



Understanding the State of Domestic Competition and Consumer Policies in Select MENA Countries

Rijit Sengupta and Udai S Mehta

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*Report of a 'Scoping Mission' undertaken in
Algeria, Egypt, Jordan, Lebanon, Morocco,
Syria and Tunisia*

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This is a report of a scoping mission undertaken by CUTS in cooperation with The Arab NGO's Network on Environment and Development (RAED) during October-November 2010 in seven countries of the Middle East and North Africa region (namely Algeria, Egypt, Morocco, Tunisia, Jordan, Lebanon and Syria) to understand the prevailing state of competition and consumer protection regimes in these countries.

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Abbreviations

| | |
|------------|--|
| AAPPC | Algerian Association for the Promotion and Protection of Consumers |
| AEPC | L'Association de l'Environnement et de Protection du Consommateur d'El Jadida |
| AMPOC | L'Association Marocaine de Protection et de Orientation du Consommateur de Kénitra |
| ANRT | Agence Nationale de Réglementation des Télécommunications |
| APCE | L'Association de Protection des Consommateurs et de l'Environnement d'Oujda () |
| APROCONESS | L'Association de Protection du Consommateur d'Essaouira |
| AUC | American University of Cairo |
| CAF | Confederation of African Football |
| CBOs | Community-based Organisations |
| CI | Consumer's International |
| CMC | Centre Marocain de la Consommation |
| CPA | Consumer Protection Agency of Egypt |
| CPD | Consumer Protection Directorate |
| CRA | Consumer Rights Association |
| CSOs | Civil Society Organisations |
| ECA | Egyptian Competition Authority |
| EMFTA | Euro-Mediterranean Free Trade Area |
| ENIE | National Electronic Industry Corporation |
| ENPA | Egyptian National Postal Authority |
| EU | European Union |

| | |
|--------|--|
| FAO | Food and Agriculture Organisation |
| FTA | Free Trade Agreement |
| GCC | Gulf Cooperation Council |
| GDP | Gross Domestic Product |
| GTZ | Deutsche Gesellschaft für Technische Zusammenarbeit |
| IDRC | International Development Research Centre |
| IMF | International Monetary Fund |
| KOICA | Korea International Cooperation Agency |
| MENA | Middle East and North Africa |
| NGOs | Non-governmental Organisations |
| NRTA | National Telecommunication Regulation Authority |
| NSCP | National Society for Consumer Protection |
| NSCP | National Society for Consumer Protection Society |
| ODC | Consumer Defence Organisation |
| RAED | Arab NGO's Network on Environment and Development |
| TRC | Telecom Regulatory Commission |
| UNCTAD | United Nations Conference on Trade and Development |
| UNDP | United Nations Development Programme |
| USAID | United States Agency for International Development |
| UTAP | National Union of Agriculture and Fishing |
| UTICA | Tunisian Union of Industry, Commerce and Craft |
| WTO | World Trade Organisation |

Foreword

The CUTS MENA Scoping Mission Report sheds new and valuable light on a vital area of national economic policy in the MENA region that has henceforth received far too little attention. It offers a welcome summary assessment and comparison of the state of national competition laws and consumer protection in a region (with important national exceptions) that has generally lagged in these areas. It also has rich implications for potential reforms and donor engagement. Why are its two areas of focus so important?

For market-based growth to yield its full benefits, it requires both competition and informed consumers. Competition drives efficiency, innovation and productivity growth, which are keys to competitiveness and remunerative employment. Competitive markets also improve consumer welfare by stimulating price competition and by driving innovation, bringing consumers lower prices and useful new products. Consumer policy assures that citizens can make welfare-maximising choices based on full and truthful information. In credit markets, consumer ignorance or seller misrepresentation of risks and obligations can potentially lead to financial ruin.

Both competition and consumer protection policies are vital to “levelling the economic playing field”, so that opportunity is equally available to all. The end objectives of both competition and consumer policies are essentially the same. However, competition policy is more of a proactive policy that *inter alia* attempts to promote consumer interest in the marketplace, whereas consumer protection policy puts forward mainly a reactive agenda to protect the interests of the consumers, and

provide access to redressal against abuses (CUTS, 2005). Needless to say, both policies also serve other social goals, including strengthening fairness and protecting citizens against deception, fraud and financial harm.

The MENA region generally suffers from information failure, lack of transparency, and imperfect competition. A central theme of the recent World Bank report *From Privilege to Competition* (World Bank, 2009) is the need to expand the benefits of private sector development by increasing transparency and competition and strengthening rule-based institutions to underpin markets. The Arab Spring concerned multiple issues, but one was the perceived injustice of the political economy, which favoured a privileged few, while denying the opportunities of employment and entrepreneurship to many.

Although MENA economies have opened more to trade in recent decades, lowering tariff and some non-tariff barriers, limitations in domestic markets have constrained the benefits. Trade liberalisation through the lowering of tariffs change price signals to entrepreneurs, in case if other factors do not impede either the signal or their ability to respond. On the one hand, if factor markets are not flexible, when trade is liberalised, workers, capital and land cannot be reallocated to markets or sectors where they are most highly valued.

It was concluded from a study conducted in Morocco and Tunisia (*Trade liberalization, factor market flexibility, and growth: The case of Morocco and Tunisia*) that: “[W]elfare gains of trade reforms under conditions of flexible factor markets can be as much as six times the gains compared with a rigid factor market scenario. This is so because whereas trade reforms may improve the incentive structure for resource reallocation, the extent to which resources move from less efficient to more efficient sectors of an economy is dependent on the degree of flexibility of factor markets.” (World Bank, 2006)

Competitive product markets are also vital to realising the benefits of liberalised markets and trade. Rigidities or public or

private actions impeding competition may deny consumers the benefits of international competition, and insulate producers from having (or wanting) to respond to international price signals.

In spite of trade liberalisation, markets may be segmented by transportation and transaction costs, by public policies, or by a number of anticompetitive business practices, each of which can protect incumbent firms from competition (and can inhibit new foreign investment) and limit the efficiency and consumer welfare gains from liberalisation. Interested parties may also actively seek to frustrate competition: *Vested interest groups, incumbent large monopolistic firms, and other stakeholders can dampen, distort, or capture the benefits of market-oriented economic reforms such as trade and investment liberalization, privatization, and deregulation. (World Bank, 2007)*

Private actions can include domestic and international cartels or price-fixing agreements, inter-firm agreements restricting pricing, market partner choice, or purchase choice; control of key inputs or distribution channels; or abuse of dominant position (e.g. by predatory pricing) or other exercises of market power (Khemani, 1997).

Public policies, too, may restrain competition, including through various barriers to entry; non-tariff barriers to trade (such as unharmonised product and technical standards); anti-dumping laws; investment policies including exclusionary lists, ownership restrictions or licensing restrictions; and restrictive sectoral regulations. Note that many of these factors can also impede foreign investment.

Without an integrated approach to competition, embracing trade, regulation investment, anti-trust policies, and consumer protection, the objectives of resource mobility, productivity gains and improved consumer welfare may not be realised in spite of trade liberalisation.

Given the importance of informed consumers and competitive markets for the region's economic development, this study by CUTS International is a vital step towards understanding and

strengthening consumer and competition policies in the MENA region. MENA governments and their regional development partners should actively support the strengthening of these policies in accordance with international best practices, and especially work to enhance the institutional capacity for implementing these policies, stakeholder dialogue on these policies, and education of the private sector, consumers and public officials as to their importance for inclusive, private-led growth and poverty alleviation.

Cairo
June 2012

Andrew Stone
Lead Private Sector Development Specialist
Finance and Private Sector
Development Department
Middle East and North Africa Region
The World Bank

Preface

For nearly two decades now, CUTS has been advocating for competitive markets in developing countries by empowering national stakeholders to demand appropriate reforms in that direction. Evidence gathered along with civil society actors and others has helped bolster arguments in favour of competition reforms in many of these countries – and a movement forward has occurred in some of them.

As a consumer organisation, CUTS interest on competition issues stemmed from the understanding that competition reforms is a necessary element for achieving consumer welfare through reduced costs and better availability of good quality goods and services. National stakeholders have gradually started to realise the need for effective competition regimes (comprising a well-drafted competition law and a well-resourced competition agency to implement the same) for ensuring welfare gains for consumers.

CUTS has worked on competition policy and law projects in a number of regions, viz. eastern, southern and western Africa; south and southeast Asia. One region that CUTS has not been able to cover yet is Middle East and Northern Africa region (commonly referred to as the MENA region). This region is characterised by unique social, cultural, political and economic realities unlike any other, and hence CUTS envisaged a preliminary stock-taking exercise in some of the countries to help CUTS develop its future work agenda for this region. This opportunity was offered by the International Development Research Centre (IDRC) – one of our long-term supporters of competition policy and law work, globally.

IDRC, Canada has a MENA regional office based in Cairo (Egypt), which positively reciprocated to our idea of undertaking a ‘scoping mission’ in order to assess the state of competition and consumer protection in a group of countries from the MENA region. Susan Joeques of IDRC Regional Office in Cairo encouraged us to undertake this mission, and approved a project idea we had shared with her.

One of the main aims of this exercise was to familiarise ourselves with the ‘main actors’ on competition and consumer issues in the region, and gather relevant literature and sources of information – so that a sound background is created for CUTS to plan a full-scale project later. We were also conscious of the language barrier this assignment might offer, and therefore decided to team up with a regional NGO that has presence in all the seven countries we wanted to cover. Arab Network for Environment and Development (RAED) is an old partner of CUTS, and we were very happy that this assignment offered us another opportunity to work together. RAED has been in existence over two decades and is fairly active on various developmental issues in the MENA region through a formidable network of partners in the region.

Algeria, Egypt, Jordan, Lebanon, Morocco, Syria and Tunisia were selected for this assignment based on the discussions we had with some of our contacts in the region, select scholars and our International Advisory Board members. Historically, this region has been a lead trading partner of the European Union, and hence it was interesting to understand if this partnership has had any influence on the national economic and market policies in the countries.

Our analysis revealed that indeed, the EU had a significant impact as a trade and investment partner in shaping the competition regimes in many of the countries. While competition laws were adopted in most of the countries except for Lebanon, only a few have been able to implement them effectively due to a host of reasons ranging from – inherent weaknesses in the legislation to financial and human resource constraints.

Only a few governments: Egypt, Jordan and Tunisia have been able to carry out noteworthy work on consumer protection through a dedicated agency. However, there seems to be a gross absence of awareness and understanding across various stakeholders on consumer protection issues. This was witnessed even in countries where a dedicated agency exists for protecting the welfare of consumers.

Markets in many of these countries are characterised by the conspicuous presence of State owned Enterprises (SoEs), which continue to get State patronage and protection against competition from private and/or foreign firms. Policies are framed and practiced such that it benefits only a few players in the market – which has also contributed to the concentration of wealth among the powerful elites. Many of the key sectors are concentrated with one or a handful of firms controlling the entire market. Such a market is bound to be a haven of anticompetitive behaviour, which ultimately hurts the economy and consumers.

As a new dawn breaks in this region, civil society organisations have to start playing greater role on socio-economic policy matters than before. They need to show more interest on economic and market reforms, just as they have been the harbinger of political reforms in some of the countries in the region recently. National policymakers need to make that space available for the civil society, and development partners must support such a process. Proper regulatory safeguard measures are an integral part of a modern market-based economy.

The State needs to play an active role in ensuring that such safeguard measures are in place and they work effectively, while gradually retreating from being an active participant in economic activities. While the government might still continue to be engaged in sectors that have considerable public and national interest values, it should seriously consider its role in other sectors, which are not as significant.

Competition and consumer protection issues in this region have not received adequate attention even from bilateral donors and

international organisations, which have shown their commitment to these issues in other parts of the developing world. With the changing political, economic and social contours of many of the countries in this region, we hope that greater attention would be given to these issues, especially given their relevance for the economy and their effectiveness in checking economic concentration in society.

Undertaking this mission has been an extremely enriching experience for CUTS, and we have already started the ground-work for developing a blueprint for our future engagement in the region. We hope that the international development community will cooperate with us, so that we are able to initiate a full-scale project here and implement that with support from the national stakeholders. This mission would not have been possible without the support and cooperation we received from various stakeholders in these countries.

Finally, let me thank Essam Nada and Ziyad Alawneh of RAED for their guidance and cooperation in making this mission possible; and the support we received from the network partners of RAED based in the countries we visited.

Jaipur
June 2012

Pradeep S Mehta
Secretary General
CUTS International

Acknowledgement

CUTS would firstly like to thank our mission partner, the Arab Network for Environment and Development (RAED) for their support and cooperation in undertaking this mission. CUTS has known RAED for a long time, but this was really the first assignment that we carried out together. The mission would not have been possible without the dedication of two senior representatives of RAED, Essam Nada (Egypt) and Ziyad Alawneh (Jordan), who assisted us in undertaking this assignment. They both worked closely with the CUTS representatives not only during the field visits, but also before and after completion of the mission, to ensure that all the relevant information required for this report was obtained.

CUTS was not only unfamiliar with this region, but also constrained by the language. However, this challenge was easily overcome with the help of the RAED national contact points in the remaining countries - Fatma Zerouati (Algeria), Marie Therese Merhej Seif (Lebanon), Mohamed Ftouhi (Morocco), Suhair Al Rayes (Syria) and Karim Akrouf (Tunisia).

This work was carried out with the aid of a grant from the International Development Research Centre (IDRC), Canada – and we are grateful for their continued support to CUTS. IDRC has been CUTS partner on the subject of competition policy and law issues, especially across developing and least developed countries of Africa and Asia for a long time now, and we hope to continue this association in the future as well.

CUTS is particularly grateful to Susan Joekes of IDRC based in Cairo (Egypt) for encouraging and guiding us throughout the period of this assignment. We would also like to thank all the key

stakeholders from the seven countries, who provided us valuable information and time during the mission, which has really helped us in preparing this document.

We cannot thank everyone by name, but would like to acknowledge their support whole-heartedly, and hope that we can work together with them in taking some of the recommendations of this report forward.

A number of CUTS staff were involved in the preparatory work for this mission and also after its completion – and we thank them all. CUTS has gained a number of friends from across the countries, and shall endeavour to deepen this alliance over time. Future initiatives would be designed on the basis of the needs underscored in the report, and the feedback we receive on it. We shall take into consideration the social, economic and political environment in the region, when developing these interventions.

1

Introduction

CUTS International (www.cuts-international.org) is recognised as an organisation that has developed a methodology for linking research with advocacy and capacity building on competition reforms and consumer welfare issues in developing countries of Asia and Africa, and has the experience of working in nearly 30 countries. CUTS work is designed to achieve the goal of developing the understanding of multiple stakeholder groups on competition law and consumer protection issues – especially on the benefits for the economy and consumers.

CUTS has considerable experience of implementing competition policy and consumer protection initiatives across countries in South Asia, Southeast Asia, East Africa, West Africa and Southern Africa. The *mantra* of CUTS work has been to ‘promote a healthy competition culture’ in the beneficiary countries, and the organisation has developed a unique model (referred to as the *7Up Approach* - <http://www.cuts-ccier.org/7Up-model-en.htm>) to pursue this.

The impact that CUTS work on these issues has had, especially in enhancing the capacity of civil society organisations (and government agencies to a certain extent) inspired CUTS to explore the possibility of taking such initiatives to other parts of the world, especially in the hotbeds of economic development and growth in other parts of the third world. One such region is the Middle East and North Africa (MENA) region, where not much information

is available about the ‘needs on the ground’ in as far competition and consumer protection issues is concerned.

Further the predominance of political issues often obscure discourses on economic and regulatory reforms in this region. It was thought necessary for CUTS to undertake an initiative that would raise the ante on the need for taking the agenda forward on competition and consumer protection issues, and strengthen constituencies for their effective implementation.

CUTS shared this idea with the International Development Research Centre (IDRC), who suggested (and also provided the necessary financial support) CUTS to first undertake a ‘scoping mission’ to assess the state of competition and consumer regimes in select countries so that the contours of this (future) initiative can be developed.

CUTS undertook this mission covering *Algeria, Egypt, Jordan, Lebanon, Morocco, Syria and Tunisia* in cooperation with The Arab NGO’s Network on Environment and Development (RAED). RAED is a network of NGOs with members present in all the seven countries and has been known to CUTS for a fairly long period of time, on account of the common interest on Trade and Environment issues.

2

Description of Mission

Rijit Sengupta and Udai Singh Mehta of CUTS Centre for Competition, Investment & Economic Regulation (CUTS CCIER, www.cuts-ccier.org) undertook a ‘needs assessment’ mission during the month of October – November 2010 in seven countries of the region (namely Algeria, Egypt, Morocco, Tunisia, Jordan, Lebanon and Syria).

A purpose of the mission was to meet with representatives of relevant national stakeholders in the countries (Competition Agency, Consumer Protection Agency, relevant Ministries, Sector Regulators, Academia, Chamber of Commerce, Donors, consumer organisations and/or other NGOs, etc.) in order to understand the prevailing state of competition and consumer protection regimes in these countries and seek their views on how to develop/strengthened competition and consumer protection regimes in these countries/region.

The following can be identified as specific objectives of the mission:

- To understand the prevailing state of enforcement of competition policy & Law (CPL) and consumer protection policy in the project countries, and analyse existing impediments;
- To identify civil society actors/organisations interested in research and awareness on competition and consumer protection issues and motivate them to get involved in the process;

- To establish contacts with various relevant government departments/institutions, business associations, academic institutions, law firms, media, etc. – and assess their role and contribution in relevant policy processes;
- To gather relevant literature (policies, legislation, research outputs, reports, etc.) for background information; and
- To identify major donor organisations, international organisations, intergovernmental organisation (and their initiatives on regulatory and business environment reforms, etc.) engaged in the counties/region.

CUTS undertook this mission in cooperation with RAED, which has its headquarters based in Cairo (Egypt). Before the actual mission, RAED nominated a nodal person each for the Middle-East and for the North Africa region to assist CUTS in undertaking the preparatory work. Roles of each of these *nodal persons* were, among others, to:

- facilitate the visit by the scoping mission team and offer other logistical assistance;
- identify a list of local organisations/institutions/individuals for meeting them during the mission; and
- identify relevant literature (or the source) for the team to gather from each country.

A joint CUTS & RAED team undertook the mission in the two regions (North Africa and Middle-East). One team (comprising a senior staff each of CUTS and RAED) visited countries in North-Africa, while the other team (of a staff of CUTS and RAED) visited the Middle-East countries. The mission started with an opening meeting between CUTS and RAED (held in Cairo) to discuss the details of the task to be accomplished in each country, including:

- Meetings with relevant institutions/organisations/individuals including representatives from the relevant government departments/agencies, business community, academia, media, legal fraternity, CSOs, etc.

- Collection of relevant information pertaining to competition and consumer issues
- Understanding the environment and assessing the future possibilities on these issues in the countries/region
- Identify possible partner organisations (and discuss their terms of engagement) for future initiatives
- Establish contacts with donors, international organisations and other intergovernmental organisations actively involved on relevant issues in the countries/region

This report collates the findings of the mission (feedback collected from over 80 relevant stakeholders, relevant literature and information, etc.) and serves as a reference document providing a bird's eye view about the state of competition and consumer protection regimes in the seven MENA countries that are covered here.

It is segregated into the following chapters: state of consumer protection regimes, state of competition regimes, governance issues in competition enforcement, external linkages of competition authorities, evidence of anticompetitive practices, future issues on competition and consumer protection, and finally conclusion and the way forward.

3

State of Consumer Protection Regimes

Adoption of Consumer Protection Laws in MENA Region

Euro-Mediterranean Association Agreements were negotiated between the European Union (EU) and the Mediterranean countries to boost trade and commerce between these parties. These agreements (often referred to as Association Agreements) were signed over the period mid-90s to mid-2000.

Explicit provisions on consumer protection issues were contained in agreements signed with Algeria (2007), Egypt (2004) and Lebanon (2003). Domestic consumer protection laws were adopted in each of these (three) countries within a couple of years of entry into force of these agreements, as has been presented in Table 1.¹

A more general reference to the ‘need for protecting consumers’ is contained in the Association Agreements between the EU and Tunisia (1998), which had already adopted a consumer protection law in 1992. Jordan and Morocco have not adopted a national consumer protection law yet. Syria adopted a national consumer protection law in 2008 as part of a technical assistance programme implemented in cooperation with Germany.

| Country | Euro-med Agreement | | Consumer Protection Law | Consumer Protection Agency or Directorate |
|---------|--------------------|------------------|-------------------------|---|
| | Signed | Entry into force | | |
| ALGERIA | 2002 | 2007 | 2009 | Yes (Directorate) |
| EGYPT | 2001 | 2004 | 2006 | Yes (Agency) |
| JORDAN | 1997 | 2002 | - | - |
| LEBANON | 2002 | 2003 | 2005 | Yes (Directorate) |
| MOROCCO | 1996 | 2000 | - | - |
| SYRIA | 2004 | 2007 | 2008 | Yes (Directorate) |
| TUNISIA | 1995 | 1998 | 1992 | Yes (Directorate) |

Status of the Consumer Protection Law

Of these seven countries (as is evident from Table 1), only Egypt has established a full fledged (independent) agency to implement the consumer protection law. In four others (Algeria, Lebanon, Syria and Tunisia) the responsibility of implementing their law rests with *Consumer Protection Directorates* (Department) functioning under the respective Ministries of Trade/Commerce. Though Jordan does not have a consumer protection legislation or a dedicated department for consumer protection issues, but the same is handled under the Quality and Market Control Directorate of the Ministry of Industry. It has been given the responsibility to receive complaints from consumers and initiate investigations. A *Centre Marocain de la Consommation (CMC)* has been established in Morocco with support from the United Nations Development Programme (UNDP) and Food and Agriculture Organisation (FAO) under the Ministry of Industry and Commerce.

In **Egypt**, The Consumer Protection Law no.67 of 2006 was promulgated and published on May 20, 2006 which led to the establishment of Consumer Protection Agency (CPA) in December 2006. The salient features of the law include:

- The right to exchange or return any sold merchandise if it was defective or did not conform to specifications or purpose of use agreed upon.

- The right to obtain an invoice or a receipt if requested
- The right to obtain correct information and data of the products that are bought or used by or offered to consumer.
- The right to obtain a fair compensation for the prejudice caused to the consumer or his money as a result of purchasing or using the products or receipt of services.

The key issues covered by the Law are deceptive and unfair advertising; product recall; penalties and legal support to the consumer protection NGOs. It is interesting to note that the law recognises the importance of civil society organisations (CSOs) and empowers them to take relevant action.

The law also provides certain powers to consumer organisations, as is indicated below:

- Bring legal actions related to consumers' interests or intervene in them;
- Carry out surveys and price and quality comparison and verify the correctness of related data that indicate contents and notify the concerned entities of violations in such regard;
- Present information to the concerned governmental entities concerning the problems related to the consumers' rights and interests and present suggestions for avoiding such problems;
- Receive and verify the consumers' complaints and work on avoiding the causes;
- Assist the consumers who have been prejudiced as a result of buying the commodity or receiving the service in making complaints to the concerned entities including the CPA and undertake the necessary legal measures to protect the consumers rights and interests; and
- Participate in spreading the culture of consumer rights and make the citizens aware of their rights and establish the necessary databases to perform their functions.

Apart from a few texts concerning certain aspects of consumer protection (laws on curbing goods fraud, the control of weight and measures, price control, a law on competition and prices etc.), there is no specific text on consumer protection in **Morocco**. A bill on consumer protection has been drawn up by the Ministry of Industry which aims to establish, on a reliable and direct basis, effective procedures for consumer protection; develop objective information for consumers; further the development of associations in this field and promote and protect the rights of the consumer in his relations with the supplier. But, the Bill is yet to be presented in the Parliament.

Recently, the Ministry of Industry has taken a few initiatives to push the agenda forward on consumer protection in the country. The first is a *Twinning Project* in cooperation with the EU on consumer protection issues. In addition to developing the Consumer Protection Bill of the country, this project envisages development of the institutional framework on consumer protection within the Ministry, and spreading awareness on consumer protection issues.

The second initiative is establishment of the *Centre Marocain de la Consommation (CMC)* with support from the UNDP and the FAO. The mission of CMC is to promote a consumer culture and support the consumer movement in the country. In addition to undertaking research on consumer protection issues, CMC is bestowed with the responsibilities of ensuring labeling in consumer goods, representation of consumer organisations and their request and finally resolution of disputes through mediation.²

Finally, the following four consumer groups (located in different provinces of Morocco) have been recognised by the Ministry of Industry for providing guidance/advice to the Moroccan consumers:

- L'Association de l'Environnement et de Protection du Consommateur d'El Jadida (AEPC);
- L'Association de Protection du Consommateur d'Essaouira (APROCONESS);

- L'Association Marocaine de Protection et de Orientation du Consommateur de Kénitra (AMPOC);
- L'Association de Protection des Consommateurs et de l'Environnement d'Oujda (APCE)
- L'Association de l'Environnement et de Protection du Consommateur de Taourirt (AEPC)

In Tunisia, The Consumer Protection Law (N 92 – 117) was adopted in the year 1992. It aims to control the general rules of consumer protection in terms of safety and health, prevent quality fraud and protect it from false advertising, ensure the quality of services and anchor the rights of consumers, particularly their right to information, guidance, security and redressing damage. A Directorate of Quality and Protection of Consumers established under the Ministry of Trade and Crafts is responsible for implementing this law.

In Lebanon, the Consumer Protection Law was adopted in 2005, which led to the creation of a Consumer Protection Directorate within the Ministry of Economy and Trade. A Consumer Protection Council has also been established with representatives from consumer organisations also included as members of this Council. The Consumer Protection Directorate has recently appointed 100 inspectors to ensure that practices of providers (of goods and services) do not take consumers for a ride. However, there has only been a little over 200 cases filed by these inspectors, and critics suspect corrupt practices as being a possible factor preventing registration of cases.

One of the only active consumer organisation³ (Consumers Lebanon) gets very little financial support from the government. There has even been occasions when donors had to abandon their plans to support projects of Consumers Lebanon at the last moment, after being influenced/dissuaded by 'vested interests' within the government. However, the organisation has continued to work on consumer protection issues (in spite of such challenges) with some meager donations and membership fees.

Jordan's continued agenda of trade liberalisation has required significant regulatory changes in order to meet the requirements of various trading regimes. Although such agreements have served to lower restrictions on the free flow of goods across national borders, consumer protection legislation has not been forthcoming.

Although hundreds of legal changes were undertaken in the late 1990s to meet the accession requirements for the World Trade Organisation (WTO) and the Free Trade Agreement (FTA) with the US, the issue of consumer protection has generally been neglected. At present there is no consumer protection law in Jordan.

In 2001, the National Society for Consumer Protection Society (NSCP) in Jordan prepared a draft law that included a mandate for a Higher Council for Consumer Protection, as well as provisions for the establishment of consumer protection societies nationwide. However, after the NSCP submitted the draft law to the Ministry of Industry and Trade, it was shelved. The law remained in their drawers untouched for years. Consecutive governments chose to completely ignore it.

In fact, the only body concerned with consumer affairs in Jordan is the NSCP, which is financially dependent on the central government. Not only does such an arrangement fundamentally produce a conflict of interest between the NSCP and the government, the financial and organisational well-being of the CPS is subject to vagaries in the central government budget.

A second consumer group referred to as the Consumer Rights Association has recently been established by a few consumer activists and journalists. The draft Consumer Protection Law is likely to be presented in the Parliament in 2011.

In **Syria**, a group of concerned Syrian met in the year 1995 to form a consumer protection society driven by the socio-economic situation of the country. The society was finally established in the year 2001 with the purpose of defending consumer's rights. In the year 2008, the society took the initiative to engage with the relevant policymakers for the adoption of a national consumer

protection legislation; which finally came into existence in the year 2008 (Law No 2, 2008). Fast-tracking the process of adoption of the consumer protection law can also be attributed to a technical assistance programme being implemented by Germany in the country (2006-17).

In addition to providing capacity building support on consumer protection, this programme also deals with competition issues. The law granted the right for the society to defend the consumer's rights on his or her behalf or even act as a lawyer to defend his or her rights. It covers most important rights of the consumers and some practical measures how to achieve (implement) them.

It also regulates the market of selling goods and providing services with an apparent objective to protect the end consumer. Some provisions of the law are further developed, implemented or interpreted via Ministerial or the Prime Minister Decisions.⁴ Syria has a Consumer Protection Directorate (a governmental agency) which has its offices in the 14 governorates of Syria.

Finally, in **Algeria**, a law on Consumer Protection and Fighting Fraud was adopted in January 2009 as part of an Association Agreement with the EU. However, a CPA has not yet been established. However, the Ministry of Commerce recognises 52 consumer groups as the guardians of the Algerian consumers. However, most of these groups operate at a micro (local) level and lack a national coverage to gain the attention from the Algerian consumers.

Algerian Association for the Promotion and Protection of Consumers (AAPPC) seems to be the only consumer organisation that has a national mandate. However, the fact that they are dependent on the government for their budget raises questions about their independence, etc. The organisation, however, maintains that it acts as an independent entity with its mission of protecting the welfare of consumers. Lack of human and material resources and no interest among the media organisations on consumer protection issues are two of the main impediments for the organisation.⁵

Consumer Protection Agencies/Departments: Structure and Functions

Out of the seven countries that have been covered in this report, only Egypt has an independent Consumer Protection Agency; rest four (Algeria, Lebanon, Syria and Tunisia) have dedicated departments on consumer protection under the Ministry of Commerce/Trade; while in the remaining two (Jordan and Morocco) has consumer protection issues covered (along with some other issues) under certain organs of the Ministry of Commerce/Trade. A detailed account of some of the structural and functional characteristics of the consumer protection agency/department is provided below.

In **Egypt**, the Consumer Protection Law established the Consumer Protection Agency of Egypt (CPA), under the Ministry of Trade and Industry. The agency has been in place since January 2007 and has established its head quarters and complaint handling units in Cairo and Alexandria respectively. The key objectives of CPA are: consumer empowerment through education of their rights and enforcement of the consumer protection law; preventing unfair trade and deceptive market practices; achieve market equilibrium by protecting consumers' rights and enhancing fair and transparent business practices and develop and strengthen consumer protection NGOs.

The Board of the CPA consists of 15 members, who are all part-time working on a voluntary basis. They are only offered sitting fees for the board meetings (there is one meeting of the Board in a month), and no other allowances. In total CPA have close to 90 staff members which are divided into Programme (40), Administrative (15) and Support Staff (30).

The Ministry of Trade and Industry oversees the CPA, and the Minister of Trade and Industry is quite keen on consumer protection issues, as he was involved in its development and promulgation. Given that there is political support to ensure smooth functioning of the CPA, there has been a gradual increase in the

amount of allocations provided by the government to the CPA, but there is a scope for providing more resources. CPA has tried to maintain its independence. They have a separate office and have established regional presence in four governorates, out of 29 in Egypt.

In order to ensure effective engagement with consumers, it has established its own hotline number (19588) to handle consumer-related complaints in Greater Cairo and Alexandria and developed its own website.⁶ CPA has entered into a joint cooperation protocol with the Egyptian National Postal Authority (ENPA) to offer free of charge complaint forms to consumers who wish to report any problems they face when buying a product. Consumers can write their complaints and send the form, free of postal charges, to the CPA.

All these efforts undertaken by CPA has resulted in effectively creating a communication channel with consumers and the same is reflected by the total number of complaints received between 2007 till 2010. i.e. 35000 approx. Out of which close to 89 percent of the total numbers of complaints have already been solved (Refer to Box I, for two sample case studies).

In terms of engagement with CSOs, the Agency has adopted the following strategies:

- Top-Down strategy: Coordination with foreign donors to provide funds necessary to finance activities of two umbrella NGOs, in Cairo and Alexandria, that will work through network relationships with community-based consumer organisations all over Egypt, in order to ensure proper consumer protection service delivery to the most remote areas.
- Bottom-up strategy: Providing few of the NGOs all over Egypt with monthly financial allowances to perform a set of agreed upon consumer protection activities. Unified work plans are approved, and achievements monitored and evaluated, guidelines given with required corrective measures on a monthly basis.

Box 1: Sample Case Studies

Case I: Automobile Industry

The CPA received a number of complaints regarding the problem of separation during the speed gears the Multi-mode transmission of Toyota Corolla Model 2008 and 2009. The CPA held a series of discussion with Toyota Egypt, Toyota sole agent in Egypt, which concluded that Toyota Egypt will recall about 6500 Corolla cars (model 2008 and 2009) to fix the transmission defect and the company, will bear all the costs and expenses of this repair. The estimate cost is about US\$3.7mn. Toyota Egypt will also make adjustment to the gas pedal as a preventive measure. A timetable for such recall was delivered to the CPA for its monitor and follow up.

Case II: Cable Industry

The CPA received many complaints that the CNE, the leading TV cable company in the region, has failed to broadcast sport channels, displaying at the time the matches of the Confederation of African Football (CAF) to its subscribers which contradicted with the contract signed in this regard. The CPA held a number of meetings with CNE and agreed that CNE will whether reimburse subscribers the dues for their subscription of the sport channel package or provide them with a three-month free renewal for their basic package. CNE allocated a temporary hotline to handle these complaints.

The agency is working with the Ministry of Education to integrate consumer protection principles into school curriculum in the coming months and organise series of consumer protection awareness (i.e. Internet Safety) workshops and seminars in schools, local communities and Boy Scout Union.

So far, in terms of raising consumer awareness, the CPA had undertaken the following activities:

- Launched a consumer awareness campaign: pamphlets and flyers, radio and TV programmes and newsletters to educate consumers about their principal rights and provide them with guidelines for better understanding the market trends

- Launched in Cairo the first national programme on deceptive advertising entitled “Towards protecting consumers from deceptive advertising” where UK and US expert officials were key speakers
- Launched the CPA website portal for consumer awareness and initiating an awareness campaign in a number of schools addressing these issues
- Encourage business self regulation through providing guidelines and case studies to serve as basis for these schemes
- Initiating a consumer satisfaction survey on household appliances, service centers and cars and its accessories, in cooperation with a prominent research centre

However, there are certain challenges that the Agency faces, which are mentioned below:

- Limited technical capacity and know-how at managerial and operational levels, including but not limited to, complaint handling, investigation and market surveillance.
- Limited experience and knowledge about the introduction and the promotion of self-regulation of the business (and other covered) sectors from a consumer protection standpoint.
- Given that consumer protection movements are usually driven from the grass-roots level, particularly by the NGOs and civic organisations, and based on the lack of basic institutional capacities within the Egyptian NGOs and civic organisations, the CPA faces a major systemic challenge in strengthening the structures and technical capacity of such organisations, especially in an environment unaccustomed to organised consumer protection.

In **Lebanon**, the law has established the Consumer Protection Directorate (CPD) within the Ministry of Economy and Trade. The overall aim of the Directorate is “to ensure a safe, fair and equitable trading environment exists for consumers and commerce alike.” The Directorate shall, in cooperation with the official and

private authorities, implement consumer protection-related laws and regulations, especially as regards the following:

- Ascertaining the quality and safety of goods and services especially foodstuffs and performing necessary tests on foodstuffs.
- Controlling prices and prices movements.
- Preparing documents and publications related to consumer education and awareness.
- Conducting researches about the abovementioned subjects.

CPD was established in 2005, after the passage of the law. It remained a bit dormant following its establishment owing to the civil war and political problems that gripped Lebanon in 2006-07. CPD has now embarked on a programme to revive its activities in Lebanon on consumer protection issues. They are in the process of developing a Strategic Plan for 2011 onwards. As part of their present agenda, they have appointed over 120 new consumer protection inspectors. 90 more such inspectors are expected to be appointed in 2011. These inspectors have specific domain knowledge (media, food safety, chemicals, biological science, etc.) and are young professionals. Further nine ‘experts’ have also been appointed for expanding the work of the CPD.

The CPD has five branch offices, one in every province of Lebanon. The Directorate is composed of two departments: (i) Department of Studies and Awareness - tasked with providing information about the laws and regulations related to consumer protection; and (ii) Department of Control – responsible for receiving and investigating complaints and with implementing the laws and regulations related to consumer protection.

During the year 2009, the Directorate had undertaken awareness generation activities with educational institutions and private schools to raise awareness about consumer protection issues and also make them aware of the consumer hotline number 1739. Given the success of the awareness generation activities, the Directorate received closed to 1000 complaints via the hotline number, emails, etc.

Further to strengthen the institutional capacity and outreach, a link between the database information for the Office of complaints in the Consumer Protection Directorate and the database of the Telecommunications Regulatory Authority pursuant to the Memorandum of Understanding between the two was executed. CPD is also mandated with the responsibility to facilitate the establishment of two-three new consumer organisations by 2011.⁷

The law sets the background for establishment of more and more consumer organisations. But, the CPD is aware of this, and is trying to stimulate the establishment of other consumer organisations. In order to financially support the CSOs, the law provides that all the fines as imposed by the Directorate shall be divided in the following manner:

- 60 percent shall be deposited in the Treasury
- 20 percent distributed by equal shares to the Judge's Mutual Aid Fund and the Judicial Assistants' Mutual Aid fund
- 20 percent shall be deposited in a common fund established for the Consumer Protection Directorate
- 10 percent for the consumer protection associations operating in Lebanon

There is also a hotline for consumers to complaint about specific cases. These cases have to be, and are mostly) resolved within 45 days of the complaint. An online tracking system for such complaints is also being worked upon. The current Trade Minister is very interested on consumer protection issues, and that is a reason that the funding for the CPD has increased over time.

At present, the CPD has over 200 staff (including the inspectors) and is considered as one of the most active government departments in the country. CPD have had interactions with international donors, e.g. EU, US Agency for International Development (USAID). Some of the staff has also received training at the Office for Fair Trading, UK. One of the recent projects that the CPD has completed was training of municipality inspectors on consumer protection issues.

Some of the challenges faced by the CPD are:

- Weakness in the Law (certain functional areas)
- Restructuring of the Directorate is necessary
- Passage of some decrees/regulations that impede their functioning

In **Tunisia**, there is no specific consumer protection agency, however, a Directorate for Quality and Consumer Protection as part of the Ministry of Commerce and Handicrafts have been established. The Directorate has 24 branches across Tunisia, which helps them undertake market surveys to keep a check on quality of products being introduced and sold in the market. The Directorate monitors the whole process of manufacturing of industrial goods right from the stage of raw material to the finish product.

As per the Consumer Protection Law (N 92 – 117), they are empowered to stop the sale of any product in the market, if it does not match up to the standards. On grounds of consumer protection, the Directorate is authorised to confiscate products, till the time they receive the analysis from the technical division within the department. In case of non-compliance of their orders by parties, they can approach the courts to seek justice.

Status and Activities of Consumer Organisations

In spite of having 52 recognised consumer organisations in the country, the state of consumer protection is fairly weak in **Algeria**. Most of these consumer organisations operate at the micro-level and receive support from the government, hence questions are often raised on their ability to represent the cause of consumers independently. The consumer protection law was adopted recently, and therefore it remains to be seen how consumer organisations are engaged in the process of effectively enforcing the law. AAPPC, the only organisation with a national coverage is run mostly by volunteers and has been suffering from lack of financial support and human capital.

| Table 2: Status of Consumer Protection Law and Agency in MENA Region | | | | |
|--|---------|---|-------------------|---|
| S. No. | Country | Legislation | Year of Enactment | Consumer Protection Agency |
| 1. | Algeria | Law on Consumer Protection and Fighting Fraud | January 2009 | Not yet established. |
| 2. | Egypt | Consumer Protection Law No 67 of 2006 | May 2006 | Consumer Protection Agency (CPA) established on December 2006 |
| 3. | Jordan | - | - | - |
| 4. | Lebanon | Consumer Protection Law No. 659 | May 2005 | Consumer Protection Directorate under MoET |
| 5. | Morocco | - | - | - |
| 6. | Syria | Law No.2 of 2008 on the Protection of Consumer Rights | March 2008 | Consumer Protection Directorate under MoET |
| 7. | Tunisia | Consumer Protection Law No 92-117 | December 1992 | Absent |

In **Egypt**, the Consumer Protection Law provides certain powers to consumer organisations to advise/guide/represent consumers. The Egyptian CPA recognises about 14 consumer organisations in the country as custodians of consumer protection in Egypt.

Government does provide support to NGOs to undertake awareness and advocacy on consumer protection issues in Egypt. There are about 50 consumer groups/NGOs in Egypt.⁸ One such organisation, that is active in the area of consumer protection is, the Society for Consumer and Environment Protection, popularly known as Egypt Eye. Egypt Eye was formed in 2009, after most of the members of the Central Egyptian Society for Consumer Protection (which was formed in 1994) decided to come out of it, and form this new consumer organisation. Egypt Eye was one of

the organisations that lobbied the government for the adoption of the Consumer Protection Act of Egypt, which was finally adopted in 2006. Egypt Eye has nearly 45 volunteers working for it.

It primarily undertakes the following activities:

- research on quality of goods and services (fast food, bottle water, bread sectors);
- organise meetings and outreach events;
- handle consumers' complaints
- produce a magazine (Consumers Eye)

The organisation works very closely with various stakeholders, including youth centres, schools, media, etc. Media has been active but is not very well-equipped (trained) to orient the public at large about consumer protection issues.

In **Morocco**, Morocco does not have a Consumer Protection Law as yet. 25 associations now work in the field of consumers' protection. Six months ago the Consumer Protection Association in Oujda, a city 635 km east of Casablanca, opened a centre *Le Guichet du Consommateur* to deal with complaints from consumers. The office has so far handled 180 cases and the centre also provides consumers with necessary information and advice. But associations could do more if there was a modern law to protect consumers.

The Consumer Protection Bill has been pending since 1998. It is interesting to note that it was a speech by King Hassan II in the year 1998, in which he spoke about the importance of consumer protection and free prices that initiated the process of adoption of consumer protection and competition law in Morocco. It should be remembered that the Competition Law (06-99) was the result of a process of economic liberalisation in Morocco. Unfortunately, owing to certain constraints the consumer protection law is yet to be implemented.

The National League for the Protection of Consumers, which is a CSO, was formed in 1996, with the objective to work on consumer protection issues. It has seven branches across Morocco and its focuses on sectors such as health, telecom, education and raising awareness among consumers about their rights and

responsibilities. National league is probably one of the few organisations in Morocco that have taken the initiative of filling consumer cases in the court. All complaints are well-documented. Very recently they filed a case against a pesticide company, as there were fears that the pesticide being used is exposing the consumers to cancer. Their recent initiative of filling a case against a gas heating company on grounds of default in manufacturing, lead to a debate in the Parliament and as a result, an agency to monitor the quality of products was established in Morocco.

In addition to the National League for the Protection of Consumers, there are two main consumer protection associations in Morocco. They are ATLAS-SAIS Association and Confederation of Consumer Associations of Morocco (CAC - Maroc). As per the draft Bill, consumer organisations in Morocco are not provided with powers to represent consumers. The Bill has been drafted in such a way so as to provide more powers to Ministry of Trade and Industry and reduce the role of civil society. The intention is to gain control over consumer protection agency by MoTI. The Bill disallows CSOs from appearing with consumer complaints before the CPA (as and when it is established) and allows only individual consumers the power to submit complaints.

Given this, consumer organisations in the country prefer not having the law and/or agency, as it diminishes their role. It is interesting to note, that CAC had organised two workshops within the Parliament and had provided their comments on the proposed Bill. Unfortunately, it fell on deaf ears and no action was taken on their recommendations.

Consumer associations' limitation of power in order to protect the consumer interest is a major drawback to the consumer rights in Morocco. During the mission, it was emphasised that involving the media to raise awareness and create a movement would be important to ensure adoption of the law. Notwithstanding whether the consumer protection law is adopted soon or not, it is crucial that the media plays an active role in educating the consumers of their rights, etc. There has been some evidence of the media already

taking interest on the subject in the country. At the same time, it is also important to sensitise the media and build their capacity to be able to understand the law and issues pertaining to consumer protection.

There are certain challenges facing the CSOs in Morocco, which are articulated below:

- The key challenge is the effective adoption and implementation of the consumer protection law soon and they are working towards the goal.
- Ensure long-term (and continuous) financial support for CSOs. They don't get any sort of support from the government and nor have they approached international donor community for support.
- They do not have material or human resources which will enable them to perform their role in education and consumer awareness. Specific skills and the accompanying materials and information sources which are required to act effectively is lacking.

The **Tunisian** Consumer Defence Organisation (ODC) was established in February 1989. ODC is recognised by the government and has been fairly active in the country for the last couple of decades. ODC has, moreover, been an affiliated member of Consumer's International (CI) since 1995 and became a full member in 2004. ODC has been participating in various international events/meetings on consumer issues and has been sort of a pioneer of the consumer movement in the region. Tunisia as compared to other countries in the MENA region is a pioneer in the matter of making laws, defining the rights and the obligations of the parties with concern to economic activities. Consequently, several laws were promulgated particularly since the November 07, 1987.

Among the various laws, two important legislations were the Law 91-64 of July 01, 1991 related to the competition and the prices and the Law 92-117 of December 7, 1992 related to the protection of the consumer. The implementation of consumer

protection law was in response to the economic reforms, i.e. liberalisation, privatisation and with the objective of protecting the interest of the consumers.

ODC comprise of 15 permanent staff and it is present across Tunisia (24 states). ODC has regional elected structures (sections at municipal and rural level, local bureaux at delegation level) headed by regional bureaux at the level of each Governorate. The whole is linked to a national elected bureau which is the supreme instance of the organisation. These structures are presented as follows:

- National Bureau elected each five years by the national congress
- Regional Bureau, per Governorate, elected by a regional assembly each five years
- Local Bureau, per delegation, elected each three years

The budget for ODC is provided by the government. In order to raise extra funding, they also have the scheme of membership fee, which is One Tunisian Dinar annually per member. At present they have close to 5000 active members. It is interesting to note that members from ODC were also represented on the Competition Council for some time before they stepped down.

Similarly, an agreement was signed in September 2004, between the Tunisian Union of Industry, Commerce and Craft (UTICA), the National Union of Agriculture and Fishing (UTAP) and the ODC under the aegis of the Commerce and Craft Ministry. This agreement constitutes a convenient platform to reinforce the dialogue and the consultation between the concerned partners. ODC is working to establish conventions and agreements between concerned parties so as to better serve the national and the consumer interests.

ODC is represented in various councils and committees within the government, such as the National Consumer Protection Council, National Commerce Council, Competition Council, etc. ODC also collaborates with consumer organisations in Africa and Europe.

Syrian Consumer Protection Association is a recognised consumer organisation in the country, and has been active on:

- Protecting consumer interests in all fields
- Guide consumers and make them aware of their rights and responsibilities; promote consumer education and provide them with adequate information to practice consumer rights in selecting products that fits their desires, needs, as well as good use of money and earnings.
- Contribute in defending consumer rights and help consumers to get compensation owing to any health or physical loss resulting from consumption or purchase of an incorrect product or service.

In **Lebanon**, **Consumers Lebanon** is a non profitable NGO dedicated to defend consumers' rights and interests, its main objectives are:

- Building up consumer awareness, by being transparent in providing information on any type of commercial goods and /or services in order to protect his rights from misleads frauds and promoting fair competition.
- Coordinating and mediating between the consumer and the governmental institution mainly Ministry of Economy and Trade.
- Contributing in updating and improving the laws and legislations related to consumers right.
- Developing consumer's awareness towards a sustainable pattern of consumption in a healthy green environment (municipality).
- Encouraging the locally produced goods and improving its quality and/ or quality/price ratio.

Consumers Lebanon was established in the year 2000 and has a board comprising seven people. Two members of the **Consumers Lebanon** are on the Board of the **Consumer Protection Council**, established under the **Consumer Protection Directorate** of the

Ministry of Economy and Trade. However, since the last two years there has not been any meeting of this council. Further, the Council was not given any power by the Minister of MoTI who had huge influence over the activities of the Directorate.

In terms of raising awareness and engagement with the Consumers, Consumers Lebanon has been publishing a monthly newsletter which is distributed with four major daily newspapers: An-nahar, As-safir, Daily Star – International Herald Tribune and Al-balad. Further, they even launched a hotline complaint service (554455) to the consumers to facilitate their affairs and tackling their daily problems with the highest authority in charge. Consumers Lebanon actively engaged in seminars, TV programmes, interviews and radio broadcasts in local, Arab and international media to promote consumer awareness and protect consumer rights and economic interests. Consumers Lebanon also participated in several local and international conferences related to the Consumer.

A member of Consumers Lebanon was nominated as the representative of consumer interests within the “Technical Commission for the Health and the Import and Export of Animals” at the Ministry of Agriculture. Consumers Lebanon has more than 600 members, and a number of scholars, experts who assist them in running their activities. The organisation has been able to maintain its independence and acted in response to specific demands made by the members. There are only two permanent staff, and only for the last five years, they have rented an office.

In **Jordan**, apart from the National Society for Consumer Protection (NSCP), which has been operational for over 10 years now, a second consumer organisation - Consumer Rights Association (CRA) has recently been formed in 2009. CRA has about 10 members, all of who are volunteers. These members contribute about 50 Jordanian Dinar on a yearly basis, which provides the seed money to CRA to carry on certain activities, etc.

Recently many academicians and politicians have shown interest to become members of CRA. A membership drive is planned by CRA once the Law comes into force. CRA feels that only having only one or two big consumer organisations in a country such as Jordan is not enough. CRA intends to open up branches all over the country and not restrict itself to Amman only. It intends to develop a network of organisations (NGOs, CBOs, etc.) with interest on consumer protection issues in the country/region. One of its future ideas is to run a massive country-wide consumer awareness campaign, which would be undertaken once the law has come into force.

Jordan has a draft Consumer Protection Law (the process for which has taken the last 3-4 years), which is likely to be discussed in the Parliament in 2011. There was uncertainty though, if the new government would give importance to the issue of consumer protection. Notwithstanding whether the new consumer protection law is passed soon by the government or not, it is crucial that the media plays an active role in educating the consumers of their rights, etc. There has been some evidence of the media already taking interest on the subject. Jordan TV has been conducting a specialised programme to spread consumer awareness in Jordan, and this programme has been going on for over 10 years now. However, the awareness of consumers on this subject seems to be rather limited or low.

Key Aspects of Consumer Protection

Certain key issues emerge from the account of consumer protection regime presented above. These are enumerated below:

- In countries like Algeria, Egypt and Morocco, where a fairly large number of consumer groups/organisations exist, they have not been able to make their presence felt among the ordinary consumers. One of the main reasons behind this could be their inability to work in partnership with the media.

- A handful of consumer groups exist in Jordan, Lebanon, Syria and Tunisia. While the other countries have domestic consumer protection law, Jordan is expected to adopt one soon. Existing consumer organisations should feel empowered by the law and embark on consumer protection initiatives with support from both within and outside the country.
- There seems to be a tendency among the existing consumer organisations to seek financial support mostly from the government. While support from the government can be a source of revenue, it should not be the only one. Consumer organisations should explore the possibility of seeking support from other sources (donors, international organisations, etc.) as well
- Generally, most of the consumer organisations suffer from lack of financial and human resources and are affected by the absence of media attention to their activities
- Consumer organisations in many of the countries seem to be active mostly at the micro (local) level, and not much at the national level. This obviates the possibility of their participation in policy processes for refining existing consumer laws.
- In some countries, the consumer protection law does not recognise consumer organisations as custodians of consumer protection issues and representatives of aggrieved consumers. Such provision in consumer laws is retrogressive and should be amended.
- Government remains an active player in economic activities in most of these countries. So, it remains a huge challenge for consumer protection agencies/departments to effectively and ‘independently’ implement the law
- Consumer organisations are not well organised. They should explore possibilities for greater co-ordination and interaction with other CSOs with interest on consumer protection issues.

- Consumer protection issues could be viewed from the perspective of human rights issues. This would probably make a larger group of stakeholders and groups interested on the subject, and help mobilise financial support for strengthening the consumer movement in the countries.
- In spite of various challenges, some of the consumer organisations have been fairly effective on specific cases. There should be proper documentation of such ‘success stories’ so that they inspire and educate other organisations.

4

State of Competition Regimes

Main Motivations for Competition Laws in the Region

Over the period between the 1960s and 1980s, the Mediterranean countries assumed increasingly important stature as trading partners of Europe, on account of progressive elimination of certain tariff and non-tariff barriers on both sides. It was, therefore, anticipated that further opening of the Parties' economies would boost trade and economic ties between them. The process for establishing what came to be known as the Euro-Med Agreements was initiated in Barcelona (Spain) in 1995 when the discussions on these agreements started.

Subsequently, the Euro-Med Agreements were signed with the countries, starting with Tunisia (1995), Morocco (1996), Jordan (1997), Egypt (2001), Algeria (2002), Lebanon (2002) and Syria (2004), and came into force in most of them within 2 to 5 years of signing these agreement. Competition policy was an issue that was included in the Euro-Med agreements as part of the economy and finance component (Euro-Mediterranean Free Trade Area, EMFTA) of these agreements. The other two components were (i) politics and security; and (ii) socio-cultural issues.

Competition rules contained in the association agreements are similar to the rules which can be found in the EC Treaty. The following practices are considered anti-competitive, according to the provisions of the agreements: (i) restrictive agreements between undertakings; (ii) abuse of a dominant position by one or more undertakings; and, for some countries only, (iii) state aids that

distort, restrict or prevent competition. These provisions are applicable in case of trade between the EC and the partner countries. The following table provides a summary of these provisions as included in the agreements.

| Table 3: Competition Related Provisions in Countries, as per Euro-Med Agreement | | | | | | | |
|---|---|---------|-------|--------|---------|---------|---------|
| | | Algeria | Egypt | Jordan | Lebanon | Morocco | Tunisia |
| General Provisions | Approximation of Competition laws | Y | Y | Y | | Y | Y |
| | Obligation to have competition law | Y | Y | Y | Y | Y | Y |
| Ability to use trade defense | Countervailing measures | Y | Y | | Y | | |
| | Safeguards | Y | Y | Y | Y | Y | Y |
| Actors covered | Private undertaking | Y | Y | Y | Y | Y | Y |
| | State monopoly | Y | Y | Y | Y | Y | Y |
| | Public undertaking | Y | Y | Y | Y | Y | Y |
| Conflict resolution | Dispute Settlement | Y | Y | Y | Y | Y | Y |
| | Arbitration | Y | Y | Y | Y | Y | Y |
| Practices covered | Agreements between undertakings | Y | Y | Y | Y | Y | Y |
| | Abuse of Dominance | Y | Y | Y | Y | Y | Y |
| | Mergers | | | Y | | Y | Y |
| | State/Public Aid | | Y | Y | | Y | Y |
| | Exemptions | Y | Y | Y | Y | Y | Y |
| Cooperation mechanisms | Exchange of non-confidential information | Y | Y | Y | Y | Y | Y |
| | Notification | | | | | | |
| | Consultation in the context of dispute resolution | Y | Y | Y | Y | Y | Y |
| | Consultation as a cooperative instrument | | | | | | |
| | TA on competition | | Y | | | | |

Source: Holmes (2005)⁹

An interesting trend is noted when we look at the time of enactment of the domestic competition laws in these seven countries, and compare that with the period of coming into force of the Euro-Med Agreements in them. It is noted that only in case of Tunisia, they had a competition law much before they signed the Euro-Med Agreement. In all the others domestic competition laws were developed within a couple of years of signing these Agreements.

Lebanon has a draft Law, but has not been able to finalise the same and establish an agency yet. It has further been observed by experts that domestic competition laws in Maghreb countries (Algeria, Morocco and Tunisia) were largely inspired by the French Ordinance of 1986.

Table 4: Euro-Med Agreement & Competition Law Enactment

| Country | Euro-med Agreement | | Competition Law | Competition Agency |
|---------|--------------------|------------------|-----------------|--------------------|
| | Signed | Entry into force | | |
| ALGERIA | 2002 | 2007 | 2008 | 2010 |
| EGYPT | 2001 | 2004 | 2005 | 2005 |
| JORDAN | 1997 | 2002 | 2002 | 2002 |
| LEBANON | 2002 | 2003 | Draft (2005) | - |
| MOROCCO | 1996 | 2000 | 2001 | 2001 |
| SYRIA | 2004 | 2007 | 2008 | 2008 |
| TUNISIA | 1995 | 1998 | 1991 | 1991 |

Competition rules contained in the association agreements only had a limited scope as they were designed to prevent anti-competitive practices affecting trade between the EC and the Mediterranean Partners (and thus offered no protection to practices prevailing in the domestic markets). While these provisions in themselves have not been implemented and have been largely ineffective,¹⁰ however, it seems that their inclusion in the Agreements might have been contributed towards initiating a discourse on the need for domestic competition legislations in these countries.

Experts feel that IMF and World Bank loans to the MENA countries mid-1980s onwards, was aimed not only in providing financial support for these countries to deter a process of gradual economic recession (slackened growth of the GDP) and unemployment that had ensued since the early 80s, but also to facilitate a process of macroeconomic reform and liberalisation in the region.¹¹ In addition to the Bretton Woods Institutions and the EU (through the Euro-Med Agreements), US has also influenced the process of trade liberalisation in the region, especially, given its strategy to attain US-Middle East Free Trade Area by 2013.

Apart from such external influence, the need for democratisation and economic reforms (containing issues pertaining to competition law reforms) has gradually been realised within the countries by various stakeholders and governments. Greater role of the private sector in the country's economy has increasingly become an important subject in the public policy domain in the region. These discussions have now gained momentum in some countries which have started opening up their economies not only to foreign investors, but also to mark a greater role of the private sector in them.

This is evident from the performance of the MENA countries with respect to 'regulatory reforms' (Doing Business indicators), which is seen to have improved in the last 5 years.¹² However, it should be borne in mind that a number of countries still remain extremely slow in adopting the trade liberalisation process.

Competition Laws and Agencies

A snapshot of the state of competition legislation is provided in the table below. Apart from Lebanon, all the other six countries have a competition law and have established competition agencies to implement the law. Tunisia has had the longest history of a competition authority. For some of the rest (Egypt, Jordan and Morocco), the competition agencies have existed for less than 10 years now. Syria has had an agency for only a couple of years now, and the agency in Algeria is the youngest. On the overall, it

| Table 5: Snapshot of Competition Law & Agencies | | | | | |
|---|-----------------------|--|-------------------|--|-------|
| Country | Competition Law (Y/N) | Legislation | Year of Enactment | Competition Agency (CA) | Since |
| Algeria | Yes | Competition (antitrust, unfair competition), Law No.10-05, as amended, 2010 (<i>Replaced the Competition Ordinance of 2003 and 2008</i>) | 2008 | Competition Council | 2008 |
| Egypt | Yes | Law No. 3 of 2005, Law on the Protection of Competition and the Prohibition of Monopolistic Practices | 2005 | Egyptian Competition Authority | 2005 |
| Jordan | Yes | Competition Law No. 33 of 2004 (<i>Provisional Law in 2002</i>) | 2004 | Competition Directorate | 2002 |
| Lebanon | No | Draft Law of 2005, of Ministry of Economy and Trade | N.A. | N.A. | N.A. |
| Morocco | Yes | Competition (Antitrust), Law No. 06-99, 2000 | 2000 | Directorate of Competition and Prices & Competition Council | 2001 |
| Syria | Yes | Competition and Anti-Trust Law (Law No 7/2008) | 2008 | Competition Commission of Syria | 2008 |
| Tunisia | Yes | Law No 91-64, of 29 1991, on Competition And Prices | 1991 | Directorate General for Competition and Economic Surveys & Competition Council | 1991 |

is therefore evident that competition reforms in a relatively new phenomenon in this area, the progress on this aspect in this region has been rather slow.

Environment and Interest for Competition

On the basis of the feedback received during the mission an analysis of the environment in the countries and interest within the government for competition reforms is presented under the following sub-heads:

Policy environment for promoting competition

- i. The government still remains an active player in economic activities, and often enjoys a monopoly or a near monopoly status in important sectors (there are a number of markets where high concentration is noted).¹³
- ii. Government policies impinge on competition in markets in the following ways:
 - Acting as entry barriers and hindering the participation of entities in certain sectors. Policies in Algeria, Syria and Tunisia act as entry barriers for foreign firms¹⁴
 - Public sector remains resistant to the reforms process and influences the process of (regulatory reform) policy evolution and enforcement, driven by such a motivation
 - Legislations are often aimed to protect domestic companies from foreign competition
 - Certain laws (like the *Exclusive Agents Law* in Lebanon) impede competition as it provides exclusive rights to one or two agencies to import and distribute goods in the country
- iii. In many countries, competition enforcement is marked with considerable political interference (final decision by the Minister), which poses threats to competition enforcement.
- iv. Tariffs in the utility sector (e.g., telecom in Lebanon) remain high; and prices of consumer goods (e.g., vegetables, meat, etc. in some countries) often undergo abrupt exponential

- increase, due to limited private participation in these sectors
- v. Price-cap or price regulation have been introduced in some countries in certain sectors, which has reduced the incentive for the private sector to enter these markets
 - vi. In countries like Jordan and Lebanon, the Army plays an active role in the some sectors of the economy (especially in important markets like infrastructure, consumer goods, etc.). This remains one of the main revenue streams for the Army in these countries.

Government support for competition reforms

- i. In case of countries where a competition agency has been established (Egypt, Jordan, Morocco, Syria and Tunisia¹⁵) the government has ensured that it is endowed with a team of professionals led by a senior-level bureaucrat. In case of all the competition agencies, they had their own office and a fleet of dedicated staff.
- ii. From the discussion with regards budget allocated to the competition agencies, it was noted in case of Egypt, Jordan and Syria that there has been progressive increase in the allocation over the years. This conveys a growing interest within the respective governments to support competition agencies.
- iii. The government seem to have clearly laid down the process of cooperation between competition agencies and regulatory authorities (as was revealed from the discussions with both the competition agencies and some sector regulators), which is an extremely progressive step to enhance efficiency in the process of competition enforcement. This has been done in three broad ways:
 - Signing of MoU between the Competition Agencies and Sector Regulators (Like in Egypt and Jordan between the competition agencies and the telecom regulators)
 - In some countries like Algeria and Tunisia, the government has mandated competition agencies to look into all aspects

- of competition regulation in sectors, and directs the sector regulators to cooperate with the competition agencies
- v. Some sector regulators (like the Telecom regulator in Morocco) is empowered to deal with competition issues in the specific sector
 - vi. Line Ministers (Minister of Trade/Commerce) and even the Prime Minister in some of the countries have highlighted the need for competition reforms during public addresses, policy processes and speeches at various national and international platforms. For example, Jordan has a mention of *National Competition Policy* in its 'National Agenda (2005-16)'.

Further, in 2005, the Prime Minister of Jordan issued a letter to all government entities to cooperate with the Competition Directorate on issues related to competition regulation. The Trade Minister of Egypt was also reported to be personally interested on competition issues.

Interest among stakeholders

- i. There is a huge unmet demand on awareness on the benefits from an effective competition regime for economic development and consumer welfare in the countries. This is compounded by the lack of interest among civil society/ consumer organisations on competition policy issues.
- ii. Consumer organisations have not been engaged with competition reforms, owing to lack of resources. On a few occasions that they have been active, it has mostly been on micro-issues pertaining to unfair trade practices
- iii. In some countries consumer activists are represented on the board of the competition commissions and/or as members of advisory bodies to the competition agencies, but their involvement in taking decisions pertaining to cases is not clearly understood
- iv. Experts and academicians with interest on competition and consumer protection issues are very few in numbers, and don't

seem to have been engaged to the extent they should have been in the process of enforcement of the law or in developing capacity of government or competition agencies

- v. In some countries (Morocco, Jordan and Egypt), the competition agency has teamed up with reputed Universities to develop capacity building programmes for young professionals on competition issues
- vi. Some of the development partners in the region are interested on competition issues, and have been providing support in various forms mostly to the competition agencies in terms of technical support, research assistance, study visits/exchanges, resident advisers, etc. However, it is evident that such support has not been forthcoming for the consumer organisations/civil society

5

Governance Issues in Competition Enforcement

Decision-making on Competition Cases

The Competition Council of *Algeria* has been bestowed with advisory, investigative and enforcement powers by the existing competition law of the country. It can initiate investigations on its own, or undertake investigations at the request of a government institution or an ‘aggrieved’ party. Though a representative of the Minister of Commerce sits on the Competition Council, it seems that the Council can take decisions independently.

Annual reports of its activities are to be sent to the Parliament, Head of the Government and the Ministry of Commerce. Given that the Competition Council has recently come into being (2010), it remains to be seen how it shapes up as far as taking decisions independently is concerned.

In *Egypt*, the Prime Minister is given the authority by the law to decide whether to refer a particular case to the Office of the Prosecutor General of Egypt for final adjudication, or not. The Prime Minister has delegated this responsibility to the Minister of Trade and Industry, who takes this decision on his behalf. The Egyptian Competition Agency submits reports of the investigation to the Minister of Trade and Industry, who decides on whether or not to proceed with the case. If a decision is made in favour of proceeding with the case then the Office of the Prosecutor General of Egypt takes over.

The Competition Directorate of *Jordan* is empowered by the Law to act as an investigative agency (in addition to carrying out its other tasks of building a culture of competition and developing capacity of relevant stakeholders on competition policy and law issues in the country). Its main duty is therefore to inform the government (through the Ministry of Trade and Industry) of prevailing anti-competitive practices and assess their impacts on consumers and/or the economy. The final decision for prosecution is taken by the Minister of Trade and Industry.

The Law also establishes a consultative committee called the *Committee for Competition Matters* designed to provide advice and consultations regarding general competition strategy of the government and its status in different sectors to the government. This *Committee for Competition Matters* comprises of senior government officials (with the Secretary General of the Ministry of Trade and Industry, being the Vice-Chair of this Committee), representatives of regulatory authorities, a representative of a consumer organisation, business chamber and experts on the subject. However, their involvement in this process is not very clear.

The Directorate of Competition and Prices in *Morocco* is empowered to undertake investigations and submit the report of such investigation to the Prime Minister, who refers the investigation report to the Competition Council (advisory body comprising of representatives from the government, business chamber, expert on competition and consumer protection issues) for advice before taking the final decision. Such decisions can be appealed in the Court.

In *Syria*, after investigations are carried out by the Competition Commission of Syria (CCS), it submits its report to the Competition Council (a ‘special court’ on competition issues), which takes the final decision. Such decisions can be appealed at the Court. The Prime Minister’s Office (which the Competition Commission of Syria reports to) does not seem to have a role in the decision making process and is only engaged with managerial duties towards the CCS.

The Directorate General on Competition and Economic Survey in *Tunisia* is in charge of undertaking investigations on competition related cases and studying concentration in specific markets, etc. Whereas, the Competition Council is empowered by the law to carry out two specific functions – one, to provide advisory services on competition related issues to other government agencies/ departments; and two, to adjudicate cases pertaining to collusion, abuse of dominance, etc.

From the above account, the following issues can be distilled:

- Final decision on competition matters rests in the hand of the Minister of Trade and Industry (or the Prime Minister), rather than the Competition Agency in some countries. This weakens the position of the Competition Agency in the economy and poses a real threat to its evolution as an independent market regulator
- Some of the competition agencies seem content with the level of independence that they currently possess and argued that it would be better to gain independence over time. It was, however, noted that some of the other competition authorities were fairly independent when it came to decision making on competition cases.
- It seems that for young competition agencies personality of the CEO is a critical factor that determines the level of its independence (or intention to evolve as an independent agency).
- Only in some competition agencies, it is noted that a multi-stakeholder ‘competition advisory group’ has been established to provide advice to the competition authority. This is a fairly progressive measure and if properly utilised would reduce biases in the working of the competition authority.

Appointment of Senior Staff of the Competition Authority

Appointment of members of the Competition Council of *Algeria* is done after approval by the Minister of Interior. In *Egypt*, the Executive Director is appointed by the Minister of Trade and Industry, in consultation with the Chairperson of the Egyptian Competition Authority. The Chairperson of the ECA is currently acting also as the Executive Director, since the former Executive Director left the ECA (about a year ago).

Senior staffs like the Director of the *Jordan* Competition Directorate are recruited through a formal process (managed by the Civil Recruitment Bureau) that is often fairly long (can last for about two months or so). However, it was gathered that for appointment in such high positions, it is necessary for the candidate to have ‘good connections’ in the political circles. The current Director was a deputy to the earlier Director and was selected to succeed her when the former Director left.

In *Syria*, the Minister appoints the senior staff of the Competition Commission of Syria, and can do that even without necessarily consulting the Chief Executive Officer. The process of selection is not clearly specified in the competition law, but is governed by other law (Labour Law). The current General Manager of the Competition Commission of Syria was earlier the head of the Consumer Protection Agency of Syria.

- Criteria and process of appointment of the CEO of the Competition Authority is not clearly indicated in the competition laws. In modern competition legislations, the process of selection is clearly spelt out – so that a competent and experienced person is appointed as the CEO of the competition authority through a neutral process
- In some countries, the selection of the CEO of the competition authorities is made by directly by the Minister – which can create political interferences in the process. Proximity to the political circle seems to be a critical factor that determine the ‘success’ factor in such appointments

Reporting Requirements and Financial Allocation

The annual budget of the Competition Council of *Tunisia* is approved directly by the Parliament (President of the country) and not the line Ministry (Ministry of Tourism, Trade and Crafts). In return the Competition Council submits an annual report directly to the President. A presentation of the activities of the Council is also made before the President, in order to convey their effectiveness (for the economy and consumers) directly to the highest authority in the country.

The Parliament of *Egypt* sanctions the budget directly for the Egyptian Competition Authority; and in return the ECA submits its annual reports to the Parliament. However, as far as operational issues are concerned, the ECA remains accountable to the Ministry of Trade and Industry (as assigned by the Prime Minister of Egypt). The Competition Directorate of *Morocco* reports to the Prime Minister about its activities, etc.

Annual budget of the *Jordan* Competition Directorate is submitted to government through the Ministry of Industry and Trade. Once the budget (of the whole Ministry of Industry and Trade, along with that of the other Ministries) is discussed and passed by the Parliament, the Ministry of Finance is directed by the government to grant the budget to each Ministry. Competition Directorate gets its budget (sanctioned by the Parliament) through the Ministry of Industry and Trade. In *Syria*, the budget of the Competition Commission of Syria is approved directly by the government, without any interference of the line ministry.

In most of the countries, in addition to internal (government) budget, financial support is also provided by various development partners, like the European Commission, International Development Research Centre (Canada), German Technical Cooperation (GTZ, Germany), USAID, Korea International Cooperation Agency (KOICA), etc.

- Little or no involvement of the line ministry in seeking financial support from the government, seem to have a positive impact on the effectiveness of the authority.

- Some of the competition authorities are accountable to the Parliament, which has enhanced their efficiency by reducing unnecessary interferences
- Financial support is also seen to be provided by a few development partners (bilateral and multilateral), who have been engaged in the process of economic and legislative/legal reforms in the region. Most of this support has been allocated towards capacity building and training activities of these competition authorities

6

External Linkages of Competition Authority

This section provides a brief account of the various ‘linkages’ that the competition agencies in the countries have developed with various stakeholders like, academia, regulators, business community and civil society.

Academic Institutions

- The Egyptian Competition Authority (ECA) has engaged the American University of Cairo (AUC) to develop a ‘Market Monitoring Mechanism’, which would help identify a set of indicators (*red flags*) that can indicate the extent of competition in specific markets. This information would be periodically published in the public domain to help raise awareness among stakeholders about competition and its possible impact on economy/consumers. Further, the AUC is also working towards developing a 2-semester (Master level) course on competition policy and law issues, to train young professionals in *Egypt* on the subject.
- One of the challenges that young competition authorities like the *Jordan* Competition Directorate face is that of addressing skilled human resource issues. That is, to have access to experts with training/knowledge/experience on competition policy and law issues. This can be addressed

by engaging with some experts/academicians in the country who have knowledge on the subject. One recent positive development is a *MA on Competition and Regulation* course that has been initiated in the Jordan University (by the Department of Economics, Faculty of Business) as an outcome of a cooperation agreement signed between Jordan and the EU.

- In the year 2002 a Master-level course on Competition Law and Consumer Protection was launched in the University of Fes in *Morocco*. By the time, when the course was stopped in 2007 (for updating the course curriculum) a total of nearly 90 young professionals had undertaken the course and some of them had joined the Competition Council and the government (Ministry of Economic and General Affairs). The course would be re-launched from the year 2011.
- In *Tunisia*, the Competition Council has been engaged with organising seminars/workshops in collaboration with academic institutions. Further, the Council has also supported research studies undertaken by scholars/doctoral students pertaining to competition issues in the country.

Sector Regulators

- Competition Council (*Conseil de la Concurrence*) of *Algeria* is mandated to deal with competition related issues/cases in all sectors, and the sector regulators are directed by the government to cooperate with them.
- The ECA has been working on developing a Memorandum of Understanding (MoU) with the telecom regulator in *Egypt* (National Telecommunication Regulation Authority). Broadly, NTRA would confine itself to technical regulation in the telecom sector, whereas ECA's role would be to deal with competition regulation in the telecom sector.

- A MoU has also been concluded between the Competition Directorate of *Jordan* and the Telecom Regulatory Commission (TRC). The fact that it took almost 5 years for this MoU to be finalised indicates that it is not easy always to have a clear demarcation of responsibilities between competition agencies and regulatory authorities, but is something that is extremely useful, especially helping in reducing the possibilities of ‘forum shopping’, which can adversely affect the competition enforcement process.
- In *Morocco*, the telecom regulator (ANRT) has been empowered (by an amendment in the law in 2004) to handle competition related issues in the telecom sector. One of the arguments in favour of this arrangement was that it would lead to speedy disposal of cases.
- Competition Council of *Tunisia* has been empowered to look into all aspects pertaining to competition regulation in the economy; hence all sector regulators are (compulsorily) mandated to refer all cases to the Competition Council.

Business Community

- It was gathered from discussions that the ECA has not been very effective in creating pressure/awareness within the private sector, which would help evoke interest among the business community for greater orientation on competition issues. In cooperation with the American Chamber of Commerce in *Egypt*, the ECA has organised workshops/ panel discussions to sensitise members of the business community in the country on practical aspects of competition. However, it was felt that there is a need for more such interactions between the ECA and the Egyptian business community.

- In *Jordan* the business community has been consulted in the process of refining the Competition Law of Jordan.
- Roundtables in cooperation with the chamber of commerce have been organised from time to time in *Tunisia*.
- In collaboration with the Damascus Chamber of Commerce and Industry, the Competition Commission of *Syria* has organised a few workshops to sensitise the business community.

Civil Society Organisations (CSOs)

- In *Jordan* a representative of a consumer organisation is member of the *Committee on Competition Matters*, which advises the Competition Directorate on competition issues.
- Both in *Algeria* and *Tunisia* representative of consumer organisation is represented in the Competition Council, which is responsible for adjudicating competition related cases.
- A representative of a consumer organisation is represented on the board of the *Egyptian Competition Authority*.

Table 6 sums up the levels and mode of engagement between the competition authorities and the various stakeholders, as could be gathered from the discussions over the course of the mission.

| Table 6: Level and Mode of Engagement between Competition Agency and Stakeholders | | |
|---|---------------------|--|
| Stakeholder | Level of Engagement | Mode of Engagement |
| Academia | Moderate to High | In some countries like Egypt, Jordan and Morocco the mode of engagement with academia was fairly systematic and based on a symbiotic process |
| Regulators | High | There was a fairly well-structured process of engagement between some of the competition agencies and sector regulators, and was driven by <ul style="list-style-type: none"> i) Legislative provisions, and ii) Operational arrangements (i.e., entering into MoU) |
| Business | Low | Apart from organising joint seminars once in a while, the competition authorities did not report about a well-structured process of interaction with the business community. This is something that is required to be taken up in a much more structured and organised manner by the competition authorities in future |
| Civil Society | Low to Moderate | Apart from having representative from consumer organisations in the Board of some of the competition authorities, there did not seem any other process of cooperation with the civil society in the countries. Given, the resource constraints that most of these competition authorities face, utilising a greater interface with consumers on the ground that consumer organisations have could prove to be beneficial for the competition authorities. Therefore, competition authorities should explore how and to what extent they can collaborate with civil society/consumer organisations in the countries |

7

Evidence of Anticompetitive Practices

Below are a few interesting cases and allegations of anti-competitive practices in the countries, as revealed from discussions with the respective competition agency officials and from other sources. While, some of these cases have been (or are being) investigated by these agencies, the others are alleged by various stakeholders, etc. This account (below) presents only a few selected cases from each country, which was referred to during the discussions with these stakeholders. As is evident, some of the practices had direct impact(s) on consumers and others impacted players in the market.

Table 7: Anticompetitive Cases in the MENA Region

| Country | Case Description |
|---------|---|
| Algeria | <ul style="list-style-type: none"> i. Case involving Tobacco/Match manufacturer: The Competition Council imposed a penalty on SNTA, the national tobacco/match corporation, for abuse of dominant position, and even monopolistic and discriminatory behaviour towards its clients. The case was brought before the Council by a client who had been a victim of such practices. The evidence breaches the Competition Law in terms of – discriminatory selling and speculative holding.¹⁶ ii. Abuse of dominance by National Electronic Industry (ENIE): The Competition Council fined ENIE for abusing its dominant position and discriminatory practices with its trading partners (some warehouses, whose charges were reduced or waived completely).¹⁷ |

Contd...

| Country | Case Description |
|---------|---|
| Egypt | <ul style="list-style-type: none"> <li data-bbox="592 457 1221 562">i. Film Distribution case: Anticompetitive practices in film distribution market, where vertical integration was noted. A report has been submitted to the Minister, and the final decision is pending <li data-bbox="592 583 1221 890">ii. Cement sector case: On October 02, 2007, the Board of the ECA found that various cement-producing companies had engaged in anticompetitive practices in breach of Article 6 of the Competition Act and submitted a report stating its findings and recommendations to the competent Minister. On October 4, 2007, the Minister referred the report to the public prosecutor and, following an extensive investigation, a highly publicised trial took place in which twenty executives from nine companies were found to have engaged in price-fixing and market sharing. Nine cement companies were fined a total of US\$1,100,000,000, while the executives involved were each fined US\$550,000,000 with immediate effect. |
| Jordan | <ul style="list-style-type: none"> <li data-bbox="592 919 1221 1024">i. Predatory pricing in Aluminum profiles: A case of predatory pricing (selling below the normal cost of production to undermine competition) was dealt with by the Competition Directorate of Jordan.¹⁸ <li data-bbox="592 1045 1221 1171">ii. Allegation of Abuse of dominant position in the mobile sub-sector: In February 2010, the Telecommunication Regulatory Commission published a report (Mobile Market Review), which found that Zain, a dominant player was abusing its position in the market.¹⁹ |
| Lebanon | <ul style="list-style-type: none"> <li data-bbox="592 1203 1221 1478">i. Alleged cartel in imported food: It has been alleged that there is a cartel that operates in the Lebanese economy in as far imported vegetables, food and meat in the country is concerned (consumer groups and experts allege that this cartel exists as the market of imported products is controlled by a handful of merchants, who collude to fix prices) and are even protected by an archaic <i>Exclusive Agents Law</i> in the country. Recently (October 2010), there was a heavy surge in the price of tomatoes and beef in the country – and the Ministry of Economy and Trade had to step in and set ‘profit-margins’ for basic goods that are imported into the country.²⁰ |
| Morocco | <ul style="list-style-type: none"> <li data-bbox="592 1507 1221 1604">i. A possible cement cartel: Morocco has one of the highest cement prices in the world. Whereas in Egypt a tonne of cement costs \$65, in Morocco it sells for as much as US\$100. This is partially related to the high local cost of the energy |

Contd...

| Country | Case Description |
|---------|--|
| | required to transform limestone into cement. But as demand reaches unprecedented levels, some builders are accusing the players in the cement industry of fixing prices. ²¹ |
| Tunisia | i. Abuse of dominant position in poultry: In a case involving abuse of dominant market position by a giant poultry firm, Poulina, the Council imposed a fine of approximately 240,000 dinars (approximately US\$194,000). While there were about 1,500 small producers of chickens and eggs, Poulina dominated the market in not only the downstream market but also the provision of inputs. It imposed unfair conditions including exclusive dealing contracts on distributors, foreclosing participation in the market by smaller producers. ²² |

8

Future Issues for Enforcement of Competition and Consumer Regimes

Future issues for enforcement of competition and consumer regimes in the project countries are summarised under the following heads:

a. Law enforcement and amendment

- Only Egypt has an independent *consumer protection agency* from among the seven countries. The process for developing such agencies should be initiated in the other countries
- The following issues should be considered while amending existing *consumer protection legislations*:
 - i. Provision of necessary powers and support to consumer organisations to strengthen their position
 - ii. Amendment to tighten the penalties for violating the consumer protection law
 - iii. Constitution of *Consumer Fund*, to support consumer organisations in undertaking activities such as awareness generation, capacity building, etc.
- The following issues should be considered for amendment of the existing *competition legislations*:
 - i. Agencies to be given more powers to impose stricter penalties (including provisions to incriminate violators)

- ii. Truncate the size of the Board (as it was felt to be too big in some legislations)

b. Addressing Capacity Building Needs

- All the agencies are relatively new in enforcement of competition law and consumer protection legislations and therefore need capacity building support. A review of the various capacity building programmes reveals that such support has been channeled through existing bilateral agreements between the donor government and the recipient country. Some of the ways for addressing capacity building needs in these countries are as follows:
 - i. Various development partners have provided support for agency/department staff to participate in international conferences/seminars, exchange programmes, research, etc. There is a need for donors to continue supporting such activities on the basis of proper ‘needs assessment’ exercises
 - ii. Certain international and intergovernmental organisations have provided specific technical assistance to government of competition and consumer protection issues. Both the donor and recipient government should include such possibilities in their future bilateral discussions on economic issues
 - iii. In addition to getting support from outside, it is also noted that in some countries efforts have been made to develop university courses (Masters level) on Competition, Regulatory and Consumer Protection issues. Efforts should be made to ensure that these programmes are effectively conducted so that young professionals are trained on these issues
 - iv. Channels of cooperation should also be explored between the competition and consumer protection institutions in this region and other from both developing and developed countries

- v. It is critical to enhance the understanding of the judiciary on competition and consumer issues, something that does not seem to have been done yet

c. Enhance Visibility and Greater Cooperation

- Competition agencies and consumer protection directorates don't seem to be doing enough to make them properly visible to the consumers and/or business community. Although, it is well-understood that one of the best ways of enhancing visibility is by giving judgement on cases and publicising them, but a lot can also be done in the interim. One way is to build a close working relationship with consumer organisations, NGOs, research institutions, media and business associations, so that there is better outreach of the activities across stakeholder groups
- There is also a general lack of awareness about the consumer protection law and the competition law, which has to be urgently addressed by the governments/agencies and other interest groups
- Participation in regional/international conferences, meetings would also enhance visibility in the international community

d. Institutional Independence

- Some of the competition agencies felt that they needed to emerge as *independent* regulatory institutions, which would enhance their performance and credibility
- Consumer protection departments are directly under the Ministry of Trade/Commerce. It is important to evolve independent consumer protection agencies like in Egypt

9

Conclusion and the Way Forward

It is evident from the information gathered during the course of the mission, review of literature and discussions with diverse group of stakeholders that there are certain challenges that need to be addressed for ensuring effectiveness of the consumer protection and competition regimes in the countries. In spite of these challenges some opportunities also emerged from these discussions. It is necessary for national and international stakeholders with an interest on these issues to assess these challenges and opportunities for them to effectively intervene bettering these countries.

Further, any discourse on competition reforms and consumer welfare cannot (and should not) be done in isolation, and has to be well-integrated with socio-economic and political realities in the countries.

For better comprehension, these ‘challenges’ can be segregated into: *Chronic Challenges* and *Acute Challenges*.

Chronic challenges pertain to policy related issues and political-economy aspects that directly influences the process of competition reforms and consumer welfare in these countries, and would need greater efforts (and possibly more time) to be addressed. Some of these challenges are described below:

- Consumer protection agencies: apart from Egypt no other country among these seven has established a consumer protection agency. Though Directorates have been established in most of the others, but that should not prevent

the government and other stakeholders to explore the possibility to evolve independent consumer protection agencies

- Absence of competitive neutrality: government policies in these countries often favour certain economic entities over the others (domestic companies over foreign companies; and state-owned enterprises over private players), and therefore impact competition in markets adversely. As these economies mature and become more exposed to the international markets, the government would need to consider how best to address this challenge to ensure that consumers have greater range of products to choose from and prices of goods and services plummet to their interest.
- Treatment of State-owned Enterprises: the government still remains a major player in many sectors of the economy. Decision-making in competition agencies is often in the hands of the Minister-in-Charge (Minister of Trade/Commerce), which is not the best arrangement for a following a ‘neutral’ process in competition enforcement.
- Political interference: Political interference is identified as another challenge that need to be tackled for both competition and consumer protection agencies to evolve as independent market regulators

Acute challenges are comparatively easier to overcome for governments/stakeholders with an interest on the issue, and can be viewed as priorities by them. A brief account of these challenges is provided below:

- Internal capacity constraints: given that a majority of competition and consumer protection agencies have been recently established, they face a daunting challenge of addressing their internal capacity constraints (both financial and human resources). A good sign is that many of these agencies are aware of this challenge, and have taken steps (cooperation with other competition agencies within and

outside the region, development of academic programmes, engaging with academic institutions/Universities, etc.) to address this issue.

- Interest of civil society: generally civil society has had a fairly limited engagement on competition policy and law issues in the countries. However, many consumer organisations have been engaged on consumer protection issues, mostly at the micro (local) level. The reason for this could be the lack of visibility that most of the competition agencies and consumer protection institutions suffer from in the region. It seems currently that civil society is more interested to work on issues pertaining to human rights, governance (political) issues and environmental issues.
- Donor attention: only a few donors have shown interest to work on competition policy and consumer protection issues. Its not that they are not interested to work on this issues, it is purely based on their assessment of the priorities in the region.
- Role of Media: Media needs to play a critical role in enhancing understanding of stakeholders and assisting in garnering public support for competition reforms and consumer welfare issues in the region.
- Indifference of the business community: the business community does not seem to have been properly sensitised and engaged on these issues. Business leaders need to be oriented/sensitised on competition and consumer protection issues so that they can act as ambassadors to push the agenda forward in the countries.

The ‘opportunities’ that seem to exist/emerge are enumerated below:

- Existing regional legislations: Article 38 and 39 of the Arab Charter on Human Rights (adopted by the Council of Arab States in 2008) cover issues pertaining to consumer protection. Member states²³ should operationalise the process for protecting the rights of their citizen consumers.

The importance of protecting rights of the consumers can be achieved also by celebrating ‘consumer day’, etc. Recently, the members of the Gulf Cooperation Council (GCC) have agreed to celebrate 1st March every year as the ‘Arab Consumer Day’. The League of Arab States could explore such possibilities.

- Framework on competition enforcement: most of the countries have a law and an established competition agency. Governments are often circumspect towards establishing new agencies, on account of limited resources and other factors. Efforts could be made to explore the possibility of integrating consumer and competition enforcement provisions under a unified legal and institutional framework.
- Initiatives of consumer organisations: In a number of countries, consumer representatives are members of the Board of the Competition Agencies and have a role to play in the taking decisions on competition related cases. The extent to which they have been playing a part in this process is not well understood, but the fact that they are represented in the decision-making body on competition is a step in the right direction.

In spite of a hostile political/policy environment, consumer organisations have existed and undertaken successful initiatives on many occasions – this should motivate them to do more. Consumer organisations should try to engage academicians, practitioners and policymakers in their respective countries to sustain success of their interventions, etc. It was gathered that a United Arab Consumers Federation exists (a network comprising consumer organisations from 15 Arab countries) and they meet once in a year (Annual General Assembly), which is hosted by one of the members.

Efforts should be made to strengthen this network and to link it with other such fora. Consumer organisation should also evolve from their engagement on ‘traditional’ consumer issues to more

‘contemporary’ issues – e.g., competition law, financial consumer protection, climate change, etc. to get greater attention both within and outside the country and to remain more relevant.

- Interest of bilateral agencies: Some bilateral agencies are interested in the region, including big players like EU and the US. Both of them and others like Germany, Sweden, Switzerland, etc. should be persuaded for providing support on competition policy and consumer protection issues like they have done elsewhere.
- Role of international organisations: International (and inter-government) organisations like the World Bank, UNCTAD, CUTS International, IDRC, etc. have worked on competition policy and consumer protection issues in a number of developing countries, and should engage more meaningfully in this region as well.

Endnotes

- 1 http://eeas.europa.eu/euromed/docs/asso_agree_guide_en.pdf
- 2 www.mcinet.gov.ma
- 3 There is a possibility of the establishment of another one soon as gathered from discussions during the mission
- 4 Consumer Protection, Policies and Strategies in Syria: <http://qualitysyria.com/all/viewNews.php?idField=15&menu=35>
- 5 www.sante-dz.org
- 6 www.cpa.gov.eg/english/index.htm
- 7 As explained earlier, there is at the moment only one active consumer organisation in the country (Consumers Lebanon)
- 8 www.cpa.gov.eg/english/NGOs.htm
- 9 Renda, A. ,‘Competition Policy in Euro-Mediterranean Partnership’, EIPA-ECR, 2007
- 10 Geradin, D. and Petit, N., ‘Competition Policy in the Southern Mediterranean Countries’, Review of Network Economies, Vol 3 Issue 1, 2004
- 11 Paloni, A. & Zanardi, M. (Eds), ‘The IMF, World Bank and Policy Reform’, Routledge, New York, 2006
- 12 *Ibid*
- 13 Similar findings have also been reported in ‘Competition and Efficiency in the Arab World’, edited by Khalid Sekkat, Palgrave-McMillan, 2008
- 14 Benhassine, N *et al*, ‘From Privilege to Competition: Unlocking Private-led Growth in the Middle East and North Africa’, World Bank, 2009
- 15 The Competition Council of Algeria has just been established
- 16 Contribution made by Algeria at the OECD Global Competition Forum held in 2009, and available at: <http://www.oecd.org/dataoecd/47/53/41941557.pdf>
- 17 www.algerianoverseas.com

- 18 www.mit.gov.jo
- 19 www.trc.gov.jo
- 20 The Daily Star, Business News (Beirut) October 29, 2010
- 21 www.executive-magazine.com/getarticle.php?article=11043
- 22 Khemani, R. S., 'Competition Policy and promotion of investment, economic growth and poverty alleviation in Least Developed Countries', World Bank, 2007
- 23 There are 22 member countries of the League of Arab States, including all the seven that this project covers



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