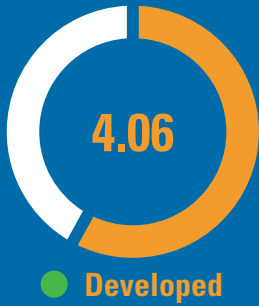
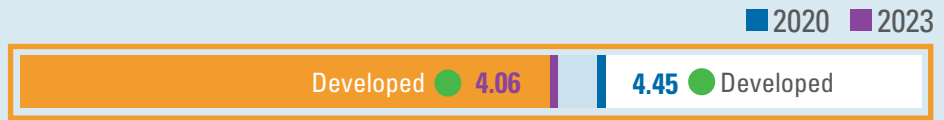




# ARAB BUSINESS LEGISLATIVE FRAMEWORKS



## COMPETITION

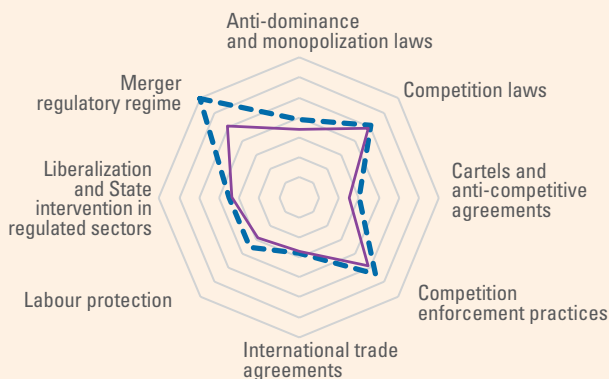


Very strong Strong Developed Moderate Basic Weak Very weak

| COMPONENTS   | 2020 | 2023   |
|--|------|--------|
| Anti-dominance and monopolization laws                     | 3.89 | 3.50 ▼ |
| Competition laws   | 5.09 | 5.09 ▶ |
| Cartels and anti-competitive agreements                    | 3.00 | 2.63 ▼ |
| Competition enforcement practices                          | 5.44 | 5.09 ▼ |
| International trade agreements                             | 2.80 | 2.80 ▶ |
| Labour protection  | 3.50 | 3.00 ▼ |
| Liberalization and State intervention in regulated sectors | 3.50 | 3.50 ▶ |
| Merger regulatory regime                                   | 7.00 | 5.25 ▼ |

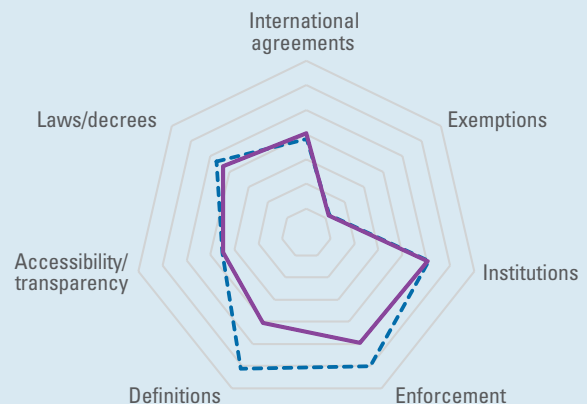
### COMPONENTS

2020 2023



### ELEMENTS

2020 2023



The competition regime in Djibouti is managed by Law No. 28/AN/08/6eme L. No amendments occurred in the past two years.



## Competition laws

Article 1 clearly states that the objective of the Law is to guarantee fair competition practices in the market between all business players and to ensure consumer welfare by guaranteeing that prices are freely determined based solely on competition rules. However, according to article 1, the State may intervene to regulate and

control prices for a period of six months under certain circumstances. Granting the State the power to intervene as such may undermine competition fairness principles and efforts to liberalize markets, and therefore such interventions should be limited to very strict conditions and criteria.



## Anti-dominance and monopolization laws

Articles 3 to 6 of the Competition Law prohibit monopolies and abuse of dominance and enumerate some prohibited practices, such as market barriers, controlling production, limiting investments, fixing prices, distinguishing between agreements/contracts based on prices and/or quality, halting deals or increasing/decreasing prices that result in excluding competing firms from the market or exposing them to losses, and the abuse of dominance in a dependent

relationship between businesses. Moreover, the Law didn't specify thresholds for firms to qualify as having a dominant position in the market. Section 4 (articles 15 and 30) lists the sanctions in case of breaching the provisions targeting anti-dominance and monopolies (ranging between 1,000,000 and 25,000,000 francs). It is worth noting that no imprisonment sanctions have been stipulated, even though such sanctions are more deterring.



## Cartels and anti-competitive agreements

Articles 3, 5 and section 3 of the Competition Law prohibit anti-competitive agreements, such as concentrations, conventions, or contractual clauses, understandings, and limiting or controlling the production. Moreover, some anti-competitive practices are enumerated, such as the resale of any product at a lower price, not giving accurate bills

when consumers purchase (for the price), import or export without customs declaration, barriers to market entry and fixing prices.

It is worth noting that cartels are neither defined nor prohibited.



## Competition enforcement practices

The Competition Law in Djibouti does not refer to the establishment of a competition authority. Each public administration is responsible for its sector. Also, the scope of application of the Law is on businesses that operate within Djibouti, there is no mention of businesses operating outside the country that impact the national market.

Article 21 clarifies the procedural work of investigators, such as investigating competition cases, assessing practices

and making consignments, referring cases to competent courts (article 24), and requesting bills, databases and any document/information for the assessments.

Pursuant to article 19 of the Competition Law, the privacy of all information and data shared must be respected. This article ensures cooperation between private businesses and the council, while guaranteeing that their data won't be shared publicly.



## International trade agreements

Djibouti has ratified the Common Market for Eastern and Southern Africa (COMESA). This trade agreement contains several competition provisions:

Article 52 (1) of the agreement targets subsidies granted by member States mentioning that such subsidies distort (or threaten to distort) competition and affects trade between States. Also, article 54 includes provisions regarding cooperation in the investigation of dumping and of subsidies. Article 55 prohibits agreements between companies that aim to prevent, restrict or distort

competition. This trade agreement includes a special section on managing disputes due to the enforcement of its provisions.

Moreover, according to article 76, States must adopt harmonized monetary and fiscal policies that promote savings for investment and enhance competition and efficiency in the financial system. Despite the important provisions in the agreement, other competition provisions and definitions (especially in comparison with the European Trade Agreements) are missing.



## Merger regulatory regime

No articles of the Competition Law define or explain criteria to assess anti-competitive agreements, including economic concentration.



## Labour protection

The Competition Law has several shortcomings regarding labour protection. Policymakers failed to include any labour protection provisions, such as

the non-compete clause, even though it would have provided protection for employees, particularly during mergers and acquisitions.

## RECOMMENDATIONS

- The Competition Law should include definitions for several basic anti-competition practices, such as monopoly, cartel, transparency and veto power (in mergers and acquisitions).
- There is a need for the establishment of a competition authority that is independent of ministers and/or political figures.
- Further cooperation is needed, including the development of a memorandum of understanding with other competition authorities (regional and international).
- Markets should be liberalized for some vital sectors (especially where State-owned enterprises operate), and State interventions should be based on specific conditions/ circumstances.
- Stricter conditions for allowing exemptions should be introduced, with sanctions for non-compliance.
- A clear economic concentration regime must be established. Studies on the market (the impact of economic concentration) should include clear criteria and conditions (effect on prices, investments, veto power, etc.). Also, a clear definition for vertical and horizontal agreements should be included.
- Labour protection provisions should be added, such as the non-compete clause.
- A robust sanction regime, with a deterring effect, should be established.
- Publishing studies and/or decisions by the Competition Authority is important to ensure transparency.

