Key Antitrust and Competition Trends for Emerging Markets in EMEA 2024

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Agenda

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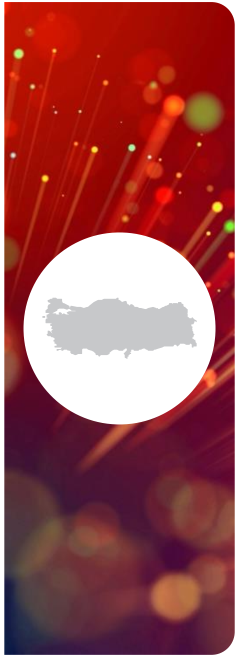
Key Enforcement Updates

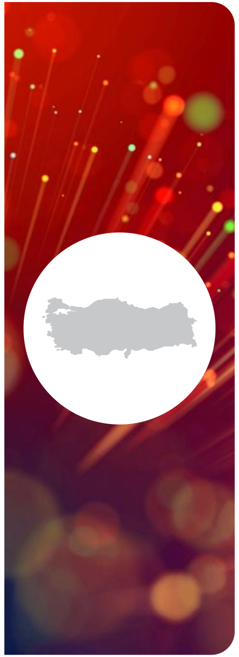
Turkey

- Fines imposed in 80 full-fledged investigations wrapped up in 2023
  - Top three sectors are (i) chemical products, (ii) food and (iii) machine industry
  - Total fine amount is approx. EUR 74,013,849
- A total of 145 TCB decisions in pre-investigations and full-fledged investigations
  - 68 cases settled with the TCB:
    - Most cases concern RPM allegations
    - Cartels comes second and other non-cartel offenses come third
  - Overall, 21 decisions concern anti-competitive agreements, 18 concern abuse of dominance claims and 6 concern both matters
  - 55 horizontal, 69 vertical and 3 hybrid cases
- 831 dawn raid authorizations in 2022, which marks a 65% increase since 2020 (2023 data is yet unavailable).



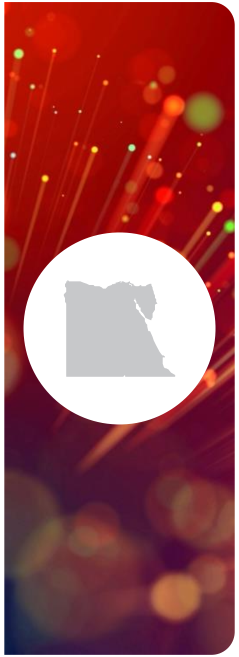
Turkey

- Digital markets under scrutiny
  - DMA like legislation underway
  - Fining decisions on Google (i.e., self-preferencing), Meta (i.e., anti-competitive data combination) for failing to comply with the authority's previous orders (i.e., behavioural remedies in case of Google and a non-infringement order in case of Meta)
  - Sector inquiry on online advertising
  - Alibaba's local online retail brand Trendyol and Amazon are investigated for their automatic pricing practices

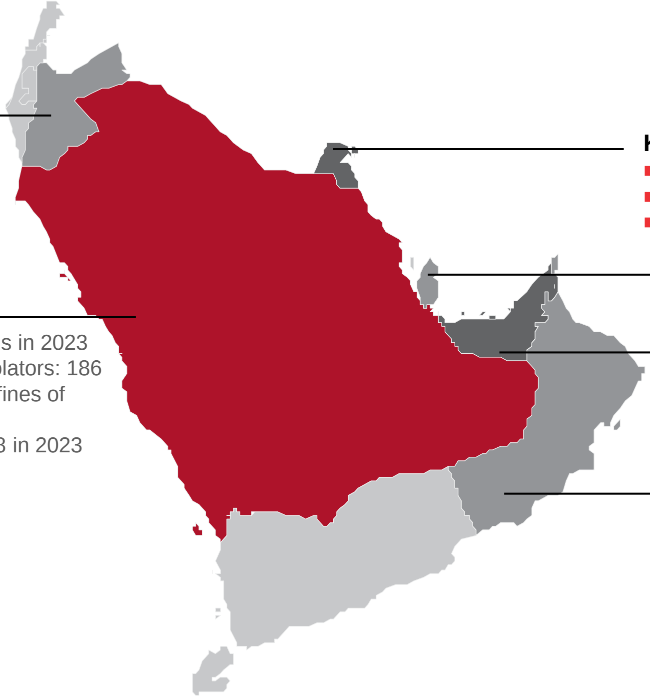


Egypt

- The ECA has increased its enforcement level significantly. Before 2021 the average number of cases was around 5 violation cases per year. in 2023 there were 27 violation cases. In April and May 2024 there were 21 violation cases.
- Most cases are settled before the ECA.
- Increasing reliance on dawn raids (more than 32 dawn raids in 2023)
- The ECA has started focusing its enforcement on vertical restraints including RPM, MFN and restrictions on parallel imports. (e.g., Home Appliances case)
- More abuse of dominance cases (e.g., school uniform cases have wider implications).
- ECA's new approach on exchange of commercially sensitive information.



Saudi Arabia and the GCC



Jordan
- New law granting more independence to the authority
- Ability to impose increased fines
- Broader scope of merger control

Saudi Arabia
- Highly active regulator: 442 investigations in 2023
- History of active enforcement against violators: 186 indicted companies and total amount of fines of US$ 32m in 2023
- High dawn raid risk: 299 in 2022 and 548 in 2023

Kuwait
- High fines based on revenues
- Active regulator
- Dawn raid risk on the risk

Qatar
- Active regulator
- Building capacity

UAE
- Recent competition law in 2023
- Sectorial exemptions no longer applicable
- Executive regulations to be published

Oman
- Recent competition law in 2018
- Building capacity

Low to medium Risk

Medium Risk

High Risk

Saudi Arabia and the GCC

- Cartels, RPM and bid rigging carry particularly high enforcement risk
- But also abuse of dominance with exclusivity and other terms of sales cases
- The GAC and the CPA have imposed fines for failing to cooperate as part of investigations
- Authorities are relatively new
- Shift from fixed fines to revenue-based fines - Issues with relevant market definition
- Dawn raid risk increasing – particularly high risk in Saudi Arabia
- Increase in the number of settlement applications in KSA (no admission of guilt, reduced settlement amounts, confidentiality)

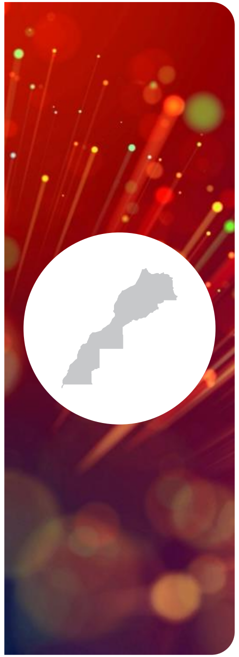
South Africa

- Strong focus on concentrated industries and desire to "de-concentrate" markets. Digital, food and agro-processing sectors under heightened scrutiny
- Increase in market inquiries and interventionist recommendations
- Creative approach by the authority in asserting jurisdiction, including capturing indirect sales cases where conduct took place outside South Africa
- Public interest considerations relevant and cases involving SMEs and entities owned by historically disadvantaged persons scrutinised closely
- High-risk conduct that is often the subject of investigations: exclusivity arrangements, non-competes, price discrimination, and refusals to supply
- No dawn raids since 2022 but indications by the authority that it intends to ramp-up
- New minister of Trade, Industry & Competition may result in shift in priorities and approach

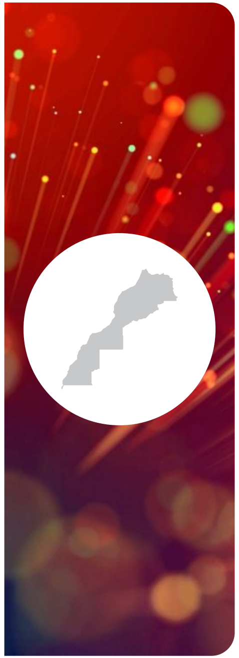
Morocco

Enhanced regulatory framework

- Modernized notification thresholds: increased turnover thresholds (moroccan threshold to MAD 400 million and global requirements) ensure focus on significant transactions.
- New filing fees: implementation of a structured fee system for merger notifications and expedited reviews ensures timely and efficient processing.
- Active enforcement:
- Strict penalties for non-compliance: the mcc's imposition of fines for gun-jumping and other violations underscores the importance of compliance with merger notification rules.
- Proactive investigations: reopened investigations into anti-competitive practices indicate a vigilant approach to maintaining market fairness and competition.



Morocco



Regional integration

- Strengthened regional collaboration: the mcc's active participation in the arab competition network fosters harmonized regulatory practices across the middle east and north africa.
- Leadership role: leading the merger control working group within the network positions morocco as a key player in regional competition policy development.

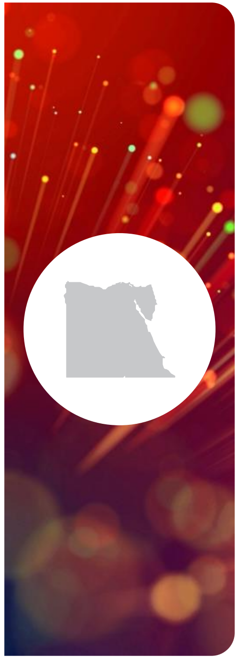
Strategic implications for businesses

- Compliance is crucial: firms must ensure they met the updated thresholds and notification requirements to avoid significant fines and delays.
- Expedited review options: while costly, expedited reviews can offer quicker clearances for critical transactions, enabling businesses to proceed with strategic mergers and acquisitions without prolonged regulatory hold-ups.

Merger Control Developments

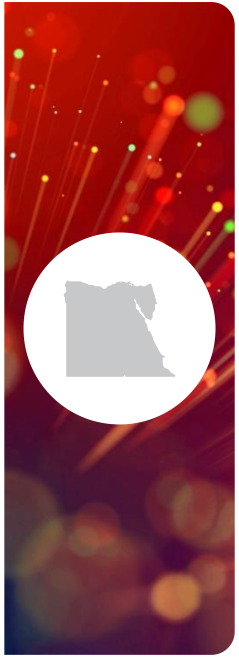
Egypt

- New mandatory and suspensory merger control regime has entered into force on 1 June 2024.
- Jurisdictional thresholds;
  1. If the combined turnover or value of assets whichever is higher of the parties in Egypt exceeds EGP 900 million and the turnover of each of at least two persons exceeds EGP 200 million, or
  2. If the global combined turnover or value of assets whichever is higher of the parties exceeds EGP 7.5 billion and one of the parties to the transaction has turnover in Egypt that exceeds EGP 200 million.
- All transactions meeting certain turnover or value of assets thresholds must be notified to the Egyptian Competition Authority ("ECA")



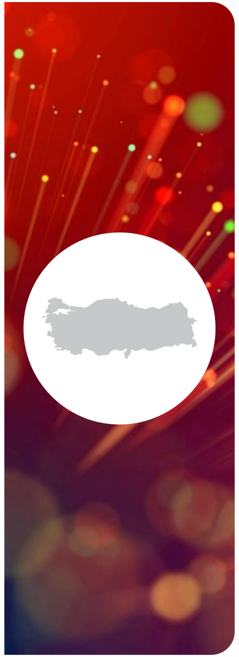
Egypt

- Phase I review period is 30 business days and can be extended by 15 business days if the parties submit commitments.
- The ECA has adopted a fast track – simplified procedures for several transactions. The clearance period in this case would be 20 business days.
- The clock does not start ticking until the notification form and documents are complete (this can result in further delays until the ECA is satisfied that the submission file is complete).



Turkey

- The authority continues to catch acquisitions of technology undertakings.
  - «Technology undertakings»: Undertakings that have activities in the areas of **digital platforms, software and game software, financial technologies, biotechnology, pharmacology, agriculture chemicals and health technologies**, or assets related thereto.
  - Applicable jurisdictional thresholds: **(i)** combined domestic turnover of the parties exceeds EUR 29,205,607; **OR** **(ii)** worldwide turnover of one party exceeds EUR 116,822,430.
- In 2023, the Turkish Competition Board reviewed **217** transactions — where this number was 245 in 2022. This is an 11% decrease in the number of transactions reviewed. As such, the peak caseload of 310 filings in 2021 seems to be left behind following the increase of the jurisdictional thresholds in 2022.
- The TCB took **1** merger into Phase II review.



Saudi Arabia and the GCC

- **KSA**
  - 1 November 2023: new version of the merger review guidelines issued with new merger control thresholds. New merger control guidelines under public consultation;
  - In 2023: 313 merger control filings submitted; 3 conditional clearances issued;
  - In Q1 2024: 93 applications received.
- **UAE**
  - 28 September 2023: adoption of a new Competition Law;
  - Introduction of a new revenue threshold, in addition to the market shares threshold (both to be determined by executive regulations to be issued);
  - Unlike the old law where non-response by the Minister is considered acceptance, under the New Competition Law, silence is a sign of refusal of the transaction.

South Africa & sub-Saharan Africa

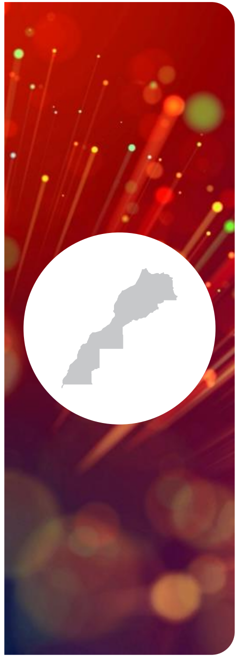
- Consideration of public interest factors in merger control increasing – strong focus on employment and, in South Africa, the promotion of a greater spread of ownership by historically disadvantaged persons
- COMESA increasing scrutiny of horizontal mergers, with heightened participation by member states

Morocco

Morocco has adopted various amendments to its competition law that will have significant impacts on its merger control regime. The amendments include increasing the minimum turnover thresholds for merger control filings, introducing a simplified filing form for no-issue transactions, and requiring a filing fee, with an optional expedited process for an additional fee.

New notification thresholds:

- The total worldwide turnover, excluding tax, of all the undertakings or groups of natural or legal persons involved in the concentration is greater than 1.2 billion MAD (appx. 110 million EUR) and the turnover, excluding tax, achieved in Morocco individually by at least one of the undertakings or groups of legal persons involved in the concentration is greater than 50 million MAD (appx. 4.5 million EUR); or
- The total turnover, excluding tax, achieved in Morocco by all the undertakings or groups of natural or legal persons involved in the concentration is more than 400 million MAD (appx. 36 million EUR) and the turnover, excluding tax, achieved in Morocco individually by at least two of the undertakings or groups of natural or legal persons involved in the concentration is 50 million MAD (appx. 4.5 million EUR); or



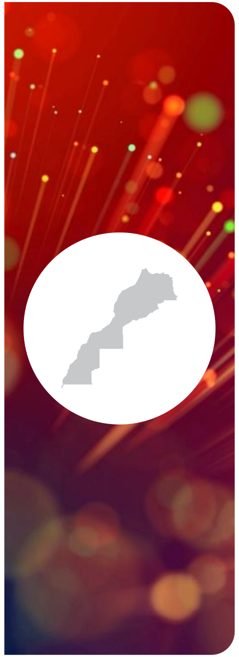
Morocco

- The companies which are parties to the agreement, or which are the subject thereof, or which are economically linked to it, have together carried out, during the previous calendar year, more than 40% of the sales, purchases or other transactions in a substitute market, or in a substantial part thereof.

The higher thresholds should reduce the number of filings for transactions with no effect in Morocco, which is an important development that would help ease unnecessary filings. However, given that the first and third thresholds could potentially be triggered by one party's turnover or market share alone, a number of global businesses that are active in Morocco could technically trigger a filing requirement for each merger they enter anywhere in the world, even when the transaction has no nexus to Morocco

Filing fees and expedited review:

- New filing fees have been introduced, set at 0,1% of the transaction's value, with a minimum of MAD 20,000 and a maximum of MAD 150,000. Parties can request the MCC to benefit from the fast-track review for a higher fee, up to MAD 300,000.



Questions

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