



## Background note: Competition provisions in trade agreements in the Arab region

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### Introduction

Recent differential trade agreements exhibit a striking trend towards competition provisions compared to earlier agreements. However, these provisions differ in terms of their inclusion and degree of precision. In agreements that include developed country parties, competition provisions are often clear and well-defined, while agreements that include developing countries often only cover issues of operations and customs.

Moreover, in many developing countries, State interventions in various sectors represent a loophole that weakens any anti-competitive provisions in trade agreements. These interventions are usually so complex and onerous that they restrict suppliers and foreign service providers or grant monopolies to State-owned enterprises.

Based on many studies of differential trade agreements and the main role of competition provisions in tackling anti-competitive behaviours and practices, the full potential gains of these agreements can hardly be achieved without the inclusion and implementation of such provisions, combined with their harmonization with national competition law.

### Competition in international and regional trade agreements

The European Union is the most important and remarkable region of the globe in terms of the level of regional economic integration and competition. The North American Free Trade Agreement (NAFTA) also witnessed a major transformation in how competition concerns were handled when the 1994 agreement was replaced by the 2020 United States-Mexico-Canada Agreement (USMCA) containing clear and binding provisions on competition.

The Maastricht Treaty (the foundational treaty of the European Union) includes provisions on anti-competitive agreements and practices between companies (article 81), abuse of dominance by companies (article 82) and assistance provided by Member States to certain local sectors or companies that distort competition under cover of social or developmental purposes. The European Union issued additional rules on competition in 1989 related to the concentration of transactions in certain sectors among a limited number of traders or producers that may affect trade between Member States. It should be also noted that the application and harmonization of these rules are guaranteed by the principle of the superiority of the European Union competition law over the national

competition laws of Member States. The European Union has become the central network for trade agreements with several countries outside the European sphere. Therefore, the European Commission has pushed toward adopting European competition standards in any trade agreements with the rest of the world.

In its time, NAFTA was considered one of the most important regional trade agreements globally. However, its provisions countering non-competitive trade behaviour/practices were limited to general principles. Chapter 15 of NAFTA on Competition Policy, Monopolies and State Enterprises required Member States to “adopt or maintain measures to proscribe anticompetitive business conduct” without stipulating any clear and binding standards or rules.

To fill in these lacunae and weaknesses, USMCA included stronger provisions against anti-competitive practices and represents a significant development in the integration of such provisions in trade agreements. These provisions include the application of the national competition laws of each State over all commercial transactions within its territory, the maintenance of national enforcement authorities, seeking transparency in the enforcement of competition laws the requirement that Member States treat individuals and companies in accordance with the principle of reciprocity (prohibiting favouritism for individuals/companies). Similar provisions could support the establishment of trade agreements in other regions, including the Arab region, as well as facilitate the process of economic integration.

## Competition provisions in Arab trade agreements

In the Arab region, many States have signed several bilateral, regional and multilateral trade agreements. However, most of these agreements do not include any binding articles requiring enforcement of competition law based on international standards. Most of the differential trade agreements signed by Arab States were in the mid-1990s when the focus was on reducing trade barriers, especially for industrial products, whereas agricultural products and services generally remained under customs restrictions.

The Euro-Mediterranean Partnership (EUROMED) trade agreement included some competition provisions that focused on anti-competitive practices and market dominance and State economic policies that hindered fair market competition. In most cases, free trade agreements between Arab States and the European Union include explicit terms that point to competition regarding service providers and import operations in the Arab countries, like Tunisia and Morocco, and European Union countries. For example, article 6 of the agreement between the European Union and Tunisia states that anti-competitive behaviour contradicts the core goals of the agreement. However, it does not define any regulations or mechanisms to tackle such practices.

In terms of State interventions, article 92 of the Treaty of Rome prohibits any State aid or interventions that can deform or threaten fair competition between local and imported products. This article is also included in the trade agreements between the European Union and Arab States, giving a five-year notice period to implement these competition provisions. Moreover, these treaties with Arab States do not explicitly define any regulation on information sharing regarding anti-competitive behaviours. In contrast, European Union treaties have clear articles about information sharing.

EUROMED is one of the most important trade agreements of the past century as it bridges two large and economically important regions. However, the above weaknesses hampered implementation and restricted the gains from it compared to other differential trade agreements, such as between the European Union and central and eastern European States.

This same weakness persists to the present day. The European Commission started negotiations for the Deep and Comprehensive Free Trade Area (DCFTA) in 2011, with the four Arab States signatory to the Agadir Agreement (Egypt, Jordan, Morocco and Tunisia) with the aim of achieving faster and deeper economic liberalization and

accelerating market access. Competition and State market intervention policies were at the heart of these negotiations, but no new agreement has been signed channelling these priorities.

The Greater Arab Free Trade Area (GAFTA), which is considered the most advanced instrument of economic integration in the Arab region, lacks any kind of binding articles regarding competition and anti-competitive practices, and any competition provisions must be the subject of challenging negotiations. When GAFTA was adopted, only Algeria, Morocco, Tunisia and Yemen had enacted competition laws in the region. The marked differences between Arab States in terms of their economic structures and competition laws have only made negotiations more difficult.

Other regional trade agreements with Arab States have lacked attention to competition and anti-monopoly policies. The Arab Common Market was established after 1957 and implemented in 1964 and had a weak focus on competition, lacking any competition provisions. Only article 9 of the general principles of the Arab Economic Unity Agreement clearly stated that the existing privileges and monopolies of the Member States should not impede the application of the provisions of the Arab Common Market.

As for the Unified Economic Agreement between the Countries of the Gulf Cooperation Council (GCC), there is no single article that tackles the subject of competition. Only article 1 states that the products of any Member State shall receive the same treatment as national products. Other trade agreements in the region, such as the African Continental Free Trade Area, state that realizing the potential gains of the agreement require Member States to cooperate in terms of competition policy.

### **Why competition provisions in trade agreements can affect consumer protection**

Countries frequently adopt strict competition provisions when joining bilateral and multilateral trade agreements. However, doing so can have detrimental consequences on consumers, especially in the least developed countries. For example, Slovenia quickly adopted competition policies in 2005 to accelerate the process of joining the European Union. Due to the lack of in-depth studies on the effect of European Union competition provisions on consumers, several sectors faced tremendous effects (especially the freight transportation sector). Hence, liberalizing trade without balancing consumer protection ultimately harms local industrial sectors and consumer demand. To prevent these harmful effects, Governments must implement regulations to ensure minimum regional standards according to the specificities of their local market.

The regionalization of competition provisions cannot be complete without harmonizing and synchronizing consumer protection regulations between countries in a trade agreement. For instance, in the European Union, regulations require cooperation between States regarding consumer protection, especially in the case of an injury by a European consumer in any Member State because of a specific competition practice. In such cases, consumer and competition authorities must share and provide information to facilitate cross-border investigation. Increasing the level of cooperation between different authorities, and even between national courts, is a crucial point for consumers' benefit.

Including elements of consumer protection, either directly or in conjunction with competition provisions in trade agreements, is essential. Also, incorporating factors of consumer protection into competition policy and other trade policies at a bilateral or regional level can help to ensure the empowerment of consumers, while at the same time guaranteeing that consumer protection measures do not become barriers to international trade, and are consistent with international trade obligations.



Source: UNCTAD, Consumer protection, competition and RTAs, pp. 213-252.

## Considerations for the Arab region

Most of the trade agreements concluded by Arab States are not characterized by a clear, integrated and unified strategy. In some agreements, trade in services is liberalized, while other agreements lack provisions relating to these vital sectors. Some agreements contain general requirements for competition laws but do not stipulate binding quantitative commitments. Such discrepancies between different trade agreements represent an additional cost in implementing them and a restriction on their ability to achieve their most critical objectives, namely developing production capacities, attracting foreign investments, promoting exports and creating job opportunities for young people. To address these shortcomings, a comprehensive development strategy and unified trade policy should be developed to encompass all differential trade agreements and define a path for the future development and diversification of Arab economies.

Quickly engaging in trade deals without diligent assessments of the social, economic and sectoral implications can have disastrous impacts. Doing so risks losing coherence between national policies and the rules imposed under trade agreements, especially given the lack of harmonization between Arab competition laws and policies and other factors like technical barriers, high transport costs and logistics frictions.

Arab countries should benefit from competition amendments within European Union trade agreements, as well as the changes and new provisions regarding competition practices in USMCA. Achieving the potential gains of competition provisions and coherent trade agreements will be critical to paving the way for a job-rich and sustainable recovery in the region, increasing economic growth and consumer welfare and advancing the achievement of the Sustainable Development Goals.

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