



## Background note: Competition law and policy and SMEs

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### Introduction

**Small and medium-sized enterprises (SMEs) account for over 90 per cent of all business in the Arab region.** SMEs are a core element of Arab economies and a pivotal instrument to achieve higher levels of growth and development. Their contribution to GDP ranges from 4 per cent to 40 per cent, showing great disparities between countries across the region and great growth potential.<sup>1</sup>

**SMEs are key to achieving a fast-growing private sector and generating new employment.** While SMEs in the Arab region account for a large share of employment and growth,<sup>2</sup> the level remains low compared to other regions. This suggests that SMEs’ potential to contribute to growth and employment is underutilized, and thus, fostering their development can translate into higher employment and growth levels.

**Competition law and policy play an essential role in supporting SMEs’ resilience and performance in the market.** SMEs have certain features that make them particularly vulnerable to anti-competitive and unfair practices in the market. In addition, the COVID-19 pandemic has placed a heavy burden on them. Competition law and policy can be vital in alleviating such challenges by providing a level playing field across all enterprises, facilitating market access and in turn promoting economic growth and development.

### Main difficulties faced by SMEs in the Arab region

**SMEs have the following characteristics that constrain their development and need special consideration for the effective implementation of competition policy:**

- ↓% **Low survival rate:** SMEs are particularly vulnerable to external shocks. With limited market shares, product ranges and customer bases, many SMEs do not have the flexibility and resources to adapt in the event of a sudden drop in demand or change in consumer behaviour. Furthermore, SMEs have limited financial resources and savings emerging from low turnovers, making them particularly likely to exit the market on a rapid decline in income.



**Lack of private investment and large public sector:** The low level of private sector investment and the large public sector are significant limitations for SME development. Private sector investment over the past decade averaged 15 per cent of GDP per year,<sup>3</sup> 3 percentage points below the average of other emerging markets and developing regions. Low private investment rates are a major constraint in building a strong private sector capable of supporting the development of SMEs. Furthermore, investment in the Arab region is mostly concentrated in State-owned sectors such as oil, gas, electricity and telecoms, which are often dominated by large enterprises receiving preferential treatment. Such advantages create an uneven playing field for many SMEs, which are often unable to access various public procurement opportunities.



**Limited access to finance:** Bank borrowing by SMEs is substantially lower in the Arab region than in other regions. On average, SMEs receive 7 per cent of total bank lending in the region, compared to 16 per cent in Asia and the Pacific, 13 per cent in Europe and 10 per cent in Latin America and the Caribbean.<sup>4</sup> The low share of SME bank borrowing reflects that credit is often concentrated in larger entities, preventing smaller firms from entering the market, investing in innovative projects or embracing growth opportunities.



**Low regulatory knowledge:** Small corporations have a limited understanding of regulatory frameworks and have difficulties complying with laws. Larger firms have higher financial resources and often delegate regulatory compliance to external consultants. Moreover, even if SMEs are knowledgeable about laws and regulations, they are less likely to report harm or misconduct due to the high cost or due to fear of retaliation from larger competitors.<sup>5</sup>



**Restrictive business environment:** The region scores relatively low in resolving insolvency, getting credit, trading across borders and starting a business.<sup>6</sup> Indicators show huge disparities between Arab countries, with substantial scope for improvement in all categories. Facilitating a conducive business environment would help encourage entrepreneurship and SME development, attract domestic and foreign investment and build a dynamic private sector.

**In this context, the decrease in demand for goods and services and the fall in the availability of supply inputs, liquidity and cash flow caused by the COVID-19 pandemic had a significantly larger impact on SMEs.**

Government support packages for economic recovery targeted micro and SMEs since the fall of 2020, through loans and guarantees, employment support and tax relief. However, other public measures<sup>7</sup> and initiatives are needed considering the current challenges brought about by digitalization. Among these, competition policy is essential to guarantee a level playing field that allows for opportunities for micro and SMEs and promotes increased competitiveness and consumer welfare to leave no one behind post-COVID-19.

## **Competition law and policy for MSMEs:** Considerations for the Arab region

**Competition law and policy are essential instruments that help achieve a level playing field between all enterprises.** First, good competition law should prohibit firms with larger market shares and power from performing abusive or dominating schemes that aim to eliminate smaller potential rivals. Such abusive acts include imposing exclusive requirements on suppliers or pricing goods or services so low as to drive smaller rivals and start-ups out of the market. The law must prevent anti-competitive agreements, such as bid rigging

and price fixing. Control of mergers is also one of the pillars of competition law, to prevent players from becoming so large that they can dominate the market.

**In the Arab region, traditional market structures and certain market conditions, such as exemptions and subsidies to industries dominated by State-owned enterprises (SOEs), have rendered markets particularly vulnerable to anti-competitive practices and abuses of dominance and obstructed market access for SMEs.**

Policies can be introduced to encourage SOEs to cooperate with SMEs and boost their participation in the market.<sup>8</sup> For example, certain rules can be designed to facilitate SMEs' access to public procurement opportunities.

### Box 1. Public procurement and government initiatives for SMEs in the Arab region

In Saudi Arabia, if the estimated value of a given limited tender is less than 500,000 Saudi Riyal (SAR) (around \$130,000),<sup>a</sup> the number of bidders must not be less than five, and priority is given to local SMEs. If the estimated cost of a direct purchase does not exceed SAR 100,000 (around \$27,000), priority is also given to local SMEs.<sup>b</sup>

Similarly, in the United Arab Emirates, a law was passed in 2016 establishing that government agencies and entities in which the Government holds 25 per cent or more in equity must allocate 10 per cent of their purchases to Emirati companies that are members of Dubai SMEs. Furthermore, in 2022, the United Arab Emirates launched various initiatives as part of the National SME Programme to provide domestic businesses with more growth possibilities and improved market access.<sup>c</sup>

In Lebanon, the new public procurement law of 2021 provides incentives for economic development by ensuring SMEs the right to fair and transparent participation, and by directing the State's procurement capacity towards sustainable development (Article 14b).<sup>d</sup>



#### Sources:

<sup>a</sup> According to the April 2022 foreign exchange rate at 0.27 USD/SAR.

<sup>b</sup> <https://www.boe.gov.sa/en/Pages/default.aspx>.

<sup>c</sup> <https://wam.ae/en/details/1395303030499>.

<sup>d</sup> <https://www.lcps-lebanon.org/articles/details/3629/article-%7C-transforming-public-procurement-lebanon%E2%80%99s-path-to-efficiency-social-value-and-transparency>.

**Other policies can provide preferential treatment for SMEs to boost their participation.** Common practices worldwide include blanket exemptions from competition law for SMEs, thresholds for certain practices that can be exempted from competition law and individual exemptions or authorization that exclude agreements between SMEs.<sup>9</sup> However, competition authorities should carefully examine such policies and assess whether they further or hinder market competition.

Competition authorities are responsible for enforcing competition law while also ensuring that other government policies are not in conflict. Depending on the jurisdiction, competition authorities' priorities will differ. Furthermore, most

### Box 2. Exclusions and exemptions from competition law: Examples from the ASEAN region

In Indonesia, MSMEs are explicitly excluded from competition law. Other jurisdictions in the ASEAN region apply certain thresholds to the application of competition law. For instance, in the Lao People's Democratic Republic, MSMEs are only required to provide notification mergers and are exempt from submitting the required documents.

In Malaysia and Singapore, MSMEs can potentially take part in an anti-competitive agreement after meeting a specific set of requirements and being assessed by the Competition Commission.



#### Source:

United Nations Economic and Social Commission for Asia and the Pacific (UN-ESCAP) (2021). The Role of Competition Policy in Strengthening the Business Environment for MSMEs in the ASEAN Region. <https://www.unescap.org/sites/default/d8files/event-documents/Competition%20Policy%20and%20Strengthening%20MSMEs%20in%20ASEAN.pdf>.

competition authorities in the Arab region are relatively young and SMEs are not the main focus of their work. Moreover, public pressure often leads to authorities focusing their attention on larger entities.<sup>10</sup> Therefore, supporting competition authorities in recognizing the importance of competition law for the development of SMEs is the first step to increasing their engagement.

Business associations or SMEs agencies can play an important role in funnelling government efforts toward SMEs and creating mechanisms to support their development. Cooperation between competition authorities and associations of SMEs can encourage compliance and raise awareness of the importance of adequately enforced competition law to enhance SMEs' economic efficiency, growth and development. Therefore, facilitating regional dialogues and capacity-building forums between SME agencies, competition authorities and policy/regulatory agencies can increase SMEs' engagement in broader economic objectives.

### Box 3. Hong Kong Competition Commission and SMEs

Some competition authorities around the world have developed approaches to increase engagement with SMEs, raising their awareness of competition law. One example is the Hong Kong Competition Commission, which has made available publications, information centres, workshops and FAQs to facilitate SMEs' understanding of and compliance with competition law.



Source:

[https://www.compcomm.hk/en/practices/help\\_sme/help\\_smes.html](https://www.compcomm.hk/en/practices/help_sme/help_smes.html).

## Endnotes

1. According to the International Monetary Fund (IMF) Financial Access Survey and IMF calculations. <https://www.imf.org/~media/Files/Publications/PP/2019/PPEA2019040.ashx>.
2. In particular, micro, small and medium enterprises, on average, account for 74 per cent of formal employment in the private sector, compared to 27 per cent of small and medium enterprises and 26 per cent of large enterprises. This share is likely to be higher when accounting for employment in the informal sector. Note: Averages calculated using the MSME Economic Indicators Database 2019, which includes data for Algeria, Egypt, Iraq, Jordan, Morocco, Qatar, Saudi Arabia, Tunisia and the United Arab Emirates.
3. Average gross fixed capital formation in the private sector as a percentage of GDP over the period 2011–2019. Available at: <https://www.annd.org/en/publications/details/an-overview-of-the-private-sector-in-the-arab-countries>.
4. IMF Financial Access Survey and IMF calculations. Available at: <https://www.imf.org/~media/Files/Publications/PP/2019/PPEA2019040.ashx>.
5. United Nations Conference on Trade and Development (UNCTAD) (2022). The COVID-19 pandemic impact on micro, small and medium sized enterprises. Available at: <https://unctad.org/webflyer/covid-19-pandemic-impact-micro-small-and-medium-sized-enterprises>.
6. World Bank Group (2020). Doing Business Report 2020. Middle East and North Africa Profile. Available at: <https://www.doingbusiness.org/content/dam/doingBusiness/media/Profiles/Regional/DB2020/MENA.pdf>.
7. UNCTAD (2021). Out of the frying pan... into the fire? Trade and Development Report 2020 Update. See at <https://unctad.org/webflyer/out-frying-pan-fire>.
8. UNCTAD (2022). The COVID-19 pandemic impact on micro, small and medium sized enterprises. See at <https://unctad.org/webflyer/covid-19-pandemic-impact-micro-small-and-medium-sized-enterprises>.
9. UNCTAD (2022). The COVID-19 pandemic impact on micro, small and medium sized enterprises. <https://unctad.org/webflyer/covid-19-pandemic-impact-micro-small-and-medium-sized-enterprises>.
10. UN-ESCAP (2021). The Role of Competition Policy in Strengthening the Business Environment for MSMEs in the ASEAN Region. See at <https://www.unescap.org/sites/default/d8files/event-documents/Competition%20Policy%20and%20Strengthening%20MSMEs%20in%20ASEAN.pdf>.
11. UN-ESCAP (2021). The Role of Competition Policy in Strengthening the Business Environment for MSMEs in the ASEAN Region. See at <https://www.unescap.org/sites/default/d8files/event-documents/Competition%20Policy%20and%20Strengthening%20MSMEs%20in%20ASEAN.pdf>.