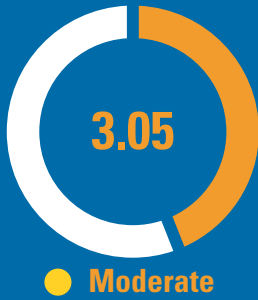




ARAB BUSINESS LEGISLATIVE FRAMEWORKS

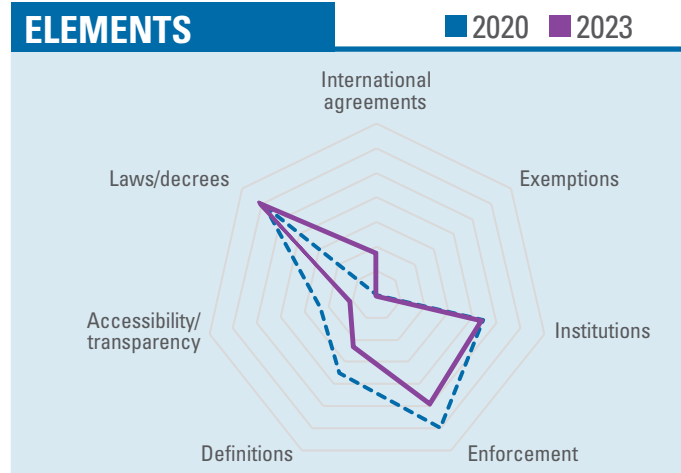
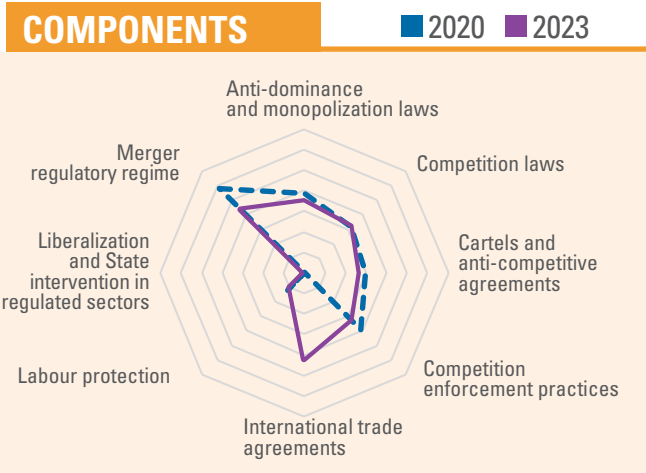


COMPETITION



● Very strong ● Strong ● Developed ● Moderate ● Basic ● Weak ● Very weak

COMPONENTS	2020	2023
Anti-dominance and monopolization laws	3.89	3.50 ▼
Competition laws	3.18	3.18 ▶
Cartels and anti-competitive agreements	3.00	2.63 ▼
Competition enforcement practices	3.89	3.18 ▼
International trade agreements	0.00	4.20 ▲
Labour protection	1.17	1.00 ▼
Liberalization and State intervention in regulated sectors	0.00	0.00 ▶
Merger regulatory regime	5.83	4.38 ▼



The competition regime in the Sudan is managed by Law no. 7/2009. On 15 November 2020, the Prime Minister issued Decree No. 513 whereby the Council for Competition and Prevention of Monopolistic Practices was established. The Council issued the Executive Regulation for Prevention of Monopoly and Unfair Commercial Practices, whereby it defined the acts that contradict the concept of free competition and the acts that constitute unfair commercial practices. Unfortunately, the United Nations Economic and Social Commission for Western Asia (ESCWA) has not been able to access the executive regulation.



Competition laws

Although article 1 of the law presents clear definitions for several competition concepts, such as mergers, monopolies and individuals, it does not cover other concepts, such as collusion, cartel, dominance and crowding out. Moreover, although article 3 aims to guarantee fair competition practices in the market between

all business players, article 3(2) opens the door for State interventions and for exceptions. For instance, the minister of economy may request exemptions for agreements that will “positively influence” public interest. As this article does not stipulate any conditions or restrictions on the exceptions, it may entrench State intervention.



Anti-dominance and monopolization laws

Dominance and monopoly are defined and prohibited by the Competition Law. In reference to the provisions of articles 5 and 6 of the Competition Law, monopolies and abuse of dominance practices are enumerated, among others: imposing an obligation not to manufacture, produce or distribute a product, coordination between competitors by submitting bids in tenders, imposing market barriers by blocking the participation of new businesses, controlling production, fixing prices (increase/decrease/stabilize), signing

contracts and agreements that effectively affect the relevant market, selling products for less than the specified cost, etc.

As for the adopted percentage to determine if there is dominance, the law didn't specify any number or threshold.

It is worth noting that article 23 states the sanctions in case of breaching the provisions targeting anti-dominance and monopolies without specifying the amounts.



Cartels and anti-competitive agreements

The Competition Law does not cover anti-competitive agreements. There is one indirect reference in article 6(2-1) which prohibits individuals and businesses from concluding agreements and contracts that negatively affect competition in the market.

It is also worth noting that cartels are neither defined nor mentioned in the Competition Law.



Competition enforcement practices

Article 14 of the Competition Law stipulates the establishment of a competition council that is to operate under the supervision of the minister of economy. However, there is no provision that indicates the scope of application of the law, especially for businesses operating outside Sudan and influencing the internal market.

Articles 16 and 17 list the functions of the Council, which include monitoring the trading of goods and services in the market, supporting and encouraging scientific research related to competition and the prevention of monopolistic practices, investigating competition cases, advising on

competition matters, assessing concentration practices, taking appropriate measures while investigating violations, advising on regulatory draft provisions in relation to competition and monopolistic practices, and developing an integrated database for the assessments and necessary studies.

Article 13 stresses the confidentiality of all information and data. It is, however, worth noting that the Council and its officers cannot investigate on their own (*ex officio*). This means less protection for businesses, especially small and medium-sized enterprises (SMEs).



International trade agreements

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

For example, article 52(1) of the agreement targets subsidies granted by Member States mentioning that such subsidies distort (or threaten to distort) competition and affect trade between States. Also, article 54 includes provisions regarding cooperation in the investigation of dumping and 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

Article 10 of the Competition Law manages merger transactions and prohibits mergers that negatively impact competition. However, according to article 10(3), mergers are permitted if one of the businesses is unable to carry out its activity on its own.

Next, according to article 11, businesses have to notify

the Council before accomplishing the transaction, but no timeframe is mentioned. Also, no criteria are defined for the assessment of merger transactions.

Article 12 permits the Council to cancel its approval if it finds that the information provided on the transaction is incorrect, misleading or fraudulent.



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.

RECOMMENDATIONS

- The Competition Law should include definitions for several basic anti-competition practices, such as monopoly, cartel, transparency, veto power (in mergers and acquisitions), etc.
- The Council for Competition and Prevention of Monopolistic Practices should be 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.). A pre-merger notification regime must be established. Also, a clear definition for vertical and horizontal agreements must 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 Council is important to ensure transparency.

