

**COMPETITION LAW AND
COMPETITION POLICY: WHAT
DOES EGYPT REALLY NEED?**

Ahmed Farouk Ghoneim

Working Paper 0239

The ERF Working Paper Series disseminates the findings of research working progress to promote the exchange of ideas and encourage discussion and comment among researchers for timely revision by the authors.

The Working Papers are intended to make preliminary research results available with the least possible delay. They have therefore not been made subject to formal review and ERF accepts no responsibility for errors.

The views expressed in the Working Papers are those of the author(s). Unless otherwise stated, copyright is held by the author(s). Requests for permission to quote their contents should be addressed directly to author(s).

As of August 1998, financial support towards the ERF Working Papers Series from the Commission of the European Communities (through the FEMISE Program) is gratefully acknowledged. The views expressed in the Working Papers are those of the authors and do not necessarily reflect the views of the European Commission.

Abstract

There is proliferation in the number of developing countries worldwide adopting a competition law. The evidence available indicates that they face severe problems in implementing competition laws. This paper addresses the question of whether Egypt is in need of adopting a competition law. The paper differentiates between the competition policy and the competition law. Adopting a new institutional economics approach, the paper concludes that Egypt is in definite need of a competition policy. However, when it comes to a competition law, given the absence of incentives among the major stakeholders for implementing such a law and given the weak institutional infrastructure that Egypt currently has, emphasizing the need for having a competition law at this current stage is oversold.

1.Introduction

The adoption of a competition law by different countries, especially developing and transitional economies has experienced an unprecedented growth in the 1990s. In October 2001 there were more than 90 countries with competition laws (WTO, 2001, p. 34). However, the degree of success of enforcing competition law in the majority of developing countries was relatively low, where the overall existing institutional environment prevented those countries from enjoying the benefits of such law (see for example, Stewart, 2001). Competition policy and competition law have been always used in a wrong way to refer to same thing, mainly competition law—a fact that has been neglected as a major element in explaining the failure of competition laws. This paper investigates whether a developing transitional economy like Egypt is in need of a competition law, and if the answer is yes then what kind of competition law is likely to succeed in achieving its objectives, given the overall weak institutional environment. After this introduction, section two provides the theoretical framework of the paper using a new institutional economics (NIE) approach. Section three then applies the theoretical framework to the competition policy in developing countries. Section four moves to the Egyptian economy identifying the status of different industries and gives an overview of the complexity of the institutional environment currently prevailing. Section five poses the question whether Egypt is currently in need of adopting a competition law, identifying the costs and benefits from adopting such law. Section six concludes and provides policy implications.

2.The Theoretical Framework: A New Institutional Economics Approach

In this section we concentrate on three main issues: The importance of institutions in developing healthy market economies; the sequence of institutional building and reform; and finally the NIE approach in explaining how institutions are formed.

2.1 The Importance of Institutions in Developing Healthy Market Economies

There is an overall consensus that institutions are needed to support markets function properly. According to the World Bank Development Report, “Institutions support markets by helping to manage risks from market exchange, increasing efficiency and raising returns hence reducing the transaction costs arising from inadequate

information, incomplete definition and enforcement of property rights” (World Bank, 2001, p. 5). There is also an overall agreement that there is no “one size that fits all” kind of institutions and hence institutions that fit the developed economies are different from that that fit economic environments of developing countries (World Bank, 2001; Hoekman 1997; World Bank and OECD, 1998; Hoekman and Holmes, 1999). Hence, it can be safely argued that developing

countries experiencing transition to market economies are indeed in need of new forms of institutions that are not necessarily those adopted by industrialized countries and that are needed to ensure the well functioning of their infant market economies. This leads us to ask a question of what sequence of institutional building should be adopted?

2.2 Sequence of Institutional Building and Reform

The ultimate goal of institutional reform in developing countries is fairly clear. That goal can be described as creating a market-friendly environment, with supportive government services that ensure its well functioning. But agreement on this ultimate goal does not resolve the crucial issue of how to get there. One way to frame this question is in terms of sequencing.

It is generally agreed that there are clear steps to follow to arrive at the right sequence. The first step is to recognize inadequate institutions that need to be tackled. This means asking which institution is missing or not working properly. After identifying the areas that need institutional building, the next question to be asked is what functions are needed from the new institutions for them to perform. In general, institutions that support market transitions perform three functions: smoothing information asymmetries (that is ensuring that all market participants have access to reliable information), defining and enforcing property rights and contracts, and regulating competition (Islam, 2002). Finally, we should concentrate on the relevant institutional design or structure that fits with the overall institutional environment prevailing in the economy. The heterogeneity of the content of those three steps across different countries led NIE theorists to conclude that there is no blue print for institutional development across all countries. In other words, there is no agreed upon sequence of institutional development (Islam, 2002; Clague, 1997) and that each country should follow the steps identified above following its own priorities and taking in consideration the differences in constitutional orders, cultural endowments, and inherited institutional arrangements – the facts that imply that institutional reforms are certainly path dependant. However, there has been a shared observation by a number of experts that strengthening the government administration and/or civil society is a cornerstone for the success of any institutional reform and should be implemented at the early stages without delay (Clague, 1997).

The NIE approach underlines the need for incentives to undertake reform. This is contrasted with other approaches as the standard “institution free” neo classical approach and the “incentive free” social engineering approach (For more elaboration see Clague, 1997). The NIE emphasizes that what is required are reform strategies based on a careful understanding of the incentives facing actors in the current situation and on an examination of different alternatives for changing the institutional equilibrium (Clague, 1997).

2.3 A NIE Model of Building Institutions

After agreeing on the steps to build institutions and taking in consideration the differences among different countries in identifying their own priorities for institutional reform we provide a simple demand supply model that describes the evolution of institutions.

Once it is decided what type of institution is required, we need to reach the right decision and build consensus for reform. This requires investigating both the demand and the supply sides. For some institutional reforms, the demand is already there, for others, various groups might need to be convinced, and still for others, there is neither opposition nor support. The demand for institutional change is normally made either by agents who expect that new arrangements will provide them with better opportunities of capturing gains that are lost under existing arrangements (greater efficiency), or by actors dissatisfied by the current distribution of income or wealth. Important factors motivating the demand for institutional change are “relative product and factor prices, the law making process, level of technology, and the size of the market.” (Zaki, 1999, p. 22).

On the supply side, institutions are created by principals (political rulers, or the owners of resources) to govern their relationship with other principals and with their agents (citizens, bureaucrats, employees, etc.) and that these principals are motivated to create institutions that maximize their individual utility. Policymakers need to be aware of the incentives the new institutions will create— that is, the rewards and penalties for not complying with new rules and regulations— which will be heavily influenced by the kinds of institutions that exist already (for a similar argument see Islam, 2002). The factors that influence the calculus of the political decision makers will include their vision and knowledge, and the expected costs of designing and implementing the new institutional arrangements— which in turn depend on “getting the factor prices right”. These include the costs of the required physical and human infrastructure) required for the design and implementation of the new institutional reforms. It is worth mentioning here the complexity of this issue since institutional change never occurs in a vacuum. It alters the impact of existing laws, so identifying the groups or individuals the new institutions will affect is crucial. Hence, “getting the prices right” is not confined here to the monetary value, but to the cost of the terms of alternative choices (of institutional arrangements) available in the social, political and economic domains (Zaki, 1999, p. 24).

Integrating the demand and supply sides together imply that the pressure of a competitive market as suggested by North (1991), is the most viable mechanism for selecting the most efficient economic institutions, “forcing out those that fail to perform in a utility maximizing way”. The market’s competitive pressure will select socially beneficial forms of economic organization, regardless of the intentions of the actors. If, instead, the creation of institutions is left in the hand

of any dominant actor— such as the state, or a cohesive self dominant class—the product will be institutional rules that will give that actor a strategic advantage vis a vis other actors, regardless of how socially sub optimal the outcome of these institutions may be. In sum while demand pressures are important, taken alone they are insufficient to explain the path of institutional change. Consideration of the political economy is essential, and the political and economic costs and benefits to the ruling elites are the key to explaining the nature and scope of change. (Zaki, 1999, p. 25).

3. Applying the Theoretical Framework for Enacting a Competition Policy in Developing Countries

With most developing countries experiencing a transitional state to market economies, the need for a competition policy is indispensable. The breaking up of state monopolies and the privatization waves require a complementary institutional infrastructure that is able to ensure a healthy competitive environment (see for example, World Bank, 2001). The diagnosis of a typical economy in transition identifies clearly the need for a competition policy. In many cases, the lack of the required competitive environment is a result of the government policies that prevent markets from being contestable (free exist and entry), impose different restrictions that preserve monopolistic situations, etc (see for example, World Bank, 2001; World Bank and OECD, 1998). But a crucial aspect of embarking on adopting a competition policy is identifying its functions and its design. Here the complexity of the issue begins. In many cases, the governments of developing countries are not clear of the functions of the competition policy they are willing to adopt. In most cases, the functions are spelled out explicitly in their competition laws identifying efficiency enhancement or public interest and or other objectives as the main objective. The design of the competition laws (and not competition policies) are put in line with the identified objective. But competition policy is a much wider and deeper concept than competition law. According to Khemani and Dutz (1995), “Competition policy is defined in the broad sense as consisting of two parts—one which is commonly referred to as antitrust or competition law and the other, which compromises micro industrial policies such as tariff and non-tariff policies, foreign direct investment, unnecessary government intervention in the market place and economic regulation designed to prevent anti competitive business practices by firms. Both parts of the policy impact on economic agents in the market place.”¹ The main problem with developing countries is that they

¹ Another definition following Hoekman and Holmes, 1999: National competition *law* can be defined as the set of rules and disciplines maintained by governments relating either to agreements between firms that restrict competition or to the abuse of a dominant position (including attempts to create a dominant position through mergers). Competition *policy* has a much broader domain. It comprises the set of measures and instruments used by governments that determine the “conditions of competition” that reign on their markets. Antitrust or competition law is a component of competition policy. Other

mix both together. The situation ends up in the failure of their competition laws to implement the objectives of competition policies.

Part of this failure can be explained using the NIE model adopted above. The main emphasis in the NIE has been on “incentives” which motivate both the demand and the supply sides to create the welfare maximizing kind of institution. Moreover, often governments are concerned with the design and efficiency of the new institutional tool, while the building up of the political support among the different stakeholders lags behind (Lamy, 2001). Looking at the status of many developing countries in their transitional phases reveals the following facts: The substantial presence of governmental monopolies, the entrenched interest of several key businessmen in preserving the monopolistic situations after privatization, the absence of consumer moves and awareness. In other words there is absence of incentives to change the status quo. Those three factors are enough to explain why competition laws end up as a failure in enacting a fully-fledged competition policy. The reason is that the law is often tailored to allow for exceptions and those exceptions are often not shielded from political interference and key interest groups influence. Even if the law is rightly implemented, the other cornerstones of a successful competition policy are missing and hence a competition law can never alone succeed in achieving its ultimate aim of enhancing the competition policy (for an extensive elaboration of the absence of other cornerstones of competition policy, see World Bank 2001). In other words, the developing countries adopt some kind of a piecemeal reform, whereas for the success of establishing the right kind of a competitive environment what is needed is a comprehensive reform (for a similar argument though used in another context see Hoekman and Messerlin, 1999).

4.The Case of Egypt

Egypt has embarked on a comprehensive economic structural reform program since 1991. Commonly referred to as the Economic Reform and Structural Adjustment (ERSAP) program that has been implemented in collaboration with the World Bank and IMF, the reform program tackled a wide range of issues related to policy and institutional reform. The main objective of the program was to transform the economy into a market economy and cure the major imbalances that the economy faced in the 1970s and the 1980s. The reform program has been appraised by the international institutions in correcting a number of major imbalances in the Egyptian economy (IMF, 1998). However, the sustainability of

components can include actions to privatize state-owned enterprises, deregulate activities, cut firm-specific subsidy programs, and reduce the extent of policies that discriminate against foreign products or producers. Often the competition policy stance of a government may be determined in part by the international treaties it is a party to, including e.g., regional integration agreements. A key distinction between competition law and competition policy is that the latter pertains to both private and government actions, whereas antitrust rules pertain to the behavior of private entities (firms)(Hoekman and Holmes, 1999).

reform have been skeptical. Moreover, insurance of a full competitive business friendly environment was never achieved. The following anecdotes identify the lack of the expected competitive environment.

The privatization program in Egypt has suffered lately a number of delays. Moreover, a number of the privatized companies remain “semi privatized” where the government still owns the lion’s share in their capital. The size of the state owned enterprises remain large by developing countries’ norms (World Bank, 1995). The tariff and non-tariff barriers remain substantial. The inflows of FDI remain constrained by various bureaucratic and red tape measures. The labor market lacks the competitive institutional pillars that ensure full flexibility. Box 1 identifies the lack of competition in some key service sectors.

Moreover, there are a number of regulatory measures that impede competition and are not tackled by competition law but rather related to trade facilitation. Examples include the technical standards which are predominantly related to food products, engineering goods, and consumer products. The majority of these national standards have no equivalence to international standards. For instance according to the latest WTO Trade Policy Review Report, there were around 1,000 standards in Egypt, of which only 25 to 30 percent are in conformity with international standards (WTO, 1999). Other measures include quality control measures where for example Egypt raised the number of imported products subject to quality control measures from 69 in 1992 to 182 in 1998. While such measures are necessary to ensure minimum health and safety standards, they may have been applied in a discriminatory fashion depending upon the use of the imported items (Zarrouk, 1999, p. 4). Other examples include the cumbersome administrative customs procedures where the average customs clearance transaction in Egypt requires 25-30 stages and takes from one day to several weeks (Zarrouk, 1999, p. 4).

To sum up, it is clear that Egypt lacks the competitive environment that allows competition to be enhanced and creates the required business friendly environment. Tables 1, and 2 identify the status of two key industries in the Egyptian economy where mergers and acquisitions have lately increased. Other observers asserted that the Egyptian economy has experienced a large number of mergers and acquisitions lately that might not have been properly investigated and could have negative anticompetitive effects where the number of mergers and acquisitions reached more than 90 cases in different sectors in the last five years despite the slow down of the Egyptian economy (see for example, Ali- El Dean and Moheildin, 2001, p.3; Al-Ahram newspaper 03/09/2002). But the question is whether the government and the major key stakeholders are in favor of adopting a comprehensive competition policy? To answer this question we need to check three issues, namely:

- The incentives of the government to create this competitive environment
- The incentives of business stakeholders to attain the similar objective
- The role of the consumers

As can be identified from table 1, there are 17 players in the local steel industry. In October 1999, Al-Ezz Rebars acquired a controlling stake in Alexandria National Iron and Steel Company, the largest steel producer in Egypt. It acquired 28 percent of the company. Al-Ezz's purchase has enabled it to enlarge its share of the Egyptian steel market to 67.1 percent. EZDK's objective is to maintain its dominance over the Egyptian steel market share by holding on to its increasing market share. Moreover, the Alexandria National Iron and Steel Company's Board of Directors appointed Mr. Ahmed Ezz joint Chairman and Managing Director of Al Ezz Steel and Alexandria National Iron and Steel Company. The move was an attempt to consolidate both companies fully. The brands of the two companies have been entirely unified as both companies produce rebars under the name EZZ-Dekhila and use the same sales force. (EFG-Hermes, 2001). Turning to our initial point of enacting a competition policy in the field of steel industry we find that there are several entry barriers to the steel industry in Egypt. Firstly, quality steel production requires sizeable capital. Secondly, local capacity exceeded consumption in 2000. Moreover, the fact that the new merger makes a single company controls almost 60 percent of the total local market seriously discourages new players from attempting to enter the market (EFG-Hermes, 2001).

Steel prices have a tendency to be fairly elastic. However, the new merged company 67.1 percent market share, combined with the fact that the company is a quality steel producer, give it a considerable flexibility when setting prices. The difference in price between the steel produced by the merged firm and the other market players reach 10 percent with the merged firm prices normally at the higher end of the market (EFG-Hermes, 2001).

The Cement Industry has seen recent moves of acquisitions as well which raised the share of one firm (Suez Cement) to 28 percent after buying Tourah in the year 2000. Table 2. identifies the different market shares of local cement producers in Egypt.

Other sectors have experienced several mergers and acquisitions (both horizontal and vertical) in the fields of the audiovisual sector which created an intensive need among the groups affected to call upon the government for enacting a competition law as they saw it as the panacea that can solve their problems (Ghoneim, 2002). Other sectors are experiencing similar developments. For example, the wood industry suffers from a dominant position in the wholesale

distribution (Ahram El Iktsady, No. 1746, 2001). Indeed, the size of the private sector, through privatization, has increased significantly in Egypt. According to Ali El Dean and Mohieldin (2001), it is now responsible for 66 percent of total investment and 72 percent of GDP.

It is clear that the government is rather pushed to enact a fully comprehensive competition policy which arises from the international institutions' pressures. The lax will of the government to embark on an effective trade policy (El-Mikawy and Ghoneim, 2002) raises the question of what the objectives are behind having a protectionist trade policy and whether the government uses trade policy as a tool to redistribute income or to shield its SOEs from foreign competition, or whether other vested interests were able to convince the government of its lax trade liberalization. Hence, the incentive of the government for enacting a comprehensive competition policy is absent even though, willingness to enact a competition law has been raised since 1995 where the first draft was ready and has been pending for approval by the Parliament since 1997.

The business community in Egypt is divided into various factions with conflicting interests. They are mainly divided into industrialists and importers. While the former would like to see some kind of special tariff protection for domestic industries, importers and agents of foreign manufacturers wish to do away with all such privileges. The matter is further complicated by the fact that domestic manufacturers wish to exclude imported inputs needed for their operations from such protection—an exemption which is of course strongly opposed by domestic producers of such imports (Zaki, 1999, p.132). The resolution of such conflicts requires collective action, which entails sacrifices on the part of certain groups and individuals. But there is no incentive for the members of the business community to change the status quo. The free rider problem inhibits the cohesion of capitalist, even when facing potential threats to their class from other social forces. (Zaki, 1999, p.132). The greater involvement of the industrialists (versus importers) in the decision-making process (37 businessmen are now members of the Parliament) shows that the government has started to take in to consideration their interests. However, as identified by some observers such greater involvement of businessmen in the decision-making process has not precluded the state from acting unilaterally at its discretion, sometimes against business interest in pursuit of its own goals (Zaki, 1999, p. 136). Other commentators have argued that the lax consideration of enacting a competition law in Egypt was because of the pressure coming from the private sector, which feared the enacting of such law for several reasons (Ali El Dean and Mohieldin, 2001).² In other words, the absence of effective collective action

² According to Ali El Dean and Mohieldin, 2001, p. 27: "The issuance of a competition law has been facing some resistance, this time not from the state but from the private sector, that has various concerns regarding this law, such as:

that calls for a comprehensive competition policy complemented by the lack a clear transparent framework for lawmaking in Egypt was translated in the absence of incentives on interested parties in calling for a full comprehensive effective competition policy.

Consumers in Egypt can be described to have no role in enacting competition policy. There is no law for consumer protection, consumer protection NGOs are weak and have no significant role in policy advocacy and they lack collective action initiatives.

Hence, it can be safely argued that the three main stakeholders in enacting an efficient competition policy lack the incentives to create such a policy. The role of the affected groups from the lack of competition has been strengthened lately, however they are not strong enough and myopic in believing that a competition law can cure their ills.

5.Does Egypt Need a Competition Law?

Before answering the main question of whether Egypt is in need of a competition law we have to differentiate between competition policy and competition law. Certainly every economy is in need of a competition policy that enables the business environment to flourish according to fair set rules of competition. Hence, Egypt is no exception when we argue that it is in need of a competition policy. The various anecdotes cited in Section four assert the fact that Egypt lacks many important aspects of an effective competition policy. But this does not answer the question of whether Egypt is in need of a competition law or not? Observers that have discussed the case of Egypt were divided into two main groups. Some argued that Egypt is in need of a competition law while others argued against adoption of a competition law at the current status of the economy.

Among the first group were Ali-El Dean and Mohieldin (2001) who fell in the same trap of mixing up competition policy with competition law. They concluded that Egypt is in need of competition law but posed the question of what kind of competition law would be suitable for Egypt³. Others who argued in

the reverse direction asserted that Egypt should not embark on adopting a competition policy before taking into consideration its anticipated costs (again probably mixing up competition policy with competition law). According to Aranson (1999), “Egypt should not embark upon the enactment of a competition policy without serious consideration of its anticompetitive consequences. As has been argued by some, a nation open to foreign trade need not fear market power or its alleged effects. Where local monopolies or cartels persist, they more likely to arise from government regulation and the political construction of entry barriers than from normal market forces.”

In trying to answer the question of whether Egypt should adopt a competition law or not we have to emphasize that competition law is just one element of a full comprehensive competition policy which embraces a large number of institutional and policies that can either support or adversely impinge the application of full comprehensive competition policy as identified in Box 2.

As has been discussed in Section four, it is crystal clear that Egypt has deficiency in the implementation of a number of policies identified in Box2. that are crucial for a successful implementation of a competition policy. Moreover, on the institutional front there are a number of conflicting aspects that lend the whole institutional setup to be described as a poor setup for the implementation of a competition policy. We mention here just a few examples, which are either loopholes in the existing draft of the competition law or are provisions in other sets of rules and regulations that contradict with the objectives of the competition law.

Starting with the existing final draft of competition law, we find that it has adopted a hybrid set of rule of reason as well as a per se approach. It identifies a threshold of 30 percent as a starting point to investigate the possibility of existence of a dominant position (per se approach) complemented by other rule of reason measures to fully examine a case. This is a reasonable approach given the full set of complexities available in the Egyptian economy. The main objective has been identified as enhancing economic efficiency. However, the identification of the 30 percent threshold is not justified by any means and it is not clear who set it or why it has been set. Debates in the newspaper have elaborated that the business community has not been consulted on that issue. The above examples of the two industries identified in tables 1 and 2 show that this threshold is not likely to be adopted in many cases unless the competition authority starts to include the rule of reason approach. There are numerous industries in Egypt that are characterized by full monopoly including alcoholic beverages, potato chips, etc. This means that the simple per se approach is likely

1. Fear of government intervention in a new form under the notion of protection of competition.

2. Possible abuse of the law by particular firms, that may use it, unjustifiably to charge competitors with unfair trade practices.

3. The law will cover only registered firms, leaving informal activities and smuggling intact.

4. Those that will be responsible for implementing the law may not have sufficient knowledge of the idiosyncrasies and peculiarities of particular segments of the market.

5. Just implementation of the law may be hindered by corruption and profiteering”

³ Following this point of view is that of some members of the WTO where it was mentioned that “Experience had shown that it was important to introduce competition policy at an early stage of development because, particularly in the context of privatization, monopolies and other

anticompetitive tendencies tended to take root if inadequate instruments existed to address them.(WTO, 2001, p. 14).

to be idle and the competition authority will have to follow the complex rule of reason approach which complicates the investigation procedures.

The existing draft has not mentioned the relation between the law itself and other sectoral regulations and has not identified the relationship between the competition authority and the sectoral regulatory bodies. This loophole is of crucial importance as it can create lack of coordination in the future and sends conflicting signals to the affected market participants.⁴

The policy advocacy role of the competition authority has not been stressed in the draft law. Policy advocacy refers to activities undertaken by staff of the competition agency or related authority to influence the design and/or implementation of government policies, legislation or administrative actions that affect competition (WTO, 1999). The absence of emphasis on this role means that it is likely that the competition authority's voice will not be heard effectively and its role in developing the rules and regulations concerned with competition will not be significant.

The current draft of the competition law was silent regarding the issues related to intellectual property rights. This is a major drawback which is likely to create several future problems when competition policy conflicts with the intellectual property rights issue.⁵ Despite the fact that the TRIPS agreement has given the right to competition authorities to include certain provisions in their national laws to preserve the adverse effects of monopolization of intellectual property rights (Hoekman and Holmes, 1999), the drafters of the Egyptian competition law seem to have missed this issue despite its vital importance.

The law itself contradicts with several provisions of other laws and regulations. For example, Law 8/1997 that is concerned with promotion of investment identified in one of its provisions that it provides generous tax breaks for firms in the audiovisual sector where their capital exceeds 200 million L.E. This is a clear invitation for mergers and acquisitions given that the existing firms in the field of cinema film production do not acquire such capital (Ghoneim, 2002, forthcoming). The competition law on the contrary calls for controlling the excess of market shares of firms by providing this threshold of 30 percent. In the

Cinema Industry, for example, a firm that controls now about 30 percent of the ownership of cinemas, and has been created recently following Law 8/1997. Is it likely to face the accuse of adopting anticompetitive behavior? Or is it likely to be given a waiver based on stimulating economic efficiency and enjoying economies of scale? (see Ghoneim 2002 for more elaboration on the structure of the Cinema Industry market).

The absence of a consumer protection law adds to the possibility of the failure of enacting a competition law. The draft of the competition law has included the consumer interest as one of the objectives to be preserved when discussing economic efficiency. But the question is: how are the perceptions of the consumers going to be channeled in the absence of a consumer protection law and active movement of NGOs in that field?

The information infrastructure in Egypt is rather weak. A fact that has severely affected the process of decision-making on several occasions. A successful implementation of competition law requires the presence of a comprehensive database on the micro level.

Table 3 summarizes the major loopholes in the current draft competition law and provides some solutions for its drawbacks. This leads us to the conclusion that adoption of a competition law in Egypt with such a weak policy and institutional infrastructure, absence of incentives among major stakeholders, and weak collective actions among potential gainers from the adoption of such a law is likely to result in a failure of enacting the law, if adopted. In addition to such specific characteristics of the Egyptian economy, we add the common features among developing countries, which include the lack of human capacity and physical infrastructure required for a successful implementation of such law. Despite the fact that our conclusion might be surprising to many observers, it should be emphasized that even international institutions have backed up this argument. For example, in the World Bank Development Report 2001 it has been asserted that "In resource-constrained countries governments may benefit from focusing on removing barriers to entry and exit in markets and opening the economy to international competition before turning their attention to building competition laws and agencies" (World Bank, 2001, p. 135) or as it has been put by OECD "Competition policy instruments are blunt not refined surgical instruments and have to be handled with care. For countries without experience in this field, a rules-based approach to competition would be appropriate and there should be the fullest interplay for market forces and mobility of resources, deregulation and lowering of barriers to entry as instruments for promoting competition rather than law itself" (OECD, 1994, p. 14). The main fact that has to be emphasized is that for a competition policy to be effective there is need for more than just simply enacting a competition law. There is a need for effective enforcement, a well thought out agenda in terms of the relationship between

⁴ For example, the failure to develop strong cooperation mechanisms between the competition authority and regulatory authorities also led to many problems and conflicts, as was the case in South Africa between the competition Authority and the Banking Regulator. For more details see Stewart (2001).

⁵ This not only the case in Egypt. It is a general case in developing economies where the prohibition of abuse on intellectual property monopoly is not evident in many competition laws of developing countries. While in developed countries it exists in the EU as a Technology Transfer Directive in which abuse of IP monopoly is strictly prohibited. The same applies to the US Anti-trust law. The case against Microsoft is a recent example. For more details on the negative impact of the absence of such a provision in developing countries see Stewart (2000).

competition policy and other government policies and finally cooperation of the business community in the development of policies and institutions to implement them (See OECD, 1994). No such factors seem to be well represented in the Egyptian economy when it comes to the issue of competition policy. Moreover, there are examples of countries that have been successful in having an effective competition policy without the existence of a competition law, and there are examples of such policies that rely on instruments other than competition legislation (e.g. a high degree of market openness supplemented by sectoral rules and other instruments, where necessary as in Hong Kong and China (WTO, 1999))

There are some arguments which assert the need to adopt a competition law, especially that the trade policy is not likely to cure the ills of lack of competition in the services and non tradable sectors (for a similar argument see Ali El Dean and Moheildean, 2001, p.7; Hoekman, 1997; Pittman, 1999; Hoekman and Holmes, 1999). The argument emphasizes that because of the closed nature of the economy, and the inability of the trade policy to invoke the required level of competition in such sectors that remain shielded from international competition, then the competition law is likely to play a positive role here. Scrutinizing this argument reveals that the adoption of a competition law in this case is a second best option, which is not likely to yield the optimistic results identified. The reason is that as has been mentioned by several authors, given the limited resources and lack of human capacity in developing countries, the main concern of their governments should be to concentrate on eliminating the barriers to entry and exit thus making the markets more contestable (see for example, World Bank 2001, World Bank and OECD, 1998; Hoekman, 1997, Pittman, 1998). Moreover, it has been emphasized by some practical commentators and international organizations that it is so difficult or even impossible to determine precisely the stage of economic development at which it was most appropriate or under what conditions competition legislation should be adopted (WTO, 2001, p. 17). If a competition law is to be adopted in an economy that refuses to open up effectively to the world, it is likely that the same vested interests behind the refusal of opening up will dominate the process of decision making when it comes to the implementation of competition law, hence leading to an idle tool in the economy. However, it should be asserted that in other cases, anticompetitive practices can completely close a country's markets to inbound trade and investment. This happens as a result of the tolerance of some governments of private domestic anticompetitive practices and allowing favored domestic companies to block out competing foreign goods or services. This strategy can wholly or partially nullify the benefits of an open trade regime (Coalition for Open Trade (COT), 1997, p. 3).

6. Conclusions and Policy Implications

The paper concludes that the impact of adopting a competition law should not be oversold. In other words, Egypt's adoption of a competition law is not likely to be effective if other pillars of competition policy remain absent. The lack of incentives among the key stakeholders is the main reason behind the expected failure of adopting a competition law. Given the limited resources available to the Egyptian economy, the government of Egypt should opt for a first best approach by eliminating the barriers that negatively affect competition in various goods and services markets. Hence, it should embark on a serious trade liberalization policy regarding tradable goods and should work on removing existing barriers to FDI in services and other non- tradable sectors. Finally, it should continue creating sectoral regulations that fit the nature of each sector if some sort of competition rules need to be clear for the players in that particular field especially in the area of services and non-tradeables where absence of a competition law is a major deficiency⁶.

If Egypt should go for the second best approach of the necessity of adopting a competition law for example due to external pressures⁷, then the design of such a law should follow certain principles:

▪ *Simplicity*

As asserted by some institutional economists, the developing countries in general have a different institutional setup from that of a developed nation. For example, there is a higher cost of public funds due to an inefficient tax system, a higher cost of auditing and control due to a lack of human and financial resources, lower transaction costs of side contracting due to less control, greater family ties or traditions, weak technical knowledge, and greater asymmetries of information (Laffonot, 2000; Islam, 2002). This leads to the necessity of adopting some sort of competition law that fits in general with the overall institutional environment prevailing in Egypt and does not necessarily follow the competition law of the major trading partner as has been asserted in a general context by some economists.

The law should concentrate on a few issues that are likely to confront a transitional economy like Egypt like horizontal integration. With respect to most other practices that may be of concern (e.g. vertical restraints, actions by dominant firms, and mergers), apparent restrictions on competition may be

⁶ This view is challenged by some experts who fear from the substitution of a comprehensive law by sectoral regulations which is likely, from their point of view to create more uncertainty and inconsistency in the application of laws (see for example, Fels, 2001, p. 16).

⁷ Among the most important pressures are its regional agreements with other partners (e.g. EU-Mediterranean Partnership Agreement and the COMESA) which call for harmonization of national competition laws.

justified on efficiency grounds (see Hoekman, 1997). Most laws therefore allow competition agencies to make judgments in such cases following a so-called “rule of reason” approach. Hence, in the Egyptian case, the law should concentrate on horizontal restraints to competition.

In addition and in light of the human resources constraints the competition authority may want to focus its efforts on issues as cartels and exclusive supply or distributional contracts. Other issues such as price discrimination, predatory pricing or complex vertical restraint cases are more complicated and less critical.⁸

- ***Progressivity***

The communication from Trinidad and Tobago which contributed to the Working Group on the Interaction between Trade and Competition Policy in 2001 has identified a clever feature for introducing competition laws in developing economies, mainly progressivity. Progressivity, refers to the approach or methodology in developing and implementing a competition regime. It allows for gradual and selective introduction of instruments to control anti-competitive behavior. This allows the authority, other government departments and stakeholders the time to accommodate and adjust to the changes that are required. Further, as the economy develops, the regime matures, the instruments could be deepened in this approach. Progressivity is particularly important as it allows a country time to build a firm foundation for the competition regime by fully assimilating one aspect of competition rules before progressing to the next.⁹

- ***Independence of the Competition Authority and its Role in Policy Advocacy***

To ensure effectiveness of the competition law, the competition authority must enjoy independency and shielding from political and other vested interests’ influence (for a similar argument see World Bank, 2001). In the case of Egypt, the case is not clear as the law has asserted the independency of the competition authority where the head is appointed by the Prime Minister. However, the

authority is likely to follow the Minister of Trade and Supply which contradicts with its independency as a separate body. Despite the fact that other countries follow in many cases the same procedures (see WTO, 1999), where they emphasize the independency of their competition authorities and at the same time they follow different ministries, the case of Egypt asserts that this is not likely to be the case as the law has given the concerned Minister certain responsibilities to undertake. This means in practice that the authority is not independent and is not shielded from political influence. A major factor that is likely to affect the transparency and predictability of this authority.

Most of the competition agencies in countries with competition legislation are engaged in competition advocacy. A case that has been mentioned with no emphasis in the Egyptian draft law (there isn’t even a complete article that is devoted to this issue).¹⁰ The absence of emphasis on this role along with the expected weak independency of the competition authority is not likely to yield positive results. Hence strengthening those provisions are crucial for enhancing the role of competition authority. A proactive stance should be adopted by the Competition Authority to promote competition by attacking not only infringements of the law but also institutional arrangements and public policies that interfere with the appropriate functioning of markets (for a similar argument see World Bank and OECD, 1998, p. 8; OECD, 1994, p. 40). Moreover, through competition advocacy the competition authority can influence government policies by proposing alternatives that would be less determinable to economic efficiency and consumer welfare. It can serve as a buttress against lobbying and economic rent seeking behavior by various interest groups. And it can foster greater accountability and transparency in government economic decision-making and promote sound economic management and business principles in both the public and private sectors (World Bank and OECD, 1998, p. 93).

- ***Building the Required Information Database***

The importance of strengthening capacity to collect and analyze information cannot be over emphasized. A common mistake made by governments involved

⁸ For a similar argument in a general context of developing countries see World Bank, 2001, p. 141-142.

⁹ Perhaps a practical application of the concept will be instructive. For instance, addressing “abuse of dominance” involves such complex rule of reason procedures that it may consume too many of the economy’s resources at an early stage. Instead, the competition authority could focus on consumer protection, so that consumers can gain a positive understanding of competition law and how it works in their favor. This approach would also allow the personnel in a new Competition Authority the time they need to ride the learning curve. They could get technical training during this time, accessing technical assistance that is available, and also do internships in more mature competition authorities. After a critical mass of experience has been garnered, the country is then able to introduce the more complex aspects of anti-competitive agreements and “abuse of dominance” provisions. At that phase, a greater degree of focus could be given to sanctions.(WTO, 2001).

¹⁰ There may be both an explicit, statutory basis for the competition agency’s competition advocacy functions and an implied or informal basis. The laws of some countries, such as Canada, Italy, the Republic of Korea, and the Russian Federation give the competition agency a specific mandate to state its views on particular matters to the appropriate ministry or regulatory agency, for example, on the restructuring of telecommunications industry. In other countries the law may be silent about the role of the competition agency in such areas. Unless the law forbids participation by the competition agency, however, the agency should, through its law enforcement role actively seek opportunities to state the case for competition in the public forum. This has been largely the practice in France, Germany, and the United States, for example. It is unlikely that any other party would do so, or be as effective. The benefits to the economy and to consumers from effective competition advocacy are almost certainly to be significant, at least as great as those from more traditional competition enforcement (World Bank, 1998, p. 94).

in regulatory reform is to reduce the ability of agencies to compile the information needed to monitor the impact of reforms (Hoekman and Messerlin, 1999). It should be noted that the absence of information in many sectors that are affected by competition may be more a consequence of old regulations (secrecy, non transparency, etc.) and market closure than an intrinsic feature of the economies of developing countries, Egypt included. Hence, the competition authority needs some sort of statutory authority to force firms to supply necessary information.

▪ ***Building the Right Support and Public Awareness***

The government needs to set the objectives of the law both in terms of substance and process. On substance, a system that can both regulate, and ensure effective competition is needed to allow fair and sustainable development. On process, the system should ensure interconnections between governments, markets and civil society (Lamy, 2001). Experiences of other countries has shown that the issue of public awareness is of crucial importance for the success of the law to be implemented. Without informed stakeholders, particularly the business sector and consumer organizations, the law lacks meaning.¹¹

We conclude by asserting that comprehensive versus piecemeal reforms are needed to ensure a better allocation of resources. By comprehensive, we mean both in terms of policies and institutionality in order to arrive at some sort of general equilibrium in terms of reforms undertaken (for a similar argument see Hoekman and Messerlin, 1999). Moreover, the general equilibrium should cover both services and goods, tradables and non-tradables to consider the interaction effects between both sets. Actions taken in services markets can affect competition in goods markets and vice versa. To have an effective competition law, we need to have the other major pillars of competition policy functioning in the right way. Hence we need to have a credible trade liberalization policy, elimination of entry and exit barriers in different markets. Opening up trade in goods, services, and having a strong informational database can pave the way for other far reaching institutional changes by influencing demand for institutions as well as the supply of new ideas and designs. The major lesson learned is that there is a need to be consistent in the set of the policies adopted by the government to ensure an effective competition law if adopted.

References

- Ahram El-Iktsady, Issue No. 1746 (24/6/2002).
- Ali El Dean, Bahaa and Mahmoud Mohieldin. 2001., “On the Formulation and Enforcement of Competition Law in Emerging Economies: The case of Egypt”, ECES Working paper no. 60, Cairo: ECES
- Aranson, Peter H. 1999. “Wealth Increasing law, with Applications to Egypt” in ECES, ‘Growth Beyond Stabilization: Prospects for Egypt’, Conference Proceedings.
- Clague, Christopher. 1997. “The New Institutional Economics and Institutional Reform”, in Christopher Clague (ed.) *Institutions and Economic Development: Growth and Governance in Less Developed and Post Socialist Countries*, John Hopkins: The John Hopkins University Press
- Coalition for Open Trade (COT). 1997. “Addressing Private Restraints of Trade: Industries and Governments Search for Answers Regarding Trade and Competition Policy”
- EFG-Hermes (2001), Egypt Steel Industry Report
- EFG-Hermes (2001), Egypt Cement Sector Report
- EFG-Hermes (1999), Egypt Banking Sector Review Report
- EFG-Hermes (1999), Egypt Pharmaceutical Sector Review Report
- El Ahram Newspaper (03/09/2002)
- El-Mikawy, Noha and Ahmed Ghoneim. 2002. “The Political Economy of Trade Reform in Egypt”, paper presented at the Center for Economic and Financial Research and Studies Conference held on the 26-27th May 2002.
- Fels, Allen. 2001. “Competition Policy: Lessons from International Experience”, ECES Working Paper No. 62, Cairo: ECES.
- Ghoneim, Ahmed F. 2002. “Audiovisual Sector and the GATS: Case Study of Egypt, Morocco and Tunisia”, Research Project undertaken in collaboration with the World Bank and the Institute of International Affairs, Italy (forthcoming)
- Hoekman, Bernard. 1997. “Competition Policy and the Global Trading System: A Developing- Country Perspective” Policy Research Working Paper No. 1735.
- Hoekman, Bernard and Peter Holmes. 1999. “Competition Policy, Developing Countries and the WTO”, World Bank Working Paper. Washington D.C.: World Bank.
- Islam, Roumeen. 2002. “Institutions to Support Markets.” *Finance and Development*, March 2002, Vol 39, No. 1.
- International Monetary Fund. 1998. “Egypt: Beyond Stabilization: Toward a Dynamic Market Economy”, IMF Occasional Paper No. 163, Washington D.C.: IMF

¹¹ For evidence on the consequences of lack of awareness on the functioning of the competition law see Stewart 2001.

- Khemani, Shyam and Mark A. Dutz . 1995. "The Instruments of Competition Policy and their Relevance for Economic Development", in Claudio Frischtak (ed.) *Regulatory Policies and Reform in Industrializing Countries*.
- Laffont, Jean-Jacques. 2000. "Institutions, Regulation and Development", ECES Distinguished Lecture Series 16, Cairo: ECES.
- Lamy, Pascal. 2001. "The Multilateral Trading System and Global Governance after Doha" Speech delivered at the German Council on Foreign Relations, Berlin, 27 November, 2001.
- North, Douglass C. 1990. *Institutions, Institutional Change and Economic Performance*, Cambridge: Cambridge University Press.
- OECD. 1994. "Competition Policy: 1994 Workshop with the Dynamic Non-member economies" OECD Document Number: OCDE/GD(96)59.
- Pittman, Russell. 1999. "Competition Policy: Especially for Developing Countries" Economic Perspectives, USIA Electronic Journal, Vol. 4, No. 1.
- Stewart, Taimoon. 2000. "The Functioning of Patent Monopoly Rights in Developing Economies: In Whose Interest?" Jaipur: CUTS Centre for International Trade, Economics & Environment.
- Stewart, Taimoon, 2001. "Public Awareness is the Key", CUTS Regular Letter, No. 5 December 2001.
- World Bank and OECD. 1998. "A Framework for the Design and Implementation of Competition Law and Policy", Washington D.C. and Paris.
- World Bank. 2001. "Building Institutions for Markets", World Bank Development Report: Oxford: Oxford University Press published for the World Bank.
- World Trade Organization. 1999. "Trade Policy Review of Egypt," Geneva, August, 1999.
- World Trade Organization. 1999. "Overview of Members' National Competition Legislation" Working Group on the Interaction between Trade and Competition Policy" WT/WGTCP/W/128.
- World Trade Organization. 001. "Report (2001) of the Working Group on the Interaction between Trade and Competition Policy to the General Council," WT/WGTCP/5.
- World Trade Organization. 2001. "Communication from Trinidad and Tobago: Working Group on the Interaction between Trade and Competition Policy" WT/WGTCP/W/179
- Zaki, Moheb. 1999. *Egyptian Business Elites: their visions and investment behavior*, Cairo: Konrad Adenaur Stiftung and the Arab Center for Development and Future Research.
- Zarrouk, Jamel. 1999. "Dealing with Regulatory Regimes and Trade Costs in MENA Region". Paper prepared for the Workshop on Preparing for the WTO 2000 negotiations: Mediterranean Interests and Perspectives, Cairo 14-15 July, 1999 organized by ERF jointly with IAI and the World Bank.

Box 1. Lack of Competition in Key Services Sectors

In Egypt the lack of competition in services that facilitate trade reduces the gains from the liberalization of merchandise trade. Only Egyptian nationals are allowed to engage in the business of importing, which clearly reduces competition in distribution and competition in domestic markets. Also, the lack of competition in the provision of port services in Egypt, which are provided by public companies, has resulted in handling and storage fees 30% higher than in neighboring countries, which have broadly similar quality of services. There is also no competition in maritime shipping in Egypt which is monopolized by a state owned firm. According to a 1994 survey, the cost of shipment and handling in Egypt of a standard container was 20 to 30% higher than in the nearby countries of Jordan, Syria and Turkey (World Bank, 2001, p. 145).

Box 2. Essential Policies for a Comprehensive Competition Policy

The following are sets of policies that are crucial for having a comprehensive competition policy

- Trade policy, including tariffs, quotas, and subsidies, antidumping actions, domestic content regulations, and export restraints.
- Industrial policy
- Regional development policy
- Intellectual property policy
- Privatization and regulatory reforms
- Science and technology policy
- Investment and tax policies
- Licenses for trades and professions.
- In addition, various sector specific policies in environment, health care, telecommunications, cultural industries, financial markets, and agricultural support schemes tend to have measures more likely to restrict than to promote the objectives of competition policy (World Bank and OECD, 1998, p. 8).

Table 1. Market Share of Local Steel Rebar Producers, 2000

Supplier	Production in (000) Tons	Market Share (%)
Ezz Steel	1147	27.5
Alex. National Iron & Steel	1375	33.2
Ezz-Dhekhila	2522	60.7
Int'l St. R.M.-Beshay	275	6.6
Kouta Group	360	8.6
Dela Steel	91.8	2.2
Menoufeya Steel	46	1.1
Al-Said Steel	50	1.2
Suez Co. Al-Koumy	82	2.0
Ayyad Rolling	36	0.9
Misr Iron & Steel	24	0.6
Sarhan Steel	0	0.0
Egyptian Iron& Steel	56.2	1.3
Al-Temsah Steel	24	0.6
Egyptian Copper Wk	34.2	0.8
Al-Arabi Planet Sharkawi	33	0.8
Egyptian Metal Hatem	80	1.9
National Metal Ind.	16.9	0.4
Total	3731.1	89.65
Imports	440	10.55

Source: EFG-Hermes Report (2001)

Table 2. Market Share of Cement Producers in Egypt in 1999

Company	Market Share (%)
Suez Cement	14
Tourah	13
Suez and Tourah	28
Assuit Cement Co. (CEMEX)	13
Helwan Cement Co.	11
Egyptian Cement Co. (ORASCOM)	12
Amreyah Cement Co. (CIMPOR)	9
National Cement Co.	11
Beni Sweif Cement Co. (Lafarge)	5
Alexandria Cement Co. (Blue Circle)	3
Misr Beni Sweif Cement Co.	0
Misr Cement Qena Co.	0
Sinani Cement Co.	0
Total Domestic Supply in 1999 (22.5 million tons)	100
Total Demand in 1999 (26.7 million tons)	
Imports	0

Source: EFG-Hermes (2001)

Table 3. Major Loopholes in the Current Draft of the Competition Law and Some Suggested Solutions

Loopholes	Solutions
30% as a threshold for dominant position situation	Increase the threshold after consultation with business community and taking the status of the existing firms' situation in consideration
Absence of the relationship between the law and other sectoral regulations.	Need to be clearly stated and identified which rules and regulations will prevail in sectors that have their own regulations.
Not emphasizing the policy advocacy role of the competition authority.	Requires a separate statutory provision with clear mandate for the competition authority.
Contradictions with some provisions of other major laws.	Clarify and solve this conflict.
Absence of provision related to intellectual property rights monopoly.	Should be included as a separate provision.
Vagueness of including consumers' representatives in the board of the competition authority.	Should be stated clearly.
Vagueness of complete fledge independency of the competition authority.	Emphasize this independency by eliminating the power given to the concerned minister and delegating it to the head of the competition authority.