



# Amendments to Egypt's Competition Law Simplified

**LYNX Business Bulletin**

January 2023

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# 01 Overview

# Overview: Egypt's Competition Law

01

In 2005, the Government of Egypt (GoE) issued the Law on Protection of Competition and Prohibition of Monopolistic Practices (law # 3/2005). The Law seeks to benefit consumers and create a conducive environment for competition in the Egyptian market and control monopolistic practices, including by combating economic concentrations of various forms.

Monopolistic practices are achieved when a firm that enjoys a dominant market position, exploits such position to increase prices, push the competitors out of the market or prevent the entry of a potential competitor.

The Egyptian Competition Authority (ECA) was assigned as the key regulator on achieving the law's objectives.

In May 2022, the GoE introduced a draft 'State Ownership Policy'\* document for public debate, highlighting the GoE's vision for enhancing private investments and reducing the role of the state in the Egyptian economy. The Policy emphasized the objective of creating a fair playing field and reducing economic concentrations that place barriers against new competitors desiring to enter or expand in the Egyptian market. Enhancing the ECA's role by availing the tools for the Authority to exercise its functions and fulfil the Competition Law's purposes were a key State Ownership Policy priority.



\* Please review [LYNX's Business Bulletin on Egypt's State Ownership Policy](#)

# Overview: Egypt's Competition Law

02

The Competition Law did not set out pre-merger control measures. Instead, it introduced a post-merger notification system. Accordingly, the ECA- in principle- lacked legal rights to interfere, suspend or object to any anticipated merger and acquisition (M&A) of companies.



However, the law stipulated that the ECA would be notified of any M&A transaction if the concerned parties' combined annual turnover, pursuant to their latest balance sheet, exceeded EGP 100,000,000. Failure to notify would subject the parties to a large fine.



The ECA's ability to pre-approve or reject M&As was challenged by legal experts. Hence, the ECA sought to enforce this mandate by introducing to Parliament amendments to the Law.



On December 29, 2022, the President adopted the amendments to provisions of the Competition Law. On the same day, the President adopted Egypt's State Ownership Policy.



# 02

## Objectives

*The GoE announced that the objectives of the new Competition Law are to:*

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**Counter the increase in economic concentrations** in its various forms through imposing a prior control on M&As and thus, enhance the effectiveness of the Law as an important tool to ensure efficient market dynamics. According to the World Bank, Egypt is the only country in the MENA region and one of the few countries in the world whose Competition Law had no prior control over M&As.

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**Protect free competition and improve the investment climate.** In 2021, Egypt was the second most targeted market for M&As after the United States. Total M&As in Egypt in 2021 amounted to approx. 233 deals (total value of USD 9.9. billion), an increase of 49% compared to the number of deals in 2020.

With expectations of a higher volume of deals in the coming period, the GoE is seeking a clear and precise *ex-ante* merger control system that would allow the ECA to properly investigate such deals and prevent any potential anti-competitive practices.

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03

# Major Amendments



# Major Amendments to the Competition Law



## New Turnover Thresholds

The newly imposed M&A notification thresholds will require higher turnover amounts than those imposed under the current regime.



## Economic Concentration Definition

A narrower economic concentration definition was introduced. Parties are now obliged to notify the ECA of any transaction considered as an 'Economic Concentration.'



## Higher Fines

Fines against companies that fail to comply with the new law or the ECA's remedial measures have been increased.



## Defined Process for M&As

A new timeline was given to the ECA for its merger review process after paying a filing fee of (max.) EGP 100,000.

# Major Amendments to the Law

- **A pre-merger or acquisition control system** was introduced to 'prevent harmful monopolistic practices while ensuring market competition.'
- **A new turnover thresholds** was introduced for M&A notifications to the ECA. Accordingly, the ECA must be notified of an M&A transaction if:
  - ❑ The annual combined turnover of the parties exceeded **EGP 900 million**, and the turnover of each of at least two parties exceeded **EGP 200 million**.
  - ❑ The global annual combined turnover of the parties exceeded **EGP 7.5 billion** and one of the parties' turnover in Egypt exceeds **EGP 200 million**.
- **The ECA must be notified of an M&A** once a letter of intent or MoU is signed by the parties prior to the completion or execution of the transaction.
- The ECA would **review the transaction within 30 working days**, extendable to an additional period (up to 90 days.)



# Major Amendments to the Law

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*The new law defined 'economic concentrations' as any change of control or material over one or several entities resulting from:*

The merger of one or more legal persons with an existing person who retains his legal personality after the merger, or the establishment of a new entity through joint ventures between at least two previously independent persons,

The direct/indirect acquisition or control over persons through the purchase of securities, assets or other means,

The establishment of a joint venture project or the acquisition by one or more persons over an existing entity for the purpose of establishing a joint venture project that exercises an economic activity in a permanent or stable manner .



*The new law excludes the following from the definition of 'economic concentrations':*

***A merger or acquisition between two entities belonging to the same legal person.*** This action is considered a restructure that does not require an ECA notification if it does not result in a direct or indirect change in control or material impact.

**The temporary acquisition of securities.** A company that temporarily acquires securities for the purpose of reselling them within one year from the date of acquisition, if they do not exercise any voting rights or take any action or measure that would influence strategic decisions. (The one-year period may be extended upon request if the acquirer proves that the securities cannot be resold within a year. )



# Major Amendments to the Law

08

- The law defined '**Control**' as the ability of the person in control to exercise direct/indirect effective influence by directing the economic decisions of another person(s), either based on the majority in voting rights or preventing them from taking economic decisions.
- The law defined '**Material Impact**' as the ability to influence directly or indirectly the policy of another person including his strategic decisions or commercial objectives.
- '**Corrective Measures**' are defined as a set of behavioral or structural measures aimed at eliminating the harmful impact on competition resulting from an economic concentration.
- '**Behavioral Measures**' are defined as measures that oblige the persons concerned with the economic concentration to commit or refrain from carrying out certain acts.





# Major Amendments to the Law

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*Moreover, the ECA has the authority to investigate (within 1 year), any economic concentration it deems harmful to the freedom of competition, even if the newly imposed thresholds do not apply in the following cases:*

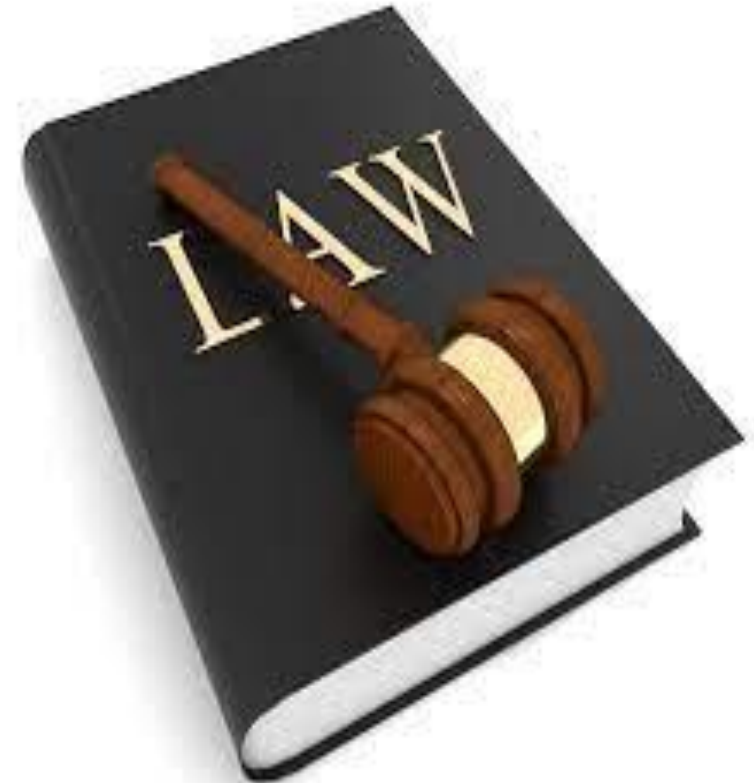
If the economic concentration limits the technological development and innovation in the market.

If it controls the market through the prices of the products,

If it reduces the quality of the products offered to the consumers,

If it can create any entry barriers to entry or prevent the expansion of the market.

Further details on those scenarios shall be clarified in the Executive Regulations of the law.



# 04

## Penalties

## Penalties

*Entities or companies that fail to notify the ECA of any transaction prior to its completion may be subject to:*

A fine ranging between **1%** and **10%** of the total annual turnover, assets, or value of the operation for persons of economic concentration, whichever is higher.

In case of failure to calculate the above-mentioned thresholds, the fine will range between **EGP 30 million** and **EGP 500 million**.



# 05

# Conclusion

# Conclusion

The amendments of the stated provisions of the Competition Law are progressive steps to improve the local investment climate by ensuring an effective competition framework that eliminates monopolistic practices. The ECA has been granted enhanced tools to extend its supervisory power over economic activities that negatively impact Egypt's investment climate.

The amendments may further facilitate the integration of the domestic economy in global markets, promote transparency, and allow businesses to flourish by following a fair set of anti-trust rules. (Generally, M&As strengthen the national economy by improving the products and services offered in the markets and fuel beneficial efficiencies.)

Implementing the new provisions of the Competition Law may not be effective if other pillars of competition policy remain unchanged. For instance, further amendments need to be introduced to the Competition Law to encompass other violations that harm the national economy such as **tacit collusion**. The latter occurs when two or more parties agree on a strategy without a formal written agreement.

The extension of the ECA's authority over potential monopolistic practices of state-owned enterprises is key to strengthening the competition environment and attracting new investments. As Egypt is offering stakes in several state-owned companies, the law is a cornerstone in ensuring a transparent and level playing field for various economic players.

Local and foreign direct investments inflows may rise with increased trust in the role of the ECA in preventing harmful and restrictive activities to free competition. This is a priority for the GoE to address the current economic and fiscal challenges facing Egypt.



# Thank You

[www.lynxegypt.com](http://www.lynxegypt.com) [info@lynxegypt.com](mailto:info@lynxegypt.com) 4 Latin America Street, Garden City, Cairo +2 02 27944331

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