



Competition Law Compliance

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Note

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Table of Contents

Guidelines for the Private Sector on the Substantive Application of Competition Laws “The Why and How of Compliance”	1
1 Introduction	5
1.1 Competition Law, Policy, Advocacy and Objectives.....	5
1.2 What is Compliance.....	8
1.3 MENA Region Countries.....	8
2 Competition law – Incentives and Responsibility to Comply	10
2.1 Scope of application.....	10
2.2 Substantive rules	12
2.3 Sanctions and remedies	12
2.4 Implementation of compliance rules	13
3 The role of National competition agencies	15
3.1 Prevention: Raising Awareness – Outreach – Advocacy.....	15
3.2 Repression: Enforcement - Deterrence – Leniency- Exchange of Information.....	16
3.3 Leniency programmes	26
3.4 Exchange of Information.....	29
4 Take away messages for undertakings	33
References	34

1 Introduction

In this introduction we will start by explaining some fundamental notions, such as “competition policy”, “competition law”, and “advocacy”. It will be examined why developing countries adopt competition rules, and explain what is meant by “compliance”.

This publication treats a delicate issue: the compliance of the private sector with the rules of competition law. We will highlight the importance of compliance, the benefits for the private sector from complying preventively with the competition rules, and the duties of the competition authorities to incentivize compliance and the methods to do so.

The purpose of this publication by the UNCTAD secretariat is to give some guidelines for enterprises in the countries of the MENA region, which consider adopting compliance programmes on competition. This should help both the private sector and the competition agencies on tackling the importance of compliance, as a practical way to increase the overall efficiency of the system against anti-competitive behaviours.

The publication is divided into two main parts, in addition to this introduction. Section 2 will explain the mechanisms that can generally be found in national competition laws, with some illustrations from the MENA countries. In Section 3, it is examined which role the national competition agencies can play when it comes to compliance and enforcement of competition law. First some key notions of competition policy and competition law will be examined.

1.1 Competition Law, Policy, Advocacy and Objectives

The central rationale of a **competitive market** system is that competition produces social benefits, which are lost through monopoly. The **purpose** is to organise the market conditions in such a way that consumers can enjoy low prices, high quality products, innovation and other benefits resulting from rivalry between enterprises. Simply put, a “competitive market” revolves around the idea of preventing harmful market power. A competitive market can put an end to an anti-competitive situation that existed earlier or prevent the damages that are about to happen through concentrated market power.

Although the terms “competition policy” and “competition law” are often used interchangeably, they should be distinguished. **Competition policy** describes the way in which governments take various (binding and non-binding) measures to promote competitive market structures and behaviour. **Competition law** refers to the binding regulatory framework, intended to guarantee that sufficient competition is maintained on any market, by imposing general or more specific rules upon companies operating on that market.

For effective competition to be achieved, a country should first define its competition policy and its priorities. It must not limit its view to competition law but act

simultaneously on a number of fronts: effective competition should also be supported - at least not be contradicted – in other fields of law (for example company and investment incentive laws). More generally, other measures can be taken to promote competitive markets and to develop a culture of competition among companies as well as end consumers.

Competition advocacy, as one of the pillars of competition policy, refers to the active promotion of a competitive environment for economic activities by a competition authority or agency¹. Competition authorities generally have information and promotion missions, in addition to the enforcement of the binding competition rules. As part of their advocacy mission, they maintain relationships with other governmental entities and increase public awareness of the benefits of competition, in particular by making available information about the competition rules in an accessible format or by publishing practical guidelines on the compliance with competition law.

Each country decides on its own competition policy, defines its priorities and concerns and tailors its competition law according to its specific economic and legal circumstances. Although competition laws usually have the same core objectives (maintain a certain level of competition on any given market) and prohibit the same types of behaviour that may harm competition, the precise description of prohibited acts (conditions), possible exceptions or justifications and the enforcement rules (*inter alia* the severity of sanctions in case of violations) differ from one country to another. Competition law and policy are not carved in stone and may change over time within one country, in order to adapt to the prevailing economic and legal circumstances or the changing competition objectives.

Competition policy should create a competition culture adapted to the society in which it will be applied. This is important to make sure that the competition rules are widely adopted and complied with in the longer term.

Developing countries, such as the MENA countries², may have several reasons to adopt competition laws and policy.

- Many developing countries consider that a proper competition policy can further the **development process**. It can be thought that competition law and policy work within a country's development context to create a more competitive environment, especially through creating competitive markets in the developing world. Competition law enforcement endorses more economic growth; as competition reduces entry barriers, pushing undertakings to function better, as they can no longer be hiding behind monopoly advantages.
- The absence of a law furthering fair completion is mostly favourable to **multinational companies**, which may abuse their strong position in the market. The push towards globalization, coupled with the liberalisation trends observed in different countries, resulted in a competition between these multinationals

¹ The terms « competition agency » and « competition authority » will be used interchangeably.

² Middle East/North Africa countries.

and local companies in emerging economies. Without any regulation, large companies –especially multinational companies- might capture the market through anti-competitive practices at the expense of smaller (local) producers.

- Competition law should also make sure that private companies can compete on fair terms with (former) **state owned enterprises**.
- The adoption of a competition law is meant to create a climate to attract **investments**. Competition law contributes to creating an environment familiar to Western firms and provides an atmosphere of trust and confidence.
- It is also believed to facilitate **export and import** with developed countries or among developing countries. Having similar competition rules will reduce the costs of learning about competition law issues exporters and importers might face in either developed or developing markets.

Developed countries (such as the United States of America, the European Union and its member states) preceded other countries in adopting competition laws and policies. They have also preceded such countries in adopting compliance plans to attract or compel undertakings to comply with the competition rules. Many developing countries, in an attempt to benefit from the experiences of developed countries, adopted rules modelled after the legislations of developed countries. These regulations are then usually inspired by EU or US regulations, rather than *sui generis* approaches or independently developed regulations. It is debatable whether this “one size fits all” approach is suitable and whether an existing competition law can accommodate the particularities of each distinct (developing) economy. Developing economies have distinct needs, operate with their legal institutions and possibly other general conceptions of the rule of law.

In addition to other countries’ legislation, countries can find inspiration in the UNCTAD Model Law³. This model law spells out the objective of a competition law to “control or eliminate restrictive agreements or arrangements among enterprises, or mergers and acquisitions or abuse of dominant positions of market power, which limit access to markets or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development”⁴. The model law further suggests possible elements for a competition law, which the countries can adapt to their particular situation.

³ The UNCTAD model law consists of (i) a permanent guide and (ii) chapters subject to regular revision. The most recent version is accessible via http://unctad.org/en/Docs/tdrbpconf7d8_en.pdf.

⁴ Chapter I – Objectives or purposes of the law, UNCTAD model law on competition, 2010, http://unctad.org/en/Docs/tdrbpconf7d8_en.pdf, p. 3.

1.2 What is Compliance

The notion “compliance” in general means that one is respecting the law or that one adheres to certain (sectorial) rules or laws. In the competition field, it means that businesses take proactive measures to make sure they respect the competition rules. In addition, companies make sure to document these efforts to comply with the competition rules. “Compliance” can be contrasted to the situation where an undertaking is obliged to adopt measures to comply with competition law following corrective measures, imposed by a competition agency or a court.

There are many reasons for a business to pay attention to its compliance with the competition law. By its proactive compliance a company will avoid administrative, civil or criminal **sanctions** for the violation of substantive rules, i.e. fines (which can be quite high) or imprisonment. It can also avoid an obligation to pay damages or **compensation** to individuals or other undertakings in case of civil actions. Companies may have other reasons, such as maintaining the good **ethics** and moralities of the employees, and preserving the company’s reputation. A company’s position may also be influenced by the strong competition culture in the country where it operates.

Other factors may however discourage companies to pursue compliance. Compliance comes at a certain **cost**, such as training the staff and the management of the company to pay attention to indications of anti-competitive behaviour or documenting the efforts made to comply with competition rules. The employees within the companies may indeed be ignorant of the actual cost of not complying.

Moreover, a company may operate in an environment where a competition culture is lacking. It may be difficult to see why a company should observe competition rules if other companies fail to respect the same rules. In some jurisdictions the market conditions may even facilitate collusion or abuse of dominance, such conditions may represent an incentive not to comply. Similarly, if there is a belief among the companies that the likely gains from not complying outweigh the likely costs of being caught.

Everyone who does business in any jurisdiction with competition rules is concerned by compliance: under most national laws competition rules apply directly to all business companies active in that jurisdiction. This means that the company should make sure that not only high level, decision-taking managers but the staff as well may need guidance on how to implement competition-compliant practices.

1.3 MENA Region Countries

This publication focuses on the countries from the MENA region. The UNCTAD MENA project covers eight countries, five of which are enforcing competition laws,

namely, Algeria⁵, Egypt⁶, Jordan⁷, Morocco⁸, and Tunisia⁹. Two countries are in the process of adopting a competition law, namely, Palestine and Lebanon.

The various elements of competition law will be illustrated by references to the national rules of the five MENA countries that have a competition law. However, this publication does not provide any legal advice on any particular national competition law. It will discuss generic issues of compliance without focusing on one specific jurisdiction. This means the discussion is not limited to the rules or sanctions in one jurisdiction or the plans adopted in one jurisdiction to foster compliance. The MENA countries' laws are the focus of this publication and therefore will be given as examples. It is however recommended that the readers seek legal advice on their particular situation.

Compliance is affected by several factors, such as the competition culture in the country, and the level of economic development. Most of MENA countries share some similar factors, namely regarding the level of economic development, the culture of competition, the priority of where competitiveness appears on the agenda of politicians, and the size of existing parallel economies. The focus of this publication is the legal situation of the MENA countries. Other considerations, such as the political situations and the effect it has on the rule of law in some countries, will fall outside the concerns of this publication.

⁵ Law No. 03-03 dated 19 July 2003 and its amendments (hereinafter the “Algerian Law”).

⁶ Law No. 3 for the year 2005 and its amendments (hereinafter the “Egyptian Law”); available at: <http://www.eca.org.eg/ECA/StaticContent/View.aspx?ID=5>

⁷ Law No. 33 for the year 2004 and its amendments (hereinafter the “Jordanian Law”); available at: <http://www.mit.gov.jo/Pages/viewpage.aspx?pageID=169>

⁸ Law No. 104.12 dated 30 June 2014 amending the Law No. 06.99 dated 5 June 2000 (hereinafter the “Moroccan Law”); available at:

<http://adala.justice.gov.ma/production/legislation/ar/Nouveautes/المنافسة%20والأسعار%20جزية.pdf>

⁹ Law No. 60 for the year 2005 and its amendments (hereinafter the “Tunisian Law”); available at: <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2005/2005A/057/TA2005601.pdf>

2 Competition law – Incentives and Responsibility to Comply

2.1 Scope of application

Competition rules generally apply to “undertakings” acting in jurisdictions where competition laws are adopted. Those undertakings can be legal entities (such as companies) or natural persons and, if they have economic activities in a jurisdiction, they are under the obligation to comply with the competition rules of that country. If an undertaking is operating in more than one jurisdiction, it is obliged to comply with the competition rules applicable in those different jurisdictions.

It is important to understand the specifics of competition law in each jurisdiction and to whom it is addressed. The definition of what constitutes a “person”, a “company”, an “undertaking”, or an “entity” that fall under the application of the competition law may differ from one jurisdiction to another.

The terms concerning the material scope of application of the competition law may vary in MENA countries. In Egypt, for example, the competition law applies to a “person”, i.e. “natural and legal persons, economic entities, unions, financial associations and groupings, groups of persons, whatever their means of incorporation, and other related parties as set forth in the Executive Regulations concurrently with the objectives and provisions of this Law”¹⁰.

Under the Jordanian competition law¹¹, the term “Enterprise” is used, i.e. “any person, natural or legal, carrying out economic activities, or any grouping of such persons”.

¹⁰ Article 2 of the Egyptian Law.

¹¹ Article 2 of the Jordanian Law.

Algeria	The “Organization”: any natural and legal persons, whatever is nature, that exercises permanently activities of production or distribution or services or importation.
Egypt	<p>“Persons”: Natural and legal persons, economic entities, unions, financial associations and groupings, groups of persons, whatever their means of incorporation, and other related parties as set forth in the Executive Regulations concurrently with the objectives and provisions of this Law.</p> <p>The Executive Regulations for the Egyptian Competition Law elaborated that “Persons” mean natural or legal persons, economic entities, unions, federations, associations and financial grouping, whatever the method of their establishment, mechanisms of their financing, their nationalities, headquarters or main centres of activities.</p> <p>Persons referred to in the first paragraph include, the related parties that are composed of two or more persons, each of them has an independent legal personality, where the majority of stocks or shares of one of them is owned, directly or indirectly, by the other party or where the majority of stocks or shares in both parties are owned by one party.</p> <p>Related parties also include the person or persons who are subject to the actual control of another person, including the spouse and the second-degree relatives, unless it shows the absence of this control.</p> <p>Actual control means every arrangement, agreement or ownership of stocks or shares, regardless of its percentage, in a manner that leads to the control of the management or decisions-taking.</p>
Jordan	The “Enterprise”: natural or legal person that exercises an economic activity or any grouping of these persons.
Morocco	“Undertaking”: All natural or legal persons, whether their headquarters is in Morocco or not, as long as the purpose of their operations or their competitive behaviours is in the Moroccan market or in an important part it or may have an impact on this competition.(.....)
Tunisia	The aim of this law is to control the provisions concerning freedom of prices and determining the rules organizing freedom of competition. For this purpose, producers, traders, service providers and any other intermediary are subjected to obligations in order to prevent any practices contrary to competition rules.

Ignorance of the law constitutes no excuse; undertakings are obliged to learn about the different laws, including competition law, and to comply with them.

2.2 *Substantive rules*

Substantive rules of competition rules may vary in its specifics from one jurisdiction to another, yet the main prohibitions are generally the same.

Most competition laws cover four pillars – four types of anti-competitive behaviour that the competition law intends to prohibit. Generally, a national competition law will have specific rules covering (i) anti-competitive agreements (“cartel”), (ii) abuse of dominance (“monopolies”), (iii) merger control, and (iv) state aid (not all countries have particular rules on state aid).

Anti-competitive agreements. Undertakings are obliged not to conclude anti-competitive agreements (whether vertical or horizontal). Such (formal or informal) agreements between two or more undertaking have the purpose or the effect of restricting competition on a given market, e.g. agreements fixing prices or other terms of sale, allocating market or customer between the participating undertakings, restraining production or sale, concerted refusals to purchase or to supply, collective denial of access to service, which is crucial to competition¹².

Abuse of dominant position. The holding of a dominant position is not prohibited per se, but an enterprise holding such dominant position is not allowed to abuse its position. For instance, an enterprise holding a dominant position cannot use below cost pricing to eliminate competitors (predatory behavior), it cannot apply discriminatory (i.e. unjustifiably differentiated) pricing or terms or conditions in the supply or purchase of goods or services, it must not fix the prices at which goods sold can be resold or impose unjustifiable restrictions on parallel trade¹³.

Merger control. Undertakings involved in a merger are obliged to notify the competition agencies when concluding a merger and they may be subject to an ex ante control (by a national competition authority) of the effect of such merger on the competition situation in a country. If according to the applicable rules the merger would negatively impact competition, then the several conditions may be imposed to reduce such risk or, if such is not possible, the merger may be prohibited¹⁴.

2.3 *Sanctions and remedies*

When prevention is not effective, undertakings may be convinced to comply with competition law by some “negative” incentives, i.e. the sanctions which a competition agency can impose if the undertaking does not comply with the substantive rules. The fear of the high fines, or the imprisonment in some cases, may incentivize the undertakings to comply. In other words, the severity of the sanctions provided by law can push undertakings to comply with the competition rules.

¹² UNCTAD Model Law – Chapter III.

¹³ UNCTAD Model Law - Chapter IV

¹⁴ UNCTAD Model Law - Chapter VI

Countries impose different sanctions for the different violations of competition laws. Severe sanctions can be imposed, e.g. in cartel cases (although the outcome details of the proceedings are not always publicly known). In the MENA countries, the sanctions for violating the competition law are usually fines, but some countries provide imprisonment sanctions as well. In Egypt and Jordan, the sanctions are limited to financial fines. In Algeria, Morocco, and Tunisia, the sanctions may include imprisonment of a period ranging from 16 days up to two years, in addition to the financial fines.

Fines may be imposed upon the violating undertakings and/or its managers or employees. Imprisonment sanctions may vary according the violation and can be imposed upon individuals, such as managers and employees.

In addition to these corrective measures, the violating undertaking may be ordered to put an end to the anti-competitive behaviour, undo its consequences, and pay damages to the undertakings that suffered prejudice.

All MENA countries allow civil actions based on competition law violations¹⁵.

By complying with the competition rules, companies avoid – at least reduce – the risk of being prosecuted for violations of competition law and the probabilities of having to pay civil damages to competitors and/or consumers.

This may also help undertakings save litigation costs, including lawyers' fees. Finally, most undertakings prefer to keep a law-abiding image: a conviction for breaking competition rules harms an undertaking's public image and it will have to spend important sums to regain the public's trust.

2.4 Implementation of compliance rules

Undertakings can take several types of measures as a part of their compliance programme.

In function of the applicable law, undertakings should adopt a clear strategy on how to comply with the competition rules and which their relation to their competitors and clients/consumers should be.

In practice, undertakings should set up **information campaigns** for their staff and management. The staff and the management should be trained on the practices that could be anti-competitive and which circumstances should raise their suspicion.

Undertakings must design **procedures** which staff can follow in case of doubt (in order to eliminate the risk of anti-competitive practices) or in case of violation and should designate the **departments** that should be involved.

¹⁵ Civil actions are allowed by law in Egypt, Tunisia, Morocco, and Jordan; although no records of severe damages being claimed.

In short, the staff and management should have the knowledge to be able to decide what should be done and what should not be done.

The undertaking should make sure that this information is widely available to all staff and management (including newcomers). More extensive information can be provided during seminars and workshops, but it is recommended to make the information also available on a more permanent, on demand basis, e.g. on the internet or the intranet of the undertaking or in educational brochures. Importantly, staff and management should know which procedures to follow in case of a violation.

There should be constant update about the competition rules and practices, e.g. through regular trainings or publications.

Undertakings should also monitor the staff properly to see how they comply with the legal and internal company rules, and consider compliance efforts in staff evaluation.

Using this feedback from staff evaluation, the undertaking can also refine its procedures and amend its internal rules to ensure a more efficient compliance. Subsequently the staff and management should be informed about the new rules and practices.

It is important to note that the mere fact of having competition compliance rules does not guarantee immunity of the undertaking. It is well possible that it comes under investigation of a national competition agency and that violations are found (if the compliance rules were not sufficient).

Companies remain under the obligation to act cautiously. It is preferable to consult the legal, economic, financial consultants, whether internal or external, before performing any act that might fall under the application of the competition law.

3 The role of National competition agencies

The notion “competition authority” or “competition agency” refers to any non-judicial authority or body independent of or incorporated in governmental bodies, which is the main responsible body for the enforcement of competition law and the other activities in the competition policy referred to earlier, regardless of its name.

The UNCTAD Model Law on Competition describes the functions and powers of the Administering Authority as:

- (a) Making inquiries and investigations, including as a result of receipt of complaints;*
- (b) Taking the necessary decisions, including the imposition of sanctions, or recommending same to a responsible minister;*
- (c) Undertaking studies, publishing reports and providing information to the public;*

In addition, countries could opt for giving the following additional functions:

- (d) Issuing forms and maintaining a register, or registers, for notifications;*
- (e) Making and issuing regulations;*
- (f) Assisting in the preparation, amending or review of legislation on restrictive business practices, or on related areas of regulation and competition policy;*
- (g) Promoting exchange of information with other States.¹⁶*

Typically, a competition agency has **preventive** and **corrective tasks**. It needs to allocate its resources to help companies avoid violations of the competition law (prevention) and to pursue the undertakings it suspects are violating the law (repression). It is recommended that the competition agency invest in both prevention and repression. It needs to reach out to the undertakings and make them aware of the competition rules, but it also needs to prosecute (possibly after a transitory period) those companies that have violated the competition rules in order to maintain deterrence.

3.1 Prevention: Raising Awareness – Outreach – Advocacy

Increasing the competition culture in a country aims at explaining the value of the competition laws, so it is more likely that those laws are complied with. Creating a competition culture should therefore be on the top of the agenda of any competition authority seeking a successful compliance policy.

Competition authorities should focus on increasing competition awareness and reaching out to the private sector. It can do so by providing information (e.g. a website or paper brochures) or through organising training programmes or supporting

¹⁶ UNCTAD Model Law - Chapter X

(academic) training initiatives. The main ingredients for successful compliance are willingness, efficiency, training, education, and information.

It takes long term plan to have society acknowledge competition rules as a part of their collective rules. The competition agency should communicate intensely and consistently to condemn anti-competitive acts for a competition culture to be established. Competition authorities should therefore engage actively with the media and inform the public (including the undertakings) about the economic consequences of anti-competitive behaviour that affect the end-consumer, other undertakings and ultimately the whole economy of the country.

The engagement of the competition agency can take different forms, addressing different sectors or actors in the society. Firstly, the competition authority can publish documentation to address the different stakeholders, introducing the concepts of the competition law, the substantive rules, the sanction or report on its achievements in following anti-competitive practices, and the impact such practices had/may have on the economy.

Also, Competition authorities in MENA countries are obliged by law to publish annual reports, make these available to the public and presented to the parliament. Competition authorities are expected to reach out not only to other governmental institutions, lawyers and economic experts, but also to the public in general.

Finally, competition authorities are expected to facilitate compliance. Some authorities provide a hotline and a mailbox for citizens' complaints; they provide ^[1]close cooperation with the public in answering questions and preserving secrecy.

3.2 Repression: Enforcement - Deterrence – Leniency- Exchange of Information

When the competition agency suspects that an undertaking violates the applicable competition rules, it can put in motion the enforcement mechanisms that are available under national law. These mechanisms are defined in the national laws of the MENA countries. Most laws allow the competition agencies to investigate suspect behaviour for violations. Depending on the investigatory efforts of the agency, the detection rates will increase.

A competition authority may have several investigation measures, which allow it to verify whether competition law has been violated. If this is the case, the competition authority can mostly initiate some type of proceedings (administrative or judicial) in view of having monetary sanctions (fines) or incarceration sanctions imposed. Alternatively, a leniency programme may be followed, which may also lead to sanctions (of variable importance – see infra sub 3.3.2).

3.2.1 Enforcement and Deterrence

Investigation. Competition authorities typically have the authority to investigate whether the behaviour or practices of an undertaking are violating the competition rules. The stronger the investigation mechanisms in the hands of the competition authorities the riskier it will be for companies willing to violate the competition rules. Competition authorities often are granted investigative powers, which cover e.g. the possibility to request access to the offices, computers and documents of the undertakings under investigations and to interrogate staff, managers or any third parties.

Competition authorities should therefore invest in employing enough personnel (depending on the size of the market), selecting legal, economic and technical specialists, providing them with regular trainings to be updated with the latest investigation tools, and invest in the computer and data technology within the competition authority.

After the investigation, mostly conducted by the competition authority, it should be verified whether its findings amount to a violation of the competition law. Several types of assessment proceedings can be found. In some countries the proceedings take place before the competition authority, during which the undertakings have the possibility to defend their positions, and the competition authority itself has the possibility to impose sanctions. In other countries, the competition authority can only conduct the investigation but the assessment of the findings in the light of the competition law is left to the courts.

Sanctions. If it is proven that an undertaking has violated competition rules, then it may be subject to a sanction. Sanctions vary between monetary fines and imprisonment, and they are either imposed by the competition authority itself (in case of fines), or thorough the courts of law (in case of fines or imprisonment).

Fines. In order to have a deterrent effect, the fines that the competition agency or the court may impose should be sufficiently important. If fines are high enough, even a low probability of detection could be deterrence. The threat of incurring such fine may outweigh the benefits that an undertaking may be pursuing by its anti-competitive behaviour.

Fines however need to be proportionate to the gravity of the violation. If the fines are too high and they are not seen as legitimate, then they may be counterproductive and the whole competition system may be undermined. Excessive fines might also raise over-deterrence, companies may then over-invest in monitoring and compliance and avoiding some useful conducts that are not actually anticompetitive. Excessive fines might be above the financial ability of a company and thus may drive it into bankruptcy or cause it to otherwise exit the market permanently. The market might end up then being less competitive than it would have been if the company had been fined with a proportionate fine that allowed it to survive, in addition to all the other social costs on the economy from a company exiting the market from job losses.

Those outcomes that may result from imposing very high fines would ultimately be against the consumer who will end up enduring higher prices, receive poorer service, or benefit from less innovation.

The highest fines are usually for anti-competitive agreements:

Table 2 Fines Sanctions for Anticompetitive Agreements	
Algeria	<p>Article 56: The anticompetitive practices stated in article 14 of this Law are sanctioned by a fine not exceeding twelve per cent of the net turnover, realized in Algeria during the last financial year, or by a fine equal at least double the profit realized from these practices, such fine shall not exceed of fourfold of the profit, if the violator did not realize a specific turnover , the fine shall not exceed six million Algerian dinar (around USD).</p> <p>Article 57: Shall be sanctioned with a fine of two million dinar (around USD) every person participated personally, in a fraudulent manner, in the organization and realization of anti-competitive practices as stated in the provision of this Law.</p> <p>Article 62 (bis): If the financial year mentioned in the provisions of Articles 56, 61 and 62 of this Law does not cover a period of one-year, financial sanction that should be applicable on the violator will be calculated according to the value of the net turnover realized in Algeria during the period of the completed activity.</p> <p>Article 62 (bis)(1): The sanctions stipulated in the provisions of Articles 56 to 62 of this Law, shall be determined by the Competition Council on the basis of certain criteria, in particular the seriousness of the practice committed, the harm done to the economy, the benefits collected by the violators, and the extent of the cooperation of the violators with the Competition Council during the investigation, in addition to the importance of the position of the violator in the market.</p>
Egypt	<p>A fine of not less than two per cent of the gross revenue of the product subject matter of the violation, and not exceeding twelve per cent of the aforementioned gross revenue, to be calculated from the gross revenue within the violation period. In case of the impossibility of calculating of the aforementioned revenues, the punishment shall be a fine of not less than five hundred thousand Egyptian Pounds (around twenty-five thousand USD), and not exceeding five hundred million Egyptian Pounds (around twenty-five million USD).</p> <p>The minimum and maximum limits of the fine shall be doubled, in case of the recidivism of violating the Law, and in case of the failure to abide by the decisions rendered by the Authority.</p>
Jordan	Article 20

	<p>a- A fine of not less than one per cent of the gross revenue of the product subject matter of the violation, and not exceeding five per cent of the aforementioned gross revenue, to be calculated on the basis of:</p> <ol style="list-style-type: none"> 1. The gross annual sales revenue, or total revenues from services rendered, within the market of the violation for the financial year preceding the violation; or 2. The gross annual sales of the products of the violation, if the activity of the violating company includes many products, and the violation is limited to some products only; or 3. The criteria that the court decides in case the activity of the violating company includes many products, and the violation is limited to some products only and the revenue of which could not be calculated. <p>b- In case of the impossibility of calculating of the aforementioned revenues, the punishment shall be a fine of not less than five thousand Jordanian Dinars (around USD), and not exceeding fifty thousand Jordanian Dinars (around USD)</p>
Morocco	<p>Article 75: Any person who participated in a fraudulent manner or in a decisive manner in the planning or the organization or the supervision of the practices mentioned in Articles 6 and 7 of the provisions this Law, shall be penalized by an imprisonment term from two months to one year and a fine of ten thousand to five hundred thousand Dirhams (around USD) or only one of these two penalties.</p> <p>The court may order the publication of its full decision or parts of it in a newspaper that it determines on the expenses of the condemned person.</p> <p>Article 77: In all cases stated upon in the provisions of Articles 75 and 76, the violator could be sanctioned by the deprivation of one or more of its rights stated upon in chapter 40 of the criminal law regardless the application of chapter 87 of this law.</p>
Tunisia	<p>Chapter 34: Regardless the sanctions issued by the courts, those who have disregarded one of the prohibitions stipulated in chapters 5 and 6 of the provisions of this law shall be sanctioned by a fine imposed by the Competition Committee as stated upon in Chapter 9 of this Law. This fine cannot exceed 5% of the number of transactions realized by the concerned party in Tunisia during the previous financial year.</p> <p>Chapter 36: Subject to the provisions stated upon in Chapter 8 of this Law, and after the completion of the procedures stated in paragraph 3 of Chapter 20 of this Law, any person who participated in a fraudulent manner or in a decisive manner in the violation of the restrictions stated in Chapters 5 and 6 of this law shall be penalized with an imprisonment of a term between 16 days and one year and a fine between 2000 and 10,000 Dinars (around</p>

	<p>USD) or only one of these penalties. In addition, the court may order the publication of its full decision or parts of it in a newspaper that the court will determine on the expenses of the condemned person. It may also rule in accordance with the conditions stated upon in Article 41 of this law by suspending its decision or declaring it by any other means or both.</p>
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Same or lesser fines are imposed in cases of abusing dominant position:

Table 3 Fines Sanctions for Abuse of Dominance	
Algeria	<p>Article 56: The anticompetitive practices stated in article 14 of this Law are sanctioned by a fine not exceeding twelve per cent of the net turnover, realized in Algeria during the last financial year, or by a fine equal at least double the profit realized from these practices, such fine shall not exceed of fourfold of the profit, if the violator did not realize a specific turnover , the fine shall not exceed six million Algerian dinar (around USD).</p> <p>Article 57: Shall be sanctioned with a fine of two million dinar (around USD) every person participated personally, in a fraudulent manner, in the organization and realization of anti-competitive practices as stated in the provision of this Law.</p> <p>Article 62 (bis): If the financial year mentioned in the provisions of Articles 56, 61 and 62 of this Law does not cover a period of one year, financial sanction that should be applicable on the violator will be calculated according to the value of the net turnover realized in Algeria during the period of the completed activity.</p> <p>Article 62 (bis)(1): The sanctions stipulated in the provisions of Articles 56 to 62 of this Law, shall be determined by the Competition Council on the basis of certain criteria, in particular the seriousness of the practice committed, the harm done to the economy, the benefits collected by the violators, and the extent of the cooperation of the violators with the Competition Council during the investigation, in addition to the importance of the position of the violator in the market.</p>
Egypt	<p>A fine of not less than one per cent of the gross revenue of the product subject matter of the violation, and not exceeding ten per cent of the aforementioned revenues, this shall be within the violation period, in case of the impossibility of calculating the aforementioned revenues, the punishment shall be a fine of not less than a hundred thousand Egyptian Pounds, and not exceeding three hundred million Egyptian Pounds.</p> <p>The minimum and maximum limits of the fine shall be doubled, in case of the recidivism of violating the provisions of any of the Articles 6, 7, 8 of this</p>

	Law, and in case of the failure to abide by the decisions rendered by the Authority in accordance with Article 20 of this Law.
Jordan	<p>Article 20</p> <ol style="list-style-type: none"> 1. A fine of not less than one per cent of the gross revenue of the product subject matter of the violation, and not exceeding five per cent of the aforementioned gross revenue, to be calculated on the basis of: 2. The gross annual sales revenue, or total revenues from services rendered, within the market of the violation for the financial year preceding the violation; or 3. The gross annual sales of the products of the violation, if the activity of the violating company includes many products, and the violation is limited to some products only; or 4. The criteria that the court decides in case the activity of the violating company includes many products, and the violation is limited to some products only and the revenue of which could not be calculated. 5. In case of the impossibility of calculating of the aforementioned revenues, the punishment shall be a fine of not less than five thousand Jordanian Dinars (around USD), and not exceeding fifty thousand Jordanian Dinars (around USD)
Morocco	<p>Article 75: Any person who participated in a fraudulent manner or in a decisive manner in the planning or the organization or the supervision of the practices mentioned in Articles 6 and 7 of the provisions this Law, shall be penalized by an imprisonment term from two months to one year and a fine of ten thousand to five hundred thousand Dirhams (around USD) or only one of these two penalties.</p> <p>The court may order the publication of its full decision or parts of it in a newspaper that it determines on the expenses of the condemned person.</p> <p>Article 77: In all cases stated upon in the provisions of Articles 75 and 76, the violator could be sanctioned by the deprivation of one or more of its rights stated upon in chapter 40 of the criminal law regardless the application of chapter 87 of this law.</p>
Tunisia	<p>Chapter 34: Regardless the sanctions issued by the courts, those who have disregarded one of the prohibitions stipulated in chapters 5 and 6 of the provisions of this law shall be sanctioned by a fine imposed by the Competition Committee as stated upon in Chapter 9 of this Law. This fine cannot exceed 5% of the number of transactions realized by the concerned party in Tunisia during the previous financial year.</p> <p>Chapter 36: Subject to the provisions stated upon in Chapter 8 of this Law, and after the completion of the procedures stated in paragraph 3 of Chapter 20 of this Law, any person who participated in a fraudulent manner or in a</p>

	<p>decisive manner in the violation of the restrictions stated in Chapters 5 and 6 of this law shall be penalized with an imprisonment of a term between 16 days and one year and a fine between 2000 and 10,000 Dinars (around USD) or only one of these penalties. In addition, The court may order the publication of its full decision or parts of it in a newspaper that the court will determine on the expenses of the condemned person. It may also rule in accordance with the conditions stated upon in Article 41 of this law by suspending its decision or declaring it by any other means or both.</p>
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Fines are also imposed in case of violating the competition obligations relating to mergers and acquisitions:

Table 4	Merger control sanctions
Algeria	<p>Article 61: The operations of groupings stated upon in the provisions of Article 17 and that had been completed without authorization of the competition council shall be sanctioned by a fine up to 7% of the net turnover realized in Algeria during the last closed financial year, this fine will be opposable to every organization that had been a part of the grouping or the institutions that had been established as a result of the grouping's operation.</p> <p>Article 62 (bis): If the closed financial year mentioned in the provisions of Articles 56, 61 and 62 of this Law does not cover a period of one year, financial sanction that should be applicable on the violator will be calculated according to the value of the net turnover realized in Algeria during the period of the completed activity.</p> <p>Article 62 (bis)(1): The sanctions stipulated in the provisions of Articles 56 to 62 of this Law, shall be determined by the Competition Council on the basis of relevant criteria, in particular the seriousness of the practice committed, the damage to the economy, the benefits collected by the violators, and the extent of the cooperation of the accused institution with the competition council during the investigation of the case and the importance of the status of the institution concerned in the market.</p>
Egypt	<p>Article 22 (bis): Shall be punished with a fine of not less than ten thousand pounds and not more than a hundred thousand pounds any person who:</p> <p>Fails to give the notification described in the second paragraph of Article 19 hereof, (...)</p>
Jordan	<p>Article 21: Any person who violate the provisions stated upon in Articles (9) and (10) of this Law or fails to comply with any decision taken in accordance with the provisions stated upon in Article (11), shall be sanctioned with a fine not less than (10,000) ten thousand and not exceeding (50,000) fifty thousand Dinars.</p>
Morocco	<p>Article 19: If a concentration process is completed without notice, the Competition Council shall order, subject to a threatening fine and within the limits provided for in Article 40 of this law, the parties to notify the operation unless the previous position of concentration is reverted.</p> <p>The procedure stipulated upon in Articles 15 to 17 will then be applied.</p> <p>In addition, the Competition Council may impose a financial penalty on persons who are obliged to report, with a maximum amount for legal persons shall be set at 5% without calculating the charge of the number of their transactions performed in Morocco during the last closed financial year ended without calculating charges. In this case, the number of transactions performed in Morocco during the same period was the one that was owned. For, the penalty may reach five million (5,000,000) dirhams.</p>

If the completion of the process of concentration, that had been previously notified to the Council, before the issuance of the decision stated upon in the first paragraph of article 14, without the benefit of the exception contained in paragraph 2 of the same article, the Competition Council can impose, on persons of physical and legal persons who had reported, a financial penalty as provided for in the second paragraph above.

If the notification contains an omission or an incorrect statement, the Competition Council may impose, on the legal persons who have reported financial, sanction as provided for in paragraph 2 above.

This sanction may be accompanied by a withdrawal of the decision authorizing the completion of the operation.

The parties are still obliged to report the process once a month from the withdrawal of the decision unless the previous situation is reviewed, otherwise it will be subject to the sanctions stipulated in paragraphs 1 and 2 above.

If the Competition Council considers that the parties have not implemented within the deadlines an order, instruction or an undertaking included in its decision or in the decision of the administration that has determined the process pursuant to Article 18 above, it shall be deemed not to be implemented. And it can:

- 1- Withdraw the decision to authorize the completion of the process. Unless a revert is made to the pre-concentration situation, the parties are obliged to report the process again within one month of withdrawal of the decision, otherwise they will be subject to the sanctions provided for in paragraphs 1 and 2 above;
- 2- The parties that are obliged to implement the unfulfilled undertaking to execute orders, instructions or undertakings within a specified period shall be subject to a threatening fine within the limits stipulated upon in Article 40 of this law.

The Competition Council may also impose a financial penalty, on the juristic or legal persons involved in the unfulfilled undertaking, as stated upon in paragraph 2 of this article. (.....)

The Competition Council shall make its decision within 120 days, effective from the end of the period provided for in the preceding paragraph.

If a concentration process was completed contrary to the decisions taken in accordance of Articles 17 and 18 above, the Competition Council shall order a threatening fine and within the limits provided for in Article 40 of this Law, the parties shall refer to the pre-concentration status. The Competition Council may also apply, to the juristic or legal persons who are obliged to

	<p>implement the said decisions, the financial sanction stated upon in paragraph 2 of this article.</p> <p>Article 40: The Competition Council may sanction the concerned parties a threatening fine within 5% of the average of the daily net for each day of delay from the date specified in order to oblige them to:</p> <ol style="list-style-type: none"> 1. To implement a decision requiring them to put an end to anti-competitive practices or to implement a decision imposing special conditions on them or to respect the decision to make an undertaken mandatory according to article 36 above; 2. To respect measures taken according to article 35 above. <p>The number of turnover that will be taking into consideration is calculated on the basis of the entity's accounts for the last closed financial year at the date of the decision.</p> <p>As for the organizations that have no activity in the form of transactions, the threat sanction is determined at a maximum amount of 5,000 (5,000) dirhams.</p> <p>The threat sanction shall be settled by the Competition Council, which shall determine its final amount.</p>
Tunisia	<p>Without prejudice to the sanctions stated by the courts, the Competition Council may order the concerned operators in breach of these requirements to pay a fine of no more than five percent of their pre-tax turnover as achieved in Tunisia during the last financial year.</p>

Imprisonment. Although fines are the most common sanctions, they are not considered the most deterrent ones. Sometimes the employees and managers working for an undertaking prefer to pursue their personal interests, rather than the interests of the undertaking. The managers or employees could indeed believe they can advance faster, collect more bonuses, or achieve higher respect by making more profits by violating the competition rules, e.g. by establishing a cartel. They may be inclined to do so even though the company could eventually be fined as a result. Consequently, national competition laws commonly provide sanctions of imprisonment for the employees or managers who contributed to the anti-competitive practices of the undertaking.

Imprisonment has proven to have its advantages, from a competition compliance point of view. If companies can compensate their personnel for the fines the personnel should have to pay, they cannot compensate them for the time they spend behind bars.

The US is considered to be the leading country adopting imprisonment for competition law violations.

In few MENA Region countries imprisonment sanctions can be adopted for cartels and abuse of dominance, although in practice are rarely applied:

Table 5 Imprisonment Sanctions for Cartels and Abuse of Dominance	
Algeria	N/A
Egypt	N/A
Jordan	N/A
Morocco	<p>Article 75: Any person who participated in a fraudulent manner or in a decisive manner in the planning or the organization or the supervision of the practices mentioned in Articles 6 and 7 of the provisions this Law, shall be penalized by an imprisonment term from two months to one year and a fine of ten thousand (10,000) to five hundred thousand (500,000) Dirhams or only one of these two penalties.</p> <p>The court may order the publication of its full decision or extracts of it in a newspaper that the court will determine on the expenses of the condemned person.</p> <p>Article 77: In all cases stated upon in the provisions of Articles 75 and 76, the violator shall be sanctioned by the deprivation of one or more of its rights stated upon in chapter 40 of the criminal law regardless the application of chapter 87 of this law.</p>
Tunisia	<p>Chapter 36: Subject to the provisions stated upon in Chapter 8 of this Law, and after the completion of the procedures stated in paragraph 3 of Chapter 20 of this Law, any person who participated in a fraudulent manner or in a decisive manner in the violation of the restrictions stated in chapter 5 and 6 of this law shall be penalized with an imprisonment term between 16 days and one year and a fine between 2000 and 10,000 dinars or only one of these penalties.</p> <p>In addition, The court may order the publication of its full decision or extracts of it in a newspaper that the court will determine on the expenses of the condemned person. It may also rule in accordance with the conditions stated upon in Article 41 of this law by suspending its decision or declaring it by any other means or both.</p>

An additional advantage for adopting imprisonment as a sanction is that it motivates companies to participate in leniency programs and staff to offer their full cooperation. Avoiding imprisonment is a strong incentive to comply with the competition rules, at least to cooperate with the investigating authorities in order to get the immunity provided by the leniency programs.

3.2.2 Leniency programmes

Violations of competition law are difficult to detect and to investigate. This is in particular the case for cartels, where the undertakings concerned have an interest in

keeping the anti-competitive agreements secret. Competition authorities depend greatly on information coming from insiders. In order to encourage those insiders to share their information with the competition authority, they could participate in a leniency programme that the national law may provide.

A “leniency programme” allows a competition authority to encourage cartel participants to share information about the cartel in exchange for immunity or a reduction of the sanctions. Condition for such leniency is that the participant in the cartel who is the first to bring useful information about the cartel or that brings information with additional value to the information that the competition authority has received already.

The aim of leniency programmes is to “drive a wedge at the heart of a cartel through its trust and mutual benefit. The reward for the first whistle-blower is generally a large (or total) reduction in penalties and other incentives can be offered to the second whistle-blower and to those who come after, if they bring forward decisive evidence. Effective leniency programmes are aimed at creating a race among conspirators to disclose their conduct to enforcers, in some instances, even before an investigation has begun, and to quickly crack cartels that may have otherwise gone undetected”¹⁷.

Leniency programs are commonly adopted worldwide. Such programmes are an important instrument to put an end to anticompetitive agreements or existing cartels. The partners of such cartel are under constant threat that their counterparts may use the leniency program to save themselves and report the cartel and all its details to the authorities.

Leniency is adopted in MENA countries:

Table 6 Leniency	
Algeria	Article 60: ^[17] The Competition Council may decide to reduce the amount of the fine or to not pronounce fines against companies that, during the investigation of the case concerning them, recognize the offenses alleged against them, collaborate to accelerate it and commit to no longer perpetrate any offenses related to the implementation of the provisions of this Ordinance.
Egypt	Article 26: ^[17] As amended by Law 190/2008. In case of any crimes committed that are mentioned in articles 6 and 7 of this Law, the court may exempt up to the half of the sanction decided thereby* (see below). This refers to violators who take the initiative to inform the Authority of the offence and

¹⁷ See UNCTAD MENA Program Competition Guidelines: Leniency Programmes, available at: http://unctad14.org/Documents/ditcc1p2016d3_en.pdf

	submit the supporting evidence, and for those whom the Court considers to have contributed to disclosing and establishing the elements of the offense at any stage of the inquiry, search, inferences gathering, interrogation and trial processes. *2014 Amendments offer full and mandatory leniency for the first applicant who comes forward to ECA.
Jordan	Article 25: (...) B ^[L] _{SEP} The Court may mitigate the punishment of a violator of the provisions of Articles 5,6,8,9, and 10 of this Law if such violator provides to the Directorate information leading to the uncovering of such practices.
Morocco	Article 41: ^[L] _{SEP} Total or partial immunity from sanctions can be granted to a company or organization which, with others, implemented a practice prohibited by the provisions of Article 6 of this Law if it helped establish the reality of the prohibited practice and to identify the perpetrators, by providing the information which the Competition Council or the administration did not previously have. (...)
Tunisia	<p>Article 26: ^[L]_{SEP} The Competition Council may, after hearing from the Government Commissioner, as provided by this article, grant full exemption or reduction of the sanction to any party to a cartel or to an anti-competitive agreement.</p> <p>Total exemption from any sanction is granted to the first person to provide:</p> <ul style="list-style-type: none"> - Information which the administration or the Competition Council did not previously possess and that enables it to conduct an investigation into violations of competition in a given market; or - Decisive evidence that allows the Administration or the Competition Council to establish the existence of an anticompetitive practice previously known to them without being able to prove it. <p>The partial exemption of the penalty is awarded to any person who:</p> <ul style="list-style-type: none"> - Provides evidence that contributes a significant added value to the evidence that the administration or the Council already had; or ^[L]_{SEP} - Does not dispute, in an unequivocal manner, the existence and content of the practices alleged against him/her; or ^[L]_{SEP} - Who takes the initiative to implement measures that lead to restore competition in the market. ^[L]_{SEP} To determine the level of reduction of sanctions, the Competition Council shall take into account the rank and date as to when the application was submitted and the extent to which the elements bring a significant added value. ^[L]_{SEP} The procedures for submitting applications for full exemption from punishment or reduction are determined by governmental decree upon proposal by the Minister for Trade. ^[L]_{SEP}

3.2.3 Exchange of Information

Competition laws usually provide an obligation to keep confidential the information that was shared or discovered in the context of the investigation. This confidentiality is necessary if undertakings are expected to provide data and share information to the competition agencies.

Those rules guarantee the safety of such information and that it can only be shared with competent authorities for the purposes they were acquired. In the context of adversarial procedures, undertakings are entitled to transmit non-confidential briefs to the other parties, leaving out their confidential information.

The UNCTAD Model Law on competition mentioned specifically confidentiality:

- “1. According information obtained from enterprises containing legitimate business secrets reasonable safeguards to protect its confidentiality.
2. Protecting the identity of persons who provide information to competition authorities and who need confidentiality to protect themselves against economic retaliation.
3. Protecting the deliberations of government in regard to current or still uncompleted matters.”¹⁸

The competition laws of MENA countries have the following provisions on confidential information:

¹⁸ UNCTAD Model Law - Chapter X

Confidentiality of Information

Algeria

Article 29

No member of the Competition Council may participate in a deliberation concerning a case in which he has an interest or has a fourth-degree relationship with one of the parties of the case or has represented or represents one of the concerned parties.

Members of the Competition Council shall have professional secrecy. The position of the member of the Competition Council shall not be contrary to any other professional activity.

Article 30

The Competition Council shall hear the parties concerned in the cases submitted to it and shall sign a memorandum. Such parties may appoint representatives or attend with their lawyers or any person of their choice.

The concerned parties and the representative of the minister in charge of trade has the right to access the file and to obtain a copy.

However, the president may, upon his initiation or the request of the concerned parties, refuse to deliver documents or documentations that affect professional secrecy. In such case, those documents and documentation are withdrawn from the file and the decision of the competition council cannot be based on the document and documentations withdrawn from the file.

Article 40

Taking into consideration the principle of reciprocity, the competition council may, within its competence and in cooperation with the entitled authority, send information or documents that he disposes or can collect, to foreign competition authorities with the same competences, if required, conditional on ensuring the professional secrecy.

Article 41

The competition council may, under the same conditions stipulated upon in article 40, by its own authority, conduct investigations into restrictive practices of competitions.

Article 7 of the executive degree 05 – 175 dated 3 Rabee El Thani, 1426 corresponding to 12 may 2005, that determines how to obtain a permit not to interfere with the agreements and the dominant position in the market, which states:

The concerned institutions or their authorized representatives may ask that certain information or certain documents that are submitted be protected by

	<p>the professional secrecy, in that case, the information and the documents has to be sent and submitted separately and to write on the top of every page “confidential business”.</p>
Egypt	<p>Article 16 The employees of the Authority are prohibited to disclose any information, data or the sources thereof, in relation to cases falling under the scope of this law which are submitted or circulated during review, taking actions and issuing decisions in such cases. These information and data, as well as their sources, shall not be used for any purposes other than those for which they were submitted. Employees of the Authority are prohibited to work with Persons that were subject to examination or are in the process of examination on, for a period of two years from the end of their employment.</p> <p>Article 23 Without prejudice to any more stringent penalty stipulated in any other Law, the breach of the provisions of Article 16 of this Law shall be sanctioned by a fine not less than ten-thousands Egyptian Pounds and not exceeding fifty-thousands Egyptian Pounds.</p>
Jordan	<p>Article 13 b: The employees of the directorate and any person who is aware of their work shall be committed to maintaining professional secrecy.</p> <p>Article 23: Shall be punished by a fine not less than (1000) thousand dinars and not more than (10,000) ten thousand dinars, any person who discloses any confidential information obtained from any source, unless by order of the Court.</p>
Morocco	<p>Article 31 Except where the communication or access to documents is necessary to exercise the rights of defense of a concerned party, the President of the Competition Council may refuse to inform or communicate a party with the documents or elements included in such documents that disclose the secrets of the work of other persons.</p> <p>In this case, the Party may have access to a non-confidential version and a summary of the documents or elements concerned.</p> <p>Parties shall refer to information that have the nature of confidential business whenever they provided the board with documents and information and no matter how much the holder is used.</p> <p>In addition, the confidential nature of the documents and information included in the file may be estimated by the President in accordance with the norms and practices in which the business is conducted.</p> <p>Article 32 A fine of ten thousand (10,000) to one hundred thousand (100,000) dirhams shall be imposed on each of the parties concerned,</p>

	<p>revealing the information relating to another party or third parties, which he has not been informed of except in the reason of the notification or inspection that had been done.</p> <p>Article 68</p> <p>(...)The persons referred to in this article shall be required to keep the professional secrecy under the sanctions provided for in Chapter 446 of the Criminal Code.</p>
Tunisia	<p>Article 56</p> <p>Employees, agents and all other persons who have access to the files of violations shall maintain the professional secrecy and shall be subject to the provisions of Chapter 254 of the Penal Code.</p>

4 Take away messages for undertakings

Messages to take for Undertakings:

- *Learn about the competition rules*
- *Invest in educating your staff – small investment can save a lot*
- *Obtain information from public reliable sources*
- *Monitor your staff – incentivize them to comply*
- *Consult your legal/economic/financial consultants when needed – Seek guidance.*
- *Avoid any anti-competitive behaviour, including but not limiting:*
 - *Treat equivalent customers and distributors in a consistent manner*
 - *Do not discuss confidential information or business secrets with competitors*
 - *Do not discuss or agree to any anti-competitive behaviour including any price fixing, pricing changes, distribution practices, terms of sales, restrictions to markets, fixing market shares, boycotting customers or competitors or suppliers, ...*
 - *Respond to any anti-competitive offers or suggestions by clear rejection*
 - *Document any contact with competitors*
- *Learn to control damage*
- *Actively use leniency programs*

Compliance will:

- *Protect the reputation of your company*
- *Bring you the competence of the consumers and the public authorities*
- *Ascertain the integrity of your employees*
- *Avoid the high costs of criminal procedures*
- *Avoid paying high fines or being imprisoned*

References

- UNCTAD, “MENA Program Competition Guidelines: Leniency Programmes”, 2016, http://unctad14.org/Documents/ditcclp2016d3_en.pdf
- UNCTAD Model Law on Competition, 2010, http://unctad.org/en/Docs/tdrbpconf7d8_en.pdf, p. 3.
- UNCTAD, “The relationship between competition and industrial policies in promoting economic development: Study by the UNCTAD secretariat”, 2009, http://unctad.org/en/Docs/ciclpd3_en.pdf
- UNCTAD, “Application of competition law: exemptions and exceptions” , 2002, available at http://unctad.org/en/Docs/ditcclpmisc25_en.pdf
- International Competition Network, “Advocacy and Competition Policy: Report prepared by the Advocacy Working Group”, *ICN’s Conference Naples*, Italy, 2002
<http://www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf>
- OECD, “Competition advocacy: challenges for developing countries”
<http://www.oecd.org/daf/competition/prosecutionandlawenforcement/32033710.pdf>
- OECD, Policy round tables: Promoting compliance with competition law, 2011, <http://www.oecd.org/daf/competition/Promotingcompliancewithcompetitionlaw2011.pdf>
- EU, “Compliance matters: What companies can do better to respect EU competition rules”, 2011,
<http://bookshop.europa.eu/en/compliance-matters-pbKD3211985/?CatalogCategoryID=8BYKABstR7sAAAEjupAY4e5L>