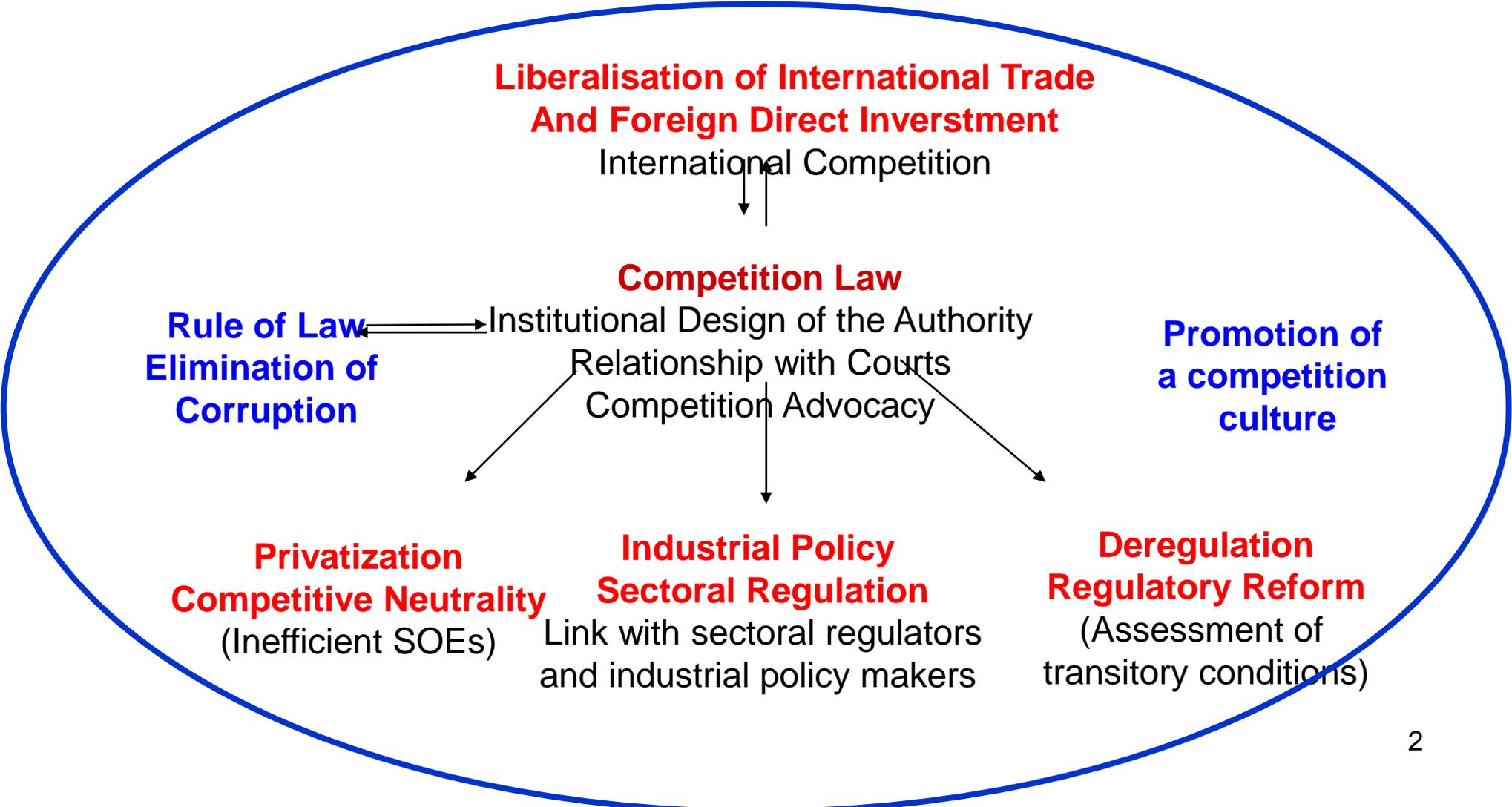


Competition and Economic Policy in the Mena Region

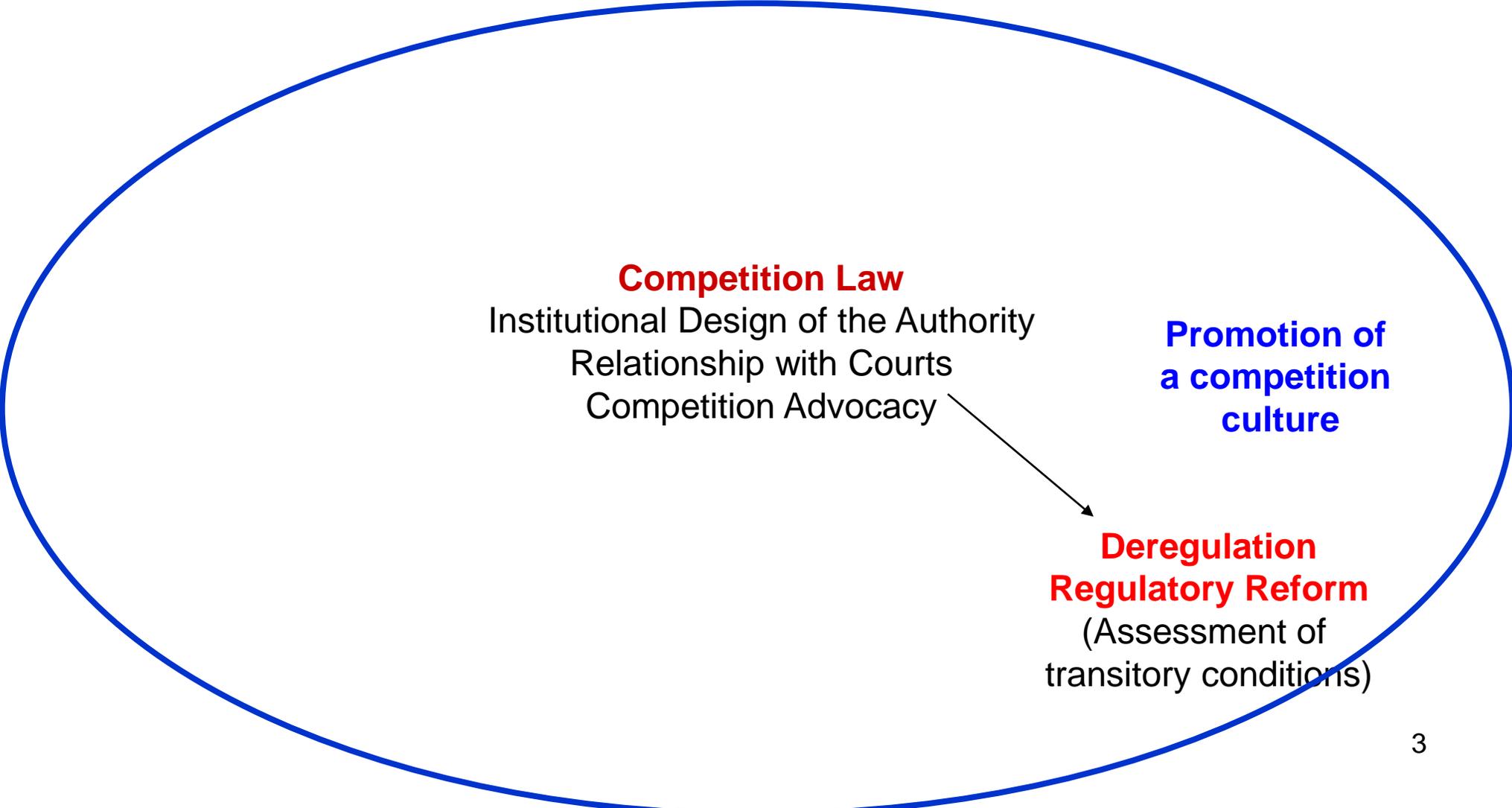
**Frederic Jenny,
Global Professor of Antitrust, New York University Law School
Chairman, OECD Competition Chairman**

**Third Arab Competition Forum (ACF)
Muscat, Oman, 24-25 May 2022**

Competition Law and Competition Policy



Competition Law and Competition Policy



From Deregulation to Regulatory Reform and Regulatory Management in the 1990s and 2000

The **reform agenda broadens in the 1990s and the 2000s.**

First: Efforts focused on identifying important areas of poor quality regulation, advocating specific **regulatory reforms** and scrapping burdensome regulations.

Second: Recognition of the fact that **ad hoc approaches to reform are insufficient.** The key elements of **regulatory quality management** emerged from the experiences of the reformers.

The Need for Regulatory Reform in Mena Countries

At the heart of the inability of MENA countries to integrate domestically and regionally are the almost impenetrable barriers to firms entering or leaving crucial markets — or, as economists put it, the lack of contestability. The economies of MENA have favored incumbent firms, whether private sector or state-owned.

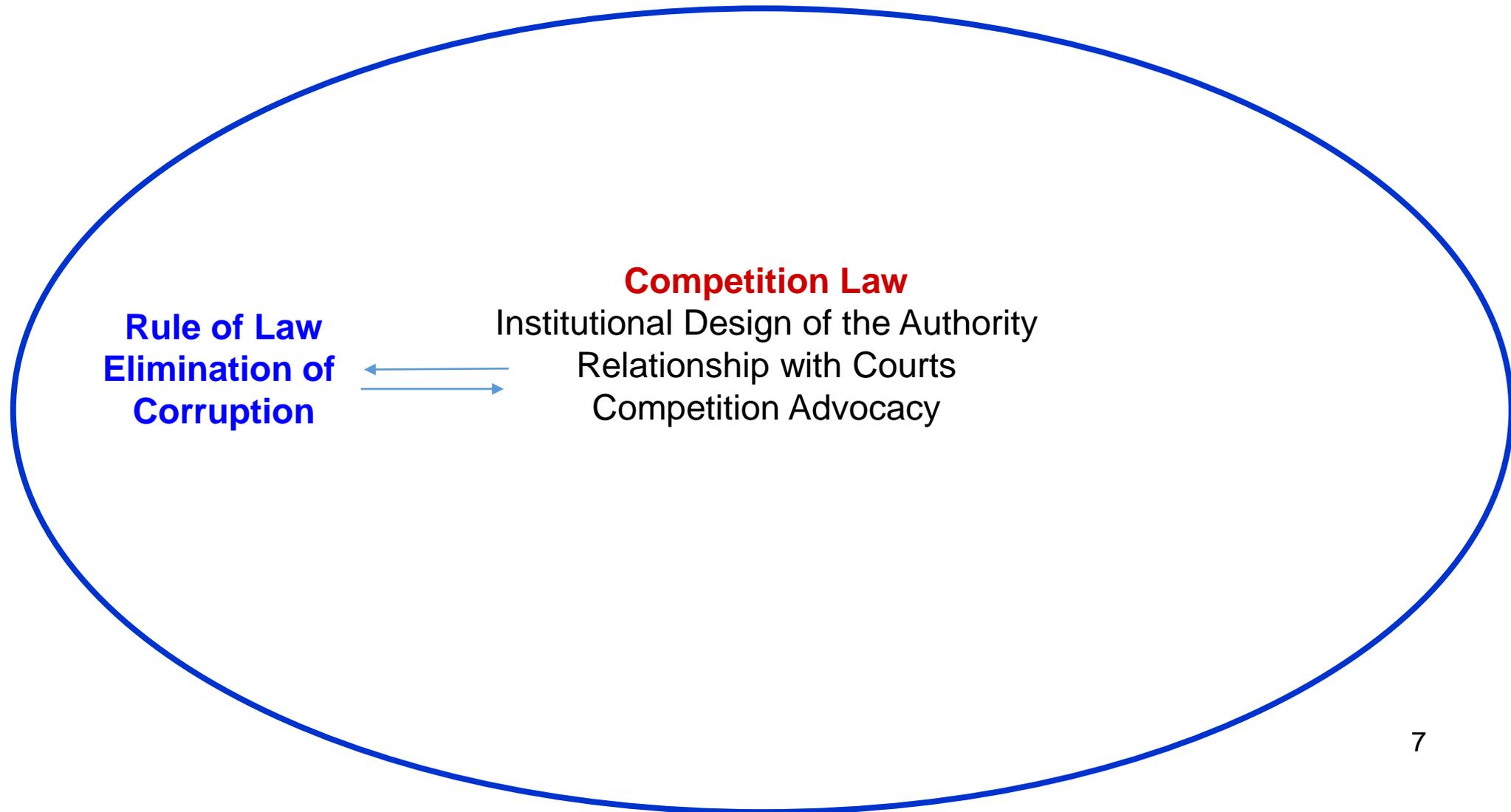
This lack of domestic market contestability reverberates at the regional level. To unlock domestic and regional integration, **the wall of vested interests in MENA countries must be torn down. In practice, this tearing-down could translate into the creation of regulatory watchdogs to champion open competition.**

The regional demand unleashed, accompanied by regulation, exercised at arm's length, that fosters competition and fights anti-competitive practices could prevent the perpetuation of economic oligarchies, namely the powerful few who seize control of attempts at liberalization, with the unfortunate result of sullyng, among citizens, the idea of reform.

The Role of Competition Authorities in Regulatory Reform Programs

- 1) Strong and independent competition law enforcement is a necessary (but insufficient) condition for the development of a competitive economy
- 2) Competition authorities are **advocates for building a competition culture**. A **way to minimize the discrepancies in regulatory standards** for various industries is the establishment of a pervasive competition culture throughout society.
- 3) In their advisory function, competition authorities **can suggest regulatory reforms**
- 4) Competition authorities **can play a useful advisory role in the privatization process**
- 5) Competition authorities in a large number of OECD member states have **drafted proactive plans for participation in regulatory reform efforts in the telecommunications, financial, electrical power generation and agricultural sectors, and the professions**

Competition Law and Competition Policy



Rule of Law, Competition and Economic Development

“Key development steps are the **establishment of a dependable rule of law** that encourages **transparency in government contracts and pensions, fights corruption, builds strong and accountable institutions, and creates a level playing field so that the private sector is allowed to compete fairly with state-owned enterprises, the military, and the government itself. ...**

The payoff is that countries that make this step attract more investment, both foreign and domestic, and can generate growth that benefits a broader part of the population.”

President Malpass The World Bank in need of reinventing itself October 29, 2019

Rule of Law, Competition and Economic Development

Today, on the streets of Iraq, Lebanon, Egypt, Algeria, Tunisia, Morocco, and other countries, we hear the demands of the youth, asking for justice, governance, dignity, and jobs.

In contrast to these demands, **we see governments unwilling or unable to move towards systems of governance that would ensure transparency, accountability, and fair competition for all.** Governments **unable or unwilling to address the urgent need to push back against rentier economic actors and incumbents, with stalled growth, poor job creation, and mounting frustration as a result.**

These calls for justice and the rule of law, and the incapacity of a large number of governments to meet the demands of their citizens, are becoming even more glaring close to 10 years after the Arab Spring brought about tectonic shifts in the national polities and in the regional political landscape of the whole MENA region.

With a number of colleagues, I have been advocating for a renewed social contract between citizens and their government in MENA. We believe that a large part of this contract to be re-negotiated lies in the need to move on promoting contestability in the economy, competition, fairness, and a level playing field for all economic actors. This needs a renewed emphasis on a credible, efficient, fast, and predictable judiciary, and actionable relief which gives confidence and trust to all

Fighting Corruption in the Mena Region

Tackling entrenched corruption will be a key focus of the political discourse in the Middle East and North Africa in 2022.

International policymakers will look to anti-corruption as a framework that can be used to help stabilize conflict countries, support economic reform, or to pressure adversarial regimes.

Pressure to deal with corruption also stems from popular anger in countries that suffer from poor governance as corruption can have very serious – even fatal – consequences, as the deadly hospital fires Iraq suffered last year illustrate.

Chatham House, Tackling corruption is focus for MENA in 2022

Corruption Distorts Competition

Examples in the Mena Region

At first glance, **anti-corruption processes underway across the Middle East and North Africa appear to suggest that states in the region are serious about combatting graft.**

Libyan prosecutors ordered the culture minister Mabrouka Touki detained on Wednesday December 29 2021 as part of an investigation into alleged graft of state funds. This arrest relates to an **alleged graft over a contract for maintenance works on ministry buildings which had already been refurbished last year.** This arrest **intervenes a week after the arrest of the education minister in a similar case.**

In May 2022, the **Al-Rasafa Criminal Court sentenced Raad Mohsen Ghazi Al-Haras (former undersecretary of the ministry of electricity), to six years in prison and a fine of 10 million Iraqi dinars** for receiving financial bribes and referring projects belonging to the ministry of electricity to companies in Batan," the judiciary said in a statement that the evidence in the case indicated that **the convict received a bribe of \$400,000 from one of the fugitives, in exchange for facilitating the task of transferring contracts belonging to the ministry (hilla karbala project) to specific companies."** This was **not an isolated incident** and the same person was convicted on July 25 2022 was sentenced in another case to four years in prison and a fine for awarding a contract in exchange for a bribe of 1,350,000,000 dinars.

Corruption Distorts Competition Examples in the Mena Region

But **appearances can be deceiving. In none of these countries have anti-corruption efforts led to meaningful change.**

In Libya, past efforts have petered out and officials have all too rarely faced trial, let alone been convicted. There is little to suggest this round will be any different as the government is unlikely to support the attorney general's cause.

In Iraq, this year's top story will be the protracted government formation process following last year's elections – a process rife with politically sanctioned corruption as the usual cast of characters come together to negotiate their share of power and money. **Despite the 2019 October revolution that called for reform of Iraq's ethno-sectarian political system (muhasasa), not much has changed.**

Corruption Distorts Competition

Examples in the Mena region

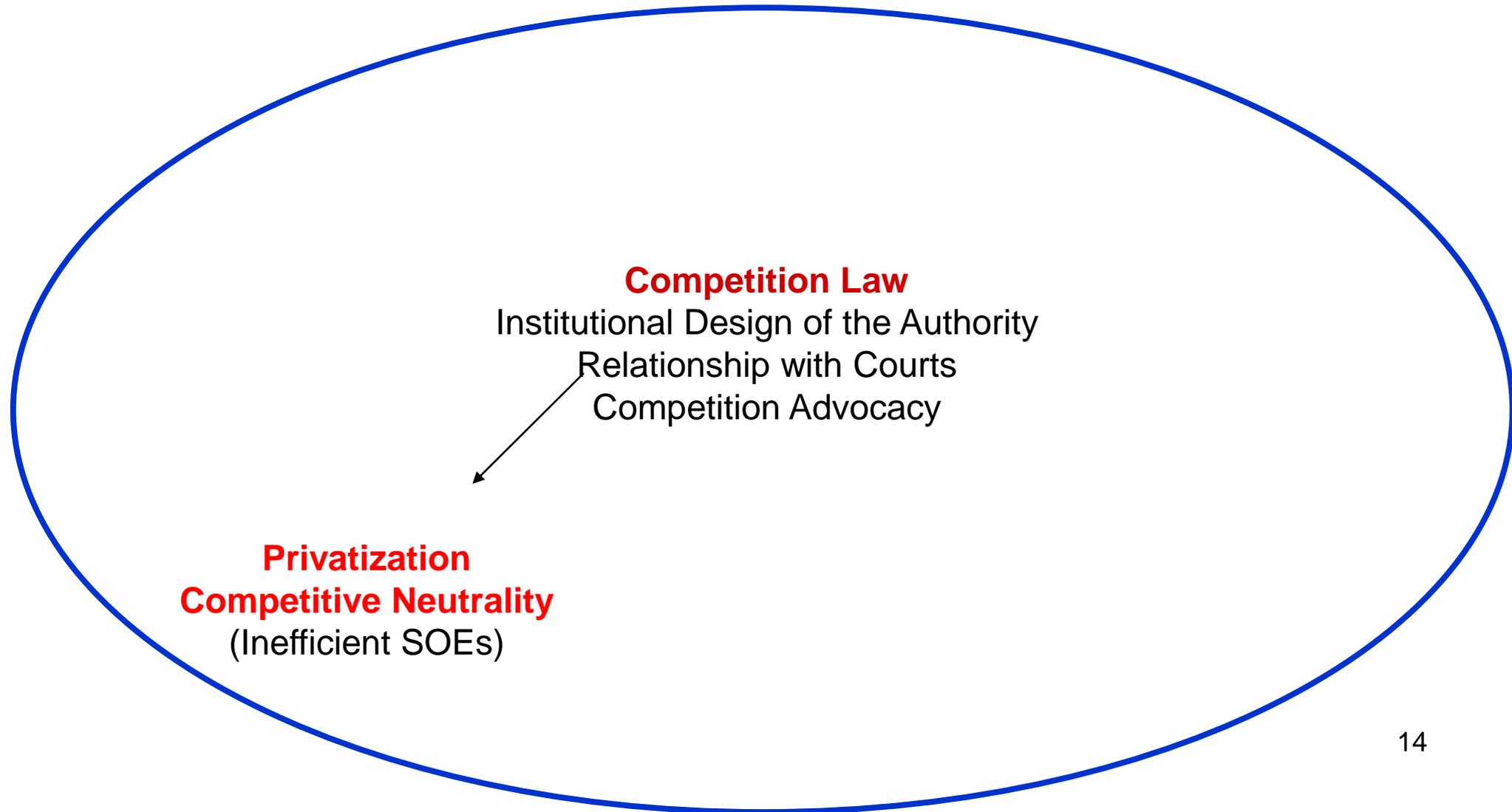
Saudi Arabia, which is pushing ahead with its Vision 2030 targets, **has an anti-corruption agenda**.

By all indications, the combating of corruption and ensuring a level playing field, for rulers and ruled, is an issue that has been taken very seriously by **King Salman bin Abdulaziz of Saudi Arabia**, who stated in June 2015 to the Anti-Corruption Committee that his government would have **zero tolerance for corruption in the country and that he and other members of the royal family are not above the law and that any citizen can file a lawsuit against the king, crown prince or other members of the royal family**. These were some of the strongest statements to be made by a Saudi monarch on the issue of combating corruption and nepotism.

However, Saudi Arabia will face **challenges in connecting its legal framework and process**, led by the Oversight and Anti-Corruption Authority (Nazaha), **with realities on the ground. Many sectors suffer from a lack of transparency when it comes to decision-making, yet the importance of personal and social connections (Wasta) remains high in Saudi society** (Chatham House, Tackling corruption is focus for MENA in 2022).

“Corruption” can be defined as “the abuse of entrusted power for private gain”. Given that the “connection” expects to benefit from a service in return or will use his or her influence for family members, a Western perspective on wasta will probably consider this as a form of corruption, while it is widely perceived as something “natural” and not criminal in most Middle Eastern societies (Mohamed A. Ramady, The Political Economy of Wasta: Use and Abuse of Social Capital Networking)

Competition Law and Competition Policy



State Owned Enterprises in the Mena Region

State-owned enterprises (SOEs) are a prominent economic feature of the Middle East, North Africa, and Central Asia (ME&CA) region, involved in all economic sectors.

The bulk of SOEs based in the region are not multinationals as they span all sectors of the economy, including network industries (for example, post offices, electricity companies, and transportation) as well as activities usually thought of as being better handled by the private sector, such as (...), tobacco manufacturing in Tunisia, and carpets in Iraq.

**International Monetary Fund, State-Owned Enterprises in Middle East, North Africa, and Central Asia: Size, Costs, and Challenges
Volume/Issue: Volume 2021: Issue 019**

State Owned Enterprises in the Mena Region

Within the Middle East and North Africa (MENA) region, the SOE footprint in the Gulf Cooperation Council (GCC) countries developed from the prominent role of oil and gas sector and a **desire for government ownership of strategic assets** within this sector (Hertog 2010).

In other countries, the SOE footprint has roots in the set of companies inherited **from past colonial regimes** and the policies followed in the immediate aftermath of independence (for example, Jordan, Morocco, Tunisia).

For another group, the sectoral footprint of SOEs tends to be very broad, reflecting **previous socialist development models which promoted greater intervention and nationalizations** of major industries (for example, Algeria, Egypt, Iraq, Syria, Yemen).

International Monetary Fund, State-Owned Enterprises in Middle East, North Africa, and Central Asia: Size, Costs, and Challenges
Volume/Issue: Volume 2021: Issue 019

State Owned Enterprises in the Mena Region

In a number of countries in the region, some **SOEs that hold a dominant and monopolistic position in selected sectors are exempt from the competition law or may be excluded from the competition law altogether** (for example, **Algeria, Egypt, Kuwait, Qatar, Saudi Arabia, Tunisia, and United Arab Emirates**).

There are **also cases whereby SOEs are exempt or are treated differently in some specific legislation** (for example, bankruptcy law) or receive special status or privileges in sector-specific regulations.

This **protection appears to implicitly extend also to the court system in some countries** where firms reported difficulties enforcing court decisions against SOEs and public authorities (for example, Azerbaijan; see OECD and others 2020).

State Owned Enterprises in the Mena Region

The existing literature suggests **SOE performance in the ME&CA region has been weak and subject to limited scrutiny. State ownership is often associated with weak oversight, limited competition, political interference, and soft-budget constraints which can negatively affect performance** ([Hertog 2010](#), [Ter-Minassian 2017](#), [Arezki and others 2020](#)). The lack of regular, comprehensive reporting on the financial performance of SOEs in the region is well documented ([OECD 2019](#)), which hinders effective supervision of SOEs. SOEs often operate as monopolies or are subject to limited competition.

Many SOEs do not operate in a competitive environment, often enjoying a range of protections and benefits that put them in a stronger competitive position vis-à-vis the private sector.

Some SOEs are exempt from the competition law, benefit from favourable tax treatments, or receive special status/privileges in sector-specific regulations.

These, and the practice of providing extensive support measures, guarantees and subsidies, create market distortions, hampering the development of a job-rich private sector.

Reforming the SOEs in the Mena Region

The IMF Report notes the most pressing challenge facing policymakers is **how to generate strong, sustainable, diversified and inclusive growth and job creation in a post-COVID-19 environment.**

“This will likely require reforming the SOE sector—to increase competitiveness and to determine which activities are appropriate for state involvement—to create an environment that promotes private sector activity as well as the necessary fiscal space to support the recovery, all while ensuring that social and economic development objectives are met,” reads the report.

The IMF report notes a set of recommendations that should be tailored to account for country-specific institutional development and technical capacities.

These include:

Ensuring fair competition requires efforts to level the playing field between SOEs and private enterprises—including public procurement, taxation, competition policies, access to credit, and bankruptcy protection.

The unfair competition that results from markets dominated by state-owned enterprises and connected firms deters private investment, reducing the number of jobs and preventing countless talented youngsters from prospering. (Reaching New Heights: Promoting Fair Competition in the Middle East and North Africa, World Bank Group)

Domestic Government Interventions Affect Domestic and International Markets

In a globalised economy, **government interventions can affect competition in both domestic and international markets.**

State support has an impact on the cost and revenue structure of supported firms and their actual or potential foreign competitors.

This means that unsupported foreign competitors may struggle to enter a market or be compelled to leave it because they do not benefit from the same support as their locally-based competitors.

This can also enable supported national firms to expand into international markets, not because they are more efficient, but because they may be entering markets where competing firms have not received any – or the same level of – support.

These dynamics can undermine the global competitive playing field and weaken gains from trade by distorting the efficient international allocation of resources. **This may also lead to snowballing effects** whereby individual countries respond by providing more support in the form of direct subsidies, preferential treatment, or state-backed guarantees for their domestic firms. This potentially erodes support for the multilateral trade rules that have brought so many economic benefits.

Consistency between Competition Policy and Domestic Government Intervention: Saudi Arabia

The findings show a **conflict between the principles underlying Competition Law and currently implemented government policy.**

Barriers to entry, public and wholly-owned state companies' immunity, the government's privatisation policy, and the government role in the market contradict the general principles of the competition law.

There is evidence of **monopolistic practices, a lack of neutrality, and insufficient implementation of the law against government-owned companies.**

There also seems to be jurisdictional conflicts between the Council of Competition Protection (CCP) and authorities with similar functions.

Musaed N. Alotaibi, Does the Saudi Competition Law Guarantee Protection to Fair Competition? A Critical Assessment, The University of Central Lancashire, 2010

Promoting Competitive Neutrality

To avoid such unintended consequences and to safeguard a healthy competition and trade environment, careful design of state support is critical. Tools and approaches from both the competition and trade policy communities can be useful to designing support that avoids medium- and long-term distortions.

Competitive neutrality is a crucial principle when designing state support measures.

The OECD has long engaged in promoting and analysing the application of this principle – leading to the 2021 OECD Council Recommendation on Competitive Neutrality. Such a Recommendation sets down the parameters for promoting a level playing field among competitors and avoiding situations where unfair advantages are bestowed upon some firms, whether state or privately owned, based on, for example, their nationality or ownership.

Competition Law and Competition Policy

**Liberalisation of International Trade
And Foreign Direct Investment**

International Competition



Competition Law

Institutional Design of the Authority

Relationship with Courts

Competition Advocacy

Link between Competition Policy and Trade Policy

While competition law concentrates on the elimination of private restrictions in the marketplace, international trade focuses on public policy to remove any restraint to commercial flow.

Their coordination will depend on the specific market and political and domestic circumstances of each sector.

The close relationship between both areas creates the necessity of including trade considerations when drafting and enforcing competition regulation and vice versa.

Trade and Competition in the Mena Region

Overall, the MENA region remains less regionally integrated in terms of trade and investment flows. The main **barriers to growth in trade and investment (including intraregional) are multi-fold:**

- Though **average tariffs** have reduced over time, they **remain very high**; **non-tariff barriers (e.g. burdensome technical regulations, import authorisation procedures, cumbersome customs clearance and border controls) are obstacles to both regional and global integration**;
- **MENA's trade facilitation performance** – in terms of procedures, harmonisation, transparency, border agency cooperation and so on – **leaves much to be desired**; Though regional trade agreements are in place, their implementation and enforcement are lacking and benefits are not visible;
- **Lack of diversification is a serious drawback**, given that oil and agricultural products remain by far the most important exports;
- **Regional economic integration has seen very little progress** due to different factors including weak institutions, the lack of infrastructure and state-owned enterprises;

Dr. Nasser Saidi and Aathira Prasad, OECD, MENA-OECD Working Group on Investment and Trade, Background Note Trends in trade and investment policies in the MENA region, 2018

Trade and Competition in the Mena Region

- **Cumbersome licensing processes**, complex regulations and opaque bidding procedures create both business and investment barriers;
- **Competition legislation is particularly needed** in countries where markets are highly concentrated and where barriers to imports are still high;
- Trade has been negatively affected by the **wars, sanctions and political barriers in the region**; and
- The **scarcity of quality data and statistics** on both domestic and foreign investment means a lack of evidence-based public policy and increases perceived investment risk.

While the region has undertaken significant reforms to support trade and investment – ranging from lowering tariffs to improving infrastructure to protecting minority investments to institutional investment reforms – it is evident that **there is a long way to go for greater trade integration.**

Dr. Nasser Saidi and Aathira Prasad, OECD, MENA-OECD Working Group on Investment and Trade, Background Note Trends in trade and investment policies in the MENA region, 2018

Conclusion

Competition law enforcement is a necessary but insufficient means of promoting competition

There is a need to integrate competition policy and complementary economic policies in a comprehensive National Competition Plan

This recommendation is particularly relevant to the countries belonging to the Mena region

Thank you for your attention

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