The Merger Control Review

Third Edition

Editor

Ilene Knable Gotts

Law Business Research

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This article was first published in The Merger Control Review, 3rd edition
(published in August 2012 – editor Ilene Knable Gotts).

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-907606-40-3

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: +44 844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ACCURA ADVOKATPARTNERSELSKAB

ADVOKATFIRMAN CEDERQUIST KB

ADVOKATSKO DRUZHESTVO ANDREEV, STOYANOV & TSEKOVA IN COOPERATION WITH SCHOENHERR

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CONTENTS

EDITOR'S PREFACE

Perhaps one of the most successful exports from the United States has been the adoption of mandatory pre-merger competition notification regimes in jurisdictions throughout the world. Although adoption of pre-merger notification requirements was initially slow – with a 13-year gap between the enactment of the United States' Hart-Scott-Rodino Act in 1976 and the adoption of the European Community's merger regulation in 1989 – such laws were implemented at a rapid pace in the 1990s, and many more were adopted and amended during the past decade. China and India have just implemented comprehensive pre-merger review laws, and although their entry into this forum is recent, it is likely that they will become significant constituencies for transaction parties to deal with when trying to close their transactions. Indonesia also finally issued the government regulation that was needed to implement the merger control provisions of its Antimonopoly Law. Many of the jurisdictions that were 'early adopters' have either refined their processes and procedures in substantial ways or have proposals pending to do so, typically to conform their regime with the pre-merger regimes of other jurisdictions (e.g., Brazil, Canada and the UK). This book provides an overview of the process in each of the jurisdictions as well as a discussion of recent decisions, strategic considerations and likely upcoming developments in each of these. The intended readership of this book comprises both in-house and outside counsel who may be involved in the competition review of cross-border transactions.

As shown in further detail in the chapters, some common threads in institutional design underlie most of the merger review mandates, although there are some outliers as well as nuances that necessitate careful consideration when advising clients on a particular transaction. Almost all jurisdictions either already vest exclusive authority to transactions in one agency or are moving in that direction (e.g., Brazil, France and the UK). The US and China may end up being the outliers in this regard. Most jurisdictions provide for objective monetary size thresholds (e.g., the turnover of the parties, the size of the transaction) to determine whether a filing is required. Germany provides for a *de minimis* exception for transactions occurring in markets with sales of less than €15 million. There are a few jurisdictions, however, that still use 'market share' indicia (e.g., Bosnia

and Herzegovina, Colombia, Lithuania, Portugal, Spain, Ukraine and the UK). Most jurisdictions require that both parties have some turnover or nexus to their jurisdiction. But, there are some jurisdictions that take a more expansive view. For instance, Turkey recently issued a decision finding that a joint venture ('JV') that produced no effect on Turkish markets was reportable because the JV's products 'could be' imported into Turkey. Germany also takes an expansive view, by adopting as one of its thresholds a transaction of 'competitively significant influence'. Although a few merger notification jurisdictions remain 'voluntary' (e.g., Australia, Singapore, the UK and Venezuela), the vast majority impose mandatory notification requirements.

Almost all jurisdictions require that the notification process be concluded prior to completion (e.g., pre-merger, suspensory regimes), rather than permitting the transaction to close as long as notification is made prior to closing. Many jurisdictions can impose a significant fine for failure to notify before closing even where the transaction raises no competition concerns (e.g., Austria, the Netherlands, Romania, Spain and Turkey). Some jurisdictions impose strict time frames by which the parties must file their notification. For instance, Cyprus requires filing within one week of signing of the relevant documents and agreements; Brazil requires that the notification be made within 15 business days of execution of the agreements; and Hungary and Romania have a 30-calendar-day time limit from entering into the agreement for filing the notification. Some jurisdictions that mandate filings within specified periods after execution of the agreement also have the authority to impose fines for 'late' notifications (e.g., Bosnia and Herzegovina and Serbia) for mandatory pre-merger review by federal antitrust authorities.

Most jurisdictions more closely resemble the European Union model than the US model. In these jurisdictions, pre-filing consultations are more common (and even encouraged), parties can offer undertakings during the initial stage to resolve competitive concerns, and there is a set period during the second phase for providing additional information and for the agency to reach a decision. In Japan, however, the Japanese Federal Trade Commission ('JFTC') announced in June 2011 that it would abolish the prior consultation procedure option. When combined with the inability to 'stop the clock' on the review periods, counsel may find it more challenging in transactions involving multiple filings to avoid the potential for the entry of conflicting remedies or even a prohibition decision at the end of a JFTC review. Some jurisdictions, such as Croatia, are still aligning their threshold criteria and process with the EU model. There remain some jurisdictions even within the EU that differ procedurally from the EU model. For instance, in Austria the obligation to file can be triggered if only one of the involved undertakings has sales in Austria as long as both parties satisfy a minimum global turnover and have a sizeable combined turnover in Austria.

The role of third parties also varies across jurisdictions. In some jurisdictions (e.g., Japan) there is no explicit right of intervention by third parties, but the authorities can choose to allow it on a case-by-case basis. In contrast, in South Africa, registered trade unions or representatives of employees are even to be provided with a redacted copy of the merger notification and have the right to participate in Tribunal merger hearings and the Tribunal will typically permit other third parties to participate. Bulgaria has announced a process by which transaction parties even consent to disclosure of their confidential information to third parties. In some jurisdictions (e.g., Australia, the EU and Germany), third parties may file an objection against a clearance.

In almost all jurisdictions, once the authority approves the transaction, it cannot later challenge the transaction's legality. The US is one significant outlier with no bar for subsequent challenge, even decades following the closing, if the transaction is later believed to have substantially lessened competition. Canada, in contrast, provides a more limited time period for challenging a notified transaction.

As discussed below, it is becoming the norm in large cross-border transactions raising competition concerns for the US, EU and Canadian authorities to work closely with one another during the investigative stages, and even in determining remedies, minimising the potential of arriving at diverging outcomes. Regional cooperation among some of the newer agencies has also become more common; for example, the Argentinian authority has worked with that in Brazil, and Brazil's CADE has worked with Chile and with Portugal. Competition authorities in Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Serbia, Montenegro and Slovenia similarly maintain close ties and cooperate on transactions. In transactions not requiring filings in multiple EU jurisdictions, Member States often keep each other informed during the course of an investigation. In addition, transactions not meeting the EU threshold can nevertheless be referred to the Commission in appropriate circumstances. In 2009, the US signed a memorandum of understanding with the Russian Competition Authority to facilitate cooperation; China has 'consulted' with the US and EU on some mergers and entered into a cooperation agreement with the US authorities in 2011, and the US has also announced plans to enter into a cooperation agreement with India.

Minority holdings and concern over 'creeping acquisitions', in which an industry may consolidate before the agencies become fully aware, seem to be gaining increased attention in many jurisdictions, such as Australia. Some jurisdictions will consider as reviewable acquisitions in which only 10 per cent interest or less is being acquired (e.g., Serbia for certain financial and insurance mergers), although most jurisdictions have somewhat higher thresholds (e.g., Korea sets the threshold at 15 per cent of a public company and otherwise 20 per cent of a target; and Japan and Russia, at any amount exceeding 20 per cent of the target). Jurisdictions will often require some measure of negative (e.g., veto) control rights, to the extent that it may give rise to *de jure* or *de facto* control (e.g., Turkey).

Given the ability of most competition agencies with pre-merger notification laws to delay, and even block, a transaction, it is imperative to take each jurisdiction – small or large, new or mature – seriously. China, for instance, in 2009 blocked the Coca-Cola Company's proposed acquisition of China Huiyuan Juice Group Limited and imposed conditions on four mergers involving non-Chinese domiciled firms. In *Phonak/ReSound* (a merger between a Swiss undertaking and a Danish undertaking, each with a German subsidiary), the German Federal Cartel Office blocked the merger worldwide even though less than 10 per cent of each of the undertakings was attributable to Germany. Thus, it is critical from the outset for counsel to develop a comprehensive plan to determine how to navigate the jurisdictions requiring notification, even if the companies operate primarily outside some of the jurisdictions.

For transactions that raise competition issues, the need to plan and to coordinate among counsel has become particularly acute. As discussed in the last chapter, it is no longer prudent to focus merely on the larger mature authorities, with the expectation that other jurisdictions will follow their lead or defer to their review. In the current

environment, obtaining the approval of jurisdictions such as China and Brazil can be as important as the approval of the US or EU. This book should provide a useful starting point in this important aspect of any cross-border transaction being contemplated in the current enforcement environment.

Ilene Knable Gotts
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New York
July 2012

Chapter 15

EGYPT

Firas El Samad[1]

I INTRODUCTION

No merger control or approval regulation currently exists in Egypt.[2] Therefore, the focus of this chapter will not be the peculiarities of Egypt's past experience but rather the prospective peculiarities of the Egyptian merger control framework. In order to achieve this without fundamentally altering the proposed structure of this review, Section I shall present a brief description of the current Egyptian competition law and of the enforcement agency in charge of enforcing the competition law provisions; Section II shall include an analysis of the latest developments as far as the competition policy and the political and economic reality in Egypt are concerned; Section III shall include an analysis of the merger and acquisition notification regulation currently in place, the reason for its actual scope and the possible paths of evolution; Section IV will constitute the bulk of this chapter and will contain a comparative analysis of the various factors that lead to the development of competition policy in general with an emphasis when possible on merger control in different jurisdictions and whether such contributing factors exist or not in the current Egyptian political and socio-economic landscape. The last section will naturally discuss the conclusions drawn from the overall analysis and the prospects of Egyptian competition policymaking in light of the fundamental political changes brought upon by the January 2011 revolution.

The Egyptian Competition Law was issued in 2005 and amended in 2008 and 2010. The Law establishes a criminal system that punishes illicit cartels, abuses of a dominant position and vertical agreements that aim to unlawfully restrict or prevent competition with fines ranging between E£100,000 and E£300 million (Article 22 of Law 190/2008). The Law also provides for a possibility for anyone who suffers damages as

1 Firas El Samad is the managing partner of Zulficar and Partners Law Firm.

2 Egypt has only a merger and acquisition notification regulation, which will be discussed in Section III, *infra*.

a result of a competition law infraction to file a civil case to claim due compensation. The Law further punishes with a fine ranging between E£10,000 and E£100,000 those with a turnover exceeding E£100 million *per annum* who acquire assets, proprietary rights, usufruct, shares or set up a union, a merger, an amalgamation or a joint management transaction without notifying the Egyptian Competition Authority ('ECA') within 30 days of the completion of the said transaction.

The decisions of the ECA are administrative in nature and can be appealed before the Administrative Court. But once the matter is referred to the Prosecutor, the competence becomes that of the Criminal Court and more particularly that specialised in considering economic crimes. This specialisation is, however, superficial at this stage due to the recent aspect of the legislation and the lack of adequate training and experience of the judges mainly on matters related to understanding competition law concepts and the dynamics of the legitimate economic activity within a given market. Therefore, the court and the public prosecution largely continue to rely on the expertise of the ECA in this field when examining competition law cases. This reliance may itself be problematic, since it may result in an unintended bias by the court against the defendants in a competition law case when the ECA as an investigation authority perceives itself as a prosecutor not as an independent expert, although the charges are officially brought to court through the public prosecution.

Despite this dual role, the ECA remains the principal body in charge of investigating any competition law breaches and referring the matter to the public prosecution after the due approval of the 'competent Minister' (the Minister of Trade and Industry). Although a part of the executive branch that reports to the Minister of Trade and Industry, the ECA is empowered with judicial prerogatives when it comes to auditing records, examining and establishing evidence (and interviewing witnesses) (Article 17 of Law 3/2005).[3] Based on these powers, the ECA has a growing tendency to perform 'dawn raids', obliging market players to show reasonable levels of cooperation. The lack of autonomy and the subjugation of the ECA to the authority and the supervision of the Minster of Trade and Industry has, however, limited its ability to follow through many investigated cases. Further, what adds to this lack of autonomy is the fact that the composition of the board of directors of the ECA and their appointment from among civil servants, independent experts, members of the Conseil d'Etat and members of the various civil society and trade and industry union representatives is decided and approved by the Minister of Trade and Industry (Article 12 of Law 3/2005).

The strong role of the executive branch of government (through the Ministry of Trade and Industry) under the current competition law set up is perceived by the public opinion as intended to limit the autonomy of the ECA and confirm its use as a political tool in the service of the influential business people highly connected with the then ruling National Democratic Party ('NDP') before the January revolution of 2011.

3 The ECA has investigated a total of 74 cases between its inception in 2006 and 2010 among which only six were considered by the ECA as constituting infringements, OECD report on Competition Law and Policy in Egypt, February 2011, p. 13.

It is therefore normal that one of the main legislative priorities of the newly elected[4] post-revolution Parliament was, as we will see in more detail below, to provide more independence to the ECA to allow it to play more efficiently its intended regulatory role outside any political influences.

II YEAR IN REVIEW

2011 was a very eventful year as far as Egypt is concerned. It witnessed a revolution that overthrew the 30-year rule of Hosni Mubarak, a constitutional referendum and parliamentary elections. The parliamentary elections yielded an overwhelming victory for the Islamist parties who managed to take control of more than 70 per cent of the overall number of seats with the Freedom and Justice Party ('FJP') (the political arm of the Muslim Brotherhood) controlling alone around 40 per cent of the seats.

As the biggest parliamentary block, FJP wanted to leave an early mark on the Egyptian legislative framework by circulating several proposed drafts to various legislations. Some of the proposed amendments to the Competition Law are inspired by previous recommendations presented by the ECA to the legislator and others are consistent with the one-dimensional Islamic approach to competition law that revolves around the concept of antimonopoly and fair dealings within the market. The proposed amendments mainly focus on the increased autonomy of the ECA by freeing it from the influence of the Ministry of Trade and Industry and allowing it to initiate criminal procedures without the approval of the Minister of Trade and Industry. The proposal further includes a provision whereby the ECA board of directors would be appointed by the Council of Ministers and would report directly to the Parliament.

The suggested draft also reflects a policy direction towards harsher penalties for violations and their link to a percentage of sale or turnover in addition to the increased upper and lower limits of applicable fines. The proposed amendments further introduce the concept of cumulative daily fines in the case of delay to provide the information requested by the ECA. The draft considers also a revision of the current leniency programme which provides for a partial relief from sanctions for those who come forward and present sufficient incriminating evidence on the occurrence of illicit anti-competition arrangements: the new draft recommends a full leniency regime instead of the partial leniency programme currently in place.

Apart from the legislative economic and social developments, Egypt has been suffering from the overall state of security deterioration and from political unrest and uncertainties, which have resulted in various economic difficulties (slow GDP growth that even reached negative figures in Q3 of 2010/2011, lower exports and a constant decline in tourism which reached 12.9 per cent in 2011 compared with figures from the previous year,[5] etc.). And to add to these economic difficulties, Egyptian businesses

4 The newly elected Parliament was dissolved in early June 2012 through a decision issued by the High Consitutional Court on the basis of the constitutional flaws in the parliamentary elections law.

5 *Business Monthly*, May 2012, p. 42.

are getting rough treatment from the successive populist transitional governments and from the public opinion at large. Across the mainstream media, one can clearly see a trend of populist views that assume the utter corruption of the business community and the decadence of the capitalist/liberal economic system. Voices are being heard more frequently requesting a return to a more interventionist/socialist system which supposedly guarantees social justice and a better distribution of wealth under the auspices of public bureaucracy. In addition, the substantial rise in numbers and amplitude of strikes and labour actions provides another challenge for struggling businesses in the absence of any political will to contain and diffuse the existing tension or even to provide a legal framework that would allow the workers to present their legitimate demands without unreasonably crippling production and leading many businesses to the edge of bankruptcy.

With all these developments in mind, the question this chapter will attempt to answer is whether it is appropriate, beneficial, reasonable or even useful to instate a new strain on the already struggling market players under the current circumstances by introducing a merger control mechanism. The other questions also needing answers revolve around the possible directions competition policy would follow in light of new post-revolution realities. Before attempting to answer these questions in Section IV, *infra*, the current merger notification regime shall be addressed in Section III, *infra*.

III THE MERGER CONTROL REGIME

The Egyptian merger notification regime is similar to that applicable in Brazil, for example, in requiring a post-completion procedure rather than the more conventional pre-completion authorisation. But unlike Brazil, whose regime is in the process of being reformed,[6] the Egyptian system does not require the approval and the authorisation of the ECA.

According to Article 19-2 of the Competition Law introduced as an amendment to the original text of Law 3/2005 by virtue of Law 190/2008, each party having an annual turnover of more than E£100 million that acquires assets, proprietary rights, usufruct, shares or sets up a union, a merger, an amalgamation or a joint management transaction must notify the ECA of the transaction within 30 days from its completion. Failure to notify the ECA will expose the acquiring party or the surviving entity of the merger in question to a fine that ranges between E£10,000 and E£100,000.

The notification must include, as per Article 45 of the executive regulations of Law 3/2005, the following information: (1) the name of the notifying party and of their related parties, their respective nationalities, the addresses of their headquarters and their main places of business; (2) the details of the transaction along with its date and the legal position it creates; (3) the licences and approvals obtained (from other regulators); and (4) all supporting documents related to the above items.

It is clear that the Egyptian legislator has opted for preparing and then passing the Law back in 2005 to adopt a gradual approach towards introducing the then brand

6 'Brazil launches revamped anti-trust regime', *Financial Times*, 5 June 2012.

new concept that is the Competition Law. In a context where the economy was shifting from a socialist/state-controlled economy to a gradually liberal laissez-faire economy, the policymakers concluded that there are more pressing competition-related issues than controlling or approving mergers in a relatively immature market when such control would require resources and logistics naturally beyond the means of the newly created ECA. Furthermore, there were strong views among the policymakers regarding the priority of having 'the Egyptian businesses grow and consolidate to face growing international trade'[7] instead of burdening them with a pre-transaction procedure that could be costly and inconvenient. It was also argued that 'a small but vibrant and growing economy such as Egypt needed to let firms grow to attain a minimum efficient scale and thus tolerate a minimum level of concentration'.[8]

Having this in mind, the policymakers introduced a legal tool that would enable the ECA, at the right time, when resourceful and sophisticated enough, to efficiently put in place a merger control system, having acquired much market intelligence through the notifications the economic players are obliged to deliver in the meantime. The importance of the database collected through the filing of the information contained in the notifications has, for the policymakers, gradually increased, until the amendment of 2008 introduced for the first time a criminal penalty (but without any criminal sanctions) for any failure to adhere to the notification obligation originally introduced by the Law 3/2005.

IV OTHER STRATEGIC CONSIDERATIONS

Following the revolution of January 2011, Egypt has found itself at a significant crossroads. There is of course the path of liberalisation and globalisation which was followed by the previous regime, but there is also the alternative path of interventionism and state control reminiscent of the old socialist regime abandoned in the early 1990s.[9]

No one can exclude the possibility of Egypt taking the opposite direction to that followed by the regime the revolution overthrew, for unfortunately, the former (and current) liberal economic approach is associated in the eyes of many with corruption and exploitation of the poor.

Despite this, this author believes that the wheels of modernisation will not stop at this stage and that a largely similar path will and must continue irrespective of the identity of the new policymakers. Egypt, with its vastly poor population, cannot sustain

7 OECD report – p. 7.

8 Idem. p. 26.

9 In this author's opinion Egypt is expected to carry on the liberal economic path since the Muslim Brotherhood candidate Mr Mohamed Morsy won the presidential elections and became the first elected President in the history of modern Egypt. The Muslim Brotherhood are known for their liberal economic inclinations and their conservative/ultra-conservative social and cultural views.

itself and its decent growth levels[10] without being part of the global economy despite the post-revolution crisis of trust.

The new policymakers in Egypt should be aware of the undeniable benefits of maintaining a course towards a more elaborate and sophisticated competition policy. According to Anestis Papadopoulos, 'there is a direct link between the level of development of a country and whether this country has adopted [an adequate and sophisticated] competition legislation.'[11] Therefore, it is crucial for Egypt to work on developing its competition policy and consequently its legislation in a manner to confirm the position of Egypt as one of the emerging competitive markets.

Egypt's case is similar to the case of some Latin American countries who switched from strong interventionist systems to more liberal economy-based competition policy conscious systems in the late 1980s. Therefore, the post-revolution troubled phase should encourage Egypt to accelerate said transition not halt it, taking example from what happened in Mexico in 1993 following the national debt crisis.[12] The Egypt case is also similar to a certain extent to the cases of some of the eastern European states who joined the free market path after the collapse of the Communist bloc, and who achieved some successful results in the field of competition policy thanks to their integration efforts with the EU.

The Egyptian case has its own challenges, however, and those need to be carefully handled in order for Egypt to follow the successful examples of countries that have succeeded in the field of competition policy and global integration. The Egyptian economy has very good foundations and achieved promising rates of growth over the last decade. Yet, among other things, Egypt is facing the problem of state subsidies which cover several commodities and which constitute the single biggest item in the government's spending. Another problem is the informal economic sector which constitutes 82 per cent of the existing SMEs and which employs 40 per cent of the total Egyptian workforce.[13] A third problem is the high level of corruption that has plagued political and economic life in Egypt for the past three decades and has resulted in the frustration and mistrust that ultimately lead to the January 2011 revolution.

The above problems aside, Egypt's economy has benefited from the old government's attempts to integrate with the global economy while creating a basic legal framework that has resulted in an in-flow of foreign direct investment, sustained economic growth and a

10 The growth levels were at around 7 per cent until recently dropping to around 4 per cent because of the global financial crisis of 2008 and then the Revolution of 2010 – *Business Monthly*, May 2012, p. 42.

11 *The International Dimension of EU Competition Law and Policy*, Cambridge University Press 2010, p.34.

12 The case of Mexico who adopted their Federal Law of Economic Competition in 1993 following the infamous 'Debt Crisis', Emmanuel Combe, *Economie et Politique de la Concurrence*, Precis Dalloz 2005, p. 17.

13 OECD report, p. 28.

reasonable level of legal protection against extraterritorial competition law infringements that had a potentially harmful impact on the Egyptian market.[14]

It is therefore essential that Egypt uses the competition policy in a gradual manner in order to overcome its problems, not only the economic problem but also the social problems, without returning to the old-fashioned socialist approach. As a matter of fact, competition policy in general may serve to promote economic and consumer welfare, achieve global integration, fight inflation and promote fairness and equity.[15]

Competition policy, be it a tool of economic development or a product thereof,[16] is therefore a good thing for an emerging economy to be associated with. Whether such policy shall include a merger control element in the immediate future is a question worthy of consideration. According to the OECD report, the ECA has been attempting to push for a merger control mechanism during the consecutive discussions of the draft laws and amendments. The policymakers have, however, expressed reservations in the pre-revolution era stating reasons related to market maturity and promoting national champions through allowing market players to consolidate freely without the burden of merger control procedures and requirements.[17] The undeclared reservations, however, emanate from the important position occupied by public-sector owned enterprises[18] that control around 34 per cent of the GDP and that, in some cases, fall under the jurisdiction of the ECA when they are not in the public utilities business. It is unlikely the above difficulties will deal a lethal blow to the prospects of having a merger control mechanism in place, but there may be some intermediate stages of a gradual evolution process towards the institution of a merger control regulation where, for example, the public-sector owned entities would be excluded from the application of said regulation for a given period of time.

V OUTLOOK AND CONCLUSIONS

In the author's opinion, there will soon be a merger control system in Egypt in the conventional sense. As shown by the result of the latest presidential elections, the country is divided between two strong camps with a third one only providing a substantial influence on the policymaking process in general. In fact, the two main Islamist

14 The impact of cartels on developing countries can be substantial and can increase the cost of trade by 10 to 20 per cent, Papadopoulos, p. 41. The developing countries' efforts to integrate with the global economy may be hampered by cartelists putting artificial restrictions on access to replace the barriers sovereign countries are trying to remove, *Droit de la Concurrence compare*, D Brault, Economica 1995, p. 124.

15 *Competition Policy*, Massimo Motta, Cambridge University Press 2009, pp. 18–30. See also Papadopoulos, p. 30.

16 Combe, p. 3.

17 Egyptian capital law regulates merger and acquisition from a minority protection, disclosure and transparency perspectives.

18 In addition to those owned by the armed forces and which are covered with a high level of secrecy regarding their size and turnover.

candidates obtained just over 40 per cent of the votes in the first round with candidates supporting the pre-revolution economic set-up getting just over 35 per cent of the overall votes. The two candidates who represent the socialist approach scored a little less than 20 per cent of the overall votes. This may be a simplistic analysis of the electoral spectrum in view of the complexity of the Egyptian political landscape but this surely gives an indication that the two main powers likely to dictate policy in the future both have liberal economic inclinations.

The Islamists will be focused on fighting monopolies while the liberal economic camp realises that at some point those concentrations would need to be more closely observed if a decent level of growth is to be sustained. The socialist interventionist camp will agree with the finalities and the conclusions of the other two camps without being able to achieve them through nationalisation and the re-emergence of a dominant public sector.

But whether a merger control system will be implemented sooner or later mainly depends on the level of maturity the Egyptian competition policy achieves and how well the Egyptian economy would fare on the path of global integration. There will be many bumps and set-backs, but the prospects are promising if the policymakers manage to maintain this course and benefit from others' experiences.

With the long-term targets mostly set, policymakers need to focus on avoiding the common mistakes others have made. For example, according to Massimo Motta,[19] policymakers ought to be aware that when trying to maximise the consumers' surplus we will be reducing the marginal surplus of the producers in a manner to affect, in the long run, their ability to sustain innovation, which will ultimately have an adverse effect on consumers' welfare. Overusing price fixing, as appears to be the growing trend, would 'hurt smart and innovative firms without justification because when the entry is free, the market will self-regulate the prices'.[20] Artificially helping small firms would sometimes encourage inefficient allocation of resources and 'would contribute to keep high prices in the economy' in a manner that would adversely affect consumers' welfare.

The challenges are many, as are the temptations to succumb too easily to the populist views as expected following any revolution. Policymakers need to understand this and should arrange their priorities in the hope of achieving Egypt's ultimate strategic goals of growth and prosperity.

19 Motta, pp. 21–29.

20 Motta, p. 25.

Appendix 1

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Zulficar and Partners Law Firm

Dr Firas El Samad is the managing partner of Zulficar and Partners Law Firm. He is a founding member of the Association for Protection of Competition (APC) and also a member of its board of directors. Dr El Samad has an extensive experience in competition law and has helped his clients formulating defense strategies in some landmark cases. Dr El Samad has published several reviews and articles in the competition law field and participated and organised several workshops and seminars aimed at increasing awareness on competition law issues among fellow professionals and members of the staff of some of the major international corporations operating in Egypt in various fields of industry. Dr El Samad has also extensive experience in the field of mergers and acquisitions and has handled and negotiated many transactions on behalf of his clients namely in the banking, cement, IT and manufacturing sectors. Dr El Samad has also headed the antitrust and IT and telecommunications departments at Zulficar and Partners Law Firm since 2009. Dr El Samad obtained a PhD in economic law from the University of Montpellier (I) – France (2000) as well as a Masters degree from the same university (1997). He also obtained a BA in political science from the American University of Beirut (1995) and a law degree from the Lebanese University in the same year.

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