



Egypt

Global merger control handbook – update

APRIL 2020

Merger control legislation updates since 1 July 2018

The ECL (Egyptian Competition Law) has been amended in April 2019 by virtue of Law No. 15 of 2019, dated 8 April 2019. In that amendment, two changes occurred to Articles 21 and 22 of the ECL as follows:

A. ARTICLE 21 OF THE ECL:

This article concerns the procedures necessary to initiate the criminal claim with regard to any breaches to the ECL. The article already stipulated that the initiation of criminal proceedings concerning breaches of the ECL shall only occur by virtue of a written request by the Chairman of the ECA (Egyptian Competition Authority) with the approval of the majority of the ECA's Board of Directors. However, the 2019 amendment made an exception to that rule, pertaining to the newly added crime included in Article 22*bis* (c).

B. ARTICLE 22*BIS* (C) OF THE ECL:

This newly added clause adds a fine for any breach of the Cabinet Decrees issued in implementation of Article 10 of the ECL, namely a fine between EGP 100,000 and EGP 5,000,000. In that regard, Article 10 of the ECL stipulates that the Cabinet may issue a decree setting the sale price of essential products for a specified period of time, after consulting with the ECA. Any agreement entered into by the government in order to implement the set prices shall not be considered damaging to competition.

Contrary to what was expected in the legal community, the 2019 amendment does not include pre-merger control. However, since 2018 the ECA has aggressively applied *de facto* pre-merger control by claiming that a potential merger or acquisition constitutes a breach of Article 6 of the ECL prohibiting anti-competitive horizontal agreement. As such, the ECA requests the parties to a potential merger or acquisition to apply for an exemption from Article 6 of the ECL. In this regard, Article 6.2

of the ECL stipulates that the relevant parties may request from the ECA an exemption from the prohibition stipulated in Article 6 of the ECL with regard to an agreement or contract aiming to realize economic efficiency, if it is proven that such agreement or contract would benefit consumers in a manner that exceeds the anti-competitive effects. The procedures for such an exemption request are included in the Executive Regulations of the ECL.

Landmark cases since 1 July 2018

The ECA has applied its new policy of *de facto* pre-merger control despite the fact that the ECL does not stipulate for such a regime. The new policy was notably applied with regard to the Uber and Careem transaction whereby Uber purchased all of Careem's assets. The parties were approached by the ECA in October 2018 (by virtue of Decree No. 26 of 2018) prior to closing the transaction, and were ordered to file an exemption request in accordance with Article 6.2 of the ECL prior to closing the transaction, in order to obtain the ECA's approval.

While the 2018 decree and the policy it aimed to establish were poorly received in the Egyptian legal community for lacking valid grounds and constituting an abuse of power, the ECA continued in its policy and conducted a review of the Uber Careem transaction. Eventually, the ECA approved the transaction after imposing certain commitments on the parties. The approval was granted in December 2019 by virtue of "Decree No. 45

of 2019 approving the acquisition by Augusta Acquisition BV (a 100% subsidiary of Uber Technologies Inc) of 100% of the assets of Careem Inc. conditional upon the parties' compliance with the "Commitments" in accordance with Article 6.2 of Law No. 3 of 2005."

A similar policy was implemented when the ECA decided that two online food delivery providers had allegedly entered into a market segmentation agreement in light of a minority shareholding acquisition by one of the parties. As such, in May 2019, the ECA declared that while the acquisition of a minority share does not in itself constitute a breach of the ECL, using these shares in order to obtain a competitor's confidential information and affect its strategic decisions impacting its competitive position in the market, does entail a breach of Article 6 of the ECL. Therefore, the ECA decided that the two companies were in breach of Article 6 of the ECL, and ordered them to cease the implementation of the alleged prohibited agreement, and to return the situation to the state it was in prior to the alleged agreement.

Web link to the national competition authority

Egyptian Competition Authority: www.eca.org.eg/

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