However, the single-article Law No. 89 of 2015 grants the President the power to remove heads and members of independent authorities and oversight agencies on too vague grounds to establish an at-will removal power for the President. While it has not been applied yet over any of heads or members of regulatory authorities which are defined neither as “independent bodies” nor “oversight agencies” in their establishing legal instruments, the broad interpretation of such a law could imply its application in this context.⁵⁶ Moreover, some scholars traced the changes in heads of the ECA since its establishment till 2017 and reported that one of them mentioned in a newspaper interview that he resigned “for personal reasons” and another one mentioned in a newspaper interview that she decided to resign after the end of her four-year term and that what was claimed of her dismissal by the Government was not true.⁵⁷

On 20th of October 2020, newspapers published that the Minister of Trade and Industry has issued a decree of appointing Mr. Ibrahim El Seguny, the ECA Board member, as acting Chairperson of the ECA, replacing Dr. Amir Nabil. Most of the newspapers did not explain the ground upon which this decision was issued.⁵⁸ However, others claimed that Dr. Nabil’s four-year term had expired.⁵⁹

Given that, the author has found that Dr. Nabil was appointed as a Chairperson and Mr. El Seguny was appointed as a Board member for a four-year term, according to Article (12) of the Competition Law, by the Prime Minister’s Decision No. 846 of 2018, published in the Official Gazette

⁵⁶ OECD, (n 32).

⁵⁷ Zaki and Youssef, ‘A Decade of Competition Policy in Arab Countries: A De Jure and De Facto Assessment.’ (n 5).

⁵⁸ ‘Ibrahim El Segeny Appointed Acting Chairman of the Egyptian Competition Authority’ (20 October 2020) <<https://www.almasryalyoum.com/news/details/2068024>>.

⁵⁹ ‘Ibrahim El Segeny Appointed Acting Chairman of the Egyptian Competition Authority’ (22 October 2020) <<https://enterprise.press/stories/2020/10/22/ibrahim-el-segeny-appointed-acting-chairman-of-the-egyptian-competition-authority-23684/>>.

on 10th of May, 2018.⁶⁰ This means that Dr. Nabil's term was supposed to end in May 2022. Only one source claimed that that Dr. Nabil resigned rather than being dismissed.⁶¹

Later, it was announced, on 6th of January 2021, that the Minister of Trade and Industry has appointed Dr. Mahmoud Momtaz as a Chairperson of the ECA.⁶²

In fact, the aforementioned story raises questions on the independence of the ECA Chairperson towards the Executive and on the reasons why Dr. Nabil resigned or was dismissed from office. Additionally, it also reveals the Executive unfavorable takeover of the administration of the ECA; it should be mentioned that Mr. Ibrahim El Seguny who served as acting Chairperson for less than three months was a Board Member of the ECA in his capacity as a representative of the Ministry of Trade and Industry, which clearly supports the hypothesis of the Executive takeover.

- **ECA's Distorted Governance: the Prime Minister Takes Back His Powers Over the ECA and Establishes the High Commission of Competitive Neutrality:**

It has been, previously in this paper, stated that the Prime Minister usually and unjustifiably delegates the Minister of Trade and Industry in his powers over the ECA which reduces the political level of institutional affiliation of the Authority. This concern seems to have had practical grounds in the case of appointing the representative of the Ministry of Trade and Industry as an Acting Chairperson of the ECA.

Moreover, such a practice completely contradicts with Egypt's undertakings to the IMF in both 2016 Extended Fund Facility Program and 2020 Stand-By Agreement Program to enhance the institutional independence of the ECA.

That said, the Prime Minister in August 2022, issued a decree to abolish his earlier decision dated in 2018 to delegate his powers over the ECA to the Minister of Trade and Industry.⁶³ The preamble of such a decree stated that it was issued upon many legal instruments, among which was "State Ownership Policy Document."

⁶⁰ 'The Prime Minister's Decision No. 846 of 2018 On the Appointment of the ECA Board' (10 May 2020) <<https://manshurat.org/node/43963>>.

⁶¹ Janith Aranze, 'Egyptian authority head steps down' (02 November 2020) <<https://globalcompetitionreview.com/egyptian-authority-head-steps-down>>.

⁶² 'Mahmoud Momtaz Appointed as Egyptian Competition Authority Chairperson' (6 January 2021) <<https://dailynewsegypt.com/2021/01/06/mahmoud-momtaz-appointed-as-egyptian-competition-authority-chairperson/>>.

⁶³ The Official Gazette, Issue No. 33 'A' bis - 21st of August 2022, 'Decision of Prime Minister No. 2934 of 2022'.

According to the published draft of the said Document, “this document intends to complement the reforms adopted by the Egyptian State within the framework of strengthening the role of the private sector in the economic activity and creating an enabling economic environment that attracts and reinforces investments... the new State Ownership Policy necessitates the application of the principles of competitive neutrality within the Egyptian markets in order to enhance the efficiency of the Government in providing high-quality public services to citizens and increase the efficiency of SOEs... The government’s efforts in this regard will be based on a number of pillars, namely activating the Competition Protection Agency’s strategy with regard to competitive neutrality, reviewing and evaluating all measures taken to ensure a competitive environment, and enhancing the efficiency of the Competition Protection Agency.”⁶⁴

A governmental website was established to promote effective participation from all concerned stakeholders on the public dialogue for shaping the final draft of the Document. According to this website, the hearing sessions were concluded on 30th of August, 2022.⁶⁵ Thus, it is not explicable how and why such a document is recalled and used as a legal document upon which the Prime Minister’s said decision could be grounded.

Anyway, the principle of “competitive neutrality” that was firstly mentioned in the Egyptian context in the IMF Staff Report for 2020 Stand-By Agreement, as mentioned earlier, was used by national authorities in Egypt only in March 2022 when the Acting Chair of Cabinet’s Information and Decision Support Center presented before the Cabinet of Ministers the first draft of the Document.⁶⁶

According to the OECD, Competitive Neutrality “is a fundamental principle of competition law and policy that firms should compete on the merits and should not benefit from undue advantages for example due to their ownership or nationality.” The OECD also asserts the role of governments to ensure that no procurement/tax rules or regulatory regimes could put private firms at a disadvantage compared to state-controlled or supported firms. It is, in a nutshell, a policy that ensures that the market is functioning as “a level playing field.”⁶⁷

⁶⁴ The Egyptian Cabinet of Ministers, ‘Executive Summary - State Ownership Policy Document - June 2022’ <<https://www.cabinet.gov.eg/conference/pdf/property-policy-document-eng.pdf>>.

⁶⁵ Egyptian Cabinet’s Information and Decision Support Center, ‘Information Center Concludes Hearing Sessions on State Ownership Policy Document’ (30 August 2022) <<http://eparticipation.idsc.gov.eg/calendarDetails/83>>.

⁶⁶ The Egyptian Cabinet of Ministers, ‘Press Release on Cabinet Meeting No. 187’ (30 March 2022) <<https://www.cabinet.gov.eg/Meeting/Details/6671>>.

⁶⁷ OECD, ‘Competitive Neutrality in Competition Policy’ <<https://www.oecd.org/daf/competition/competitive-neutrality.htm>>.

Although, according to the OECD, competition authorities generally and for the vast majority of countries are responsible for responsible for the oversight, investment and enforcement of aspects or elements of competitive neutrality⁶⁸, the Egyptian Prime Minister established, in June 2022, The High Commission For Competitive Neutrality to perform such a task. Such a commission is composed of the Prime Minister, Minister of Justice, Minister of Finance, Minister of SOEs, Minister of Public Business Sector, Minister of Trade and Industry, The Chairperson of ECA, and other executive officials.⁶⁹

What should be noted, in this respect, is that such a step comes months after Egypt's Stand-By Agreement with the IMF where the principle of "competitive neutrality" was highlighted and weeks before Egypt announces that it is nearing a new deal with the IMF to help the Egyptian government face the economic implications of the Russian invasion of Ukraine.⁷⁰ Moreover, with the not so good record of the independence of the ECA, the structure of such a commission is of a concern that it might overlap with the ECA and compromise its independence so that its decisions could be in line with those of "the High Commission."

Concluding Remarks and Recommendations:

The analysis made in this paper has made it clear that the transformation from the state-led economy to a market-oriented one was the major motive and ground for the need of the competition law and the competition authority. Later, the practicalities proved the need for amending the Law in order to grant the ECA with more independence so that it could effectively function its powers. Additionally, the global attention directed to the regulatory governance had its implications when Egypt promised the IMF in its 2016 and 2020 structural reform programs to enhance the independence and accountability of the ECA.

⁶⁸ OECD, 'National Practices Concerning Competitive Neutrality' (2012) <<https://www.oecd.org/daf/ca/50250966.pdf>>.

⁶⁹ The State Information Service, 'Prime Minister Chairs First Meeting of the High Commission For Competitive Neutrality' (27 June 2022) <<https://www.sis.gov.eg/Story/237417/%D8%B1%D8%A6%D9%8A%D8%B3-%D8%A7%D9%84%D9%88%D8%B2%D8%B1%D8%A7%D8%A1-%D9%8A%D8%AA%D8%B1%D8%A3%D8%B3-%D8%A7%D9%84%D8%A7%D8%AC%D8%AA%D9%85%D8%A7%D8%B9-%D8%A7%D9%84%D8%A3%D9%88%D9%84-%D9%84%D9%84%D8%AC%D9%86%D8%A9-%D8%A7%D9%84%D8%B9%D9%84%D9%8A%D8%A7-%D9%84%D9%84%D8%AD%D9%8A%D8%A7%D8%AF-%D8%A7%D9%84%D8%AA%D9%86%D8%A7%D9%81%D8%B3%D9%8A?lang=ar>>.

⁷⁰ 'Egypt Nears Deal on New IMF Loan in Face of Economic Crisis' *Bloomberg* (22 August 2022) <<https://www.bloomberg.com/news/articles/2022-08-22/egypt-says-nearing-deal-on-imf-financing-for-troubled-economy>>.

Thus, while the author agrees with the commentators who have concluded that the socio-political and economic changes that Egypt has experienced after the Arab Spring have been the influencing factor for the evolution of its competition regime, it is also essential to assert the impact of the globalization in this respect.⁷¹ Moreover, while the evolution is, as explained, of a multifaceted nature, the creation was, as shown, of an only economic one.

Finally, based on the analysis made in this paper, there is a set of recommendations the author believes in their significance. Firstly, progressivity, to which we previously referred in this paper, requires the implementation of the Competition Law in the near future on the public utilities directly run by the state currently excludable from the Law, according to Article (9). Additionally, it was criticized that the public utilities indirectly run by the state, through private law firms, could submit an application to request exemption from the Competition Law and it was described as “an exception that significantly exceeds the reasonable limits of unequal treatment”.⁷² Such a recommendation seems to be in its way to be implemented considering the fact that the Egyptian government is working on its comprehensive “State Ownership Policy” to fully implement “Competitive Neutrality.” Finally, having been considered the basic formal source of data and information on the ECA activities, the latest published annual report of the ECA was that of 2019/2020. Thus, more attention should be directed to broaden the publishing process of ECA decisions and activities to support its transparency and credibility and to enable the academia to effectively assess its functioning.

⁷¹ Kim and Choi (n 27).

⁷² Abdellatif (n 4).