Competition Neutrality

Advance Copy
ACKNOWLEDGEMENTS

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# ABBREVIATIONS

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<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ADE</td>
<td>L'Algérienne des Eaux</td>
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<tr>
<td>AMDI</td>
<td>Moroccan Agency for Investment Development</td>
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<tr>
<td>ANPME</td>
<td>National Agency for the Promotion of Small and Medium-Sized Enterprises</td>
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<tr>
<td>ANRT</td>
<td>National Telecommunications Regulatory Authority</td>
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<tr>
<td>ARTP</td>
<td>Autorité de régulation des télécommunications et des postes</td>
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<tr>
<td>BCC</td>
<td>Banking Control Commission</td>
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<tr>
<td>BH</td>
<td>Habitat Bank</td>
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<td>BNA</td>
<td>Agricultural National Bank</td>
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<td>BOP</td>
<td>Bank of Palestine</td>
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<td>BOT</td>
<td>Build-Operate-Transfer</td>
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<td>BSE</td>
<td>Beirut Stock Exchange</td>
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<td>CAPW</td>
<td>Construction Authority for Potable Water and Wastewater</td>
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<tr>
<td>CDG</td>
<td>Deposit and Management Fund</td>
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<tr>
<td>CEGCO</td>
<td>Central Electricity Generating Company</td>
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<tr>
<td>CMA</td>
<td>Capital Markets Authority</td>
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<td>CN</td>
<td>Competitive Neutrality</td>
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<tr>
<td>DfID</td>
<td>United Kingdom Department for International Development</td>
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<tr>
<td>DISCOs</td>
<td>Distribution companies</td>
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<tr>
<td>EDCO</td>
<td>Electricity Distribution Company</td>
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<tr>
<td>EdL</td>
<td>Electricité du Liban</td>
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<td>EEHC</td>
<td>Egyptian Electricity Holding Company</td>
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<td>EEPG</td>
<td>Egyptian General Petroleum Corporation</td>
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<tr>
<td>EET</td>
<td>Energie électrique de Tahaddart</td>
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<td>EFF</td>
<td>Extended Fund Facility</td>
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<td>EIHCAAN</td>
<td>Egyptian Holding Company for Airports and Air Navigation</td>
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<td>EIT</td>
<td>Emirates International Telecommunications</td>
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<td>ERBD</td>
<td>European Bank for Reconstruction and Development</td>
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<td>EWRA</td>
<td>Egyptian Water Regulatory Agency</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<tr>
<td>FIPA</td>
<td>Agence de promotion de l’investissement extérieur</td>
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<tr>
<td>GAIFI</td>
<td>General Authority for Investment and Free Zones</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>GICA</td>
<td>Groupe industriel des ciments d’Algér</td>
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<tr>
<td>GMPCS</td>
<td>Global Mobile Personal Communication by Satellite</td>
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<td>GST</td>
<td>General Sales Tax</td>
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<tr>
<td>HCWW</td>
<td>Holding Company for Water and Wastewater</td>
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<tr>
<td>ICT</td>
<td>Information Communication Technology</td>
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<td>IDAL</td>
<td>Investment Development Authority of Lebanon</td>
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<td>IDECO</td>
<td>Irbid District Electricity Company</td>
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<td>IFG</td>
<td>General Inspectorate of Finance</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>INT</td>
<td>Instance Nationale des Télécommunication</td>
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<td>ISPs</td>
<td>Internet Services Providers</td>
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<tr>
<td>JLEC</td>
<td>Jorf Lasfar Energy Company</td>
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<td>JMPC</td>
<td>Jordan Phosphate Mines Co. Ltd</td>
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<td>JTC</td>
<td>Jordan Telecommunications Company</td>
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<td>JVA</td>
<td>Jordan Valley Authority</td>
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<td>LRA</td>
<td>Litani River Authority</td>
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<td>MENA</td>
<td>Middle East and North Africa</td>
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<tr>
<td>MIDOR</td>
<td>Middle East Oil Refinery</td>
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<td>MITIS</td>
<td>Ministry of Industry, Trade and Supplies</td>
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<td>MoEW</td>
<td>Ministry of Energy and Water</td>
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<td>MOJI</td>
<td>Ministry of Justice and Liberties</td>
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<td>MoNE</td>
<td>Ministry of National Economy</td>
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<td>MTIT</td>
<td>Palestinian Ministry of Telecommunication and Information Technology</td>
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<td>MVC</td>
<td>Municipality and village councils’</td>
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<tr>
<td>Abbreviation</td>
<td>Full Name</td>
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<tr>
<td>NEPCO</td>
<td>National Electrical Power Company</td>
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<td>NOPWASD</td>
<td>National Organization for Potable Water and Sanitary Drainage</td>
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<td>NRTA</td>
<td>National Telecommunications Regulatory Authority</td>
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<td>NWC</td>
<td>National Water Council</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
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<td>ONAS</td>
<td>Tunisian National Sanitation Agency</td>
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<tr>
<td>ONEE</td>
<td>National Electricity and Water Board</td>
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<tr>
<td>ONICL</td>
<td>National Interprofessional Cereals and Pulses Board</td>
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<tr>
<td>PADICO</td>
<td>Palestine Development and Investment Company</td>
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<tr>
<td>PalTel</td>
<td>Palestine Telecommunications Company</td>
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<tr>
<td>PENRA</td>
<td>Palestinian Energy and Natural Resources Authority</td>
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<tr>
<td>PERC</td>
<td>Palestinian Electricity Regulatory Council</td>
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<tr>
<td>PETL</td>
<td>Palestinian Electricity Transmission Company Ltd</td>
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<tr>
<td>PIEFZA</td>
<td>Palestinian Industrial Estate and Free Zone Authority</td>
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<tr>
<td>PIF</td>
<td>Palestine Investment Fund</td>
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<td>PIPA</td>
<td>Palestinian Investment Promotion Agency</td>
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<td>PMA</td>
<td>Palestine Monetary Authority</td>
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<td>PNA</td>
<td>Palestinian National Authority</td>
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<tr>
<td>PPP</td>
<td>Public private partnership</td>
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<td>PWA</td>
<td>Palestinian Water Authority</td>
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<td>RAM</td>
<td>Royal Air Maroc</td>
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<tr>
<td>ROR</td>
<td>Rate of Return</td>
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<td>SMEs</td>
<td>Small and Medium Enterprises</td>
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<td>SNI</td>
<td>National Investment Company</td>
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<tr>
<td>SOEs</td>
<td>State Owned Enterprises</td>
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<tr>
<td>SONEDEDE</td>
<td>Société Nationale d'Exploitation et de Distribution des Eaux</td>
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<tr>
<td>Sonelgaz</td>
<td>Société nationale de l'électricité et du gaz</td>
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<tr>
<td>STEG</td>
<td>Tunisian Electricity and Gas Company</td>
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<tr>
<td>STP</td>
<td>Tunisian Bank Society</td>
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<tr>
<td>TGR</td>
<td>General Treasury of the Kingdom</td>
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<tr>
<td>TGV</td>
<td>High-speed rail service</td>
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<tr>
<td>TPR</td>
<td>Trade Policy Review</td>
</tr>
<tr>
<td>TRC</td>
<td>Telecommunications Regulatory Commission</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<tr>
<td>VAT</td>
<td>Value added tax</td>
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<tr>
<td>WAJ</td>
<td>Water Authority of Jordan</td>
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<td>WB</td>
<td>World Bank</td>
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<tr>
<td>Wes</td>
<td>Water Establishments</td>
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<td>ZFT</td>
<td>Tangiers Free Zone</td>
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EXECUTIVE SUMMARY

This report is based on a range of sources, including the 2015 UNCTAD MENA Programme Inception Report; Competitive Neutrality and Its Application in Selected Developing Countries, an UNCTAD Research Partnership Platform 2014 publication;1 and exchanges with officials and experts in the MENA region; OECD work establishing the basic principles of Corporate Governance of State-Owned Enterprises; WTO Trade Policy Reviews and UNCTAD Investment Policy Reviews.

The legal and regulatory analysis looks at the overall state of the economy for seven MENA beneficiary countries, including Algeria, Egypt, Jordan, Lebanon, Morocco, State of Palestine and Tunisia, with a focus on State-owned enterprises (SOEs) in utilities sectors and network industries (energy, telecommunications etc.). The legislative framework for “doing business” and attracting foreign direct investment in MENA programme beneficiary countries is presented in detail. Ultimately, the report investigates the extent to which competition law provisions ensure a level playing field for both SOEs and private sector enterprises.

State intervention in the economy has always been important, ranging from full control in centrally planned systems to lesser intervention in market economies, where the private sector is expected to play a major role. Even in market economies, the State has played a fundamental role in operating natural monopolies and in implementing a higher or lesser degree of industrial policy.

This report reviews the efforts in the MENA programme countries to enhance synergies between industrial and competition policies and the extent to which these efforts need to be reinforced to streamline the competitive neutrality principle in the economy. Competitive neutrality (CN) is defined as a policy whose objective is to remove competitive advantages and disadvantages that may arise merely and exclusively due to the ownership differences between the public and private sector enterprises. The application of CN policy is designed to enhance efficiency by removing any distortions in resource allocation which would otherwise reduce the overall economic welfare of the society.

Chapter I deals with competition law and policy, competitive neutrality and SOEs, noting that CN covers areas that go beyond competition law and policy. It covers other factors, which distort the level-playing field between SOEs and private enterprises, such as uneven accountancy rules, taxation policy, public procurement, State aid, State guarantees and bankruptcy rules and explains efficiency grounds for CN policy adoption. Chapter II reviews the present situation in seven UNCTAD MENA Programme beneficiary countries or territories with respect to CN-related aspects, including the extent of the public sector in these countries in general and in specific sectors, such as energy, telecommunications and banking etc. It further examines privatization and delegated management contracts and concessions, including public-private partnerships, the extent to which a level playing field between private and public sectors exists with respect to credit facilities accorded by banks, State

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1 Available at: https://unctad.org/en/PublicationsLibrary/ditclpmisc2014d1_en.pdf
subsidies and bailouts of failing companies, taxation, public procurement, and related legislation, including competition law and price regulation.

Chapter III provides some CN policy recommendations for UNCTAD MENA Programme countries, elaborating on the list of nine measures, including at tax neutrality; regulatory neutrality; debt and outright subsidy neutrality; and public procurement neutrality. The concluding section then aims at making recommendations on how best to apply competitive neutrality principles in the light of the in-depth review carried out in each of the UNCTAD MENA Programme countries.
INTRODUCTION

Economic reforms, definition and objectives of competitive neutrality (CN)

Although State intervention in the economy reached its peak in centrally-planned economies, the degree of State intervention in so-called market economies varies considerably between Governments that believe in traditional industrial policies as means to achieve accelerated growth and development and those that believe in free market forces to create the right conditions for innovation and accelerated economic growth, while keeping intervention by the State to the minimum.

Industrial policy usually involves State intervention in specific sectors, chosen for their growth and development potential. Whether in developed or in developing countries, State intervention in commercial markets often includes some or all of the following advantages for “national champions”:

- Temporary or permanent exemption from taxes and charges;
- Immunity from various regulatory requirements, including bankruptcy rules;
- Explicit or implicit government guarantees on debts and preferential interest rates on loans;
- Not being required to achieve commercial rates of return on assets and subject to favorable depreciation rules;
- Preferential access to public procurement;
- Cross-subsidizing activities when operating both in a situation of monopoly and in sectors where they compete with other firms.

Such incentives may be justified in the short- or medium-term, to attract investors and accelerate the development of the priority sectors chosen by the State. However, experience has shown that in the long-term, the advantages provided in favor of specific sectors or enterprises are always to the detriment of the rest of the economy; sometimes more efficient sectors that are being sacrificed to subsidize the ones given priority by the State. The main question here is whether the State knows best and should weigh on the economy through its industrial policies, to correct perceived market failures, or if it is better to allow market forces to allocate resources in the most efficient way.

It is useful to note that countries like Japan and Korea heavily resorted to industrial policy in their earlier stages of industrialization, which help them achieve a higher level of economic development compared to those which adopted more liberal policies. Since they have reached the “developed country” status, they have given stronger emphasis on market forces and competition policy. Developing countries are still in the earlier phases of industrialization and will still benefit from industrial policies, especially in the fourth industrialization era, which the world has been going through with digitalization. Developing countries will need appropriate digital industrial policies in this new era. Some might argue that State intervention is necessary to protect their low-income population, by administering affordable prices for all and by boosting employment to guarantee income. As in many essential socio-economic debates, the truth may lie in between: Would it be possible to enhance synergies between industrial and competition policies? Is state ownership the best way to promote strategic industries? How would a competitive business environment benefit industrialization in developing countries?
One of the characteristics of the economic reforms in recent years has been adoption of competition laws in almost all developed and developing countries, including in countries in transition. Of the seven UNCTAD MENA Programme countries under review, five have competition law and enforcement systems in place and two are in the process of drafting such legislation. Countries with competition laws and competition authorities are constantly strengthening and improving the enforcement of such laws. Increasingly competition authorities are required to advise the Government and Parliament in the regulatory process, when draft proposed legislation has the potential to affect competition; and also, to weigh in on public procurement procedure and in the attribution of State aid.

Along with the adoption of competition laws and policies, developing countries, including UNCTAD MENA Programme countries, have gone through important regulatory reform processes. Such reforms are still underway at varying levels and paces. In a broad sense, one can describe five major steps that characterize the transition from centrally planned economy to market economies as follows:

The first step is deregulation, or de-monopolization. Monopolies of the past, usually considered as “natural monopolies”, which were totally under State control, are gradually opening to competition by the private sector. In the past, many sectors such as banking and finance or air transport were also strictly controlled by the State, including for prudential reasons.

The second step is price liberalization. Prices of many sensitive and essential goods and commodities were regulated by the State for important socio-political considerations. However, it should be noted that when the State regulates prices, either to protect consumers (lower than free-market price) or to protect producers (higher than free-market price), there is a departure from competitive market price formation. This usually results in one of two outcomes: Either supply is unable to respond to demand (creating scarcity); or higher price induces over-production. In both situations, the State needs to close the gap by subsidizing consumers if prices are too high, or by purchasing the excess production when supply exceeds demand. In most economies, price regulation or administered prices are being reduced to a list of basic necessities, while prices of most goods and services are left to market forces.

The third step is to transform the commercial operations of the State, which used to be performed directly by the Government under a Department or a Ministry into State-owned enterprises or corporations. Such corporatization of SOEs have helped improve the quality of services offered and bring corporatized firms closer to the functioning of private firms. They can then be listed on the stock-exchange and be sold in part, or totally, to private interests, thus achieving privatization through the stock market. Listing of SOEs on the stock market also enables them to accede to private financing and loans on similar conditions as large private firms.

The fourth step is privatization. In many countries, State-owned enterprises are gradually being sold to the private sector. Privatisation might be politically controversial. Opponents consider that the State is selling the “crown jewels” at slashed prices, not reflecting the real value of the SOE, or that privatizations will lead to losses of employment. Privatization may also inadvertently lead to a situation where a State monopoly becomes a private monopoly. Another avenue for the State to delegate the management of the SOE, while retaining ownership, is through time-limited concession contracts with private operators. The trend to arrange public-private partnerships is yet another way for the State to join forces with the private sector and take advantage of its financing and management capacities.
The fifth step is trade and investment liberalization. The powerful trend of globalization, and the efforts by international organizations such as IMF, the World Bank, WTO and OECD in particular, as well as regional integration schemes and free-trade areas, have changed the multilateral trading system by opening previously closed economies to the challenges of competition. Last but not least, linked to the globalization trend, is the liberalization of foreign direct investment (FDI). The interlinkages of capital and the importance of the multinational enterprises cannot be ignored nowadays. This too brings enormous regulatory reforms and increased competition into play.

The transition and reform path from centrally planned economy to market economy should weigh on the extent to which State intervention is able to distort competition. Competitive neutrality principles should equally apply to business activities of publicly owned entities, that is the business activities of Government that are producing goods and/or services for sale in the market place with the intention of making a profit and providing financial returns to their owners. The term “publicly owned entities” should comprise not only enterprises which are 51% or 100% owned by the State, but also minority shareholdings where the State maintains its influence, such as through the ownership of “golden shares”.

The objective of CN policy is to remove competitive advantages and disadvantages that may arise exclusively due to the ownership differences between public sector and private sector enterprises. Any such differences, if they exist, should be strictly limited to justified and transparent situations aimed at redressing the level playing field, for example, in view of universal service obligations SOEs may have, which private competitors do not shoulder. Accordingly, the application of CN policy is designed to enhance efficiency by removing any distortions in resource allocation which would otherwise reduce the overall economic welfare of the national economy.

CN policies were first adopted in Australia in early 90s, with adoption of the Hilmer Report, which identified common advantages of Government businesses including immunity from various taxes and charges; immunity from various regulatory requirements; explicit or implicit government guarantees on debts; concessional interest rates on loans; not being required to account for depreciation expenses; not being required to achieve a commercial rate of return on assets; and effective immunity from bankruptcy.

It also found that in some cases, a government business will also operate in both monopoly and competitive markets, taking advantage of opportunities for cross-subsidisation. The Hilmer Report also noted some competitive disadvantages of Government businesses as including greater accountability obligations, community service obligations (universal service obligations), reduced managerial autonomy and requirements to comply with various government policies on wages, employment and industrial relations. It also recognized,
however, that in some situations it was difficult to determine the net competitive advantage or disadvantage of particular activities with any precision.

As noted by Prof. Deborah Healey\(^5\) of University of New South Wales in Australia, in some jurisdictions, particularly in developing economies, Government has historically occupied such an important place in markets that these subtler distortions are not at the forefront of consideration during periods of regulatory and organizational reform. Where industrial policies prevail, the critical question is often whether and to what extent the (often new) competition law will actually apply to government bodies. In these jurisdictions it is essential to consider CN in all its manifestations as a very important issue affecting competition. Government accountability and corporatisation are important first steps. Transparency and good governance are important features of a level playing field for competition.

Accordingly, this report proceeds as follows: Chapter I deals with competition law and policy, CN and SOEs; and Chapter II presents an overview of MENA programme countries’ economies and legal framework fostering or inhibiting competitive neutrality principles. Chapter III spells out some CN recommendations for all countries, but in particular for UNCTAD MENA Programme countries. The concluding section then aims at making recommendations on how best to apply CN principles in the light of the in-depth review carried out for each of the UNCTAD MENA Programme countries.

CHAPTER I: COMPETITION LAW AND POLICY, COMPETITION NEUTRALITY AND SOEs

Competition law is basically addressed to enterprises, prohibiting certain anti-competitive behaviour by firms, such as anti-competitive agreements (cartels), abuses of dominant positions of market power, and anti-competitive concentrations such as through mergers and acquisitions (M&As) which might create dominant positions or outright monopolies. Most modern competition laws cover behavior of all types of enterprises, should they be private or public, in principle, without any distinction. There are certain instances, however, where public enterprises or SOEs operating in certain monopoly markets, or markets regulated by a specific regulatory authority may not fall under the scope of the country’s general competition law.

The extent to which competition laws deal with CN depends to a large extent on the way they are drafted, if they cover or exclude State monopolies and SOEs. However, even when they cover all types of business undertakings in principle, in reality the competition authority may face with important limitations. For example, in sectors where a regulatory authority exists and was established before the entry into force of the competition law, it is often the case that the sector regulator refuses to recognize the overarching scope of the competition law. It is also important to note that competition laws only deal with anti-competitive practices such as cartels and abuse of dominance, including anti-competitive mergers. Nonetheless, many of the competition-distorting advantages of Government businesses remain outside the scope of competition laws. Government activities in certain markets have traditionally been entrenched and the impact on competition may not even be the subject of any consideration. Therefore, as noted in the Hilmer Report, CN must cover other issues that often fall outside the realm of competition law but that have the potential to influence the playing field.

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\(^5\) Prof. Deborah Healey of University of New South Wales (Australia) coordinated the project on Competitive Neutrality and Its Application in Selected Developing Countries in UNCTAD Research Partnership Platform.
Differentiated treatment of SOEs and private enterprises, in terms of uneven accountancy rules, taxation policy, public procurement, State aid, State guarantees and bankruptcy rules, including unwritten rules may distort competition and thus need to be addressed using CN policy and principles.

CN policy is based on the assumption that markets which are competitively neutral foster a ‘level playing field’, which allows resources to flow to efficient producers, regardless of whether they are privately-owned or government-owned. This should ultimately maximize consumer welfare by improving efficiency, increasing productivity and encouraging innovation.

Competition law on the other hand is broadly directed to enterprise behavior and falls short of tackling with State induced distortion. One notable exception to this is the EU competition law, which extends to State aid, as a competition-distorting element within the Single Market.6 Most competition laws, however, except for certain regional integration schemes such as COMESA, do not extend to State aid or subsidies afforded by the State.

Another relatively common feature of competition laws is that they take the principle of free-play of competition in the markets with respect to price formation as given. However, in developing countries, including in UNCTAD MENA Programme countries, the general principle of free market prices is often limited by the possibility for the State to regulate prices of specific necessities and to control prices during crisis situations.

Statutory monopolies

Historically, there have been many reasons for States to decide to establish a market presence through a State controlled economic entity. Many countries nationalised entire industry sectors for political and ideological reasons, in the belief that the State would achieve faster growth and development goals and a better distribution of wealth through its involvement in strategic sectors of the economy.

This was especially the case with “natural” monopolies, where the nature of the market (i.e. railways, electricity and gas transmission, water distribution, etc.) made it impossible to envisage more than one set of rails, wires or pipes throughout the country. It made sense to establish a monopoly and given the economic importance of the sectors in question, it seemed obvious to ensure the control of these monopolies by the State. The thinking behind this narrative would be that these monopolies be controlled by private interests, taking undue advantage of its monopoly situation to increase profits by fixing abusive prices, while exploiting its staff to the maximum. By establishing a State monopoly, the Government was able to control prices and guarantee employment, offering attractive wages and working conditions for the labor force, including favorable retirement schemes, and to establish direct control over strategic components of the economy.

Another reason for nationalizing certain profitable sectors of the economy, (i.e.matches, cigarettes, alcohol, etc.) was that by so doing, the State could increase its revenues. The same logic applies to the State presence in strategic resource industries, such as oil and gas, or other lucrative commodities.

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6 See Article 107 TFEU and related regulations and EU Court of Justice rulings in this respect.
Finally, State monopolies are often required to provide “universal services” (i.e. equal access to services in remote parts of the country), where private competitors would seek to “skim the cream of the market”, that is provide services in the most profitable locations, large cities etc., and ignore less profitable or loss-making locations. This also relates to the political commitment to inclusive development objectives of governments.

While the State monopoly is usually not under the scope of competition law, cross-subsidization by a State monopoly, using its power in the monopoly to subsidize its activities in competitive markets, is clearly a case for competition law enforcement. This is often a problem encountered with the so-called “hybrid SOEs” which enjoy a monopoly in certain parts of their value chain, but face competition from private enterprises in other parts of the chain. When an SOE enjoying a monopoly in a given sector spills over its activities into another sector where it faces private competitors, the lack of a level playing field brings serious CN concerns.

**SOEs in competitive markets**

The problems of cross-subsidization bring us to competitive sectors, where SOEs may coexist and compete with private enterprises. When SOEs compete with private enterprises, it may be important first, to specify what is included in the notion of « SOE ».

As indicated in the 2010 OECD report, there is no political agreement on how to define an SOE. The World Bank uses the following definition: SOEs are “government owned or government controlled economic entities that generate the bulk of their revenues from selling goods and services.” This broad definition covers the following main categories of SOEs:

- Statutory entities which run close to, or are part of a Government department within a Ministry;
- Incorporated, 100% State-controlled companies, which are not quoted on a Stock-Exchange;
- Listed SOEs with a minority share floated on a Stock-Exchange;
- SOEs where the State has a minority shareholding, but which are still controlled by the State through « golden shares »;
- Public-private partnerships (PPPs), which involve joint ventures between SOEs and private interests;
- Private firms in which the State has minority shareholdings, which might or might not lead to preferential treatment, for example under public procurement.

One of the important reforms discussed in the introduction concerns the gradual transformation of the first type of SOEs into incorporated companies, subject to general company law, through the so-called “corporatization”. Such corporatization brings an SOE closer to a private firm, obliges it to respect general corporate law and accountancy requirements, allows it eventually to obtain fresh funding by selling minority stakes to private interests in the stock market, and facilitates eventual privatization through an initial public offering (IPO).

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When SOEs compete with private firms on a free market, however, they might be in a position to compete on unequal terms, therefore raising competition and CN concerns. First, by nature, SOEs are generally not subject to the same profit obligations as their private sector counterparts. As seen earlier with respect to obligations of «universal service» and employment benefits, SOEs pursue specific political objectives of the State, which are not the same as the profit obligations of their private sector competitors who are under pressure to satisfy the profitability requirements of their shareholders. Usually, SOEs are exempt from the obligation to pay dividends to their shareholders, since they are fully owned by the State. This would encourage them to engage into predatory pricing strategies with respect to their private sector competitors, with the aim of increasing their market share to the detriment of their competitors.

Thus, SOEs tend to be very large corporations operating at low profit, and even at a loss, because management which is generally politically nominated will not be under constant pressure to improve productivity and be under no threat of being replaced as a result of a takeover or pressure by shareholders.

SOEs may also raise costs and barriers to entry for competitors, as a way to increasing their own revenues. For example, by preventing competitors from gaining access to essential infrastructure or inputs or increasing the price of such essential inputs by purchasing excessive amounts of such inputs, an SOE may abuse its dominant position.

**Competition-distorting privileges of SOEs**

SOEs may obtain specific privileges from the Government, aimed at giving them a competitive edge over their private sector rivals. As discussed in the introduction to this report, these can include access to favorable credit conditions or to enjoy State credit guarantees which reduce their cost of borrowing and enhance their competitiveness with respect to their private competitors. Even when SOEs do not enjoy specific State credit guarantee, banks or credit institutions, especially if State-owned, will more easily accord favorable loans to fellow State-owned firms.

SOEs may also benefit from information collected by public authorities which may be provided to them in priority, maintaining information asymmetries to the disadvantage of their private sector competitors.

Regulatory exemptions may also be granted to SOEs, lowering their operating costs. As some competition laws exclude SOEs from their scope of application, in some cases, SOEs are not subject to the same costly regulatory regimes as private firms. These exemptions may range from compliance with disclosure requirements to securities regulators, to exemptions from building permit regulations or from zoning regulations, to exemption from local or national taxes. Such preferential tax regimes are tantamount to selective Government subsidies.

Direct subsidies, which involve direct cash transfers to SOEs are less common than more subtle, indirect subsidies such as specific local duty or VAT exemptions, free petrol or transport privileges for their operations or for their staff, or unwritten rules that apportion a certain share

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of all public procurement to local SOEs, which can distort competition in a more discreet and unnoticed way.

Exemption from general accountancy rules, and especially from bankruptcy rules, enable SOEs to have a competitive edge over their private sector rivals. SOEs which are fully State-owned can endure losses for a long period of time without fear of being declared bankrupt. In addition, it is common for loss-making SOEs, even those with less than 100 per cent State ownership, to be regularly bailed out by the Government. Being immune from bankruptcy rules will encourage SOEs to become involved in risky competitive ventures and thus to compete inefficiently and unfairly with private enterprises. In addition, private firms will be discouraged from entering markets where SOEs are believed to enjoy unfair advantages. Having said that, the 2008 financial crisis have revealed that bailing out large enterprises is not limited to SOEs, but large private enterprises such as banks and financial institutions could also be bailed out, as was done in the US and UK, using the “too big to fail argument”.

To sum up, such advantages are not based on better performance, superior efficiency, better technology or superior management skills. However, they were initially provided to meet certain industrial and development policy objectives. In countries where such advantages did not bring about economic development, it was mostly due to corruption and Governments’ abandoning of initial industrial policy objectives. Therefore, advantages provided to SOEs eventually ended up distorting competition in the market. They run counter to any CN rules, and hamper the overall economy, as they create inefficient allocation of resources and prevent more efficient and innovative firms from entering the markets.

**Efficiency grounds for competitive neutrality policies**

When efficient economic operators are unjustifiably disadvantaged, less efficient enterprises might take business from them, and hinder entry of new competitors into the market. This may happen, for example, when less efficient Government businesses compete with private sector enterprises but are not obliged to earn a rate of return reflecting the cost of capital, enjoy exemption from certain taxes or social security obligations, are given immunity from some regulatory requirements, or benefit from overt or disguised State subsidies. In developing or transition economies where State ownership is seen as a rubber stamp for legitimacy, if a State-owned bank benefits from the guarantee of the State, it might be able to offer more interesting loans to its clients, thus gaining market share in the face of competing banks which are not immune from bankruptcy, and therefore must take more care about risk in their loan policy. It is however worth noting that the 2008 financial crisis revealed the lack of prudence in conducting risk assessment in their loan policies. This is exactly what triggered the financial crisis in 2008.

The existence of a net competitive advantage for an SOE may enable it to price below more efficient or equally efficient private sector competitors. Hence, whenever a less efficient government enterprise takes business from a more efficient firm because of such advantages, or the advantages hinder the entry of new competitors into a market, resources in the economy are not being used efficiently and the distortion of resource allocation reduces the overall economic welfare of the country.

Adoption of a CN policy may also bring other benefits to an economy in addition to fostering a more competitive environment. It may force SOEs to be more efficient. It may also increase Government transparency and address private competitor concerns about equity and the level
playing field. It may also assist Government to assess realistically whether it should continue in a particular business, especially if it has been obliged to support the SOE in question for many years in a row. Arguably, CN is a minimum condition for effective markets where government businesses are competing.

More and more countries strive to create « world class » national champions, offering them a wide range of artificial short-term competitive advantages with a view to achieving sustainable economic and social development objectives in the longer-term. Often, such firms are supported by the Government and correspond to a tight or looser definition of an SOE. By considering CN policies, these Governments may minimise the risk of crowding-out more efficient domestic competitors by affording undue advantages to less efficient SOEs or national champions.10

A recent OECD paper on the so-called “zombie” firms, which the State keeps alive either because they are too-big-to-fail, or for strategic and economic reasons, confirms the view that in a great majority of cases, it is a mistake to keep alive inefficient or unsustainable enterprises (public or private) because they are stifling labor productivity growth in the whole domestic economy.11 The study shows that a higher share of industry capital sunk in zombie firms is associated with lower investment and employment growth of a typical non-zombie firm.

Besides limiting the expansion possibilities of healthy incumbent firms, market congestion generated by zombie firms can also exacerbate productivity dispersion, create barriers to entry and constrain the post-entry growth of young firms.

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CHAPTER II: COMPETITIVE NEUTRALITY IN MENA PROGRAMME COUNTRIES

This Chapter reviews the market (de facto) and legislative (de jure) reality in UNCTAD MENA Programme countries (Algeria, Egypt, Jordan, Lebanon, Morocco, Palestine and Tunisia), with respect to competitive neutrality policies. The country reviews are mostly based on reports of international organizations, including the International Monetary Fund, the World Bank, and other sources.

Algeria

At present, the Algerian economy may still not be considered as a market economy.\(^{12}\) In transition since 1988, when initial reforms were introduced, the country has been struggling to build a free market economy, where prices are set according to supply and demand and subsidies are not endemic and significant with respect to GDP. Subsidies accounted for 23% of GDP in 2016 in Algeria. Many prices are regulated, in particular those of “primary necessities”, like semolina, flour, milk, sugar and cooking oil, while essential services are subsidized by the State (water, electricity, gas, railways, etc.).\(^{13}\)

The Algerian market is characterized by the presence of natural public monopolies (electricity, gas, water, railways, postal services), by quasi-monopolies resulting from privatisations, by oligopolies (agri-food, mobile phones, construction, laboratories, etc.) and by a multitude of private micro-enterprises which depend on these large industrial groups either as subcontractors or as wholesale distributors, but very seldom as competitors.\(^{14}\) Moreover, nearly 50% of the market is composed of informal operators active in particular in import and distribution sectors, which distort healthy and fair competition. Algeria’s exports principally consist of oil and gas to the EU, and most of its imports come from the EU, although China is becoming an increasingly important source.\(^{15}\)

During the period 2017-2018, the monopoly powers remain strong, especially in import concessions and product markets. Smaller privatisations proceed in manufacturing and other non-strategic sectors. As concerns the medium term, the government will continue to shield local companies from competition as economic interaction with the EU deepens. Incoherent government policies towards the private sector remain an issue for investors.

The public sector

SOEs control about two-thirds of the Algerian economy, led by the national oil and gas company Sonatrach (Société Nationale pour la Recherche, la Production, le Transport, la Transformation, et la Commercialisation des Hydrocarbures s.p.a.). Apart from oil and gas, Sonatrach’s activities are diversified into electricity generation, petrochemistry and seawater desalination. According to Europétrole, its activities account for around 30% of Algeria’s GDP.\(^{16}\) Despite a new, supposedly more investment-friendly, hydrocarbons law being

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12 Slimani Djilali, Membre permanent du Conseil algérien de la Concurrence. Contribution écrite au GIE sur le droit et la politique de la concurrence de la CNUCED, (Septembre 2016), portant sur « Le renforcement des capacités du secteur privé en vue de se conformer aux règles de la concurrence ». 
13 Ibid.
14 Ibid.
15 Economist Inteligence Unit: Algeria- Country forecast, Septembre 2017, pg.17
approved in 2013, the lack of interest in the 2014 licensing round, where only four out of 31 blocks on offer were awarded, suggests that security risks, tough contract terms, red tape and customs delays are among the issues that will continue to deter foreign oil and gas firms to invest in traditionally state-owned sectors.  

More than 51% SOEs operate in all sectors of the Algerian economy. In 2015, out of 12 public industrial groups listed by the Minister of Industry and Mining, seven were newly established, to serve in agro-industry, chemical industry, electrical equipment, electro-domestic and electronics industry, local industry, mechanics, metallurgy and steel industry, and textile and leather industries. The remaining five industrial groups, which existed already, include SNVI, the national vehicles industry; GICA, the national cement group; SNTA, the national tobacco and match industry; SAIDAL, the pharmaceutical group; and MANAL, the industrial mining group.  

SNVI, which is a fully State-owned enterprise, is a manufacturer of trucks, tractors, buses, and industrial motor vehicles and also provides sales and after-sales services. The national cement group GICA (Groupe industriel des ciments d’Algérie), has been subject to a programme of partial privatizations since 1997. SAIDAL, the pharmaceutical group is 80% State owned. MANAL (Manadjim El Djazaïr) was created by Decree N° 11-85 of 16 February 2011 and replaced the previous SOMINES Group, to acquire the assets of five mining SOEs, FERPHOS, ENOF, ENASEL, ENAMARBRE and ENG. It includes two other SOEs, AGENOR and ORGM. MANAL’s mission is to develop Algeria’s mining resources except for hydrocarbons.

It is reported that senior management teams at SOEs usually report to the relevant Ministry; while CEOs of larger companies such as Sonatrach, electric and gas utility Sonelgaz, and Air Algérie report directly to Ministers. Boards of directors are appointed by the State. This may cast doubt about the objectivity of nominations.

SOEs are subject to budget constraints. Audits of public companies are conducted by the Court of Auditors under the jurisdiction of the Office of the President. The Court is generally considered independent but may be subject to pressure or interference from government officials, particularly with regard to politically sensitive financial results. It is widely believed that the Court is reluctant to release potentially controversial results. The General Inspectorate of Finance (IFG) is a public auditing body under the supervision of the Ministry of Finance authorized to conduct “no-notice” audits of public companies. The results of these audits are sent directly to the Minister of Finance, and the offices of the President and Prime Minister. They are not made public.

The banking sector

The banking sector consists of around 85% public and 15% private institutions as measured by value of assets held which potentially can limit competition and reduce financing options for private firms. In principle, private enterprises have the same access to financing as SOEs, but they tend to work more with private banks as the latter are considered less bureaucratic than

17 The Economist Intelligence Unit: Algeria, Country forecast, September 2017.
19 US Department of State. Investment climate statements for 2017: Algeria https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm#wrapper
20 Ibid.
their public counterparts. Public banks mainly lend to public companies or well-connected private businesses and their importance as a financier of public investment projects will increase as fiscal savings which have financed many investments in the past are depleted.\textsuperscript{21} After the collapse in 2003 of Khalifa Bank, the largest private bank in the country, the divide between public and private banks increased. A government directive was passed in 2008 ordering public companies to work only with public banks. The directive was later officially rescinded, but its initial effect remained as a self-imposed practice by public companies, which refrain from dealing with private banks.\textsuperscript{22}

**Telecommunications**

The telecommunications sector is regulated by the sector regulator, Post and Telecom (ARTP), since 2001, which oversees the well-functioning of the telecommunications market and competition, and to protect the general interest of its customers. The main functions of ARTP include: to defend effective and equitable competition on the postal and telecommunications market; to issue authorisations to use the lines; act as arbitration of disputes between operators; and fixing the conditions for utilising the telecommunication frequencies.

Algérie Télécom, the incumbent landlines SOE, owns one of the mobile operators, ATM Mobilis, which is estimated to have 30% market share. In January 2015, after three years of negotiations, the National Investment Fund (FNI) took over 51% of the first mobile operator, OTA Djezzy, which has an estimated market share of 45%, from the Egyptian operator Orascom, under the « 51/49% State preemption rule ». Thus, the nation’s first and second mobile operators in terms of market share now belong to the State. However, while FNI owns 51% of Djezzy, the remaining 49% is owned by VEON, a major international operator, who is responsible for the management of the firmA third mobile operator with approximately 25% market share is WTA Nedjima originally owned by Kuweiti investors. It was taken over in March 2007 by the then Qtel from Qatar, and became Ooredoo, an Algerian affiliate of the Qatari Ooredoo Group. Investors from the Arab world, primarily Egypt and the Gulf, have been prominent in telecommunications.

Despite huge investments over the past decade, telecommunications sector needs improvement. It is nevertheless predicted that due to a small urban middle class which enjoys consumption patterns like those in Europe and other mature markets, the market for telecommunications services should grow rapidly as 4G networks are belatedly being expanded, and the use of smartphones increases.

**Other utilities**

**Electricity:** Sonelgaz (Société nationale de l’électricité et du gaz) lost its monopoly in the sector\textsuperscript{23} and was transformed into a fully State-owned stock company.\textsuperscript{24} Sonelgaz and General Electric (USA) have signed a public-private partnership agreement in April 2017, which includes an operations and maintenance services contract.

\textsuperscript{21} Economist Inteligence Unit: Algeria- Country forecast, Semptember 2017, pg. 20
\textsuperscript{22} US Department of State. Investment climate statements for 2017 : Algeria https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm#wrapper
\textsuperscript{23} Law 02-01 of 5 February 2002.
\textsuperscript{24} Presidential Decree 02-195
**Water:** ADE (L’Algérienne Des Eaux) was created by Executive Decree in April 2001 as a national SOE under the control of the Ministry of Water Resources and Environment.

Air transport: Air Algérie, the national fully State-owned carrier, holds a de facto monopoly in the domestic sector, after the collapse of Khalifa Airways in 2003. Tassili Airlines is a fully State-owned charter company, specialized in transporting Sonatrach personnel and cargo until recently.

**Trade policy**

Algeria is not a WTO member. The Algerian authorities expressed their wish to accelerate the process of Algeria’s accession to the WTO in 2017, which has been at a standstill. The accession discussions include various legislative reform plans and public policies, including agricultural and industrial policies, technical barriers to trade, trade-related intellectual property rights and investment measures. At present, the Working Party, is preparing an updated inputs report based on replies provided by the Algerian authorities.

**Subsidies and bailouts**

The State heavily subsidizes loss-making SOEs. According to the Secretary General of the Algerian General Workers’ Union (UGTA), no less than 460 SOEs out of a total of nearly 1000, or about 50%, were bailed out by the State. It was reported that these bailouts would cost more than 1232 billion Algerian dinars (approx. 11.3 bn USD). Most of these SOEs are structurally deficitary. If they have been in operation so far, it is due to the overdrafts they can obtain from public banks.

The measures undertaken since 1988 to increase the managerial autonomy of SOEs have remained on paper, and State investment funds were thereafter transformed into State asset management companies, transmitting the political influence onto the public sector. This situation has been sustained by oil revenues, which served to bridge the chronic operating deficits. Earlier in 2018, it was reported that Algeria was planning a subsidy reform to decrease fiscal deficit in a four-year period. Among the rumored subsidies to be cut down were those on gasoline. However, in the new budget for 2019, gasoline, diesel oil, and LPG fuel, in addition to electricity prices, are to be exempted from significant changes in 2019.

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28 El Watan, 5 December 2011.
29 Reuters: Algeria eyes subsidy reforms to help close budget deficit in 3 or 4 years, February 2018 "https://www.reuters.com/article/algeria-budget/algeria-eyes-subsidy-reforms-to-help-close-budget-deficit-in-3-or-4-years-idUSL8N1Q00HP" https://www.reuters.com/article/algeria-budget/algeria-eyes-subsidy-reforms-to-help-close-budget-deficit-in-3-or-4-years-idUSL8N1Q00HP
Taxation of public and private enterprises

SOEs are subject to the same tax burden and tax rebate policies as their private sector competitors, but business representatives report that the Government favors SOEs over private companies with regard to access to land. Ties between SOEs and the Government are close, and when involved in domestic investment disputes with other companies, SOEs generally win.31

Privatization

The government appears aware that in order to increase employment, the private sector must boost job creation, but there are few sizeable enterprises that are not linked to the State. Despite the introduction in the 2016 budget of a clause formally allowing domestic private firms to buy shares in non-strategic State firms, there is little momentum for privatization. According to the Economist Intelligence Unit (EUI), Algeria will continue its policy of supporting loss-making state-owned firms. This means that private firms will in effect face subsidized competitors which are favoured in terms of access to land and contract awarding for government services. Private companies competing with rivals that have privileged ties to core state interests will continue to be vulnerable to obstructive measures. While privatization is contemplated, no major privatisation has taken place so far, apart from selling minority shares of a few SOEs on the Algiers Stock-Exchange.

Relevant legislation

According to authorities, there is no discrimination between public and private enterprises. Article 43 of the Constitution, as revised on 6 March 2016 states that:

“Freedom of investment and commerce is recognised. It applies within the framework of the law. The State strives to improve the business climate. It encourages, without discrimination, the blossoming of enterprises at the service of the development of the national economy. The State regulates the market. The law protects the rights of consumers. The law prohibits monopoly and unfair competition.”32

However, existing practice and legislation often provide for the contrary.33 In fact, since the launch of economic reforms in 1988, stock exchange companies owned by the State were given the status of « economic public enterprise » (EPE) and mentioned this particular status on all their paperheads and documents, although this was not required by the applicable Code of commerce. Meanwhile, Article 9 of Ordinance N°03-03 of 19 July 2003 on competition, as amended and completed, exempts from its scope of application any enterprise, which accomplishes public service activities or contributes to increasing employment. This led natural monopolies, such as SONELGAZ (electricity and gas), SNTF (National Railways), Air Algérie (domestic flights), etc. to impose their status as public service, to avoid being subject to competition rules.34

31 US Department of State. Investment climate statements for 2017 : Algeria https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm#wrapper
32 La Constitution de la république algérienne démocratique et populaire http://www.joradp.dz/TRV/FCons.pdf
33 See Slimani Djalili, op cit.
34 Ibid.
With respect to SOEs’ obligations to respect the general commercial rules (Commercial code), Article 6 of Ordinance N° 01-04 of 20 August 2001 on the organisation, management and privatisation of SOEs states that « Irrespective of the provisions of this Ordinance, public enterprises which activity is strategic with respect to the programme of the Government are subject to the organic statutes in force, or to special statutes fixed by regulation. » As the Government’s Plan of Action for 2015-2019 includes projects covering all sectors of the economy, it can be understood that any SOE can be considered as strategic and exempted from applying the strict provisions of the Commercial Code. Accordingly, they will be protected from bankruptcy, and the State will constantly bail them out, as has been the case up to the present.35

Revision of the Investment Code

The 51/49 rule requires a majority of Algerian ownership of at least 51 percent in all projects involving foreign investments. This requirement was first adopted in 2006 for the hydrocarbons sector and was expanded across all sectors in the 2009 investment law. The rule was removed from the new investment law in August 2016 (Loi n° 2016 - 09 du 3 août 2016 relative à la promotion de l’investissement), but it remains in force by virtue of its inclusion in the 2017 annual finance law. Moreover, the State preemption rule is still maintained in article 30 of the investment code.36 Some of the most salient features of the Revised Code relate to the removal of the obligation to present a positive foreign exchange balance and authorizes the free transfer out of Algeria of the capital invested and its proceeds. Also, the rules on foreign financing has been slightly relaxed for the so called “strategic investments” which are to be approved by the Algerian Government on a case by case basis.

Algerian government officials have defended the law as necessary to prevent capital flight, protect Algerian businesses, and provide foreign businesses with local expertise. However, the 51/49 investment rule and the risk of preemption by the State in case of sale of the firm discourages various types of investors. For example, the requirement hampers market access for foreign small and medium-sized enterprises (SMEs), as they often do not have the human resources or financial capital to navigate the complex requirements.37

Proposed amendments to the Competition law

Algeria's competition law dates back to 2003 and went through two amendments in 2008 and 2010. Within the MENA Programme, the Algerian competition law was reviewed by UNCTAD and the report of the review including recommendations for amendment was presented in Alger in May 2017 during an awareness raising seminar organized by UNCTAD. This seminar was addressed at members of the Government, particularly the Ministry of Commerce; representatives of the Competition Council, members of Parliament, judges in charge of competition, academia, representatives of the private sector, consumer representatives and media.

35 Ibid.
36 Loi N° 2016-09 du 3 août 2016 relative à la promotion de l’investissement
37 US Department of State. Investment climate statements for 2017 : Algeria
https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm#wrapper
Furthermore, the Competition Council in its Opinion N°04/2016 made relevant proposals to amend the existing competition legislation (Ordinance 03-03 of 19 July 2003 amended and completed), to reflect the principles included in Article 43 of the Constitution and in light of the four years of experience in the application of the Ordinance, and the comments received from international experts, under the auspices of UNCTAD. The Opinion includes, among others, proposals that are fully in line with the competitive neutrality principles listed in this report. These relate, in particular, to non-discrimination between public and private sectors; making it mandatory to seek the opinion of the Competition Council before adopting price regulations; improving the role of the Competition Council with respect to public procurement; repealing Article 8 of the Ordinance, which gave the Council the power to exempt enterprises (public or private) from the scope of application of competition rules; clarifying the prohibition of monopolies, as enshrined in the Constitution; making it mandatory to seek the opinion of the Competition Council before adoption of any legislation on State aid or subsidies by local authorities.

Policy advice

*Strengthening the powers of the competition authority, limiting subsidies and privatizing non-strategic SOEs.* According to the Opinion N° 04/2016 of the Competition Council, the amendment and streamlining of the competition act to international best practices is a priority. The existence of a large sector of subsidized, loss-making SOEs distorts competition and constitutes a serious barrier to entry for private enterprises.

*Opening the economy to international trade and FDI and accelerating Algeria’s accession to the WTO.* This would include softening the 51%–49% rule, and avoiding imposing import licensing procedures, which tend to increase inflation, distort competition and enable rent-seeking practices.

*Encouraging access to financing for all enterprises, public as well as private.* It is recommended to promote competition in the banking sector, to gradually eliminate subsidized loans, to ensure protection of the rights of creditors and to modernize the bankruptcy rules.

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38 Avis N° 04/2016 du Conseil de la concurrence portant sur les principaux amendements proposés aux dispositions de l’Ordonnance No. 03-03 du 19 juillet 2003, modifiée et complétée, relative à la concurrence.
Egypt

With a population of around 95 million, Egypt is by far the largest economy of the MENA region. The Egyptian economy is highly trade-oriented and dependent on remittances from Egyptians overseas (estimated at US$17.5 billion in 2016/17), as well as on travel and tourism. Exports are the most important source of foreign currency despite their significant fall in recent years. At the same time, Egypt's export base has become more diversified partly due to a sizeable decrease in fuel exports.39

Since 2014 the Government has adopted a reform strategy: Shift in the exchange rate regime from a peg to the US dollar to a full float of the Egyptian Pound on 3 November 2016; reduction of energy subsidies (cutting energy subsidies to 1.75% GDP in 2017 and subsequently to less than 0.5%); and containment of the high growth of the wage bill. The second wave, currently underway, aims to improve governance and the investment climate.40

In 2016, IMF Executive Board approved US$12 billion extended arrangement under the Extended Fund Facility for Egypt. In this context, Egypt undertook an increase in social spending by at least 25 billion pounds and imposed a stamp duty on stock-exchange transactions. It also drew up an action plan to restore financial stability of the Egyptian General Petroleum Corporation (EGPC).41 The process of economic reform has proven difficult and faced with strong resistance from entrenched interests. Significant obstacles continue to hinder private sector investment, including the often-arbitrary imposition of bureaucratic impediments and the length of time needed to resolve them.42

The short-term outlook of the Egyptian economy seems to point to the sale of SOEs shares operating in the downstream petroleum sector through the stock market. For the medium term (2019-21) the public-private partnership programme will be revived, and the State will sell most of its remaining shares in banks while keeping National Bank of Egypt in full public ownership.43

The public sector

State-owned enterprises compete directly with private companies in numerous sectors of the Egyptian economy. SOEs are generally structured as individual companies controlled by boards of directors and grouped under government holding companies that are arranged by industry, including petroleum and gas, spinning & weaving; metallurgical industries; chemical industries; pharmaceuticals; food industries; building & construction; tourism, hotels & cinema; maritime & inland transport; aviation; and insurance. The holding companies are headed by boards of directors appointed by the Prime Minister with recommendation from the relevant Minister.

https://www.wto.org/english/tratop_e/tptr_e/s367_e.pdf
https://www.wto.org/english/tratop_e/tptr_e/s367_e.pdf
41 Al Monitor, Egypt Pulse: Egypt’s economy trapped in vicious circle of IMF debts. (May 17/2017)
42 US Department of State, Bureau of Economic and Business Affairs, Investment Climate Statements for 2017
https://www.state.gov/e/eb/hs/oic/investmentclimatestatements/index.htm#wrapper
In addition to SOE groups above, the Egyptian military has successively expanded their civil economic activities.\(^{44}\) Military SOEs maintain strong market positions, established privileges and historically ingrained structures, officially accounting for some 2% of GDP. Some experts believe the true figure to be much higher, although there is a lack of solid data which makes reliable estimates impossible. The military and other security institutions were given exemptions in a new value-added tax (VAT) law enacted as part of IMF-inspired reforms. The law states that the military does not have to pay VAT on goods, equipment, machinery, services and raw materials needed for the purposes of armament, defense and national security.

The Egyptian Government owns vast parts of the economy, including much of its oil industry and real estate, as well as main banks and insurance companies. In the petroleum and gas sector, Egyptian General Petroleum Corporation is a State holding company with interests in refining, exploration, production, drilling, transportation and storage of crude oil; production of lubricants and greases; and includes helicopter transportation services, repair and maintenance services for machinery and equipment as well as manufacture of petrochemicals. As part of the IMF Extended Fund Facility for Egypt, EGPC is to repay its large arrears of debt to foreign petroleum companies by the end of June 2019.\(^{45}\) Another SOE, Middle East Oil Refinery (MIDOR), is one of the largest, most modern refineries in the MENA region.\(^{46}\) In mid-2017 advisers were selected for a public offering of a 24% stake in Enppi, a majority State-owned petroleum engineering company. Share offers are scheduled in a number of public enterprises in the petroleum sector and for two or three banks.

In the real estate sector, Arab Contractors, which is listed on the Cairo Stock-Exchange, is one of the leading construction companies in the Middle East and Africa, with some 77,000 employees in 29 countries.\(^{47}\) Hassan Allam Holding, is one of the leading real estate developers in the country.

The Government has previously sought to assist domestic steel and cotton producers in the face of global pressures. Loopholes and other impediments to competition remain in certain sectors, such as telecommunications and utilities.

**The banking sector**

The number of banks in Egypt has fallen from 59 (of which 13 foreign-controlled banks and 14 branches of foreign banks) in 2005 to 40 (of which 15 foreign controlled banks and 6 branches of foreign banks) in 2015. Domestic banks accounted for 71.2% of the total balance sheet of the banking sector in 2015, while foreign-controlled banks accounted for 24.2%, and branches of foreign banks for 4.6%\(^{48}\).

As of late 2017, five large banks (National Bank of Egypt, Banque Misr, Banque du Caire, Agricultural Bank of Egypt, and Arab African International Bank) remained fully State-owned. Alexbank was privatized and acquired by San Paolo Intesa (Italy) in 2006 and there are plans

\(^{44}\) German Institute for International and Security Affairs. SWP Comments 5, of February 2017


\(^{45}\) IMF releases loan details: an investor’s Guide (Bloomberg, 19 January 2017)


\(^{46}\) Egypt oil and gas web portal http://www.egyptoil-gas.com/directory/middle-east-oil-refinery-midor/


to partially privatize Banque du Caire. There have also been several acquisitions in the foreign-owned banking sector: BNP (France) sold its interests to the Emirates National Bank of Dubai (United Arab Emirates) in 2013; the Qatar National Bank acquired the local National Société Générale Bank (NSGB) in 2013; Al Ahli Bank (Kuwait) acquired Piraeus Bank Egypt (Greece) in 2015; and Barclays (United Kingdom) sold its interest in Egypt to Attijariwafa Bank (Morocco) in 2017.

40 percent of the banking sector’s assets are reported to be controlled by three state-owned banks (Banque Misr, Banque du Caire, and National Bank of Egypt). Banque Misr currently holds equities in 162 projects in various fields, including industry, tourism, housing, agriculture and food, IT and communications. It also owns two of the largest investment funds in Egypt, including Misr Capital Investments (MCI).

As of 2017, the National Bank of Egypt, a commercial bank, not to be confused with the Central Bank of Egypt, was reported to account for 23% of the Egyptian banking system's total assets, 25% of total deposits and 25% of total loans and advances.

It is reported that in practice, private firms sometimes find themselves at a disadvantage when competing for resources with SOE. For example, SOEs often have easier access to bank credit from the State-dominated banking system than do private firms, whether domestic or foreign. Despite the sufficient bank capitalization, access to credit is a particular issue for small and medium enterprises (SMEs), which are often not considered sufficiently well established to merit the risk.

**Telecommunications**

The State-owned fixed line telephone company, Telecom Egypt (TE) lost its legal monopoly on the local, long-distance and international telecommunication sectors following the adoption of Telecommunications Law 10 of 2003, which required TE to have relinquished its monopoly status by January 2006. Telecom Egypt is 80% owned by the State, the remaining 20% having been listed on the Egyptian stock market in 2005. TE is still the monopoly operator for fixed-line services.

As from October 2016, the National Telecommunications Regulatory Authority (NTRA) introduced a unified licence regime that now allows a company to offer both fixed line and mobile networks. The agreement allows TE to enter the mobile market and the three existing mobile companies to enter the fixed line market. In October 2016, the three mobile telephone companies, Vodafone, Orange, and Etisalat, obtained a fixed-line licence. The mobile network operators are majority-owned by foreign capital while the State ownership accounts for most of the rest of the shares; 44.95% of the shares owned by Telecom Egypt in the case of Vodafone, and 20% owned by the Egyptian Post Office in the case of Etisalat. In the case of Orange, 1.08% of total shares have been listed on the Egyptian stock market.

The introduction of Telecom Egypt as a new mobile operator in the Egyptian market will increase competition among operators, which will benefit users by raising the bar on quality of services as well as improving prices. The market shares of mobile phone operators are:

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49 US Department of State, Investment Climate Statements for 2017. Op cit
51 US Department of State, Investment Climate Statements for 2017. Op cit
52 Op cit.
Vodafone (41% of the market in 2016), Orange (34%) and Etisalat (25%). Etisalat is the last entrant, having entered in 2009. The three other mobile operators Etisalat, Orange (Formerly Mobinil) and Vodafone all have signed the 4G frequency agreement with the NTRA.53

Other utilities

Electricity

The Egyptian Electricity Holding Company (EEHC) is responsible for the oversight of production, transmission and distribution of electric power through its subsidiaries. The sector is vertically and horizontally unbundled, with several companies operating in generation and distribution, although most of these companies are SOEs owned by the EEHC. Moreover, Egyptian Electricity Transmission Company (EETC) holds a monopoly on transmission. It also acts as the single buyer from the power generation companies.

Egypt is undergoing reforms with ambitious plans to promote renewable energy and increase private sector participation. In 2015, the Government issued a new law (Electricity Law No. 87/2015) to create a competitive electricity market. This will essentially pave the way to end the single-buyer model and allow private generation to sell directly to end users. At the same time, third parties will have access to grids while the role of the EETC will become that of an independent transmission system operator. The new law also allows for the creation of two electricity markets. The first market for large consumers to negotiate and purchase electricity directly from various suppliers and the second for consumers, who purchase electricity from distribution companies at regulated prices.

The government is also stepping up efforts to reform electricity prices to reduce Egypt’s electricity subsidy bill. So far, Egypt has relied on EEHC to increase capacity, with the private sector responsible for only 10% of power generating assets.54

Water and sanitation

The Ministry of Water Supply and Sanitation Facilities supervises all institutions in charge of providing water and sanitation services. On the institutional side, regulation and service provision have been separated to some extent through the creation of a national holding company for Water and Wastewater in 2004, and of an economic regulator, the Egyptian Water Regulatory Agency (EWRA), in 2006.

The Holding Company for Water and Wastewater (HCWW) and its affiliated companies are SOEs. The mandates of the HCWW and its affiliates are to purify, distillate, transport, distribute and sell drinking water in addition to collecting, treating and safe disposal of wastewater. Among these, the National Organization for Potable Water and Sanitary Drainage (NOPWASD) and the Construction Authority for Potable Water and Wastewater (CAPW), are two public organizations responsible for investments of all water and wastewater sector. CAPW


is in charge of Great Cairo and Alexandria and NOPWASD for the rest of Egypt except the Suez Canal area.

HCWW and its affiliates are not free to fix tariffs for services they provide. It is the State which approves rates in function of socioeconomic and political criteria. This results in low prices that do not cover the cost of the service or the operation of these organizations in the majority of cases (only one company balances its budget). This situation causes a significant dependence of the companies’ vis-à-vis the State and often financial difficulties related to insufficient contribution of the State.

Although the private sector participation is encouraged by the Egyptian Government, few operations have been implemented in the sanitation sector. Only one BOT (Build-operate-transfer) contract was reported to be underway, although several projects exist.55

**Air Transportation**

Egypt has nine national scheduled carriers in addition to its State-owned flag carrier Egyptair. All domestic airlines are privately-owned and several of them have foreign investment participation: Egyptair, State-owned via a holding company; Air Arabia Egypt, private, 60% Egyptian, 40% foreign (Saudi Arabia); Nesma Airlines, private, 100% Egyptian; Air Cairo, private, 100% Egyptian; AMC Airlines, private, 100% Egyptian; Alexandria Airlines, private, 60% Egyptian, 40% foreign (Jordan); Nile Air, private, 60% Egyptian, 40% foreign (Saudi Arabia); El Masria Universal Airlines, private, 100% Egyptian; Air Leisure, private, 100% Egyptian; Flyegypt, private, 100% Egyptian. This picture is a reflection of a policy that seeks to promote start-ups in order to multiply tourism arrivals and strengthen Egypt's connections in a region where aviation is a highly competitive sector.56

All Egyptian airports are publicly owned and publicly managed, except for two that are managed under a Build-Operate-Transfer agreement. The Egyptian Holding Company for Airports and Air Navigation (EHCAAN) is the body responsible for airport management in Egypt.

**Trade policy**

Egypt is a WTO member. The latest WTO TPRof Egypt was completed in January 2018. The Egyptian Customs Authority (ECA) is the body in charge of implementing customs procedures and trade-related legislation issued by different ministries.

**Public procurement**

Tenders Law 89 of 1998 requires the government to consider both price and best value in awarding contracts and to issue an explanation for refusal of a bid. As is common practice in many countries, the law contains preferences for Egyptian domestic contractors, who are accorded priority if their bids do not exceed the lowest foreign bid by more than 15 percent.

While the law requires public tendering to be designed in accordance with the criteria of transparency, equal opportunity, equality and free competition, SOEs may contract from each other directly without bearing on the provisions of the public procurement law. Egypt is not a party to the World Trade Organization’s Government Procurement Agreement.

According to a report on Commercial Laws in Egypt by the European Bank for Reconstruction and Development (ERBD), there are no rules on conflict of interest in competing for public tenders. The same report also noted that Egyptian legislation was in “medium compliance” with internationally recognized corporate governance principles and identified concerns regarding non-financial disclosure and transparency, especially in regard to conflict of interest situations. In addition, intensified cooperation between the army and the private sector also creates structures of dependency. It has become harder for private companies to win public contracts, as they can be underbid by the expanding military enterprises. If they want to survive economically, firms are increasingly forced to cooperate with the armed forces, with the latter clearly in the driving seat.

Subsidies and bailouts

As we have seen above, many SOEs, especially in electricity and water utilities sector, are loss-making entities which are regularly subsidized by the State. In addition, many essential commodities, including oil, are heavily subsidized, and the State is undergoing serious IMF-induced efforts to reduce and gradually eliminate subsidies.

On 19 February 2018, the Government issued a new Bankruptcy Law no. 11/2018. The new law replaces and revokes the bankruptcy rules set out in chapter 5 under the Commercial Code. The new law introduced comprehensive procedures for reorganizing the company's financial and administrative system with the aim of paying off its debts. The restructuring process will be run by a committee composed of experts listed in the Bankruptcy Expert Schedule at the Economic Courts (“Bankruptcy Experts”). The restructuring committee will have the authority to reevaluate the company's assets, restructure its debts (including those owed to the Government), increase its capital, increase its internal cash flow, decrease expenditure, and apply an administrative restructure. After the ratification of the restructuring plan, creditors will be prohibited from taking any court action against the debtor until the end of the process.

Bankruptcy is declared by virtue of a court judgment. The court will declare a debtor bankrupt if it fails to pay its financial obligation(s) and such failure is a result that it is in sever financial distress. Once bankruptcy declared, creditors may place the debtor in involuntary liquidation. Detention of a non-fraudulent bankrupt is abolished, while allowing travel ban for a limited period of 6 months in case of necessity.

In practice, the paperwork involved in liquidating a business remains convoluted and extremely protracted. Starting a business is much easier than shutting one down. Bankruptcy is frowned upon in Egyptian culture and many businesspeople are concerned that they may be found criminally liable if they declare bankruptcy.

57 ERBD (2013): Commercial Laws of Egypt
59 US Department of State, op cit.
Taxation of public & private enterprises

Fiscal exemptions represent yet another competitive advantage. Military enterprises pay no income, sales or import taxes. In June 2015, the Defence Ministry also exempted numerous military-owned properties, including hotels and supermarkets, as well as housing from property tax. Concurrently, in 2016 a 13% value-added tax was imposed on transactions in the private sector, and at the same time the import tax on hundreds of products was increased, in some cases by up to 60%.  

Privatization

To encourage the growth of private sector, privatization of SOEs and state-owned banks was accelerated under an economic reform program from 1991 to 2008. Following the 2011 revolution, third parties have brought cases in court to reverse privatization deals, and in a number of these cases, Egyptian courts have ruled to reverse the privatization of several former public companies. Most of these cases are still under appeal.

In July 2018 Egypt announced the names of the first five state companies that will offer shares as part of a plan to boost public finances through minority offerings on the Cairo stock exchange. The companies include Alexandria Mineral Oils Company, Eastern Tobacco, Alexandria Container and Cargo Handling, Abou Kir Fertilizers, and Heliopolis Housing.

Investment

The Ministry of Investment has adopted a new Investment Law (Law No. 72 of June 2017) that has been discussed extensively with all stakeholders and is still under study. Drafts of new laws regarding Bankruptcy, Commercial Registration, and Companies’ Law are also under discussion. Egypt’s investment law stipulates the establishment of a One-Stop-Shop (OSS) for investors at General Authority for Investment and Free Zones (GAFI). The OSS’s main functions are to (a) facilitate the procurement of business licenses, (b) offer technical advice and information to clients, (c) introduce a transparent and reasonable fee structure, and (d) improve the quality and timeliness of government related processes.

Investment incentives under the new law include deductions on taxable profits and preferential import duty rates. Exemptions from stamp duty, and notarization and registration fees are provided for up to five years from registration in the Commercial Register. In October 2017, the regulations to implement the law were approved.

The regulation under Investment Law No. 72/2017 also provides for the establishment of free zones. There are two types of free zones: public and private. Public free zones are established for several projects, whereas private free zones are confined to one specific project or company; and must meet certain conditions, inter alia with respect to minimum capital (US$10 million) and exports (no less than 80% of the production value). Enterprises in free zones benefit from

61 US Department of State, op cit.
62 Voice of America, Egypt Names First Five State Companies to Float Shares Under Privatization Plan
63 General Authority for Investment and Free Zones (GAFI)
http://www.gafi.gov.eg/English/MediaCenter/PressReleases/Pages/default.aspx
complete exemption from import tariffs, income taxes and the VAT. Freezone investors may sell all or part of their products on the Egyptian market after payment of the relevant customs duties. There are currently nine public free zones in operation.

**Competition and price regulation**

Competition policy is mainly regulated in Egypt by the following legislation: (a) the Egyptian Constitution of 2014; (b) the Egyptian Law No. 3/2015 on Protection of Competition and Prohibition of Monopolistic Practices (Egyptian Competition Law – ECL), which entered into force on 15 May 2005, and was amended in 2008 and 2014; and (c) the ECL’s executive regulations (ER).

The Article 27 of the Egyptian Constitution (2014) states that: “the economic system shall adhere to transparency and good governance, enhance the pillars of competitiveness, encourage investment, ensure balanced geographical, sectorial, and environmental growth, prohibit monopolistic practices, and maintain financial and trade balances and a fair tax system.”

The Egyptian Competition Authority (ECA) is responsible for enforcing the ECL, which applies to all types of persons or enterprises carrying out economic activities, whether public or private. This includes State-owned enterprises, except for public utilities managed directly by the State.

Egyptian competition law as amended in 2014 states in its Article 9 that: “The provisions of this Law shall not apply to public utilities managed directly by the State. The Authority, upon the request of the concerned parties, may exempt some or all the acts, from the ban provided for in articles 6, 7 and 8, regarding public utilities that are managed indirectly by the State, where this is in the public interest or for attaining benefits to the consumers that exceed the effects of restricting the freedom of competition. This shall be done in accordance with the regulations and procedures set out by the Executive Regulation of this Law.”

With respect to price regulations, Article 10 of ECL provides that: “The Cabinet of Ministers, after taking the opinion of the Authority, may issue a decree determining the selling price for one or more essential products for a specific period. Any agreement concluded by the Government for the purposes of the implementation of these prices shall not be considered an anti-competitive practice.”

Despite the provisions in the new Investment Law No. 72/2017 stipulating that the Government shall not interfere in the pricing policies of firms operating in any market, prices may be set or guided. The Central Administration of Pharmaceutical Affairs is responsible for setting the price of pharmaceutical products, certain medical devices and dietary supplements. Moreover, provisions in the Electricity Law No. 87/2015, electricity tariffs are approved and fixed by the Egyptian Electric Utility according to the rules approved by the Cabinet. Tariffs are issued by a decree from the Minister. Sugar and edible oils are not subject to price controls but are sold in the context of a ration-cards system at market prices.

**Conclusion**

As can be seen above, Egypt has an important public sector, where SOEs have significant advantages, when competing with private sector enterprises. Reform efforts are underway, including IMF loan-induced reforms, which go a long way towards competitive neutrality. New legislation goes in the same direction, as well as the competition law, which states the principle
of non-discrimination between the private and public sectors. However, due to the hard-socio-economic realities, the principles of competitive neutrality are far from being applied in the everyday economic world.

Jordan

Jordan’s economy is mainly led by the private sector, which contributes to 71 per cent of GDP and 75 per cent of net cumulative investment. SOEs in Jordan are mainly established to bridge the gap between the Government and the private sector. They exercise delegated governmental powers and operate in fields that are not yet open for investment, such as managing the transmission and distribution of electricity and water. Other activities include logistics, mining, storage and inventory management of strategic products. Jordan ranks 58th for best infrastructure in the world, according to the World Economic Forum's Index of Economic Competitiveness.64

Jordan's main export good is potash and potash-related products like fertilizers. The majority State-owned Jordan Phosphate Mines Company has exclusive rights for mining phosphate. The State-owned National Petroleum Company has exclusive rights for natural gas and crude oil; and the partly State-owned Arab Potash Company has exclusive rights to exploit, manufacture and market mineral resources from the Dead Sea. Exploration and exploitation rights in other areas are open to private companies, including foreign ones, through agreements with the Energy and Minerals Regulatory Commission.65

The Jordan Vision 2025 Strategy, states that: “Jordan 2025 charts a path for the future and determines the integrated economic and social framework that will govern the economic and social policies based on providing opportunities for all. The strategy focuses on improving infrastructure, enhancing education and health services and strengthening the role of the private sector and civil society institutions to achieve its objectives.”66

The public sector

Currently, 17 SOEs of different sizes and mandates are fully owned by the government. They include, in particular: The National Electrical Power Company (NEPCO), Samra Electric Power Company, and the Yarmouk Water Company, Aqaba Development Corporation (ADC). Assets of wholly-owned SOEs exceed 11 billion USD and provide around 3000 jobs.67

SOEs compete under largely equal terms with private enterprises with respect to access to markets, credit, and other business operations. The laws do not provide preferential treatment to SOEs and they are held accountable by their Board of Directors, typically chaired by the

67 US Department of State, Bureau of Economic and Business Affairs: Investment Climate Statements for 2017: Jordan https://www.state.gov/e/eb/rls/othr/ics/investmentclimatesstatements/index.htm#wrapper
sector-relevant Minister and the Audit Bureau.68

In 2003, Jordan notified the WTO of two State-trading enterprises with special or exclusive trading rights, the Jordan Phosphate Mines Co. Ltd (JPMC) and Jordan Petroleum Refinery Co.

JPMC has exclusive rights to import, store and sell explosive materials used for mining and quarrying purposes and has exclusive mining rights over phosphates for four mines in Jordan. JPMC does not sell phosphate to private traders for export purposes. Jordan Petroleum Refinery Co. has exclusive rights to import oil and hydrocarbon products for local use.

The Government classified barley and wheat as essential commodities, the consumption of which is subsidized. For this reason, the Ministry of Industry, Trade and Supplies (MITS) is the sole importer of these products. The MITS puts up tenders for local companies that will be responsible for the transfer of wheat and barley from the country of origin, and private traders import under the direction of the Trade Directorate at the MITS. In addition, exports of the following products are restricted to specific enterprises or authorities, including raw hides and manufactured leather (Jordan Tanning Company), Portland cement (Jordan Cement Factories Company) and Mineral extracts, such as stone, sand, gypsum, and clay derivatives (Natural Resources Authority).69

Banking & finance

Jordan has 25 banks in total, including commercial banks, Islamic banks, and foreign bank branches. The Central Bank of Jordan has developed strict regulations on lending, particularly mortgage lending, and improved prudential requirements. The banking sector's indicators remain strong; banks continue to be profitable and well-capitalized, and deposits are still the major funding base.70 The banking sector in Jordan remains the third-largest component of GDP, after the government and manufacturing and remains resilient.

Telecommunications

The Telecommunications Regulatory Commission (TRC) is one of the oldest regulatory bodies in Jordan, established as a financially and administratively independent jurisdictional body through the Telecommunications Law No 13 of 1995 and is subsequent amending law No.8 of 2002. The primary function of the TRC is to regulate the telecommunications and information communication technology (ICT) services sectors, as well as the postal sector according to the Postal Law No 34 of 2007.71

In January 2000, the Government sold 40% of the shares of the State-owned Jordan Telecommunications Company (JTC) to a consortium including France Telecom and Arab Bank, with a fee-based management contract for France Telecom (Orange).

The mobile sector is currently evenly divided between three major operators: Zain, owned by MTC Kuwait, which has the largest share (39%), followed by France Telecom’s brand Orange (36%) and Umniah (25%), which is 96% owned by Bahrain’s Batelco. The market is highly

68 Ibid.
69 WTO TPR 2015, op cit.
70 US Department of State, op cit.
competitive with the three major operators all having around 30% market share each, in terms of mobile subscribers. The fixed broadband network is also growing, and the government has been working for some time to deploy its national broadband network.\textsuperscript{72} FDI inflows has brought substantial investment in telecommunications through new infrastructure, enhanced services, lower consumer costs and a substantial number of jobs.

**Electricity**

The energy sector has been extensively liberalized, with the electricity generation and distribution network fully privatized. Private companies are now allowed to import and distribute fuel. Transmission stayed in State ownership for technical reasons. Electricity production in Jordan was affected by the end of natural gas supplies from Egypt, which accounted for 80 per cent of electricity, and replaced by higher priced oil. In 2011, the Government started issuing State guaranteed corporate bonds for NEPCO, to ensure continuous power supply for the country. In 2014, NEPCO had accumulated heavy government guaranteed losses, due to subsidizing the price of electricity. In October 2016, the authorities adopted an automatic electricity tariff adjustment mechanism and published a study on cross-subsidization and options for electricity tariff reform.\textsuperscript{73}

In addition to publicly-owned powerplants, Jordan currently has four independent power producers, including the Amman East Power Plant (owned and operated by AES Jordan PSC, a consortium of a subsidiary of AES Corporation (US) and Mitsui (Japan), which operates the plant on a 25-year build-own-operate (BOO) basis.\textsuperscript{74}

**Water and sanitation**

The Ministry of Water and Irrigation embraces the two most important entities dealing with water in Jordan: The Water Authority of Jordan (WAJ) responsible for water and sewage systems; and the Jordan Valley Authority (JVA) responsible for the socio-economic development of the Jordan Rift Valley, including water development and distribution of irrigation.

Direct transfers from the Government to NEPCO and WAJ are reported to have amounted 6% of Jordan’s GDP in 2013.\textsuperscript{75} According to IMF, the situation is improving, and an updated action plan for the water sector was adopted at the end of December 2016 to this effect.\textsuperscript{76}

**Air Transport**

The Jordan Civil Aviation Regulatory Commission operates within the legal framework of the Civil Aviation Law No. 41 of 2007 and provides separation between regulation and aviation management. In 2012, two companies were licensed to operate scheduled services in Jordan: Royal Falcons (a sister company to Jordan International Air Cargo owned by the Royal Jordanian Air Force), and Royal Wings (a subsidiary of Royal Jordanian Airlines).

\textsuperscript{73} IMF Jordan 2017 Article IV Consultation Staff Report www.imf.org/~/media/Files/Publications/CR/2017/cr17231.ashx
\textsuperscript{74} US Department of State, op cit.
\textsuperscript{75} Ibid.
\textsuperscript{76} IMF Jordan 2017 Article IV Consultation, op cit.
Aviation and Petra Airlines (Air Arabia Jordan) were also licensed to provide scheduled services. Foreign ownership is however limited to a maximum of 49 per cent in scheduled and non-scheduled passenger and air transport; and auxiliary services are limited to Jordanian nationals or legal entities. There are three major airports in Jordan; two in Amman and one in Aqaba. Jordan's main airport is the Queen Alia International Airport in Amman, which is fully privatized and privately managed on the build-operate-transfer model. The national carrier, Royal Jordanian (Alia) has been transformed into a stock company in 2001, which is currently an SOE.

**Trade policy**

Jordan has maintained an open economy with the value of trade in goods and services (imports and exports) greater than GDP, the economy has grown and reforms to improve the trade and investment climate have continued. Jordan became a WTO member on 11 April 2000. It is a signatory to the Information Technology Agreement (ITA), and an observer to the Government Procurement Agreement.\(^{77}\)

**Public procurement**

Different systems of government procurement are applied by different government agencies and regulated under a number of laws. This makes the overall situation complicated. Furthermore, foreign equity restrictions on construction and contracting firms also act to limit access to government procurement contracts.

Government procurement in Jordan is grouped into three types, and is regulated by different government agencies, under different laws. Some government departments and corporations, such as the Aqaba Special Economic Zone, and sub-central government entities, have their own procurement legislation. SOEs also have their own procurement regulations. Jordan is preparing a unified procurement by-law, which is awaiting ratification by the Cabinet. The new by-law has provisions for almost all types of government procurement with several key reform features. It intends to separate policy and regulatory functions from operational functions, and to establish a policy and legislation unit, and a complaint remedy system.\(^{78}\)

**Subsidies and bailouts**

As seen above, there are price controls for electricity and water. Some utilities, such as the National Electrical Power Company (NEPCO) and Water Authority of Jordan (WAJ) made significant losses which, along with the cost of bread subsidies, imposed a considerable fiscal burden. The authorities are taking steps to reduce the burden and improve the efficiency of support to low-income households which they have already done in other areas, by replacing fuel subsidies with direct income support. According to the authorities, the Cabinet, upon recommendations from the Minister of the MITS, may determine the prices for any of the basic materials. The tariffs for a number of services are subject to price control, including certain telecommunications services, for compulsory motorvehicle insurance, postal services and public transport services. In 2013 and 2014, price ceilings for the foodstuffs were applied.\(^{79}\)

The Government has been providing subsidies to maintain these price controls, and in 2012, it began an action plan to reduce the impact of rising prices on low income households through

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\(^{77}\) WTO TPR, op cit.

\(^{78}\) Ibid.

\(^{79}\) Ibid.
targeted cash transfers. While bread remained subsidized, the prices of most other bakery products were liberalized.

**Taxation of public and private companies**

The Income Tax Law, which entered into force on 1 January 2015, raised tax rates, reduced the basic exemption allowance, and introduced a tax on the foreign branches of Jordanian companies. The new corporate income tax rate increased for most of the industries: in banking from 35% to 40%, in insurance from 24% to 40%, except for telecommunications, electricity and distribution where the tax rate remained at 24%. \(^{80}\)

The provisions in the law introduced a 10% withholding tax on dividend distributions made by public shareholding companies. An exemption to the dividend withholding tax would apply where the distribution is made to other public shareholding companies. No dividend withholding tax should apply on distributions made by unlisted companies.

The taxation system in Jordan is primarily composed of the general sales tax (GST), taxes on income and profits, and taxes on international trade and transactions. The biggest source of tax revenue is the GST, accounting for about two-third of total tax revenue. Jordan has provided regulatory easing for the free zones established to promote export-oriented industries and transit trade. They are open to foreign and local investors and exempt from taxation. Jordan has six public free zones: Zarqa, Sahab near Amman, Queen Alia International Airport, Al-Karak, Mouqar and Al-Karama. The Aqaba Special Economic Zone also benefits from tax burden exemption.

**Privatizations**

Over the last fifteen years, the Jordanian government has engaged in a wide-scale privatization program. Jordan's energy sector has witnessed the privatization of two distribution companies – the Electricity Distribution Company (EDCO) and the Irbid District Electricity Company (IDECO) - and one generation company, the Central Electricity Generating Company (CEGCO). Other partly or full privatizations included the telecommunications, energy and transportation sectors. \(^{81}\)

The privatization Law of 2000 was replaced in 2014 by the Public-Private-Partnership Law. The Law aims at encouraging the private sector to participate in economic development, provides a legislative environment for both the public and private sectors to develop, and to enable the public sector to manage and carry out projects funded by the private sector. Under this Law, a Partnership Council (chaired by the Prime Minister) was established. \(^{82}\)

**Relevant legislation**

On 22 May 2018, the Jordanian Cabinet approved a new draft law (“Proposed Law”) amending the Income Tax Law no. (34) 2014; and amendments to the deposit insurance law (end-March

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\(^{81}\) WTO TPR, op cit.

\(^{82}\) WTO TPR, op cit.
Bankruptcy law

There have been delays in enacting the secured lending and insolvency laws, which were benchmarked for March 2017 by IMF. The Insolvency Law was finally adopted in May 2018, and aims at enabling individuals and companies to reorganize their businesses when in a troubled financial situation under certain deals reached with creditors. Under the law, “insolvency” is defined as the state when an institution or individual can no longer meet its financial obligations towards lenders. The law also regulates the insolvency proceedings for foreign organizations operating in the Kingdom according to international conventions ratified by Jordan.

Investment

To simplify business procedures and improve the investment climate, several trade and investment related legislation was revised or amended, including the Customs Law (amended in 2012), Investment Law (2014), Income Tax Law (2015), Competition Law (2011), and Public-Private-Partnership Law (2014). In particular, under the Investment Law No. 30 of 2014 all the government agencies responsible for different aspects of investment were brought under one agency, which has simplified investment procedures.

However, although foreign and domestic investors are treated equally in most ways, differences remain in restrictions on land ownership, minimum capital requirements, and some sectors have foreign equity restrictions of 49-50% (including construction, wholesale and retail trade, international trade, and several services sectors). Moreover, foreign investment is prohibited in a few areas including road transport and real estate services.

Competition and price regulation

The institutional framework for competition law enforcement in Jordan is a three-tier structure composed of: The Competition Directorate, responsible for implementing the competition law; the Competition Affairs Committee, the advisory body of the Competition Directorate, which provides opinions and advice on competition policy and reviews matters related to the competition law; and finally the Judicial Council and the Ministry of Justice responsible for reviewing competition cases and dealing with the execution of specific provisions of the Law.

The Competition Law of 2004, amended in 2011 (Competition Law No. 18 of 2011), regulates anti-competitive agreements, abuse of dominant positions, and mergers and acquisitions. The Law applies to all production, commerce and service activities in Jordan, and any economic activities occurring outside Jordan but having an effect inside the country (Article 3 on the scope of application of the law).

The Law applies to all enterprises including SOEs. The competition law follows the principle of free determination of prices in accordance with market mechanisms and the principles of free competition, with the following exceptions:

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84 Ibid.
• prices of “essential commodities” subsidized by the Government: price controls may be applied pursuant to the Industry and Trade Law No. 188 of 1998 and other specific laws, on “essential commodities”, which are determined by the Council of Ministers; and
• temporary government control of prices in the case of emergencies or natural disasters.85

The prices of essential commodities are regulated by the Ministry of Industry, Trade and Supplies (MITS). MITS is responsible for importing and purchasing domestically produced wheat and barley, which it supplies to domestic bakeries. Flour for bread is sold to bakeries at subsidized prices and bread made from this flour is sold to consumers at fixed prices. Price controls are also applied to electricity, water, car insurance, postal services and public transport services.86

Conclusion? Jordan has a relatively open economy, with a large private sector. In markets open to private competitors, the laws do not provide for preferential treatment of SOEs and these compete under largely equal terms with private enterprises with respect to access to markets, credit, and other business operations.

Public sector operators in electricity and water distribution encounter heavy losses mainly for socio-economic reasons and are subsidized by the State. However, such subsidies are specific to these sectors and do not hamper the level playing field between private and public firms in the markets where they compete.

Lebanon

Lebanon has always had a vibrant private sector economy, and the country is renowned for its laissez-faire policies, its minimalist State, and its entrepreneurial tradition. Public ownership has generally been limited to infrastructure and utilities. Lebanon's economy has survived a civil war and is rapidly adapting to the changes in the world economy that imply a different development strategy for the future. The country benefits from a large and resilient remittance base (6.1 percent of GDP in 2015), a dynamic private sector, a large and profitable banking sector (total assets exceeding 350 per cent of GDP.87

However, the services-oriented economy is highly sensitive to political uncertainty. The large public debt constrains the state's ability to invest in productive sectors and crowds out private-sector activity. The current-account deficit remains wide, and the external position depends on politically sensitive financial inflows. 88

The legislative framework to support the tax and regulatory environment for hydrocarbons development and on public-private partnerships has been approved and licensing will progress slowly. Tax changes that came into effect on 1 January 2018 include changes to corporate tax, new levies in banking and construction and a percentage-point increase in the rate of value-added tax (VAT) to 11%.

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85 See Articles 4, 7 and 8 of the Competition Law No° (33) of 2004 and Amendments thereof.
86 Ibid.
The public sector

The Government of Lebanon maintains monopolies in the utility sector (telecommunications, electricity production and transmission, and four water authorities), tobacco procurement, manufacturing, and sales (La Régie des Tabacs et Tombacs), a mixed public-private casino (Casino du Liban), and the national airlines (Middle East Airlines), whose monopoly is scheduled to end in 2024. Other major SOEs or public institutions include the Beirut, Tripoli, Sidon and Tyre ports, an International Fair in northern Lebanon, the Sport City Center, and real estate development institution Elyssar.

The Ministry of Finance maintains an unpublished list of SOEs and public institutions. SOEs and public institutions have independent boards staffed primarily by politically-affiliated individuals, appointed by the Cabinet for public institutions and shareholders of SOEs. These boards always include a Cabinet-appointed Government Commissioner who reports to the concerned Ministries. SOEs do not currently adhere to the OECD Corporate Governance Guidelines. SOEs may independently prepare their budgets, which must be approved only by their board of directors. The SOEs and public institutions are required by law to publish an annual report, and to submit their books for independent audits as well as to send their books to the Court of Audit.89

Banking and finance

Lebanon has a large number of banks of all sizes: between 60 and 92 small, medium and large-size private owned commercial banks. In addition, the State owns shares in Intra Investment Co., a mixed public-private investment company, which has a majority shareholding in Finance Bank, a Lebanese commercial bank. Intra Investment Company was established in 1970 following the State’s restructuring of the collapsed Banque Intra.90

Finance Bank is one of the subsidiaries of Intra Investment Co. In 2015, the bank ranked the first within its category in terms of loans and advances to customers, first in terms of customer's deposits, first in terms of total assets and second in terms of profits. The bank provides a wide range of services, including subsidized Bank of Lebanon (the Central Bank) loans to support the development of the productive sectors in Lebanon (agriculture, industry, tourism, commercial, etc.), in addition to housing and environmental loans.91

Banks and other financial institutions in Lebanon fall under the jurisdiction of the Bank of Lebanon (Banque du Liban or BDL), the country's central bank, which is the banking regulatory authority. BDL controls entry into the banking industry, defines the scope of banking activities and sets prudential regulations and codes of practice for banks.

The Banking Control Commission (BCC), established in 1967, is the regulatory authority for the banking sector. It is responsible for supervising banking activities and ensuring compliance with the various financial and banking rules and regulations. The Lebanese banking system enjoys high financial standing and boasts a capital adequacy ratio of 14.6 percent as of June 2016. The total domestic assets of Lebanon’s five largest commercial banks reached

89 US Department of State, Bureau of Economic and Business Affairs : Investment Climate Statements for 2017 : Jordan https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm#wrapper
90 Ibid.
approximately USD 112 billion as of the end of 2016 (or about 52.1 percent of total Lebanese banking assets), according to BDL data.\textsuperscript{92}

The Capital Markets Law calls for the corporatization and subsequent privatization of the Beirut Stock Exchange (BSE) within a two-year period from the date that the Capital Markets Authority (CMA) is appointed. The cabinet appointed the CMA in June 2012 but has yet to undertake serious action to corporatize the BSE.\textsuperscript{93}

**Telecommunications**

The State owns Ogero, the incumbent landlines monopoly and two mobile companies, which are operated by private operators, Alfa and Zain. Alfa is managed by Orascom Telecom Media and Technology (Orascom TMT) of Egypt. Zain was tendered a 4-year agreement by the Lebanese government to manage one of the country’s two existing mobile networks, which operates under the name Touch.\textsuperscript{94}

**Electricity**

The Law restricts electricity production to Electricité du Liban (EdL), but numerous private investors operate unregulated generators across the country and sell electricity to citizens at significantly higher rates during the country’s frequent power cuts. EdL awarded several concessions to privately-owned companies for power distribution in specific regions. In April 2014, the Parliament granted the Cabinet the authority to license private companies to generate electricity through 2018. Since 2012, EdL contracted three private companies to manage bill collection, maintenance, and power distribution.\textsuperscript{95}

The electricity sector has not only been widely identified as Lebanon’s most pressing bottleneck, but it also remains a major drain on the budget. Indeed, over the 2006-2014 period, the Government transferred on average 4.5% of GDP each year to EdL, representing over 40 per cent of the current debt stock. The World Bank has long been active in promoting electricity reform. But progress has been hindered by political disagreements within the Government.\textsuperscript{96}

**Water and sanitation**

According to Law 221/2000, the water sector in Lebanon is primarily managed by the Ministry of Energy and Water (MoEW) on a national level, and on a regional level through four autonomous State-owned Water Establishments (WEs): North Lebanon, Bekaa, Beirut and Mount Lebanon and South Lebanon. The Litani River Authority (LRA) is considered similar to the regional WEs and is tasked with managing the major rivers in the country. These institutions were identified as primary stakeholders. Other stakeholders involved in the

\textsuperscript{92} Association of Banks in Lebanon http://www.abl.org.lb/subPage.aspx?pageid=360
\textsuperscript{93} US Department of State, op cit.
\textsuperscript{94} Telcoma http://www.telcomatraining.com/list-of-mobile-network-operators-of-lebanon/
\textsuperscript{95} US Department of State, op cit.
\textsuperscript{96} IMF 2016 Article IV consultations with Lebanon Staff Report 
https://www.imf.org/~/media/Files/Publications/CR/.../cr1719.ashx
management of the water sector include several other governmental institutions, in addition to non-governmental organizations.\textsuperscript{97}

**Air transport**

Middle East Airlines (MEA), the national carrier, is an SOE which is 99.5 per cent owned by the Central Bank. Its monopoly is scheduled to end in 2024. Plans to list 25\% of its shares on the Beirut Stock Exchange (BSE) as a first step toward privatization were reportedly postponed awaiting improvement in investor confidence to ensure that its shares will not be undervalued when traded on the BSE.\textsuperscript{98}

**Trade policy**

Lebanon has observer status at the WTO.\textsuperscript{99}

**Public procurement**

Lebanon has a procurement law that regulates public procurement. However, public institutions have separate procurement regulations under the law’s guidelines. The State often awards contracts by mutual agreement, without a tender, and does not always establish clear procedures for the process.\textsuperscript{100}

**Taxation**

SOEs and public institutions benefit from certain tax exemptions. In addition, private firms benefit from tax exemptions if they invest in sectors encouraged by Lebanon’s Investment Law, such as information technology, telecommunications, media, tourism, industry, agriculture, and agro-industry. In addition, companies that list 40\% of their shares on the Beirut Stock Exchange (BSE) are exempt from income tax for two years. The Law also introduces tailored incentives through package deals for large investment projects, regardless of the project’s location, which may include tax exemptions for up to 10 years, reductions on construction and work permit fees, and a total exemption on land registration fees.\textsuperscript{101} Moreover, Parliament enacted a law in April 2014 to reduce income tax on industrial exports by 50 per cent.\textsuperscript{102}

**Privatization**

The Government currently has no plans to privatize SOEs or public institutions. Middle East Airlines, which is 99.5 percent owned by the Central Bank, has postponed plans to list 25\% of its shares on the BSE as a first step toward privatization. It is reportedly awaiting improvement in investor confidence to ensure that its shares will not be undervalued when traded on the BSE.

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\textsuperscript{98} US Department of State, op cit.

\textsuperscript{99} WTO Members and Observers. https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

\textsuperscript{100} US Department of State, op cit.

\textsuperscript{101} Ibid.

\textsuperscript{102} Investment Development Authority of Lebanon (IDAL) http://investinlebanon.gov.lb/en/doing_business/investment_incentives
electricity sector (Law 462) were drafted in 2002. However, political dysfunction stalled their implementation. Parliament passed a two-year law authorizing the cabinet to issue Independent Power Producers (IPP) licenses to investors in April 2014. It later amended the law to extend its application through April 2018; however, the government has lagged in implementation. The Ministry of Energy and Water launched tenders in March 2017 for solar power plants under the IPP law.\footnote{US Department of State, op cit.}

**Relevant legislation**

There is no uniform definition of (SOEs) and each has separate internal by-laws. Decree 4517 (of 1972) establishes two types of public institutions, one administrative category that involves public enterprises like the Lebanese University, and a second that holds commercial aspects like EdL and La Régie des Tabacs.\footnote{Ibid.}

**Bankruptcy law**

Lebanon does not have a Bankruptcy Law as such; however, the Commercial Code (Book No. 5, Articles 459-668) and the Penal Code govern insolvency and bankruptcy. By law, a secured creditor has the right to a share of the assets of a bankrupt party.\footnote{Ibid.}

**Investment**

The current investment law of Lebanon (Law 360 of 16 August 2001, complemented by Decrees 9311 and 9326 of 21 December 2002) is not a comprehensive one. The law does not contain the provisions usually featured in an investment law, such as the core standards of treatment and protection applying to domestic and foreign investors. The Investment Development Authority of Lebanon (IDAL) is the national entity responsible for promoting investment in Lebanon and possesses the authority to award licenses and permits for new investment in specific sectors.\footnote{Ibid.}

The Law No.48 on public-private partnerships was approved in September 2017. PPP law details the tendering mechanism for PPP projects, including the general institutional framework. The main purpose of the PPP Law is not to regulate the numerous management contracts that are currently favored in Lebanon. Rather, the Law is aimed at the major infrastructure projects that fall under risk/return sharing schemes, excluding concessions. The government is committed to improving the business environment and encouraging domestic and foreign investment and public-private partnerships.

**Competition and price regulation**

Currently there is no competition law in Lebanon. Prices of essential commodities including electricity and water are regulated and subsidised. In the absence of a dedicated law, Decree Law 73/83 on Ownership of Products, Materials and Goods and their Trade of 9 September 1983, as amended by Laws 72/91 and 490/96, as well as the law on exclusive commercial representation and on e-commerce constitute the legal framework for competition.
The relatively small size of the Lebanese market is one of the factors explaining the high levels of market concentration and the monopolistic and oligopolistic market structure, and their impact on prices and investment (CUTS, 2006). After the advice provided by UNCTAD within the MENA programme, the draft competition law was reviewed in August 2016 in line with international best practices. A national awareness raising seminar on competition law and policy took place on 30 September 2016 in Beirut. This half-day workshop aimed at raising awareness of parliamentarians in this field by underlining the importance of having competition law and policy in the context of globalization and deregulation; and reviewing in depth the existing draft competition law in the light of the international best practices.

Policy advice

Apart from a few State monopolies in the utility sector, and SOEs inherited from the past, like Casino du Liban and Régie des Tabacs, Lebanon has a relatively open economy, where the private sector is dominant. The most important step for Lebanon in achieving an inclusive economic growth and promoting its consumers’ welfare would be to adopt a competition law and policy. A competition law covering both public and private sectors would also contribute to competitive neutrality and ensure that economic growth is not undermined by cartels and abuse of market power by dominant companies.

Morocco

Due to its political stability, solid infrastructure, and strategic location, Morocco is emerging as a regional manufacturing and export base for international companies. Actively encouraging and facilitating foreign investment, particularly in export sectors, through macro-economic policies, trade liberalization, investment incentives, and structural reforms, Morocco’s overarching economic development plan seeks to leverage its unique status as a multilingual nation with a tri-regional focus (toward Sub-Saharan Africa, the Middle East, and Europe) to transform the country into a regional hub for shipping, logistics, finance, manufacturing, assembly and sales. The Government of Morocco has implemented a series of strategies aimed at boosting employment, attracting foreign investment, and raising performance and output in key revenue-earning sectors, such as the automotive and aerospace industries.107

The public sector

As of March 2017, the Moroccan Treasury held a direct share in 212 SOEs and 44 companies. Several sectors remain under public monopoly, managed either directly by public institutions (rail transport, some postal services, and airport services) or by municipalities (wholesale distribution of fruit and vegetables, fish, slaughterhouses). The Office Cherifien des Phosphates (OCP), a public limited company that is 95 percent owned by the Moroccan government and 5% by the private sector, is a world-leading exporter of phosphate and derived products.

Morocco has opened several traditional government activities using delegated-management or concession arrangements to private domestic or foreign operators, which are generally subject to tendering procedures. Examples include water and electricity distribution, construction and operation of motorways, and the management of non-hazardous wastes. In some cases, SOEs continue to control the infrastructure while allowing private-sector competition through

107 IMF 2016 Article IV Consultation (Released Feb 2017)
https://www.imf.org/~/media/Files/Publications/CR/.../cr1736.ashx
concessions. SOEs benefit from budgetary transfers from the State treasury for investment expenditures. Law No. 69-00 on State Financial Control of Public Enterprises, adopted in 2003, defines Moroccan SOEs using three distinct categories:

(i) “State-owned companies” wholly owned by the state,
(ii) “Government-owned subsidiaries” whereby government bodies hold more than half the equity, and
(iii) “Semi-public companies” when public bodies hold between 5% and 50% of the equity.

Moroccan SOEs are overseen by boards of directors or supervisory boards governed by the Financial Control Act and the Limited Liability Companies Act. The Ministry of Economy and Finance’s Department of Public Enterprises and Privatization monitors SOE governance. Pursuant to Law No. 69-00, SOE annual accounts are publicly available. Under Law No. 62-99, the Financial Jurisdictions Code, the Court of Accounts and the Regional Courts of Accounts audit the management of several public enterprises. The State also holds significant shares in the main telecommunications companies, banks and insurance companies, as well as railway and air transport companies.

Banking and finance

Morocco has some of Africa’s largest banks, and several have become major players on the continent and continue to expand. The sector has several large, homegrown institutions as well as several subsidiaries of foreign banks. Among the 19 banks operating in Morocco, the top three account for over two-thirds of the banking system assets and deposits. The share of public banks has declined steadily to 16% from 40% in 2002. Foreign (mainly of French origin) financial institutions are majority stakeholders in seven banks and nine finance companies. The financial system also comprises several microcredit associations and financing companies, with combined assets of 10.5% of GDP.

Telecommunications

Turnover in the telecommunications sector increased on average by 4% per annum between 2008 and 2011, before experiencing an annual decline approaching 4.6% during the years 2012 to 2014. This decline can be mainly attributed to the strong competition in the various market segments, especially the mobile segment, which dragged down prices, with an exponential increase in the number of users. At the end of 2014, three global operators shared the fixed and mobile telephony and Internet market:

- Maroc Telecom or Itissalat Al Maghrib (IAM)) is Morocco's traditional operator. The French group Vivendi Universal, which held 53% of its equity, sold its entire stake to the operator Etisalat (UAE) in May 2014. The Moroccan State holds 30% of Maroc Telecom's equity and the rest (17%) is held by the public and quoted on the stock exchange. IAM increased its share of the fixed telephony market from 33% in 2010 to

57% in 2014, and its share of the Internet market from 56% to 58%. On the other hand, its share of the mobile market fell from 53% to 41%. However, it still remains a powerful operator in the three markets and the number-one provider of Internet access via ADSL.

- Médédi Telecom was set up in 1999 by a consortium including, in particular, the SpanishTelefónica group (32%), Portugal Telecom (32%) and the Deposit and Management Fund (CDG). Telefónica and Portugal Telecom withdrew in September 2009, selling their shares to their Moroccan partners FinanceCom (and its subsidiary RMA Watanya) and CDG (and its subsidiary Holdco), which became shareholders on an equal footing. In September 2010, the latter two concluded with the French group France Télécom an agreement allowing it to take a 49% stake in the equity of Médédi Telecom in two phases involving the acquisition of 40% in September 2010 and another 9% in the second quarter of 2015. The rest of Médédi Telecom’s equity is now shared between the FinanceCom Group (25.5%) and the CDG Group (25.5%). At the end of 2014, Médédi Telecom held a tiny share (1%) of the fixed telephony market, 31% of the mobile market; and 26% of the Internet market.

- Wana Corporate was the last to enter the market, in 2008. It holds 39% of the market for fixed telephony services with restricted mobility; 28% of the mobile market; and 17% of the Internet market. Wana Corporate is a subsidiary of the Moroccan holding company National Investment Company (SNI), which sold a 31% stake to the Kuwaiti consortium Zain Al Ajial in 2007.

- Among the other operators, Cires Telecom and Moratel SA are shared resources radio network operators; four are operators of public GMPCS satellite telecommunications networks; and three are VSAT operators. All these operators operate in niche markets.\(^\text{111}\)

The sector is regulated by the National Telecommunications Regulatory Authority (ANRT) established in 1998. Its functions include processing licence requests and authorizations for private networks, as well as allocating frequencies and numbering blocks, auditing operators, settling disputes about telecommunications and competition in the sector. It has exclusive rights to regulate competition in the telecommunications market.\(^\text{112}\)

In Morocco, the universal service covers telecommunications services generally, including services relating to land-use management and value-added services such as the Internet. It is financed from the Telecommunications Universal Service Fund (FSUT), which relies on contributions from the telecommunications operators amounting to 2% of their turnover, net of interconnection and terminal sales costs.\(^\text{113}\)

**Other utilities**

**Electricity**

Morocco is a net importer of electricity. In 2014, domestic production covered 82% of electricity demand. Electricity in Morocco is generated by the National Electricity and Water Board (ONEE) and by private concessionaires, namely, the Jorf Lasfar Energy Company (JLEC), Theolia, and Énergie électrique de Tahaddart (EET). In addition, there are independent

\(^{111}\text{WTO TPR 2016, op cit, page 125}\)

\(^{112}\text{Ibid.}\)

\(^{113}\text{Ibid, page 128.}\)
generators, such as mines and phosphate treatment plants, which generate electricity mainly for their own needs.

Transport of electricity is provided exclusively by ONEE. The State's share of national electricity generation is around 37%. ONEE supplies the domestic market from its own power stations. Electricity is distributed by ONEE (58% of sales in 2014), municipal electricity boards, and private distribution companies. ONEE has a monopoly on power plants with a capacity of more than 50 mw, but it is authorized to conclude agreements in the form of concessions with private operators for the generation of electricity at capacities in excess of 50 mw, provided that the generator supplies the power generated exclusively to the ONEE. In such cases, competitive tendering is compulsory. Law No. 54-14 allowed industrial firms to generate electricity for their own needs and by their own means at capacities of 300 mw or more.114

Water and sanitation

Water supply and sanitation in Morocco is provided by a wide array of utilities. They range from private companies in the four largest cities, to public municipal utilities in 13 other cities, as well as the National Electricity and Water Board (ONEE), which is the main operator in Morocco in the area of water and sanitation. It is responsible for the production of drinking water as it produces 83% of the nation’s potable water. ONEE’s branch dealing with water supply and sanitation is also responsible for quality management and water supply transmission to the local agencies. It also contributes in wastewater collection and treatment and the management of sanitation services.115 Several activities that were traditionally run by the Government are now open to private domestic or foreign operators, under the delegated management or concession arrangements generally subject to tendering procedures, including in water distribution and the management of wastes.

Air transport

The Moroccan airlines are Royal Air Maroc (RAM) and its low-cost subsidiary RAM Express, which are partly State-owned, and Air Arabia (Moroc), which is private. Airport services are managed by public institutions.116

Rail transport

The State still retains a de facto monopoly on the construction, operation and management of railroads for transporting passengers and goods, through the National Railway Board (Office National des Chemins de fer, ONCF). In 2015, the French National Railway Company (SNCF) and the ONCF signed an agreement to set up a joint company to maintain the future Moroccan high-speed rail service (TGV) and a maintenance contract for a 15-year term.117

Trade Policy

Morocco is a WTO member since 1995. The latest WTO trade policy review dates back to 2016.

114 Id, page 110.
115 ONEE Branche Eau, http://www.onep.ma
116 WTO TPR 2016, op cit, page 121.
117 Ibid, page 117.
Public Procurement

Government procurement accounts for around 15% of GDP and a large share of turnover in sectors such as construction (70%) and engineering (80%). The General Treasury of the Kingdom (TGR) is responsible for monitoring the legality of the operations and for prior verification of the availability of financial credits and resources. Contracts awarded by SOEs and public institutions have to be approved by State controllers and paymaster generals pursuant to the provisions of Law No. 69-00 on State financial control of SOEs and Public Institutions. The Court of Audit and the regional courts of audit also play a role in monitoring government procurement. The Procurement Commission, which is attached to the General Secretariat of the Government, has competence, *inter alia*, for giving an opinion on draft legislative or regulatory texts on government procurement, drawing up instructions for the procurement services, proposing provisions to supplement the regulations, and codifying and updating the latter. Morocco does not have any central government procurement board or any single authority responsible for awarding contracts. Ministries, SOEs and local authorities award contracts themselves.\(^\text{118}\)

On 1 January 2014, a new Government Procurement Code came into force in Morocco following the adoption of Decree No. 2-12-349 repealing Decree No. 2-06-388 of 2007. The first feature of the new Code is to make the Government Procurement Code applicable (in addition to all government and regional authorities) to the public institutions listed in an order of the Minister of the Economy and Finance. The second is the redefinition of the most economically advantageous bid. According to the new regulations, the most economically advantageous bid is that acceptable as regards technical and operational quality and offering the lowest price taking into account the economic assessment of the cost of use and/or maintenance.\(^\text{119}\)

The entry into force of Decree No. 2-12-349 of 20 March 2013 on Government procurement gave competitors for government contracts more equal access, more equitable treatment of bidders and firmer guarantees of the rights of competitors and contractors, along with increased automation of procedures so as to make the administration of contracts more transparent and effective. The amendments to the Code have several objectives such as transparency, harmonization of procedures, close involvement of Moroccan industry in government procurement, protection of the environment and sustainable development goals. Decree No. 2-12-349 also reaffirmed the preference that may be given to Moroccan enterprises for contracts for works and related design contracts, which remains limited to 15%. Other legal texts also apply to government procurement, including the Decree on the National Government Procurement Commission of 28 September 2015, to enter into force on 1 January 2016.\(^\text{120}\)

Morocco is neither a party nor an observer to the WTO Plurilateral Agreement on Government Procurement.

Subsidies and bailouts

Morocco has two public institutions that intervene in the subsidy system, with a major impact on the country's public finances: The Compensation Fund, which acts to stabilize energy and sugar prices; and the National Interprofessional Cereals and Pulses Board (ONICL), which

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\(^\text{118}\) WTO TPR 2016, op cit. page 79.  
\(^\text{119}\) Id.  
\(^\text{120}\) Id.
subsidizes flour. These measures aim to support the purchasing power of the most vulnerable social sectors, specifically by alleviating the impact on consumers of variations in the international prices of these products.

Recognizing that the increase in these expenses, and borrowing to finance them, aggravate the country’s macroeconomic vulnerability and reduce resources available for public investment, the Government introduced reforms in this domain in 2013, by partially indexing the prices of certain petroleum products. It has also engaged in hedging operations to cover any rise in international diesel prices. In 2014-2015, the reform process was continued with a view to total liberalization of the prices of petroleum products.¹²¹

**Taxation of public and private sector**

As stressed by the OECD, in practice, the taxation of private individuals and corporate entities differs significantly depending on whether the firms are informal, and thus largely escape taxation; or are in the export sector, and thus receive major tax benefits; or are in the non-exporting formal economy, which is heavily taxed.

With the aim of helping small and particularly very small enterprises to move into the formal sector, the status of self-entrepreneur (*autoentrepreneur*) was created in January 2015. Although activities eligible for this status are mostly in the crafts sector, trade, small-scale non-automated production and services are also covered. According to the authorities, this status affords many advantages which include the simplification of procedures for setting up a business and cessation of activity; exemption from commercial registration; electronic payment of a specific income tax and exemption from VAT; social coverage; and exemption from seizure of the entrepreneur's main domicile. To encourage entry into the formal sector, the National Agency for the Promotion of Small and Medium-Sized Enterprises (ANPME) finances 50% of expenses relating to the administrative formalities involved in forming a corporate entity or registration in the Register of Self-Entrepreneurs, with a ceiling of DH 2,000 per beneficiary.¹²²

**Privatization**

Privatization in Morocco is governed by Law No. 39-89, authorizing the transfer of SOEs to the private sector, as amended and supplemented. The Law defines three methods of privatization: bidding, direct sales or sales on the financial market. Bidding is the method most commonly used (over 50% of the revenue generated in 2009), followed by direct sale (30%) and public offer of sale on the stock exchange (19%). Privatization transactions are subject to post-transfer follow-up of the buyer's contractual undertakings on investment and job protection throughout the period fixed in the contract of sale, usually five to ten years. At the operational level, follow-up takes the form of a regular exchange on the state of progress in the investment programmes and visits to the site of the company concerned. In the case of sale of State holdings in companies marketing cotton, oilseeds or selected seeds or companies that process sugar beet and cane, fruit and vegetables, or engage in cotton ginning, priority is given to agricultural cooperative associations. In such cases, the procedure followed is limited competitive tendering.¹²³

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¹²¹ Id.
¹²² Ibid.
¹²³ Ibid.
The Moroccan Government’s privatization programme was initiated in 1993, enabling Morocco to channel a large volume of foreign direct investment to key sectors such as telecommunications, energy, agri-business, financial services, and tourism. When this program ended in August 2011, total revenue from divestment of SOEs and the granting of telecommunications licences totaled approximately USD 13 billion. The State still holds significant shares in the main telecommunications companies, banks, and insurance companies, as well as railway and air transport companies. However, the Government has opened several traditional government activities using delegated-management or concession arrangements to private domestic or foreign operators, which are generally subject to tendering procedures. Examples include water and electricity distribution, construction and operation of motorways, and the management of non-hazardous wastes. In some cases, SOEs continue to control the infrastructure while allowing private-sector competition through concessions.124

Some examples of recent privatizations include the Tobacco Board, an SOE which had a general monopoly on the growing, manufacture, sale, purchasing, import and export of tobacco and tobacco products, and the Renault-Nissan factory in Tangiers, in which the Deposit and Management Fund (CDG) had a 47.6% share.125

**Relevant legislation**

Broadly speaking, the relevant legislation applies equally to Moroccan and foreign legal entities and to domestic or foreign investment (direct and portfolio), with the exception of certain monopolies (e.g. phosphate mining), certain provisions regarding foreigners in the natural resource sector and the acquisition of agricultural land. Morocco places a 49% cap on foreign ownership of capital in air transport companies and maritime transport companies as well as marine fishing companies. Access for foreign investors to the ownership of agricultural land is also restricted to long-term leases (99 years maximum). There is a substantial presence of foreign investors in the agricultural sector, especially as regards agricultural land concessions previously managed by government agencies.126

The Moroccan National Commission on Corporate Governance was established in 2007. It prepared the first Moroccan Code of Good Corporate Governance Practices in 2008. Based on the OECD Principles of Corporate Governance, it applies to both the private and public sectors. Recognizing the specific features of the SOE sector, the Commission drafted in 2011 a code dedicated to SOEs, drawing on the OECD Guidelines on Corporate Governance of SOEs. The code, which came into effect in 2012, is aimed at enhancing SOEs’ overall performance. It requires greater use of standardized public procurement and accounting rules, outside audits, the inclusion of independent directors, board evaluations, greater transparency, and better disclosure. The Moroccan government prioritizes a number of governance-related initiatives including an initiative to help SOEs contribute to the emergence of regional development clusters. The government is also attempting to improve the use of multi-year contracts with major SOEs as a tool to enhance performance and transparency.127

**Bankruptcy law**

Morocco’s bankruptcy law is based on French law. Commercial courts have jurisdiction over

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124 US Department of State, op cit
125 WTO TPR 2016, page 114.
126 Ibid.
127 US Department of State, op cit
all cases related to insolvency, as set forth in Royal Decree No. 1-97-65 (1997). The Commercial Court in the debtor’s place of business holds jurisdiction in insolvency cases. The law gives secured debtors priority claim on assets and proceeds over unsecured debtors, who in turn have priority over equity shareholders. Bankruptcy is not criminalized. The Ministry of Justice and Liberties (MOJL) is currently redrafting Livre V, the national insolvency code. The draft law intends to shift the focus of bankruptcy from liquidation and restructuring to prevention and settlement. The World Bank’s 2017 Doing Business report ranked Morocco 131 out of 190 economies in “Resolving Insolvency.”

**Investment**

Law 18-95 of 1995, constituting the Investment, is the principal Moroccan text governing investment and applies to both domestic and foreign investment (direct and portfolio). The Investment Charter offers many tax exemption schemes depending on whether the investment is in special regions of the country and offers employment opportunities. In 2014, Morocco launched its Industrial Acceleration Plan, a new approach to industrial development based on establishing efficient "eco-systems" that integrate value chains and supplier relationships between large companies and SMEs. The Moroccan Agency for Investment Development (AMDI) is Morocco’s primary agency responsible for the development and promotion of investment in Morocco. The Agency’s website aggregates relevant information for interested investors and includes investment maps, procedures for creating a business, production costs, applicable laws and regulations, and general business climate information, among other investment services. Morocco acceded to the OECD Declaration on International Investment and Multinational Enterprises in November 2009, which guarantees national treatment of foreign investors. The only exception to this national treatment of foreign investors is in those sectors closed to foreign investment which were notified upon accession to the Declaration.

**Public-Private Partnerships**

Among the most notable developments in recent years, is the entry into force of Law No. 86-12 on public-private partnership contracts of February 2014 and its implementing Decree of 7 May 2015. The new law defines the PPP as a time-limited contract between a public entity and a private enterprise, awarded by a tendering procedure (described under articles 4, 6, 7 and 8), to achieve a specific activity, financed in part or totally by the private partner, with respect to a public service. The law provides for follow-up and control of the private partner’s compliance with the contract (Article 18), and termination in case he does not fulfill the contract appropriately (Article 19) and his eventual replacement (Article 21).

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[http://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB17-Report.pdf](http://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB17-Report.pdf)


131 US Department of State, op cit.

132 Loi 86-12 relative aux contrats de partenariat public-privé [https://ribh.files.wordpress.com/2015/05/loi_86-12_fr.pdf](https://ribh.files.wordpress.com/2015/05/loi_86-12_fr.pdf)

Competition and price regulation

With the enactment of Morocco's new Constitution in July 2011, the legislation on competition and pricing moved to a new stage marked by the publication of Law No. 104-12 on free pricing and competition and Law No. 20-13 on the Competition Council in August 2014. These laws confirm the functions of the Competition Council. Henceforth, the Council may itself (ex-officio) deal with any matters affecting competition in Morocco. The independence of the Competition Council is enshrined in Article 166 of the Constitution.

Law No. 104-12 lays down the principle of market prices under Article 2, which are determined by the free-play of supply and demand. However, the same article goes on to limit this freedom, by referring to the list of goods and services whose prices are regulated, after consultation with the Competition Council. Article 3 provides that prices can be regulated by administration after consultation with the Competition Council, in particular in sectors or geographic zones where competition is limited because of situations of legal monopolies, or because of subsidies of the administration supporting production or commercialization in sectors suffering from long-term supply difficulties. Article 4 deals with temporary measures aimed at regulating prices of goods or services in exceptional situations of crisis or calamity.

At present, the following prices continue to be controlled by the State: subsidized goods (Moroccan common wheat flour, sugar and petroleum products), basic services (drinking water, liquid sanitation, electricity, passenger road transport, urban passenger transport, school books), health products and services (pharmaceuticals, medical acts and services in the private sector, acts by midwives and nurses in the private sector), products and services under a monopoly (manufactured tobacco), as well as acts by notaries.133

Conclusion

Morocco has made considerable progress in streamlining monopolies and SOEs, and while many prices remain regulated or under administrative control, efforts are made to reduce State subsidies and bailouts. While privatizations have been popular in the 1990s up to 2011, with the entry into force of the law on public-private partnerships, it seems that the Government will focus on public-private joint ventures to modernize and streamline the remaining SOEs and monopolies, while reducing the scope and extent of privatization.

State of Palestine

The Palestinian economy is suffering from volatile and unsustainable growth. For a small economy like the State of Palestine, achieving a sustainable growth path depends to a large extent on its capacity to compete in regional and global markets and increase its exports. Despite a 4.1 per cent growth in GDP in 2016, the productive capacity of the Palestinian economy continued to erode. The economic performance was far below its potential and unemployment persisted.134 In 2016, unemployment remained extremely high, at 18 per cent in the West Bank,

133 WTO TPR 2016, op cit.
134 Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory* (TD/B/64/4).
42 per cent in Gaza and 27 per cent in the Occupied Palestinian Territory; more than twice the regional average.

According to a 2017 World Bank report, however, the Palestinian economy’s competitiveness remains weak as result of a poor business climate mainly driven by externally-imposed restrictions on trade and access to resources in addition to lack of political stability.\(^{135}\)

**The Public sector**

There are no SOEs in the State of Palestine. Public sector employment in the West Bank and Gaza is equivalent to 4.6 per cent of the Palestinian population. Even if one adds the employees hired by the de facto authority in Gaza, the ratio remains close to 5 per cent.

Since 2006, private companies and entrepreneurs have been responsible for more than 65% of net jobs created. More recently, in a difficult context, the private sector achieved impressive double-digit growth of 13.5% and 10.1% in 2011 and 2012, respectively. Analysis suggests that the private sector can most effectively contribute to economic growth by concentrating its efforts in five sectors with the greatest potential: Agriculture, information technology and digital entrepreneurship, tourism, construction and energy. While there are important opportunities for initiatives to drive growth in many of the 20 sectors, including in manufacturing, these five prioritised sectors were found to have the capacity to maximize immediate and long-term opportunities as well as positive externalities.\(^{136}\)

Although there are no SOEs, some observers have noted that the Palestine Investment Fund (PIF), which essentially acts as a sovereign wealth fund, enjoys a competitive advantage in some sectors, including housing and telecommunications, due to its close ties with the State of Palestine. The import of petroleum products falls solely under the mandate of the Ministry of Finance’s General Petroleum Corporation, which re-sells the products to private distributors at fixed prices.\(^{137}\) The Palestinian Electricity Transmission Company (PETL) was established in 2013 as the single buyer and transmission network operator for the Palestinian energy sector.

The largest private foreign company in the West Bank/Gaza is the Palestine Development and Investment Company (PADICO), which has invested over USD 250 million in the economy. PADICO has grown its portfolio of investments to include almost every sector that is vital to nation-building, with returns from these investments rewarding the shareholders. These sectors include telecommunications, tourism, real estate, energy and environment, manufacturing, finance and capital markets and agriculture.\(^{138}\)

**Banking and Finance**

The Palestinian banking sector is considered to perform well under the supervision of the Palestine Monetary Authority (PMA). The PMA is steadily building many of the capabilities.

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137 US Department of State 2017 Investment Climate Statement West Bank and Gaza https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm#wrapper

138 PADICO Holding http://www.padico.com/en
of a central bank. It provides rigorous supervision and regulation of the banking sector, consistent with international practice. The PMA oversees 15 banks with 260 branches and offices in the West Bank and Gaza, several of which are foreign banks, mostly Jordanian.\textsuperscript{139}

The largest bank, Bank of Palestine (BOP), has around 30% market share of deposits and loans in the State of Palestine. Operating as a universal bank, BOP is engaged in retail, corporate, SME and micro, and diaspora banking operations, with the largest card processing operations in the State of Palestine. It is the sole agent for issuing and acquiring Visa and MasterCard with over 6,230 point of sale merchant terminals nationwide. Recently, BOP has also played a leading role in some of the largest project finance loan syndications in the country.\textsuperscript{140}

Other banks include Arab Islamic Bank, Palestine Islamic Bank, Palestine Investment Bank, Al Quds Bank, the National Bank TNB, Palestinian Commercial Bank, Arab Bank, and many foreign banks, including Cairo Amman Bank, Bank of Jordan, Egyptian Arab Land Bank, Jordan Kuwait Bank and Safa Bank.\textsuperscript{141}

The financial sector also includes the Palestine Investment Fund (PIF), which acts as a sovereign wealth fund, owned by the Palestinian people. PIF’s investments in 2015 were concentrated in infrastructure, energy, telecommunications, real estate and hospitals, micro, small and medium enterprises, large caps, and capital market investments.\textsuperscript{142}

\textbf{Telecommunications}

In 1995, with the signing of the Oslo Accords, Palestinians were promised direct control over their domestic and international telecommunication network.\textsuperscript{143} In 1996, the Palestine Telecommunications Company (PalTel) was awarded a licence to build, operate, and own all landlines, cellular networks, data communications, paging services, and public telephones. To date, however, the Palestinian network is not truly independent because the Israeli government keeps the Palestinian telecommunications network dependent on Israeli networks.\textsuperscript{144}

In 1999, Israel granted PalTel frequencies to launch Jawwal, the first Palestinian mobile telephone service in Gaza and the West Bank. Today, the PalTel Group belongs to PADICO Holding, and consists of:

- Palestine Telecommunications Company (PalTel) which provides fixed line, internet access via BSA and other value-added services,
- Palestine Cellular Communications Company (Jawwal), the first mobile operator in the State of Palestine,
- Hadara Technology Investment Company, the biggest internet service provider in the State of Palestine,

\textsuperscript{139} US Department of State 2017, op cit.
\textsuperscript{140} See Bank of Palestine (BOP) https://bankofpalestine.com/en/tr/factsheet
\textsuperscript{141} Association of Banks in Palestine http://www.abp.ps/files/server/20172105094628.pdf
\textsuperscript{142} US Department of State 2017, op cit.
\textsuperscript{144} The telecommunications and IT Sectors in Palestine, by Mashhur Abudaka, in This Week in Palestine, July 2017. http://thisweekinpalestine.com/telecommunication-sector-palestine/
• Reach for Communications Services Company, the first contact centre in the State of Palestine; and
• Palmedia for Multimedia Services Company the media arm of PalTel Group.¹⁴⁵

The second Palestinian mobile operator Wataynia (48,45% owned by Ooredoo from Qatar, and 34,03% by the Palestinian Investment Fund) was granted its license in 2006, but actual operation started in 2008 after Israel agreed to free frequencies for its operation only in the West Bank.

In 2009, the Palestinian Ministry of Telecommunication and Information Technology (MTIT) started to initiate fixed-line liberalization by separating the Internet services from line access, a process called « Bit Stream Access ». For the first time, Internet Services Providers (ISPs) were able to compete in the Internet market, while Paltel services in the area of data remained confined to providing line of access. Today, about ten companies compete to provide Internet services in the Palestinian territories. ¹⁴⁶

Other utilities

Electricity

The Palestinian economy is highly dependent on imports to satisfy its energy needs, with 95% of electricity imported from Israel. The overall cost of energy is also relatively high: energy makes up 6.4% of Palestinian household expenditure, compared to 2.7% in Israel. At the same time, low energy consumption levels in the industrial sector suggest that the limited availability of expensive energy is stifling potential industrial development and growth. In 2010, the total electricity need in the West Bank and Gaza was estimated to be around 6,200 GWh, against a supply of around 4,300 GWh.¹⁴⁷

The Palestinian Energy and Natural Resources Authority (PENRA), established in 1995, launched key institutional reforms including the consolidation of numerous small municipality and village councils’ (MVC) electricity services into larger distribution companies (DISCOs) to benefit from economies of scale. In 2009, the Palestinian Electricity Regulatory Council (PERC) was established with a mandate of regulating the energy sector. In 2013, the Palestinian Electricity Transmission Company (PETL) was established as the single buyer and transmission system operator for the Palestinian energy sector. However, the political division between the Palestinian National Authority (PNA) and the Hamas led authority in Gaza, reduces the ability of PENRA, PETL and PERC to exercise their jurisdiction in Gaza.

Another problem is the net lending, resulting in unplanned energy subsidies paid through local governments’ budget. To a significant extent, local government units finance their operating budgets by selling electricity and other utility services provided to them by Israeli companies and leaving the PNA to repay some or all the costs (these are deducted by Israel from clearance

¹⁴⁵ https://www.padico.com/en/about-padico/overview
revenues due to the PNA, along with an 11 per cent late fee). As a result, the PNA finds itself providing unplanned subsidies of over US$200 million per year (2% of GDP) to the local government units. The Ministry of Finance attempts to recover those losses by withholding revenues otherwise due to local government units (municipal property tax, professional permit fees, transportation tax, etc.), but these intercepts by no means offset utility non-payments and lead to disputes and chaotic budgeting. As a result, the PNA is compelled to subsidize electricity distributors for their non-payment of electricity purchases from Israel Electric Corporation (IEC).  

**Water and sanitation**

The current water and sanitation sector legislation was established after the 1995 Oslo Accords, with a by-law establishing the Palestinian Water Authority (PWA) in 1996, a Water Resources Management Strategy in 1998 and the Water Law of 2002, which clarifies the responsibilities of the PWA and establishes a National Water Council (NWC) with the task to set national water policies. The PWA acts as regulatory authority.

Revenues from water tariffs are insufficient to cover the operating costs of the water supply, which is insufficient to meet overall demand. The supply shortfall is made up by Mekorot, the National Water Company of Israel. In addition, it was estimated in 2002 that losses of water in the network were around 28% in the West Bank and up to 50% in Gaza. Delays in repairs and a lack of electricity and fuel which would be necessary to operate the wastewater treatment facilities result in large amounts of untreated or partially treated wastewater being discharged into the sea since January 2008, threatening the environment in the region.

**Air Transport**

The State of Palestine has no running airport nor a national carrier at present.

**Trade Policy**

The State of Palestine is not a WTO member, but is actively preparing for an eventual observer status; and participated in the 2005, 2009, 2011 and 2013 WTO Ministerial meetings as an ad hoc observer.

**Public Procurement**

Among the requests of the private sector, listed in a document on “The Private Sector’s Position”, request N°9 stated that: “The PNA should be committed to a more effective implementation of its contractual arrangements and agreements with the private sector. This pertains particularly to avoiding delay in settling outstanding payments to the private sector for goods and services procured by the PNA. It is unfortunate that the Governmental procurements practices in the past became a de-development factor that threatened the growth and

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150 US Department of State, op cit.
continuity of many companies, instead of functioning as a reviving tool for the private sector.”

**Subsidies and bailouts**

Energy subsidies are among significant sources of expenditures in the PNA’s budget. Although the PNA has significantly reduced the amount of fuel subsidies over the past year, subsidies still cost US$150 million per year. Also, as seen above, revenues from water tariffs are insufficient to cover the operating costs of the water system at the current tariff level. Another major problem is that desalination is very energy-intensive, while the import of fuel to produce the necessary electricity is restricted by Israel and Egypt. Moreover, as mentioned before, the PNA has been compelled to subsidize electricity distributors for their non-payment of electricity purchases from Israel Electric Corporation (IEC) through a mechanism known as “net lending”.

**Taxation of public and private sector**

In an effort to improve the income tax system and reduce the tax burden on individuals, the State of Palestine passed new legislation on income tax brackets for individuals and companies in 2004, followed by a Presidential Decree to amend the income tax law No.8 of 2011. For companies, this is a change from a 20% rate to a 15% flat rate. For individuals, this is a significant change from a progressive bracket of 5-20% to 5-15%.

With respect to direct or indirect taxation of the private sector, it is interesting to consider among the requests of the private sector, listed in the document on « The Private Sector’s Position », cited earlier in this report, request N°4, asking to « Revoke all privileges, concessions and monopolies granted without solid national economic grounds and justifications. The PNA should not grant any new privileges, concessions and monopolies. » and request N° 12 : « Reconsider the licensing policy and other pertinent fees imposed on the private sector, which is increasing the administrative and financial burdens on the citizens, companies and other institutions. »

**Privatization**

Although there are no SOEs as such, it is interesting to note the request N°2 of the Palestinian Private Sector Position, to the effect that : the PNA is invited to « Privatize all PNA commercial activities and shareholdings in a most professional and transparent fashion.»

**Relevant legislation**

The PNA adopts a market economy philosophy based on the private sector driven development and this requires a comprehensive range of economic legislation. The Ministry of National Economy (MoNE) has been taking concrete steps towards reforming the business environment in the Palestinian territories with support from the World Bank and the Palestinian Market

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152 World Bank Report, op cit.  
153 Palestinian Investment Promotion Agency (PIPA) http://www.pipa.ps/page.php?id=1bc27fy1819263Y1bc27f  
154 The Palestinian Private Sector Position, op cit.  
155 Ibid.
Development Program (funded by the United Kingdom Department for International Development (DfID) and the European Union). A series of laws and regulations relevant to the private sector have been identified as priority reform areas, including the Securities Transactions Law, which was enacted in mid-2016. In addition, consideration is being given to streamline the procedures for business licensing.  

**Bankruptcy law**

The World Bank’s 2017 Doing Business Report did not cite any cases involving a foreclosure, liquidation or reorganization proceedings filed in the country in the last 12 months. According to that report, no priority is assigned to post-commencement creditors, and debtors may file for liquidation only. With the assistance of international donors, is in the process of drafting a number of proposed laws related to bankruptcy, but no bankruptcy reform has been enacted. In the updated Companies law, there will also be a chapter on insolvency.  

**Investment**

Different institutions have been created to develop and promote investment, including the Palestinian Investment Promotion Agency (PIPA) and the Palestinian Industrial Estate and Free Zone Authority (PIEFZA). In addition, the PNA has created a framework of economic laws to encourage local investments and attract FDI to the State of Palestine. These laws include: The Law on Investment Promotion, Industrial Estates and Free Zones Law, Capital Markets Authority Law and the Palestinian Monetary Authority Law.

The PIPA was established by Law (1) of 1998 on investment promotion and operates in accordance with its subsequent amendments, the latest of which is Decree No 7 of 2014. Article 9, amending Article 24 of the law of 1998, states that: “The Agency’s Board of Directors may, to advance the public interest and subject to the nature of the project’s activity, geographical location, the extent to which the project contributes to increasing exports, creating job opportunities, to advance development, transfer knowledge, support research and development or for the purposes of enhancing the public benefit services, conclude an incentive package contract in which this project may benefit from the taxation incentive and support services specified in this contract; provided that all contract items shall be met and fulfilled.”

**Competition Law and Price Regulation**

There is no competition legislation as such in the State of Palestine. However, there are some references in existing laws that deal with activities harmful to competition. For example, Penalty Law 16 of 1960 stipulates that any person tampering with prices by raising them or lowering them to affect supply and demand in the market shall be imprisoned for a maximum

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of one year and fined 100 Jordanian dinars. The draft Palestinian law on trade and the protection of industrial property includes articles that prohibit illegal competition.  

Currently, there is work in progress towards adopting a competition law. UNCTAD MENA Programme assisted the State of Palestine in the revision of its draft competition law and regulations. A national awareness raising seminar on competition law was held with the MENA programme on 27 September 2016 in Ramallah, State of Palestine. The seminar aimed at raising awareness of participants on the importance of competition law and policy for economic development; and reviewing in-depth the existing draft competition law in light of international best practices. The participants included members of the Government and Parliament, judiciary, academics, private sector, representatives of competition directorate, representatives of consumer organizations and the media. Following this awareness-raising seminar, the Minister of National Economy decided to establish a high level national technical committee to review and amend the draft competition law.

Conclusion

The Palestinian economy is mainly driven by the private sector. Therefore, it is essential for the country to move forward and adopt competition legislation to prevent possible distortions to competition and create a business environment where the private sector could better contribute to economic growth.

Tunisia

Despite the socio-political crisis that hit Tunisia at the end of 2010 and the disruptions that followed, including a series of attacks culminating in 2015, economic growth has remained positive, largely due to the relative diversification of the country’s economy, its trade performance, and well-educated labour force. Trade remains extremely important for the Tunisian economy, with a ratio of trade in goods and services to GDP of around 90%. However, the fall in the share of exports in GDP (from 45% in 2005 to 39% in 2015) coupled with a rise in the share of imports (45% to 50%) suggest that reforms are needed to revive the competitiveness of Tunisian enterprises.

The Public sector

SOEs play a large role in Tunisia’s economy. Some sectors are not open to foreign investment. The informal sector, which is estimated to be between 40 and 60 per cent of the economy, continues to pose difficulties to companies forced to compete with smuggled goods.

Many SOEs compete with the private sector in industries such as telecommunications, banking, and insurance. There are monopolies in other sectors considered sensitive by the Government, such as railroad transportation, water and electricity distribution, postal services, and port logistics. Importation of basic staples and strategic items such as cereals, sugar, edible oil, and steel also remain under SOE control. Senior management officials of SOEs are appointed by

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the Government and report to their respective ministries. The board of directors for each SOE comprises representatives from various ministries and public shareholders depending on the relevant sector. Like private companies, SOEs are required by law to publish independently audited annual reports, regardless of whether corporate capital is publicly traded on the stock market. In addition, the Government encourages SOEs to adhere to OECD Guidelines on Corporate Governance, but adherence is not enforced.\textsuperscript{162}

**Banking and Finance**

Tunisia hosts 32 banks, of which 21 conduct both commercial and investment services. Two are Islamic universal banks, seven are offshore, and two are business banks. After the fall of the former regime, companies, banks, and real estate that belonged to former President’s family were brought under State control. This concerns three banks, Société Tunisienne de Banque (STB), Banque Nationale Agricole (BNA) and Banque de l’Habitat (BH), which are now property of the State. In addition, the State is reported to own minority shareholdings in 7 other banks. Under the conditions of a four-year IMF Extended Fund Facility (EFF) arrangement approved in May 2016, the State is expected to disengage itself from the banking sector.\textsuperscript{163}

In the World Bank’s 2017 *Ease of Doing Business* survey, Tunisia’s ranking improved in terms of ease of access to credit from 126 in 2016 to 101 in 2017. According to the IMF *Financial System Stability Assessment*, the banking sector faces significant challenges such as a weak domestic economy and the legacy of the previous regime. In particular, loan quality, solvency, and profitability have deteriorated. Weak underwriting practices contributed to inappropriate lending to well-connected borrowers. Tunisia’s 25 onshore banks offer essentially identical services targeting the same segment of Tunisia’s larger corporations. Meanwhile, SMEs and individuals often have difficulty accessing bank capital due to high collateralization requirements. Moreover, investment banks and credit agencies tend to associate SOEs with the Government and therefore consider them having better risk profile for lending purposes.\textsuperscript{164}

Government regulations hold down lending rates. This prevents banks from pricing their loan portfolios appropriately and incentivizes bankers to restrict the provision of credit. Competition among Tunisia’s many banks has the effect of lowering observed interest rates; however, banks often place conditions on loans that impose far higher costs on borrowers than interest rates alone. These non-interest costs may include collateral requirements that come in the form of liens on real estate. A lien is a type of interest or claim on a parcel of real estate held by a creditor that secures payment of a loan or other debt owed to the creditor. A home mortgage is a common example. If the debtor defaults on the underlying debt, the creditor has a right to pursue payment of the debt through the sale of the property subject to the lien. Often, the collateral must equal or exceed the value of the principal loan.

Apart from banks and stock exchange, there are few effective financing mechanisms in the Tunisian economy. A true bond market does not exist, and government debt sold to financial institutions is not re-traded on a formal, transparent secondary market. Private equity remains a niche element in the Tunisian financial system. Firms experience difficulty raising sufficient capital, sourcing their transactions, and selling their stakes in successful investments once they mature. The microfinance market remains underexploited, with non-governmental organization...\textsuperscript{162} Ibid.\textsuperscript{163} See Financial Afrik: « Sous pression du FMI, l’Etat Tunisien se désengage de 3 banques », 27 February 2017\textsuperscript{164} US Department of State, op cit.
Enda Inter-Arabe the dominant lender in the field.165

Telecommunications

The National Telecommunications Authority (Instance Nationale des Télécommunications - INT) is the telecommunications sector regulator. It is responsible for ensuring competition among providers of telecommunications services. According to the authorities, the INT is an independent regulatory body and is not governed by the rules of operational and administrative supervision. For administrative purposes, the INT has a management board which has full decision-making powers and is not subject to Government approval. The Board has a sovereign committee with exclusive powers to regulate and settle disputes between operators; its decisions may be contested only before the courts.166

The traditional operator, the National Telecommunications Company, Tunisie Telecom, continues to dominate the telephony market, with a market share of around 90.9% of the 943,000 fixed-line subscriptions. Tunisie Telecom had a monopoly of the fixed telephony market until 2009, when Orange Tunisie (49% Orange S.A.) obtained a second fixed-telephony licence. Tunisie Telecom continues to hold the largest market share for fixed telephony, by wire in the absence of local loop unbundling.167

In the mobile telephony market, Tunisie Telecom’s market share amounts to around 35%. In 2006, Tunisie Telecom underwent partial privatization when the consortium now known as Emirates International Telecommunications (EIT) acquired a 35% stake in its capital. The second operator, Orange Tunisie has around 24.3% of the mobile sector, while the latest entrant, Ooredoo, (subsidiary of Qatari Group Qtel), which was established at the end of 2002, boasted a 40.7% mobile market share in 2015. The Tunisian State owns 65% of Tunisie Telecom’s capital and, since 2011, also owns 10% of Ooredoo Tunisia’s capital and 51% of that of Orange Tunisia.168

During the first quarter of 2015, the INT imposed heavy fines on Orange Tunisie and Tunisie Telecom for failure to comply with the statutory and regulatory provisions concerning the publication of the tariffs for commercial offers intended for the general public. It also issued a cease and desist order to Ooredoo, to stop its infringement of the Telecommunications Code.169

The Tunisian telecommunications market is subject to the 51/49% requirement to set up a company under Tunisian law with at least 51% of the capital in Tunisian hands. According to the INT, the aim of universal service is to make telecommunications services accessible to as many people as possible at an affordable price. The extent of the universal service is determined by the Order of the Minister of Information and Communications Technologies of 30 December 2013, made after taking the advice of the INT. Universal service projects are financed from the ICT development fund in conformity with Decree No. 2013-5199 of 12 December 2013.170

165 Ibid.
167 Ibid.
Other utilities

Fuel, natural gas and electricity

There has been a sharp reduction in subsidies for energy consumption since 2014, and in 2016 an automatic pricing mechanism was set up to index domestic fuel prices on international prices. Until then, fuel prices had been set at all stages of production and distribution. British Gas is the principal gas producer. The major investors since 2005 are OMV, Eni, Medco, and Anadarko. Any enterprise producing natural gas locally must first meet the needs of the Tunisian market by selling part of its production to the State-owned Tunisian Electricity and Gas Company (STEG), the sole buyer and importer of these products.

Most electricity is generated by STEG. Electricity production has been open to self-generators since 2002 for co-generation and since 2009 for electricity generation from renewables. STEG has monopoly on electricity distribution. The same applies to the connection and transport system and the marketing, purchase and supply of electricity, as well as to the purchase of electricity injected into the grid, whether from independent generators or self-generators, which are required to sell to STEG the electricity they do not consume themselves. STEG and the Tunisian Mining Products Transport Company are under the Ministry of Industry, Energy and Mining.\(^{171}\)

Water and sanitation

Over the last decade, Tunisia has achieved considerable success in expanding access to both water and sanitation services, but challenges remain. According to the Tunisian National Sanitation Agency (Office National de l’Assainissement - ONAS), the growth of urban population has put immense pressure on water reserves. By the end of 2006, access to safe drinking water was expected to be close to universal (approaching 100% in urban areas and 90% in rural areas).

Société Nationale d'Exploitation et de Distribution des Eaux (SONEDE) is the national water supply authority responsible for the water supply systems in urban areas and large rural centres. SONEDE is an autonomous public entity under the Ministry of Agriculture. Planning, design and supervision of small and medium water supplies in the remaining rural areas are the responsibility of the Direction Générale du Génie Rural (DGGR). SONEDE runs an annual deficit of TND 82 million ($50 million). The average cost of a cubic metre is TND 0.716 ($0.44) and it is sold at TND 0.570 ($0.35).

ONAS was established in 1974 to manage the sanitation sector. Since 1993, ONAS obtained the status of main operator for protecting water environment and combating pollution. ONAS depends on subsidies.\(^{172}\)

Air Transport

Tunisia has nine international airports. In 2016, three domestic airline companies were offering scheduled connections with 70 countries and around a hundred foreign airports: The national

\(^{171}\) Ibid, page 117.
airline Tunisair, founded in 1948; Tunisair Express, a domestic airline set up in 1991, as a subsidiary of Tunisair; and Nouvelair, a private Tunisian airline, established in 1989. Syphax Airlines, another private company, ceased operating in July 2015. More than two thirds of passenger traffic to and from Tunisia consists of charter traffic, and Tunisair serves about a hundred charter destinations which vary from one season to another.

Tunisia’s airports all belong to the State. Two airports (Enfidha and Monastir) are operated by the private company TAV on concession. The OACA operates the other seven airports, as well as passenger assistance, aircraft handling, and the handling of baggage and freight, currently put out on concession to Tunisair. Airport services have not been opened to competition.\footnote{173}{WTO TPR, op cit, page 128.}

Trade Policy

Tunisia is a WTO member and grants at least MFN treatment to all its trading partners.\footnote{174}{Ibid, page 29.}

Public Procurement

A new regulatory framework was established by the adoption of Decree No. 2014-1039 of 13 March 2014 which establishes the principle according to which bids are evaluated based on “the lowest bid that meets the specifications”. Nevertheless, for the procurement of important goods and equipment with technical specifications, the bids may be evaluated by weighing quality against cost (Article 63). Likewise, design contracts are governed by special procedures which give priority to quality (Article 126).

According to the Decree No. 2014-1039, government procurement contracts are written contracts, concluded against payment by the government purchasers with a view to fulfilling orders from the Government, which may entail carrying out works, supplying goods or services or carrying out studies. The State, local authorities, SOEs and public distribution services (water, electricity) are deemed to be Government purchasers. Concessionaires of networks and any other legal person, public or private law body entering into a contract on behalf of a Government entity or to be paid out of public funds in order to meet a need of general interest must also comply with government procurement regulations.

The Decree covers all procurement except for procurement by the Ministry of Defence and the three State banks. Article 4 lists government contracts which are not deemed to be government procurement, namely, contracts of association, contracts establishing groups, subcontracting contracts, delegated contracting agency contracts between a government purchaser and other parties, and agreements on the fulfilment of public works between State services governed by the current legislation and regulations, concession contracts and sponsorship contracts.

The government procurement regulations renew the possibility of giving preference for Tunisian companies and products of domestic origin, provided that the bids by Tunisian companies are not more than 10% over the amount of those by foreign companies.\footnote{175}{WTO TPR op cit.}
Subsidies and bailouts

In 2014, most of Tunisia's SOEs, including in the water and sewage sector, experienced financial and structural problems, with a cumulated deficit of around TND 3 billion (around €1.3 billion). Several ministries therefore launched rescue plans and programmes with a view to the reorganization of the enterprises under their authority.176

Taxation of public and private sector

The tax system still involves a multiplicity of levies, including: customs duties; value added tax, which continues to vary according to whether or not similar products are manufactured locally; consumption tax (excise duty); payment on account of personal income tax (IRPP) or corporation tax (IS); registration fees and stamp duties, which apply to real estate transactions; local taxes; and other levies on items such as milk, meat and other products, transport, and insurance. In practice, multiple exemptions to some extent alleviate the overall tax burden, which was 22.5% of GDP in 2014. The 2014 Finance Law reduced the IS rate for firms serving the domestic market to 25%; and raised the rate charged on export earnings for the first time since 1972, from 0% to 10%.

According to the statistics furnished by the Customs, 42% of the customs declarations made in 2015 sought fiscal concessions in the form of exemption from import duties or taxes, known as "fiscal privilege". There are two kinds of exemption: firstly, exemptions provided for by the Investment Incentives Code and intended to encourage exports or to achieve other objectives (for example, regional development or innovation in relation to information technology); and secondly, suspension, exemption or reduction of the duties and taxes prescribed in the finance legislation. In fact, the Government may, by law, suspend any duties or taxes, including VAT, consumption tax or customs duty as such, or modify them. Such measures may be intended to improve the competitiveness of domestic industries or to counteract shortages or price hikes. In general, however, they tend to lessen the predictability of decisions on production, increase the instability and complexity of the tariff and raise the level of effective protection of the industries concerned.177

Privatization

A significant share of Tunisia’s Foreign Direct Investment (FDI) in recent years has come from the privatization of SOEs. Privatization has occurred in many sectors, such as telecommunications, banking, insurance, manufacturing, and fuel distribution, among others, 35% stake of Tunisie Telecom passed to Emirates International Telecommunications (Tunisia) (EIT)), acquired a 1.178 In 2011, the Government took over the assets of the former regime and allowed privatization bids for shares in Ooredoo (telecom), Ennakl (car distribution), Carthage Cement (cement), City Cars (car distribution), and Banque de Tunisie (banking). The Government does not exclude the possibility of selling shares in these companies on the Tunis Stock Exchange, in its efforts to cope with budget constraints, upgrade the banking sector, and increase foreign reserves. The Government is expected to sell some of its stakes in State-owned banks. Under the conditions of a four-year IMF Extended Fund Facility (EFF) arrangement approved in May 2016, the State is expected to disengage itself from the banking sector.179

176 Ibid.
177 WTO TPR, op cit, page 50.
178 Ibid.
179 US Dept of State, op cit.
Relevant legislation

Tunisia made substantial progress on much-needed structural reform, including passing new public-private partnership, competition, bankruptcy, and renewable energy laws; safeguarding the independence of the Central Bank through a new central bank law; and improving the investment climate through a new investment law.\(^{180}\)

Far-reaching reforms were introduced following the adoption in 2014, of a new Constitution. On the other hand, this constitutional reform paved the way for radical changes in the legal, political and institutional frameworks. Transparency and the rule of law are now declared principles. All draft legislation is now subject to a mandatory public consultation procedure. Similarly, the new Constitution provides that duties and taxes applicable to certain products may only be increased, reduced or suspended by laws, and not by specific decrees, which means that the country's economic policy is more transparent and predictable. A so-called “regulatory guillotine” project involving a systematic review of regulations is expected to contribute considerably to the business climate – a much needed improvement particularly when it comes to cross-border trade.\(^{181}\)

Bankruptcy law

In April 2016 the Tunisian Parliament adopted a new bankruptcy law which merged and replaced Chapter IV of the Commerce Law and the Law N° 95-34 (Recovery of Companies in Economic Difficulties law). These two previous laws had duplicative and cumbersome processes for business rescue and exit and gave creditors a marginal role. The new law increases incentives for failed companies to undergo liquidation by limiting State collection privileges. The improved bankruptcy procedures are intended to decrease the number of non-performing loans and facilitate access of new firms to bank lending.

According to the World Bank 2017 Doing Business report, Tunisia’s recovery rate (which calculates how many cents on the dollar secured creditors recover from an insolvent firm at the end of insolvency proceedings) is about 52 cents on the dollar (compared to 26 cents on the dollar for MENA countries as a whole and 73 cents on the dollar for OECD high income countries).\(^{182}\)

Investment

The Tunisian Parliament passed a new Investment Law N°2016-71 of September 2016 that went into effect April 1, 2017.\(^{183}\) To encourage good governance of investments, the law provides for the creation of three major institutions: the High Investment Council (Conseil Supérieur de l’Investissement), the Tunisian Investment Authority (Instance Tunisienne de l’Investissement), and the Tunisian Investment Fund (Fonds Tunisien de l’Investissement). These institutions started operating in early 2018. Meanwhile, the Foreign Investment Promotion Agency (Agence de promotion de l’investissement extérieur-FIPA Tunisia) continues to be Tunisia’s principal agency to promote foreign investments. FIPA is a one-stop shop for foreign investors; it provides information on investment opportunities, advice on the

\(^{180}\) Ibid.  
\(^{181}\) WTO TPR, op cit.  
\(^{182}\) US Department of State, op cit.  
appropriate conditions for success, assistance and support during the creation and implementation of the project, and contact facilitation and advocacy with all other government authorities.\textsuperscript{184}

The World Bank Report \textit{Investing Across Sectors} affirms that Tunisia has the fewest limits on foreign equity ownership in the MENA region. Tunisia has opened up the majority of the sectors of the economy to foreign capital participation with the exception of electricity transmission and distribution.\textsuperscript{185}

The Law No. 2015-49 of 27 November 2015 on public-private partnership contracts was adopted with the objective of diversifying ways of meeting Government procurement needs and sources of financing by allowing one or more private suppliers of construction, conversion and maintenance of public works services to be associated. Pursuant to this Law, the government party may entrust a private supplier with financing, building or converting works or facilities or even infrastructure, whether tangible or intangible, needed for the public service, under a contract for a specified period. One provision in the new Law prescribes that the private partner must use domestic products and employ Tunisians.\textsuperscript{186}

\textbf{Competition law and price regulation}

The Law 2015-36 of 15 September 2015 is Tunisia’s new competition law and gives greater power to the Competition Council. Article 11 makes it mandatory for the Council to be consulted on draft laws and regulations that might restrict entry into markets.\textsuperscript{187} As part of the MENA programme, UNCTAD launched the Regional Training Centre on 22 November 2016 in Tunis. The center will serve as a bridge for peer learning and exchange in the region on best practices in competition law enforcement.

Several goods and services are still excluded from the free pricing regime stipulated under Article 2 of the Law. Article 3 excludes “essential” goods subsidized by the State. These include bread and other food products as well as goods and services provided by State monopolies (water, electricity, gas, postal services, port and airport services) and certain types of automobiles. In addition, fuel prices are set by order at all stages of production and distribution, except for jet A1 and bitumen. However, there has been a sharp reduction in subsidies for energy consumption since 2014.\textsuperscript{188}

\textbf{Conclusion}

Although some sectors are still under monopoly and SOEs in other sectors compete with private firms, the new competition law gives more powers to the Competition Council to maintain a level playing field in sectors open to competition. Tunisia has made considerable progress in liberalizing its economy, and the trend is expected to continue. There are no indications of tax discrimination or subsidies provided to SOEs, except from monopolies in the power and water sectors as described above.

\textsuperscript{184} US Department of State, op cit.
\textsuperscript{185} World Bank report \textit{Investing Across Sectors} http://iab.worldbank.org/data/exploreeconomies/tunisia
\textsuperscript{186} WTO TPR, op cit.
\textsuperscript{188} WTO TPR, op cit, page 116.
CHAPTER III: SPECIFIC RECOMMENDATIONS FOR COMPETITION NEUTRALITY POLICIES

The OECD Guidelines on Corporate Governance of State-Owned Enterprises states: “Good corporate governance of SOEs is a key reform priority in many countries. Improved efficiency and better transparency in the State-owned sector will result in considerable economic gains, especially in countries where State ownership is important. In addition, creating a level playing field for private and SOEs will encourage a sound and competitive business sector.”

This chapter takes in-depth account of the OECD Guidelines mentioned above and includes some useful developments in advanced countries in the field of competitive neutrality, such as Australia. It is therefore recommended that national authorities committed to the CN principle, that is, “level playing field” between public and private providers of goods and services, should address the following priority areas:

1. Streamlining the operational form of government business;
2. Identifying the direct costs of any given function;
3. Achieving a commercial rate of return;
4. Accounting for public service obligations;
5. Aiming at neutrality of taxes and subsidies;
6. Aiming at regulatory neutrality;
7. Ensuring debt neutrality;
8. Ensuring public procurement neutrality; and
9. Establishing a CN transparency and redress procedure.

This chapter reviews each one of these mutually reinforcing priority areas in the form of recommendations for the UNCTAD MENA Programme countries.

Streamlining the operational form of government business

As mentioned in Chapter I of this report, many Government commercial operations are run by statutory entities which run close to or are part of a Government department within a Ministry. Transforming such public entities into specific companies having an independent identity is a priority in achieving CN.

This would result in placing sectors directly run by the State under theoretical market conditions, with well-defined status and objectives and, above all, subject these entities to accountancy rules. The aim is to hold each State-owned enterprise operating autonomously accountable for its results, either profit or loss.

To achieve this, the Government should structurally separate the commercial activities from non-commercial activities of the Government department, and incorporate the Government business, in what is commonly known as “corporatization” of SOEs. The effect of corporatization is to convert a Government department into a public company and interpose commercial boards of directors between the shareholding ministers and the management of the enterprise.

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Such externalization of the SOE creates legal and managerial autonomy from politicians, which could potentially increase efficiency, because it safeguards to a certain extent the firm from direct political interference. In order to consolidate this advantage, corporatised SOEs should observe high standards of transparency and disclosure and be subject to the same high-quality accounting and auditing standards as companies listed on the stock market. It should be noted, however, that in some countries, public entities are subject to a body of law and court system known as administrative law and the administrative courts, which are different from the jurisdiction that is applicable to private companies, and corporatisation of a public utility may not subject the entity to private corporate law as it is deemed to be providing a public service.\footnote{See World Bank (2017): Utility restructuring, corporatization, decentralisation, performance contracts, https://ppp.worldbank.org/public-private-partnership/agreements/utility-restructuring-corporatization-decentralization} In any event, CN is more easily achieved when competitive activities are carried out in an entity with an independent identity, operated at arm’s length from the Government.

Another form of externalization of public service is the practice of handing over the control of the public service to private enterprises, under strict contractual performance requirements, also called delegated management or “concession agreements” generally subject to tendering procedures. This form is currently used in UNCTAD MENA Programme countries.

Finally, the streamlining of operational form of Government utilities from non-commercial operations also involves the creation of specific sector regulators, which act as an independent State authority setting the rules of operations in a specific sector. Sector regulators have been established in many utility sectors, such as telecommunications and ICT, power generation and distribution, water and sanitation, railways, air transport, maritime transport etc. in UNCTAD MENA Programme countries. Among other important responsibilities, sector regulators usually have fair competition on their statute books, and should cooperate closely with competition authorities to avoid discrimination between the incumbent or recently privatized SOEs and their private competitors.

**Identifying the direct costs of any given function**

Where commercial activities are carried out by unincorporated entities a main challenge is that these often share assets with the other parts of the government sector (e.g. monopoly cross-subsidizing costs with non-monopoly activities), especially if the costs of these assets are joint costs. Developing appropriate cost-allocation mechanisms is therefore important to ensuring CN. This is greatly facilitated when the Government department has been corporatised, as recommended above. It nevertheless remains that corporatised SOEs still have commercial and public policy objectives in their statutes, such as important universal service obligations.

Where SOEs combine commercial and public policy objectives, CN measures prescribed below, under the sub-section related to accounting for public services obligations should be applied.

Accordingly, SOEs should disclose material financial and non-financial information on the company in line with high quality internationally recognised standards of corporate disclosure and including areas of significant concern for the State as an owner, and for the general public, as taxpayers. This includes in particular SOE activities that are carried out in the public interest. Such information should include a clear statement of the SOE’s objectives and their
fulfilment and the SOE’s financial and operational results, including in particular the costs and funding arrangements pertaining to public policy objectives.

**Achieving a commercial rate of return**

CN implies that SOEs pay a market-consistent rate of return (ROR) on the assets they use for providing the relevant activities. A market-consistent ROR would be one that is comparable with what is earned by private enterprises operating within the same industry[^191].

The importance of achieving a commercial ROR derives from the fact that, if Government businesses were not required to earn a commercial ROR, then they would be able to undercut competition by factoring lower profit margins into their pricing and use predatory pricing practices. Achieving a commercial ROR ensures a level playing field and discourages cross-subsidisation.

Any equity financing provided by the State budget should be subject to a minimum expected ROR consistent with private sector practices. A number of countries have enshrined this principle in national practices. However, methodologies to calculate RoR targets and measure performance vary across jurisdictions, so do the periods over which average performance is calculated: ROR targets make sense only as a medium to long-term measure. Sufficient room must be left for short-term variations.

**Accounting for public service obligations**

As seen above, one of the most challenging issues for CN arises where SOEs that operate in a competitive environment are required to carry out non-commercial activities in the public interest (e.g. to ensure “universal service” operations in remote, non-commercially profitable locations). As discussed, SOEs should be adequately and transparently compensated by the State in a way that avoids market distortions. Some Governments tend to lower ROR requirements to compensate SOEs for their public policy objectives. This should be avoided, because public service obligations, including universal service mandates should be compensated separately and in a fully transparent manner.

Whenever SOEs are under- or over-compensated for public service obligations, the playing field with private competitors, and thus competition, gets distorted. On the one hand, if SOEs are over-compensated for their public policy activities, this would amount to an effective subsidy on their competitive activities, thus distorting the level playing field to the detriment of private competitors. On the other hand, under-compensation for public policy activities can jeopardise the commercial viability of an SOE’s competitive activities, putting them at an undue commercial disadvantage with respect to their private sector competitors.

It is therefore recommended that any costs related to the fulfilment of public policy objectives be clearly identified, disclosed and adequately compensated by the State budget on the basis of specific legal provisions and/or through contractual mechanisms, such as management or service contracts. Compensation should be structured in a way that avoids market distortion. This is particularly the case if the SOE concerned operates in competitive sectors of the economy. Ensuring that compensation is calibrated to the actual cost of fulfilling public policy objectives...

objectives can be facilitated by the structural separation of commercial and public policy activities and accounts.

**Aiming at tax neutrality**

In order to maintain a level playing field, CN requires that Government businesses bear an equivalent fiscal burden as their private sector competitors. The implementation of tax neutrality often differs markedly according to whether or not Government businesses are incorporated or operated by government offices. Government activities are often not subject to indirect taxes, and it would be in many cases legally impossible to impose corporate taxation on the earnings of units of general Government.

For incorporated SOEs, it is important to avoid any State subsidies and preferential loans that have the same effect as tax facilities. Attention is drawn here to the possibility that unincorporated SOEs may provide indirect financial support such as preferential financing, tax arrears or undue trade credits to incorporated SOEs. SOEs may also benefit from “off market” funding arrangements from other SOEs, such as trade credits. Measures should be implemented to ensure that inter-SOE transactions take place on purely commercial terms.\(^{192}\)

**Aiming at regulatory neutrality**

To maintain CN, government businesses should operate to the largest extent feasible in the same regulatory environment as private enterprises.\(^{193}\) In some countries SOEs are not required to comply with competition rules. They may be exempted from a number of rules and requirements due to be observed by private enterprises. This is especially the case for unincorporated SOEs, which may have easier access to planning and building permits (especially where municipally owned businesses are concerned) and a lighter regulatory approach to government-controlled financial sector activities.

SOEs are also in some cases not covered by bankruptcy law and creditors sometimes have difficulties in enforcing their contracts and in obtaining payments. Such exemptions from the general legal provisions should be avoided to the fullest extent possible in order to avoid market distortions. It is therefore recommended that SOEs should not be exempt from the application of general laws, tax codes and regulations.

At the same time, SOEs should not face uncompensated financial or operational obligations that could put them at a material disadvantage vis-à-vis private companies in like circumstances. For example, SOEs may be disadvantaged compared to their private sector competitors by Government employment and environmental policies.

**Ensuring debt and outright subsidy neutrality**

Industrial policy has long held that Government selected priority sectors, whether public or private, should benefit from financial advantages such as preferential loans attributed with State guarantees and lower interest conditions, in order to boost such sectors, chosen for their export potential or high employment characteristics.

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\(^{192}\) Ibid.

\(^{193}\) Ibid.
Debt neutrality implies that SOEs and other government businesses shall pay the same interest rate on the debt obligations they incur as a private enterprise in like circumstances. It is straightforward for governments to ensure that SOEs and government businesses do not benefit from outright subsidies or subsidised finance.

However, additional problems may arise when government-backed businesses, because of a perceived lower default risk, obtain cheaper finance in the market place than would be available to private operators. Creditors often assume that there is an implicit State guarantee on SOEs’ debts. This situation has in many instances led to excessive indebtedness, wasted resources and market distortion, to the detriment of both creditors and the taxpayers. Moreover, in some countries, State-owned banks and other financial institutions tend to be the most significant if not the main creditors of SOEs. This environment leaves great scope for conflicts of interest. It may lead to bad loans by State-owned banks as the SOE might feel itself under no obligation to repay the loan, or under no threat of bankruptcy. This may shelter SOEs from a crucial source of market monitoring and pressure, thereby distorting their incentive structure.

As a general principle, the State should not give an automatic guarantee in respect of SOE liabilities. Fair practices with regard to the disclosure and remuneration of State guarantees should also be developed and SOEs should be encouraged to seek financing from capital markets. State-owned banks should grant credit to SOEs on the same terms and conditions as for private companies and ethic measures should be developed to avoid conflicts of interest between State owned banks and financial institutions and SOEs operating in competitive markets.

SOEs’ competitive activities should face market consistent conditions regarding access to debt and equity finance. In particular, as mentioned earlier in this report:

1. SOEs’ relations with all financial institutions, as well as non-financial SOEs, should be based on purely commercial grounds.
2. SOEs’ competitive activities should not benefit from indirect financial support such as preferential financing, tax arrears or undue trade credits from other SOEs.
3. SOEs’ competitive activities should be required to earn rates of return that are, taking into account their operational conditions, consistent with those obtained by competing private enterprises.

**Ensuring public procurement neutrality**

The basic criteria for public procurement practices to support competitive neutrality are that they be competitive and non-discriminatory, and that all public entities participating in a bidding process should operate according to standards of competitive neutrality. However, where long-existing SOEs or in-house bids are involved their incumbency advantages may be such that the entry of competitors is effectively impeded.

When SOEs participate in public procurement tenders, they would have a high chance of being successful. In some cases, this has reflected bidding criteria designed to favour the government’s own enterprises. In other cases, it just happens that the purchaser being the State, has a tendency to favor its own fellow public enterprises, who may be better known by the bidder, or respect employment and other rules favored by the Government. Often, this merely
reflects the fact that the contracts are awarded in areas where SOEs have important incumbency advantages over more recent private sector entrants.

When the SOE is the procurer, it might also favor its fellow SOEs for a number of reasons, ranging from State obligations, unwritten rules, or local municipality or regional political considerations.

When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency.194

Where an in-house team wins a competition, it should be subject to contract-like arrangements which specify the conditions under which the service is to be managed and monitored. In-house providers should be subject to formal contractual performance regimes in the same way as external contractors, and there should be a similar level of rigor and independence in monitoring and reporting. In-house contractors should carry the penalties for poor performance, and implicit government underwriting of the associated costs needs to be built into bid evaluation.

Nevertheless, it is a well-known fact that during the past industrial revolutions, public procurement was a widely used policy tool to promote SOEs or national firms in strategic sectors identified by Governments in their industrial and development policies. Governments or public bodies spend significant amount of resources to purchase/procure in the market place which can shape the market place. Procurement can be used as an industrial policy tool to promote domestic production and consumption.

One example to this is the aerospace industry in the US. We could find many examples from other jurisdictions. At present, the world is going through the fourth industrial revolution: Digitalization and data economy. Developing countries should not be deprived of policy space and tools that would help them in catching up with the developed countries in the digital economy. This is crucial given the global digital and digitalized economy is dominated by a handful of firms and the digital divide between developed and developing world.

**Establishing a CN transparency and redresss procedure**

As indicated earlier in this chapter, SOEs should observe high standards of transparency and disclosure and be subject to the same high-quality accounting and auditing standards as listed companies. They should develop efficient internal audit procedures. They should be subject to an annual independent external audit based on internationally recognised standards, and they should disclose material financial and non-financial information on the company in compliance with high quality standards of corporate disclosure. Such information could include for example:195

1. A clear statement to the public of the SOE’s objectives;
2. The SOE’s financial and operating results, including the costs and funding arrangements pertaining to public policy objectives;

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194 Ibid.
195 Ibid.
3. The governance, ownership and voting structure of the company, including the content of any corporate governance code or policy and implementation processes;
4. Information on board member remuneration policies and levels as well as board member qualifications, selection process, roles on other company boards and whether they are considered as independent by the SOE board;
5. Any material foreseeable risk factors and measures taken to manage such risks;
6. Any financial assistance, including guarantees, received from the State and commitments made on behalf of the SOE, including contractual commitments and contingent liabilities arising from public-private partnerships;
7. Any material transactions with the State and other related entities, including other SOEs;
8. Any relevant issues relating to employees and other stakeholders.

Finally, stakeholders, including competitors, should have access to efficient redress through legal or arbitration instances when they consider that their rights have been violated. In this connection, SOEs as well as the State as a shareholder should not be protected from being challenged by the courts or the regulatory authorities, in case they infringe the law. Stakeholders should be able to challenge the State as an owner in the courts and be treated fairly and equitably in such cases by the judicial system.

The Australian CN experience, with the establishment of the Australian Government Competitive Neutrality Complaints Office (AGCNCO), is a useful example of what might be done for redress in case of Government abuses in this field.196

**CONCLUSIONS AND RECOMMENDATIONS FOR UNCTAD MENA PROGRAMME COUNTRIES**

Based on the review of CN-related issues in UNCTAD MENA Programme countries (Algeria, Egypt, Jordan, Lebanon, Morocco, State of Palestine and Tunisia), and the analysis of economic (de facto) and legislative (de jure) situation in these countries with respect to competitive neutrality, this Chapter provides an overview of the lessons learnt and some recommendations to enhance synergies between industrial and competition policies.

First, it should be noted that the countries covered by this report are very different in terms of size, GDP and GDP per capita. In terms of population, Egypt is by far the largest, with around 95 million people in 2017; Algeria the second (41.3 million); and Morocco the third (35.3 million). Tunisia has 11.5 mn, Jordan 8 mn, Lebanon 6.6 mn, and State of Palestine around 5 mn.197

As for GDP, Egypt had 336, 3 bn USD in 2016, Algeria 178 bn, Morocco 111 bn., Lebanon 53,4 bn., Tunisia and Jordan 41,7 bn. each, and State of Palestine around 13 bn (estimate for 2014). As a result, in terms of GDP per capita, Lebanon is the first with 11,497 USD; Jordan

197 The World Bank, World Development Indicators Database (2017)
the second with 5,292 USD; Algeria the third with 4,295 USD; followed by Tunisia (3,675 USD); Egypt (3,514 USD); Morocco (3,253 USD) and the State of Palestine (2,500 USD).\textsuperscript{198}

All UNCTAD MENA Programme countries have a large public sector, except for the State Palestine. In addition, State intervention is relatively high in these economies, particularly through State monopolies and price regulation for “essential commodities”, which include energy products, electricity, water and extensive lists of foodstuffs, aimed at protecting the poor. Although their competition laws lays down the principle of free price formation in the economy, most of these laws reserve the right for the State to regulate prices for essential commodities and generally exclude monopolies and SOEs from the scope of application of the law. This is the case in Algeria, Egypt, Jordan, Morocco and Tunisia. The competition law also reserves the right for the Government, usually after consulting the competition authority, to take emergency action to regulate prices in crisis or calamity situations. Such action is limited to six-month period, renewable, in Morocco and Tunisia.

In most countries of the region, SOEs, especially in electricity and water sectors, need to be subsidized by the State because the regulated price is lower than effective costs of supply. This entails heavy deficits for the State and brings about further difficulties for the public utilities in question to invest in the maintenance and upgrading of existing facilities and developing new ones.

The OECD report on SOEs in the MENA region underlines that State involvement remains important in the region, particularly in the service sectors (especially electricity and water); capital-intensive modes of transport (aviation, railways, shipping and ports); minerals and hydrocarbons sectors; heavy and large-scale industrial sectors such as refining, steel and cement.\textsuperscript{199}

The common feature of SOEs in the MENA region is their role as the main source of Government revenue, with the local private sector having almost no role and foreign investors typically owning minority stakes in specific projects. Apart from the infrastructure utilities, some countries, Algeria in particular, rely extensively on oil and gas resources of the State to support other economic sectors.

Such industrial policy is often not sustainable in the long-term and creates a dual economy, dominated by a generally inefficient and loss-making public sector, competing with private sector firms on an uneven playing field. As hydrocarbon prices falter, rent economies might be forced to reduce State involvement in bailing-out inefficient public sectors, and find solutions including bankruptcy or, when possible, privatization. It should be noted, that recent Constitutional amendments in Algeria (Article 46 in particular) now ban monopolies and introduce the principle of non-discrimination between public and private enterprises. Such reforms are an indication of the country’s move from a transition to a market economy.

An intermediate stage in moving towards a free market economy for many countries in the region, including Jordan, Lebanon, Morocco and Tunisia, would be to outsource the management of SOEs under concession contracts or public-private partnership arrangements.

\textsuperscript{198} Ibid

Such PPP laws have recently been adopted for example in Jordan, Morocco and Tunisia, and are strongly supported by their respective Governments.

One common feature of all MENA countries is the weakness, or quasi-absence of modern bankruptcy laws. The mentality of many entrepreneurs of the region is reported to be averse to declaring insolvency as many business people believe they may be found criminally liable if they declare bankruptcy. As a result, starting a business is reported to be much easier than shutting down one. This partly explains the States’ bailing out failing enterprises and SOEs. At present, bankruptcy laws are being revised in Egypt, Jordan, Lebanon and Morocco, and a new insolvency law was recently adopted in Tunisia.

The privatization wave of 1990s and early 2000s seems to have lost its initial impetus, as Egypt and other countries of the region have slowed or retreated from selling public firms to private ones. Privatization is rather done in a more gradual way by selling limited shareholdings through the stock exchange. It is advisable for the State to streamline SOEs and make them more attractive before fully or partially privatizing in order to maximize the revenue from the sale of shares on the stock market. This option has been taking place, for example, in Jordan, Lebanon, Morocco and Tunisia, which favor public-private partnerships, including time-limited concession contracts in which the private sector plays an important role in upgrading the company and bringing advanced technology and know-how. This may lead to partial privatization, where the State gradually disengages from SOEs by selling shares on the stock-market, or through bidding processes.

The countries with the largest public sector include Algeria and Egypt, followed by Morocco and Tunisia. Algeria is still considered to be a country in transition from central planning to market economy, having a large public sector, including in non-monopoly industries, where public enterprises, which are either wholly or partly owned by the State, compete with private ones. Supported by high energy revenues, Algeria has been able to support loss-making SOEs for many years, creating an uneven playing field for sustainable private enterprises.

In Egypt, which benefits from energy revenue to a much lesser extent, and whose budget depends in part on revenues from the Suez Canal, such an industrial policy has not been possible to the same extent. Military based SOEs, which can count on the army to produce at low cost, in addition to being exempt from any kind of taxation, operate in many sectors (construction, real estate, foodstuffs etc.), where they compete on an unequal footing with private firms. The military SOEs are quite popular in Egypt, as they provide a boost to the economy at times of recession and being subject to austerity measures imposed by international institutions such as the IMF. The Army is often seen as the savior of low-income population, providing cheap supplies of essential commodities. This entails, however, that private sector firms may easily be marginalized for example, from the public procurement bidding processes.

There are differences in procurement rules between public and private sector competitors, for example in Egypt and Lebanon. In Morocco, a new Government Procurement Code came into force in January 2014, which is applicable to public institutions listed in an order of the Minister of the Economy and Finance (200 entities previously not subject to), in addition to all Government and local authorities.

Another possible source of unequal treatment of public and private enterprises is the extent to which State-owned banks dominate the financing of enterprises. In Algeria, for example, State banks, which account for 80% of the market in terms of assets, are reported to give loans quasi-
exclusively to the public sector SOEs. In other countries where State-owned banks compete with private institutions, there is a risk that SOE banks are perceived as having the benefit of State guarantees. As a result, these banks are able to take more risks in terms of attribution of credits and loans to their clients, and benefit from unequal playing field with their private counterparts, which are obliged to require more collateral from their borrowers. This does not exclude the fact that State-owned banks may be inclined to offer preferential credit conditions to fellow SOEs than to the private sector. This may be part of an industrial policy scheme, or simply because SOEs are considered more secure and are believed to benefit from State guarantees.

This may be the case for example in Egypt and Tunisia, where State-owned banks play a major role in the banking sector. It should be noted that in Tunisia, the State inherited a number of companies from the previous President’s family following the 2011 revolution. The State is expected to disengage itself from three important State-owned banks in Tunisia, as a condition of a four-year IMF Extended Fund Facility arrangement approved in May 2016. As for Morocco, it is reported that the share of public banks has declined steadily from 40% in 2002 to 16% in 2016.

With respect to State aid and subsidies, it is worth noting that in most developing countries subsidies are granted in the form of exemptions, reductions, delays or rescheduling of tax payment. As seen in the case of Tunisia, according to statistics provided by the Customs Department, 42% of the customs declarations made in 2015 sought fiscal concessions in the form of exemption from import duties or taxes, known as “fiscal privilege”. There is often a debate in developing countries on how to determine what constitutes State aid and what is a measure of general economic support.

In the other countries of the UNCTAD MENA Programme, including Jordan, Lebanon and the State of Palestine, it was found that SOEs and State monopolies, where they exist, generally do not distort competition with respect to private sector. In Jordan, for example, SOEs are reported to compete under largely equal terms with private enterprises with respect to access to markets, credit, and other business operations, and the laws do not provide preferential treatment for them.

Based on the review of the current situation in UNCTAD MENA Programme countries, the following recommendations are made with respect to competitive neutrality policy:

1. **Streamlining the operational form of government business:** Increasingly all MENA Programme countries have intended to separate SOEs from respective Ministries and transformed the incumbent firm into autonomous State-owned corporations. In a number of sectors, the State has also established independent regulatory authorities whose functions, interalia, include the creation of a level playing field between SOEs and private enterprises, in cases where they have access to the market. Governments and sector regulators should be encouraged to continue this process and give wider access to private firms, while ensuring that SOEs are not provided preferential treatment.

2. **Identifying the direct costs of any given function:** While corporatized SOEs are held responsible for holding accurate accounts, many such companies have not been able to achieve sustainable results, largely because of ineffective management by administrators for political reasons. Governments are encouraged to appoint high-quality staff/managers based on qualifications, and not political allegiance.
3. **Achieving a commercial rate of return:** Many firms are burdened by socio-political constraints, including high employment objectives and State imposed price regulations which do not allow them to achieve a commercial rate of return. SOEs should be allowed to make profits under normal business conditions. The existence of a large sector of subsidized, loss-making SOEs distorts competition and constitutes a serious barrier to entry for private enterprises. SOEs which are unable to develop in a sustainable way should be privatized through transparent public bidding procedures.

4. **Accounting for public service obligations:** SOEs are usually required to provide the so-called “universal access”, i.e. to serve all locations of the country, including in remote places where they are unable to make profit. It is detrimental for SOEs to be bound by such obligations, while private sector competitors would be allowed to “skim the cream” of the lucrative portions of the domestic market, by being present only in those portions of the market where they can make profits. The State or the sector regulator should clearly ensure a level playing field, where all competitors comply with universal obligations or intervene to impose higher duties on those enterprises which benefit from “cream skimming”, in order to reallocate such resources in favour of SOEs or private concessionaries obliged to respect public service obligations.

5. **Aiming at tax neutrality:** In many countries of the region taxes are not evenly applied on all firms, SOEs or private enterprises. While public service obligations discussed above should clearly be accounted for and compensated, giving across-the-board tax concessions for all the operations of SOEs should be avoided. It should also be mentioned that one way of subsidizing firms is by offering them tax exemptions or easier payment terms. Governments should avoid such competition-distorting measures.

6. **Aiming at regulatory neutrality:** Many countries of the region exempt SOEs and State-related enterprises from competition rules. More subtle exemptions include obtaining exemptions from the competition authority for enterprises engaging in prohibited anti-competitive practices, such as cartels or abuse of dominance, or monopoly-creating mergers for employment, technological progress or other reasons. Such exemptions should only be granted after consulting and having approval of the competition authority.

7. **Ensuring debt and outright subsidy neutrality:** Loans should be granted to all enterprises, public or private, based on merit and not on the type of ownership. State-owned banks should be free to deal with all enterprises active in the market and privately-owned enterprises should not be crowded out from credit by SOEs. As for outright subsidies, they should only be given horizontally to entire sectors, without any discrimination between public or private ownership, and after consultations with the competition authority.

8. **Ensuring public procurement neutrality:** According to market economy public procurement codes, all public bids should be awarded to firms based on transparent and clear criteria regardless of the type of ownership. Competition principles must be respected in bidding processes and this may also prevent corruption. Obviously, if SOEs and military-owned public enterprises have competitive advantages over private firms because of tax exemptions or for other reasons, competition for bids would be an unfair one.

9. **Establishing a CN transparency and complaints procedure:** Such complaint procedures are increasingly adopted with respect to public procurement. Taking the example of Australia, countries of the MENA region could establish a complaints bureau, for example at the
competition authority, which would be entrusted to receiving and handling complaints about perceived competitive neutrality shortcomings.

All such measures would contribute to more open, effective and competitive markets. Broad and effective competition law enforcement is essential to ensuring a level playing field. Competitive neutrality in turn is critical to making competition policy effective.
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