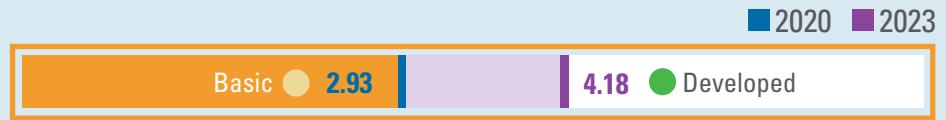




ARAB BUSINESS LEGISLATIVE FRAMEWORKS

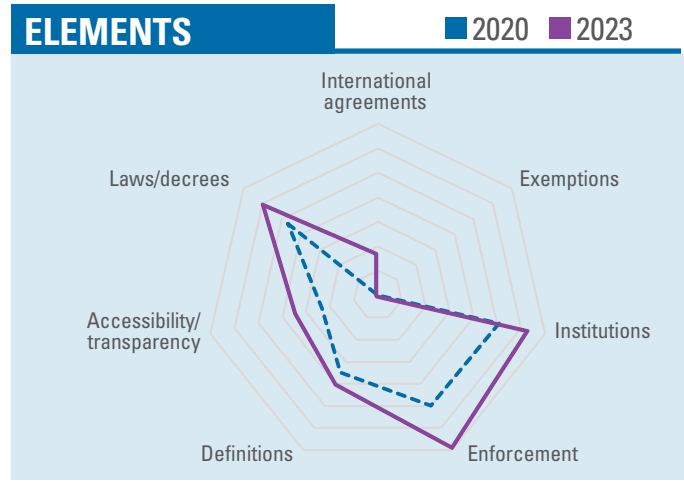
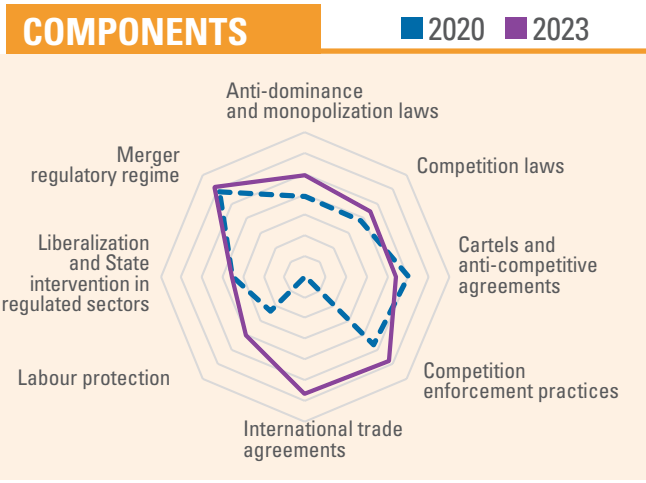


COMPETITION



Very strong Strong Developed Moderate Basic Weak Very weak

COMPONENTS	2020	2023
Anti-dominance and monopolization laws	3.89	4.20 ▲
Competition laws	4.45	4.45 ►
Cartels and anti-competitive agreements	4.00	3.50 ▼
Competition enforcement practices	3.89	4.45 ▲
International trade agreements	3.50	4.20 ▲
Labour protection	1.17	3.00 ▲
Liberalization and State intervention in regulated sectors	3.50	3.50 ►
Merger regulatory regime	5.25	5.25 ►



Tunisia has adopted the Competition and Prices Law in 1991, and has since reviewed it several times, before replacing it with Law No. 36 of 2015 relating to the reorganization of competition and prices. Tunisia is currently working on competition reforms, in cooperation with the European Union and the Organisation for Economic Co-operation and Development (OECD).¹ The Competition Council has been active in performing its functions, and has flagged activities in different sectors, including health, banking and telecommunication.² Moreover, the Competition Council has published a number of its decisions.



Competition laws

Articles 1 and 2 of the Competition Law state that the objective of the law is to ensure market equilibrium, economic efficiency and consumer welfare as well as the freedom of determining prices with respect to the competition rules and process. Tunisia has also adopted decree No. 1039/2014 on public procurements which prohibits the practices of excessively lowering prices and collusion in procurement agreements.

However, articles 3 and 4 of the law open the door for state interventions by allowing the Government to temporarily fix prices for a period of six months under certain circumstances such as disruptions or a force majeure. Also, the Competition Law in Tunisia

is applicable to any company/business operating and carrying out economic activity, including State-owned enterprises (SOEs).

Last, it is worth noting that definitions for several competition concepts (such as collusion, crowding out, monopoly and vertical/horizontal agreements) are missing from the Competition Law. The concepts are, however, more elaborately discussed in the jurisprudence of the Competition Council, which defined anti-competitive practices and what constitutes them. There are also sectors, such as banking, insurance and microfinance that are subject to particular regulations enforced by their authorities that administer them.



Anti-dominance and monopolization laws

The provisions of chapter 2 (articles 5 to 10) of the Competition Law prohibit abuse of dominance and monopoly and list practices that constitute them. The listed practices include refusing to sell or purchase a product, imposing a minimum reselling price, selling on discriminatory terms as well as the termination of commercial relations without fair reasons or solely for the other party's refusal to comply with abusive commercial conditions. Article 5 prohibits any contractual clause that includes committing to any of the enumerated practices. The presence of such a clause would automatically deem the contract void.

Article 6 of exempts from the provisions of Competition Law any agreement that aims to ensuring economic or technical progress, or that contributes to improving employment. These exemptions are granted on a case-by-case study and are subject to the approval of the Minister of Trade after receiving the opinion of the Council. Finally, the Council may commit businesses that benefit from exemptions to certain conditions and, pursuant to article 43, impose sanctions on non-compliance.



Cartels and anti-competitive agreements

Article 5 prohibits anti-competitive agreements, cartels, and explicit or implicit collusions are prohibited and lists some of the prohibited practices. Those include putting barriers on market entry, fixing prices and limiting and controlling production. Title 4 (article 43) covers the enforcement and sanction regime. Sanctions include fines with up to 10 per cent of the turnover earned in Tunisia in the last fiscal

year. Also, according to article 44, the implementation of a council decision regarding offenders who commit anti-competitive practices falls on the Minister in charge of trade in cooperation with the competent authorities.

It is worth noting that even though cartels are prohibited, there is no clear definition of them.

¹ Africa Competition Guide – Tunisia.

² Ibid.



Competition enforcement practices

Article 11 of the Competition Law stipulates the establishment of a financially and administratively independent competition council. Article 15 allows the following stakeholders to report infringements of the competition board: economic enterprises, professional and trade union organizations, established consumer organizations, chambers of commerce and industry, regulatory authorities, and local collectivities. It is worth noting that the scope of enforcement of the law is not clarified, especially regarding the activities carried out outside of Tunisia but affect the local market. There is, in the Ministry of Trade, a department that is responsible for the development and enforcement of competition rules and policies.

Articles 14 and 15 clarify the functions of the Council, such as investigating competition cases, advising on competition matters, assessing concentration practices, taking interim measures to suspend presumed restrictive practices under investigation, and advising on regulatory draft provisions related to competition (even though the Council's opinions

are not binding). Article 65 states that reports established regarding anti-competitive practices are to be transmitted, under specific conditions, by the Minister in charge of trade to the public prosecutor. Any company that does not comply with the precautionary measures and orders stipulated in articles 15 and 27 of the Competition Law is to be sanctioned with the same fine stipulated in article 43 (up to 10 per cent of the annual turnover).

Pursuant to articles 15, 17 and 24 of the Competition Law, all information and data shared is to remain confidential, and the Council may investigate on its own (ex officio). To guarantee fairness and due process, pursuant to article 28, the decisions rendered by the Competition Council can be appealed before the Administrative Court.

Box 1 highlights a case addressed by the Competition Council. It is worth noting that between 2016 and 2020, the Competition Council issued 94 decisions covering cartels, abuse of dominance, abuse of economic dependence and excessive low pricing.³

Box 1 Enforcement practices

1. The Competition Council issued an opinion regarding the stop-the-clock mechanism.

The stop-the-clock mechanism is used while the Competition Council is doing investigations and inquiries. It consists of postponing the legal deadline until parties provide additional information as per the request of the Council. The last opinion of the Competition Council in Tunisia affirms that it has the power to stop the clock on a merger review when it requests "additional information until it is provided".

2. The Competition Council approved a vertical agreement in the pharmaceutical sector.

In 2021, on grounds of public interest, a merger transaction was approved between two pharmaceutical companies. The Competition Council decided that the merger will have a positive impact by contributing to the development of the national pharmaceutical industry, and by supporting innovation and product diversification in this sector.

Source: [Africa Competition Guide](#) – Tunisia (M&A).

³ Organisation for Economic and Co-operation and Development, [Peer reviews of Competition Law and policy](#) – Tunisia, p. 12.



International trade agreements

Tunisia has ratified the Euro-Mediterranean Agreement which includes provisions on competition in chapter 2 of the agreement. These provisions prohibit agreements or undertakings taken by a country, which have as their object or effect the prevention, restriction or distortion of competition. The agreement has a special section on resolving disputes that arise due to the enforcement of its provisions.

In 2018, Tunisia ratified the agreement for the Common Market for Eastern and Southern Africa (COMESA).

Article 6 of the agreement aims to promote competition, enhance consumer welfare in the common market, investigate anti-competitive practices by businesses and monitor mergers.

Moreover, Tunisia participated in the negotiations related to the preparation of the competition protocol within the framework of the African Continental Free Trade Area Agreement (ZLECAF).



Merger regulatory regime

Economic concentration is defined in article 7 of the Competition Law. Several practices that lead to a change in control in companies or reinforce a dominant position are taken into consideration, especially exercising a determinant influence on the activity of a company.

Next, according also to article 7, the merger notification regime is voluntary, and awaiting decision on it, the parties involved have to refrain from taking measures that would make the merger irreversible or alter the market situation.⁴ The notification threshold becomes mandatory and suspensory when the average share of these gathered enterprises exceeds, for the past three years, 30 per cent of the sales, purchases, or any other transactions of the internal market.

Also, according to article 9, parties must notify the Minister of Trade within 15 days of the completion of the agreement if the 30 per cent threshold is met or if the total value of transactions carried out by the parties in the internal market exceeds 100 million dinars (the application must comprise several documents enumerated in article 9, such as a list of managers/shareholders, financial statements, etc.). Pursuant to article 10, after consulting with the Competition Council, the Minister of Trade takes the appropriate decision regarding the transaction (approval/conditional approval/rejection). Decisions may be appealed before the Administrative Court.



Labour protection

Despite the protection ensured to the employees in the case of mergers and acquisitions through article 15 of the labour law, policymakers failed to include any labour

protection provisions in the Competition Law, such as the non-compete clause.

⁴ Ibid.

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), etc.
- The Competition Council 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).
- 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.
- Markets should be liberalized for some vital sectors, (especially where State-owned enterprises operate), and State interventions should be based on specific conditions/ circumstances.

