

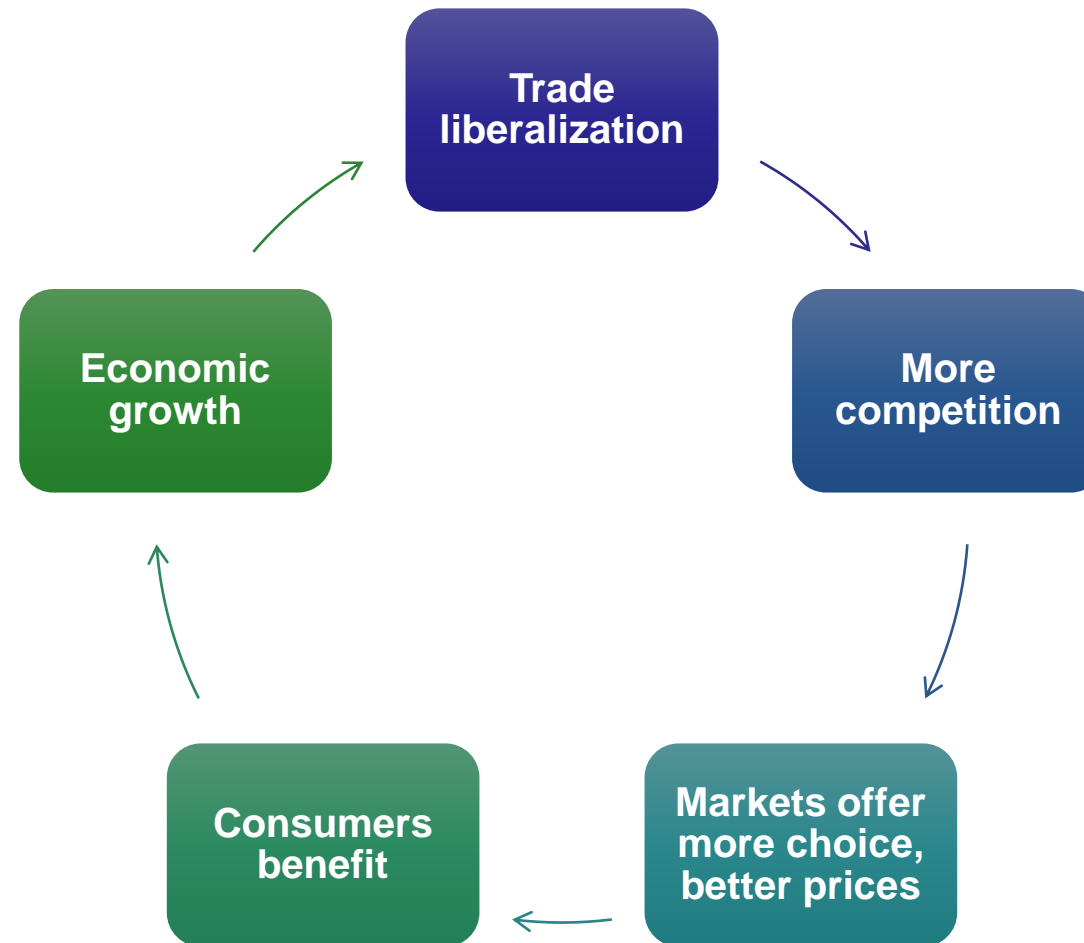
3rd Arab Competition Forum

24-25 May 2022

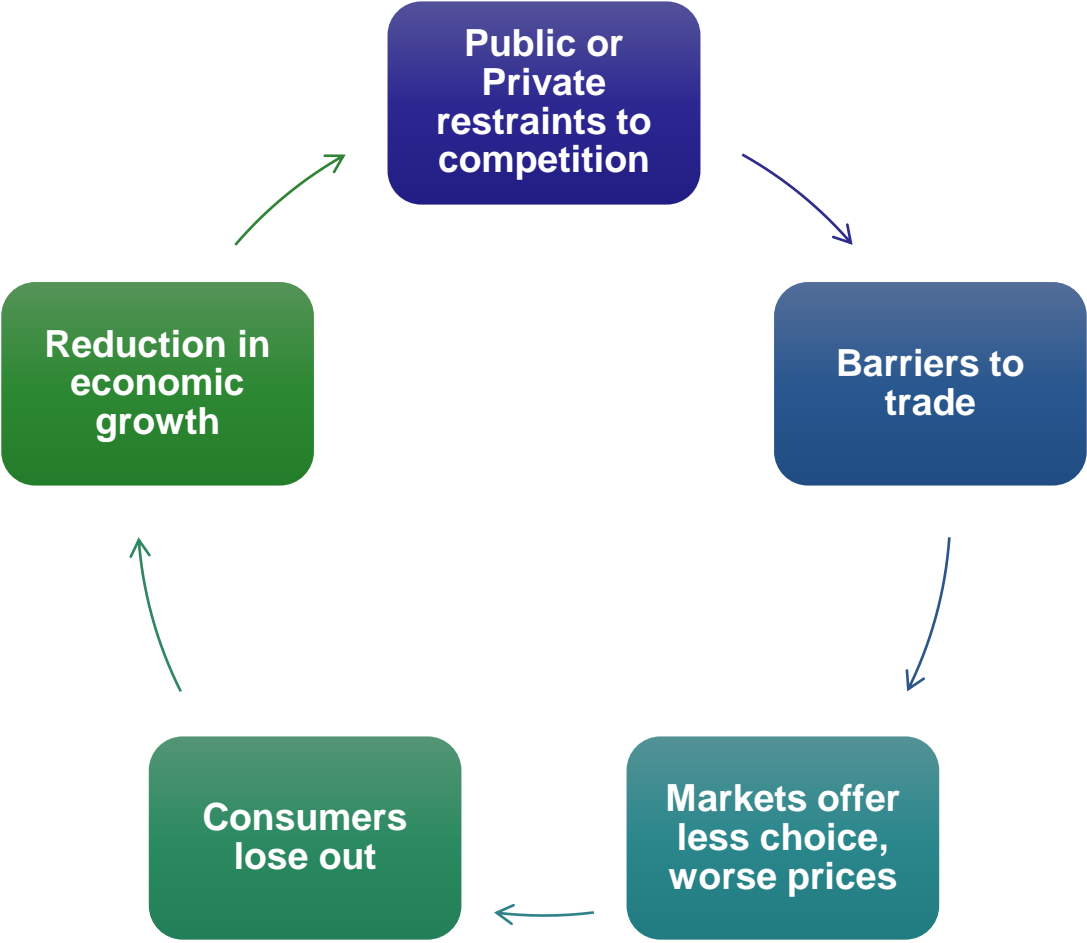
Competition Provisions in Trade Agreements

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Intellectual Property, Government Procurement and
Competition Policy Division

The trade – competition interface: positive synergies



The trade – competition interface: the need for competition advocacy & enforcement



Historic perspective: competition policy and trade as a “new” issue?

Havana Charter,*
Chapter V, 1947-1948:

“Each Member shall take appropriate measures ... to prevent ... business practices affecting international trade which restrict competition, limit access to markets, or foster monopolistic control”

UN Set of Principles and
Rules on Competition,
1972-1980

Recognizing ... the need to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting international trade, particularly those affecting the trade and development of developing countries...

WTO Working Group on
the Interaction between
Trade and Competition
Policy, 1997-2003

Doha mandate to study: core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building

* The Havana Charter was the principal source of the original GATT (1947). Chapter V was included in the Charter but not carried over into the GATT.

Work on competition policy in the WTO



- Exploratory work programme commenced at Singapore Ministerial Conference (December 1996).
- Doha Ministerial Declaration (para. 23): recognized “case for a multilateral framework” and directed Members to develop “modalities for negotiations”.
- Subsequently, negotiations opposed by developing countries (key developed jurisdictions also had mixed feelings). No consensus reached on modalities at Cancun.
- July 2004 General Council Decision on the Doha Work Programme: no further work toward negotiations on competition policy (or investment or transparency in government procurement) for duration of the Doha Round.
- Working Group “inactive” – could be revived if desired by WTO Members (consensus needed).

Relevance of competition policy to specific elements of the WTO Agreements

TRIPS, Articles 8 and 40:

- Members permitted to take measures to deal with anti-competitive licensing practices, other abuses

GATS, Article VIII:

- issues concerning conduct involving monopoly and exclusive service suppliers

GATS, Article IX:

- consultations regarding anti-competitive business practices that restrain competition and thereby restrict trade in services

GATS Telecom Annex, Reference Paper on Regulatory Principles:

- commitment by Members to action against anti-competitive practices by major suppliers in the telecom sector (2004 *Telmex* case)

GPA:

- competition rules an essential counterpart
- main aim to increase supplier competition

TRIMS, Article 9:

- issue of whether to implement complementary provisions on investment and competition policy in the course of a review of the Agreement

Implication: competition policy present in the WTO framework, though in a piecemeal fashion.

Continued work areas with reference to competition policy in the WTO



- Considered as important policy area in the process of **accession to the WTO of new Members** (pursuant to Article XII of the Marrakesh Agreement)
 - In around 80% of cases, the acceding state is requested to provide information on its domestic competition policy regime. Growing importance/detail.
- **Trade Policy Reviews:** a comprehensive overview and analysis of the WTO Member's trade policies, including information on competition policy and the relevant laws and institutional framework.
 - Reports as important resource for information, trend to cover in more detail.
- **Discussions** in WTO Bodies administering WTO Agreements:
 - E.g. recent discussions on Competition and Public Health in TRIPS Council
- **Technical Assistance:**
 - National seminars available on request, Workshops in Geneva
- **Ongoing/future discussions**, e.g. on e-commerce *may* touch upon competition-related aspects.

Multilateral cooperation continues in other fora...



- International Competition Network

- competition authority contact, cooperation, framework for competition agency procedures.

- OECD Global Forum on Competition

- exchanges on relevant subject areas.



- UNCTAD

- UN Set, trade and developments links, technical cooperation.

- Regional Trade Agreements

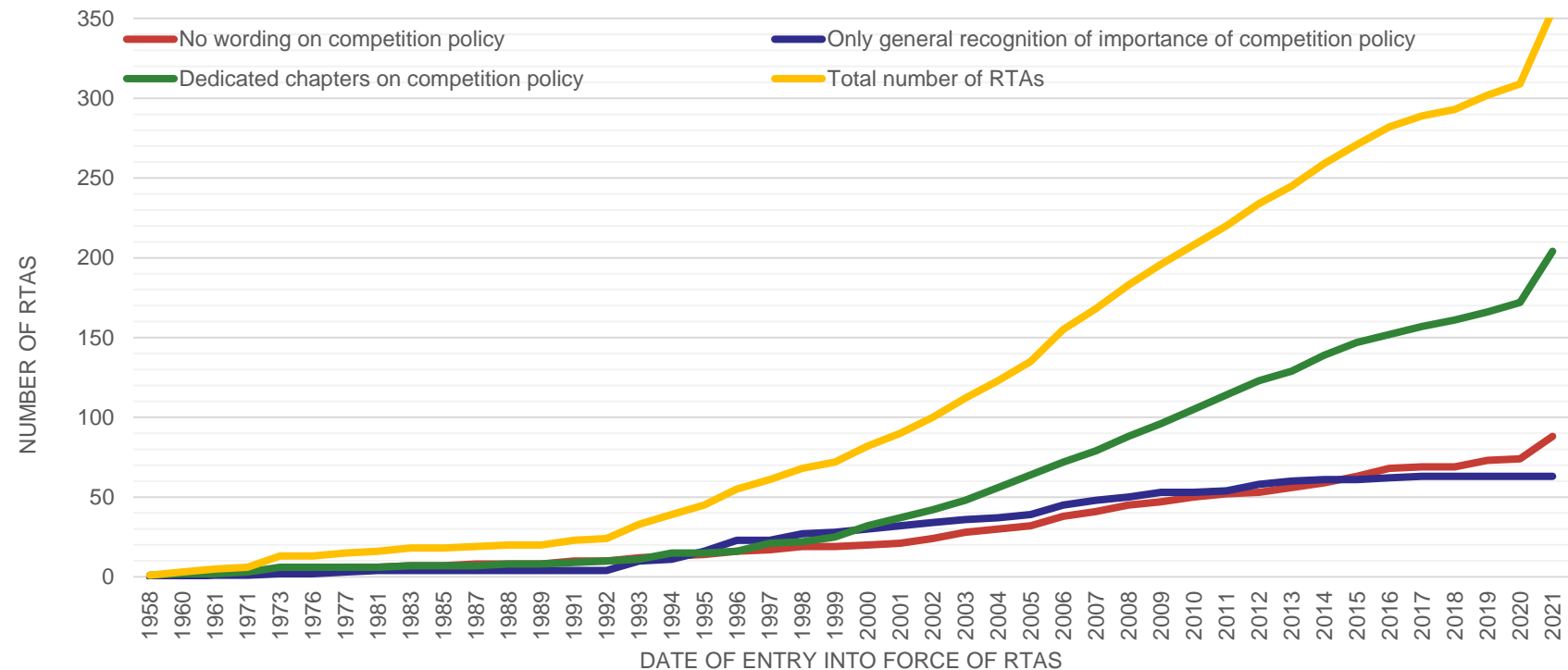
- Increasing integration of competition policy rules.



Trend: Inclusion of dedicated chapters on competition policy in Regional Trade Agreements



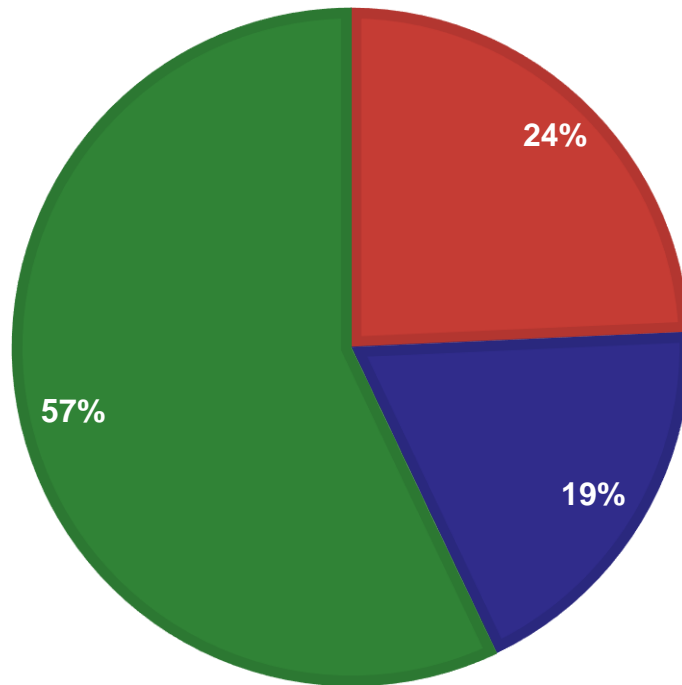
- RTAs as main instrument. Survey of 354 RTAs notified to WTO. Include 22 RTAs involving ME, 17 involving African economies with dedicated chapters (overall 202 RTAs with dedicated chapters).



A majority of RTAs include dedicated chapters/provisions on competition policy

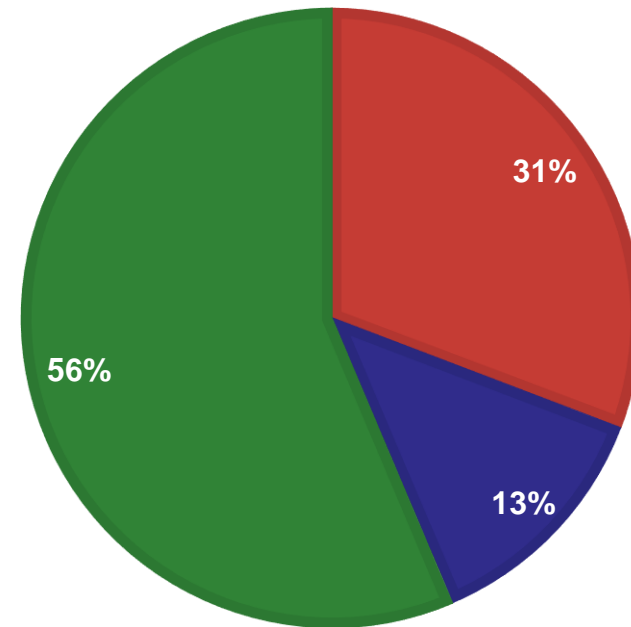
ALL RTAS

- No wording on competition policy in RTA
- General recognition of importance of competition
- Separate/dedicated provisions on competition policy



RTAS INVOLVING MIDDLE EASTERN ECONOMIES

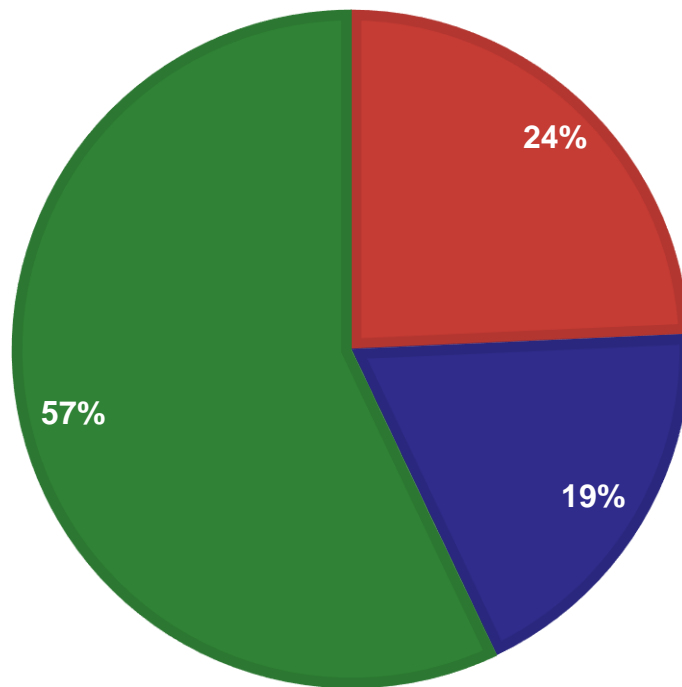
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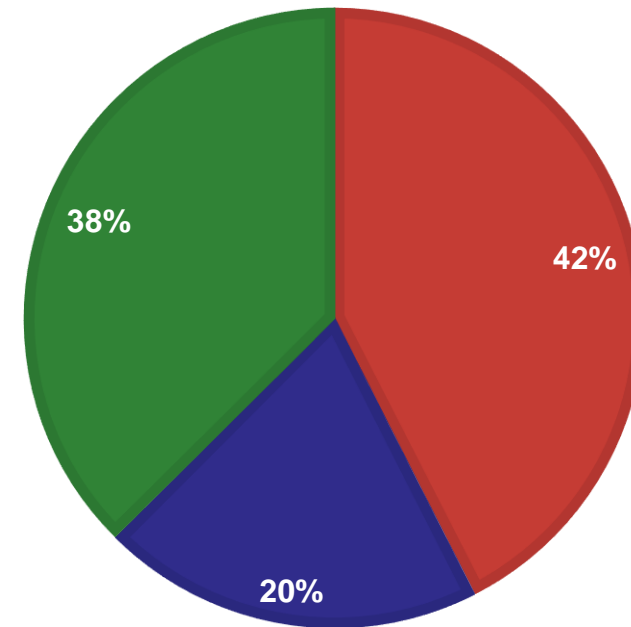
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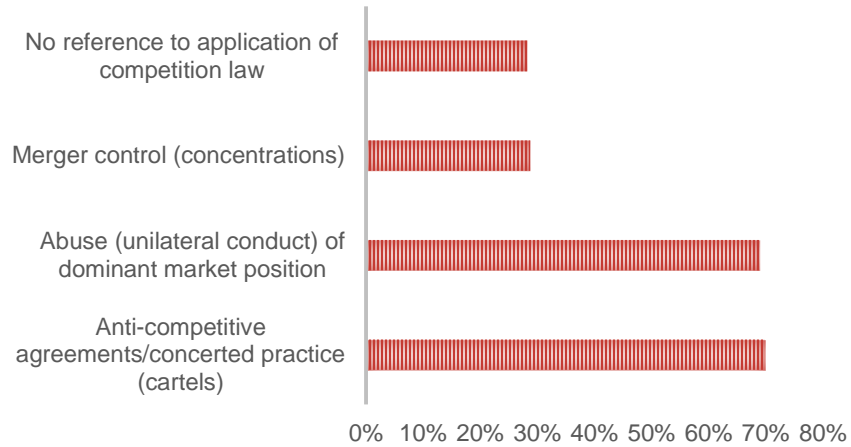
RTAS INVOLVING AFRICAN ECONOMIES

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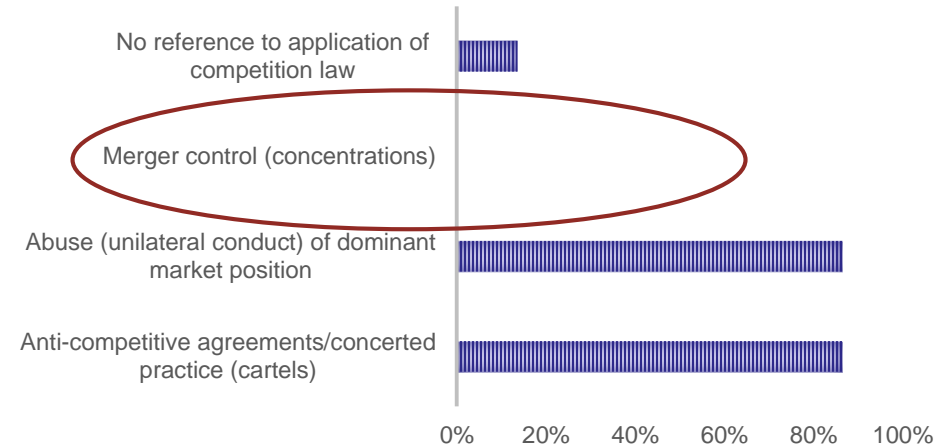


Scope of application

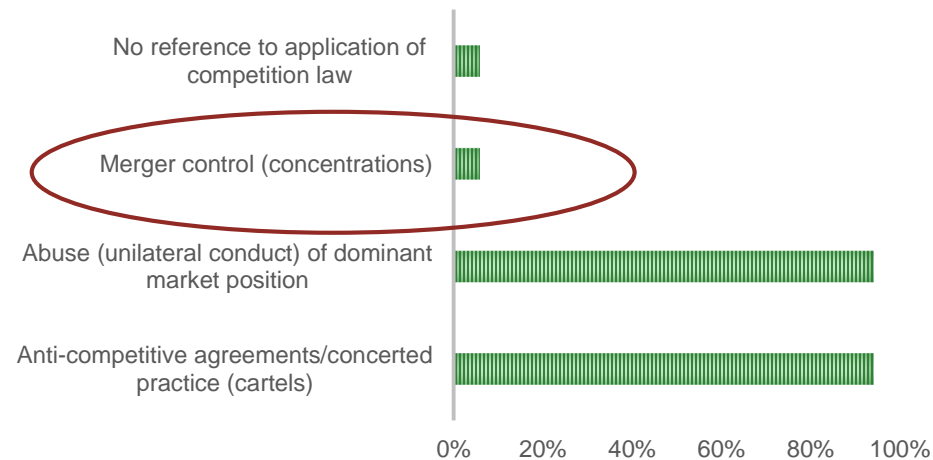
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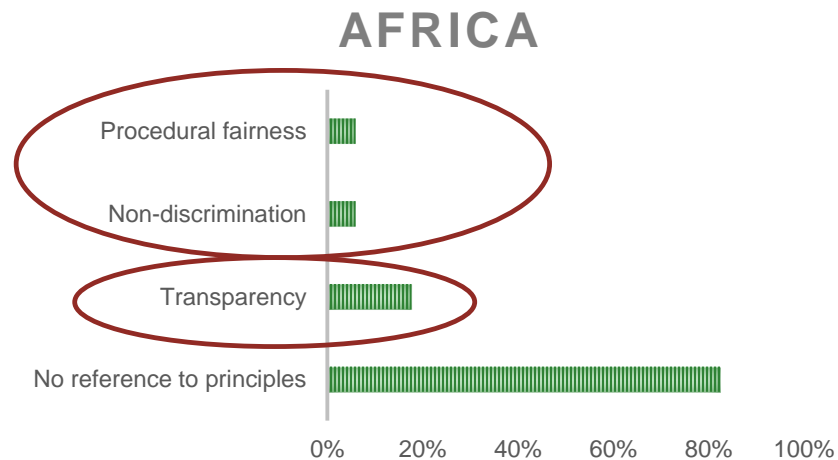
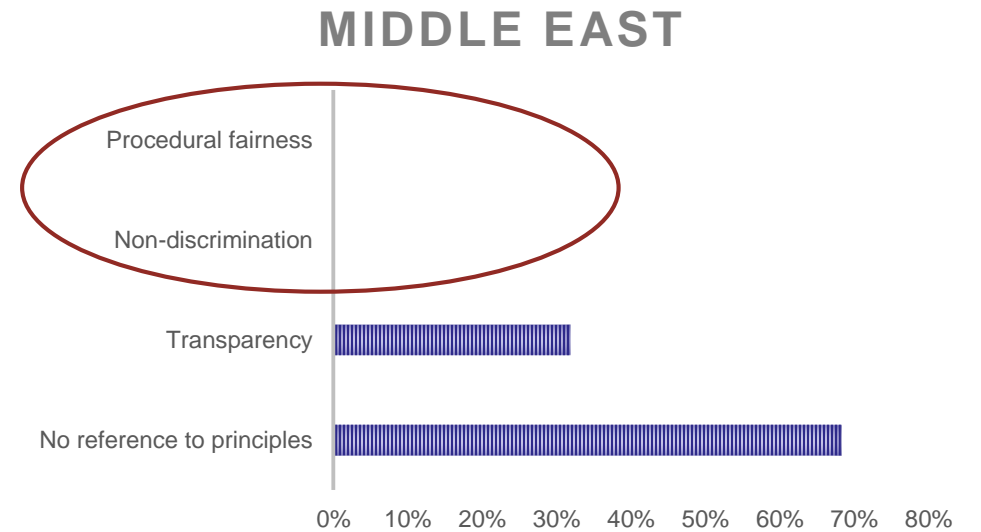
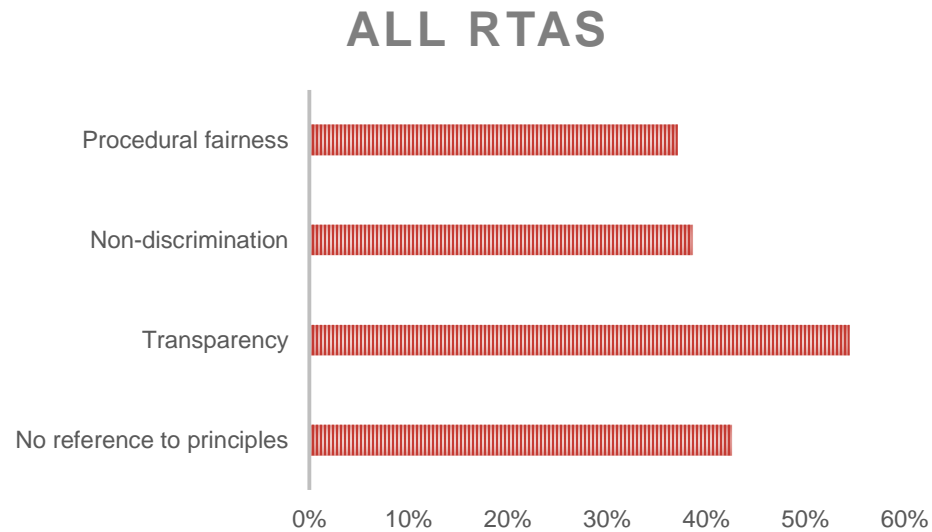
MIDDLE EAST



AFRICA

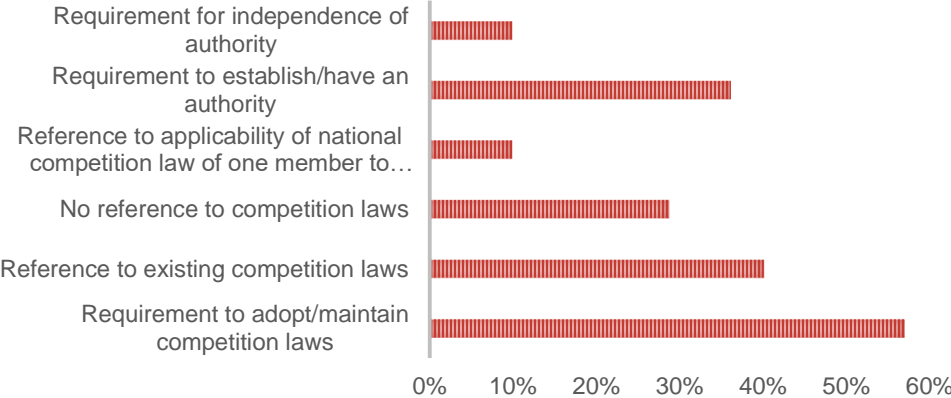


Competition policy principles

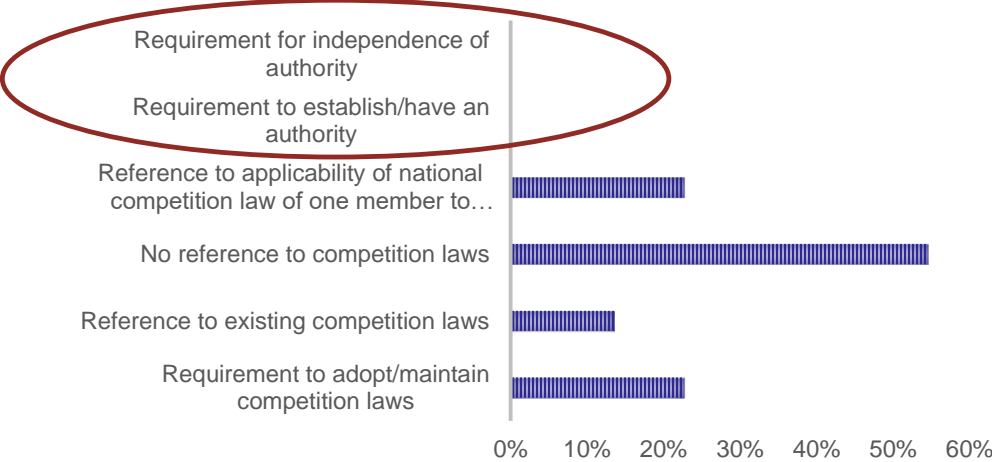


Institutional Provisions

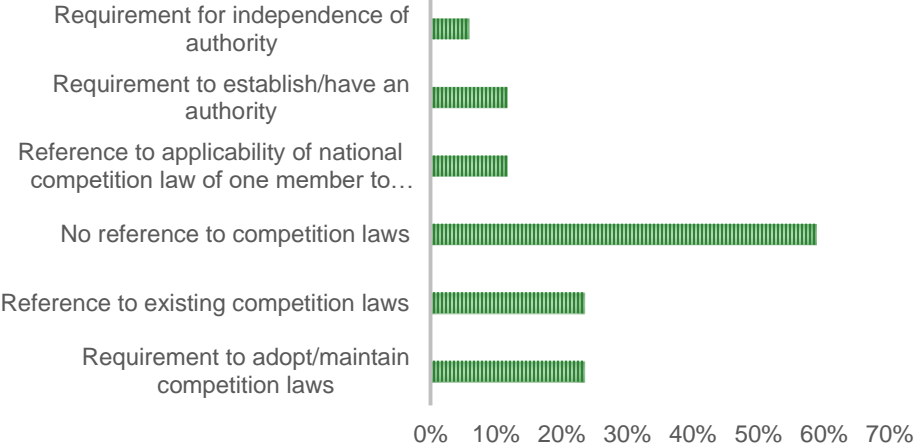
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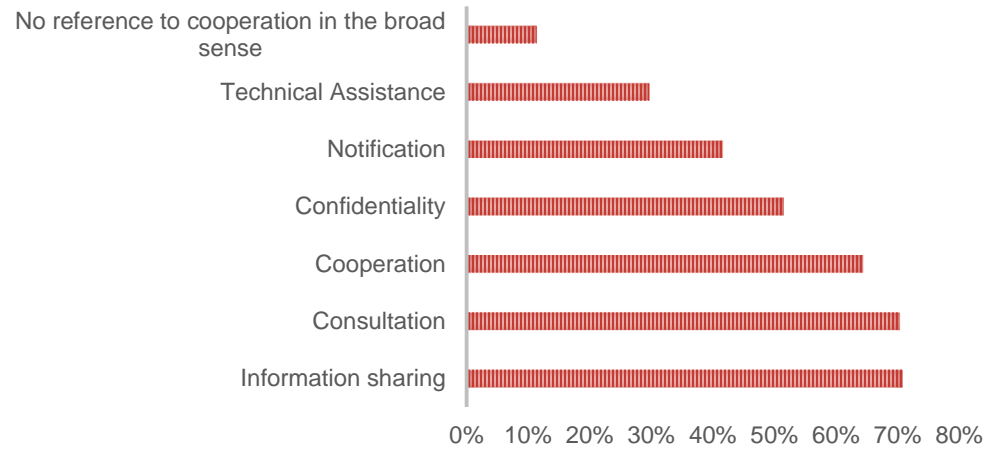


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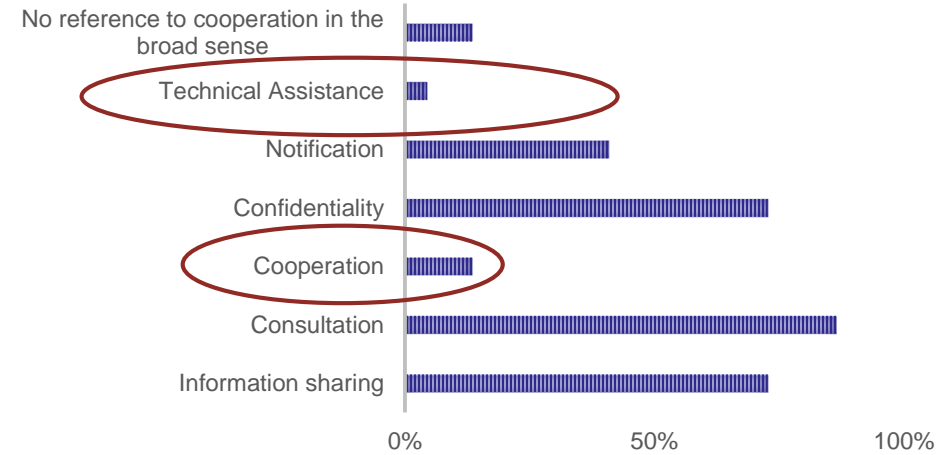


Cooperation & Coordination

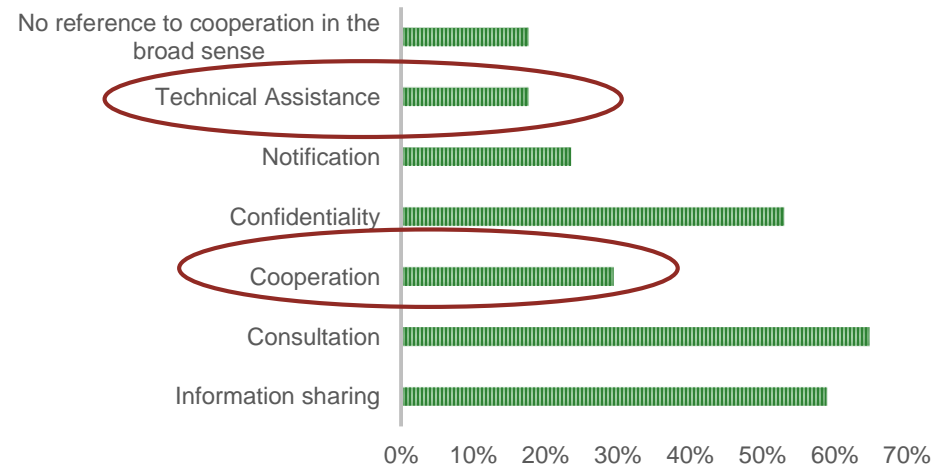
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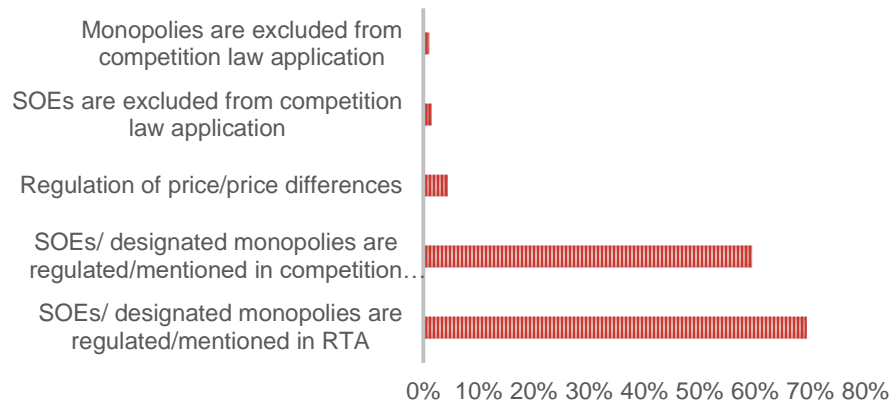


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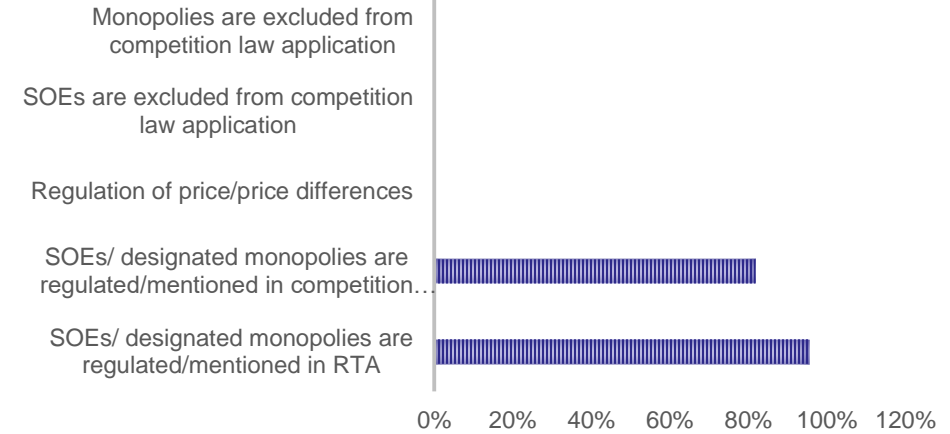


Monopolies & SOEs

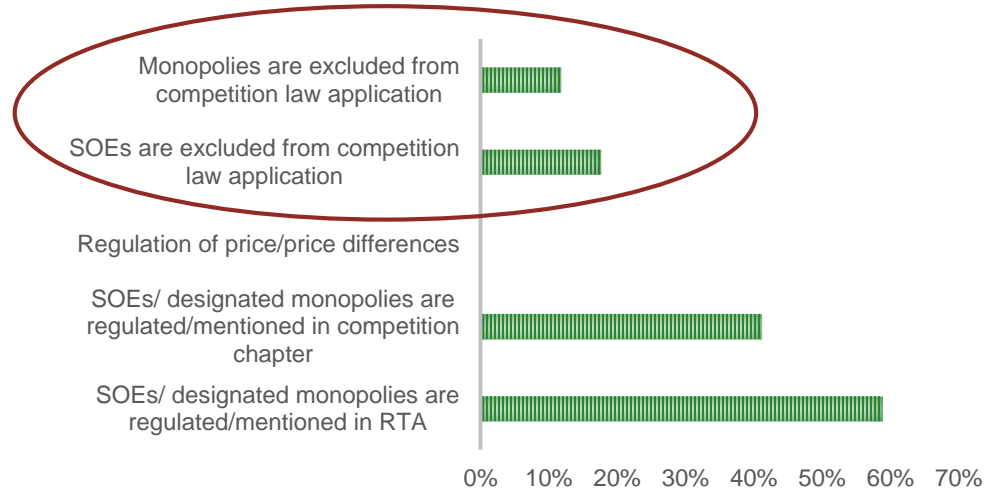
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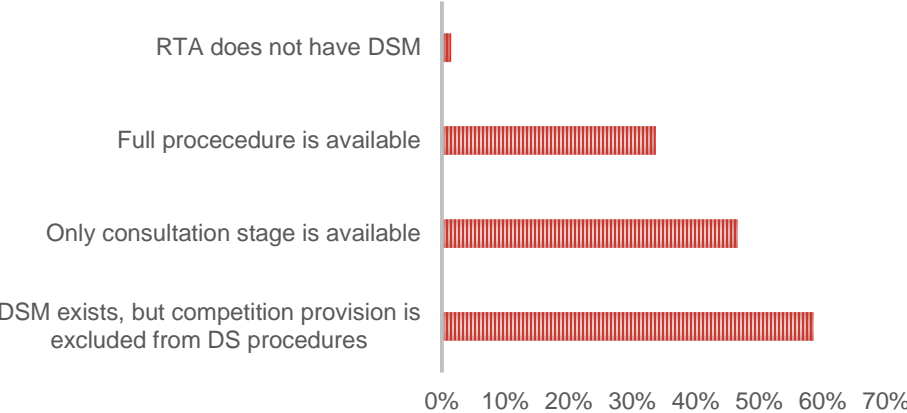
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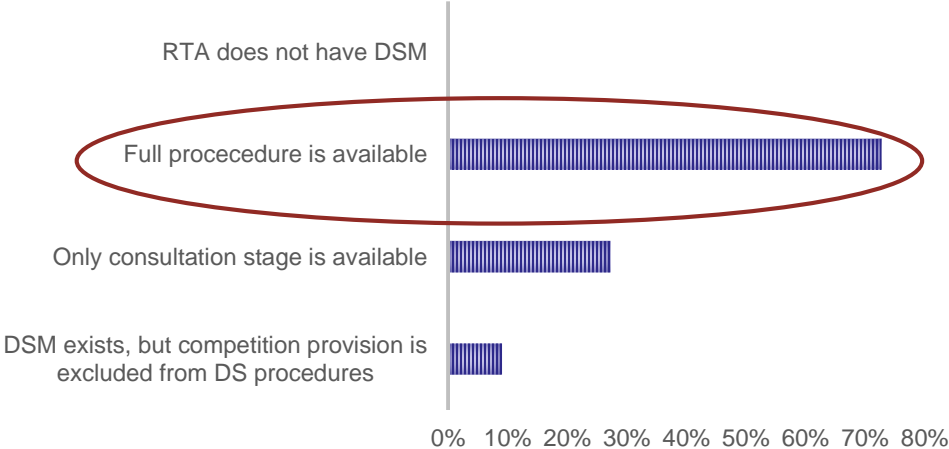
Enforceability



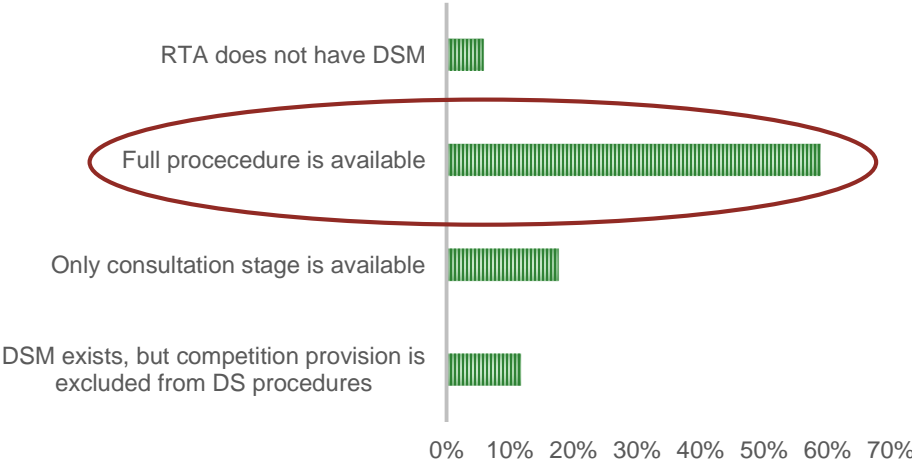
ALL RTAS



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AFRICA



Questions

- Need for more coordination between trade negotiators and competition authorities?
- Are goals of competition authorities met?
- Usefulness of more coherent, strategic use of RTAs?
- Need for enhanced transparency, discussions at the international level?
- What are the information needs that are currently not met in order for Arab countries to be able to use trade agreements in the best possible way?