



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

**Egyptian Competition Authority
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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning anti-competitive practices, particularly hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]¹

1. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]

Article 6 of Law No. 3 of 2005 on the Protection of Competition and the Prohibition of Monopolistic Practices (Egyptian Competition Law, ECL) states that:

“Agreements or contracts between competing Persons, in any relevant market, are prohibited, if they should cause any of the following:

- a) Increasing, decreasing or fixing prices of products subject matter of dealings.*
- b) Dividing product markets or allocating them on ground of geographical areas, distribution centers, type of customers, goods, market shares, or seasons or periods of time.*
- c) Coordinating with regard to proceeding or refraining from participating in tenders, auctions, negotiations and other calls for procurement.*
- d) Restricting processes of manufacturing, production, distribution, or marketing of goods or services. This includes restricting product type or volume or limiting the availability thereof.*

The Authority, upon the request of the concerned parties, may exempt the agreement or the contract intended to achieve economic efficiency, from the ban stipulated in this article, if proved that the aforementioned agreement or contract attains benefits to the consumers

¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

	<p><i>exceeding the effects of restricting the freedom of competition, and the Executive Regulations shall determine the procedures, the conditions of submitting the request and the regulations of issuing the decision by the Authority. ”</i></p> <p>ECL is available in Arabic at http://eca.org.eg/ECA/StaticContent/View.aspx?ID=5</p>
<p>B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>Article 11 of the Executive Regulations of ECL states that:</p> <p><i>“Agreements or contracts between Competing Persons in any relevant market shall be prohibited if they are intended to cause any of the following:</i></p> <ul style="list-style-type: none"> <i>a) Increasing, decreasing or fixing prices of products subject matter of dealings. The determination of these prices shall cover due returns on installments, guarantee duration, before and after sale services or any other modalities that would determine the aforementioned prices</i> <i>b) Dividing product markets or allocating them on ground of geographical areas, distribution centers, type of customers, goods, market shares, or seasons or periods of time.</i> <i>c) Coordinating with regard to proceeding or refraining from participating in tenders, auctions, negotiations and other calls for procurement. Existence of coordination can be established through the following:</i> <ul style="list-style-type: none"> <i>1. Submitting identical bids, which includes the agreement on common rules for the calculation of prices or the determination of the bid conditions.</i> <i>2. Agreeing on the identity of the bidder, which includes the prior agreement on the person who will be awarded the tender, whether on a rotation basis, geographical basis or customer allocation basis.</i> <i>3. Agreeing on submission of cover bids.</i> <i>4. Agreeing on preventing a person from entering or participating in bid submission.</i> <i>d) Restricting processes of manufacturing, production, distribution, or marketing of goods or services. This includes restricting product type or volume or limiting the availability thereof.</i> <p><i>Competing persons shall mean persons who are currently or potentially operating in the relevant market. Agreements and contracts between competitors in the relevant market include written and non-written agreements and contracts.”</i></p> <p>The Executive Regulations are available in Arabic at: http://eca.org.eg/ECA/StaticContent/View.aspx?ID=6</p>
<p>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>In 2021, the Egyptian Competition Authority (ECA) issued joint guidelines with the General Authority for Government Services regarding the application of competition related provisions stated by the Public Procurement Law, which include detecting and preventing bid-rigging.</p> <p>These guidelines are available in Arabic at:</p> <p>https://mofblob.blob.core.windows.net/gags/Books/file-676668ed-048b-44a5-8398-0b5f17b7f374.pdf?sv=2015-12-11&sr=b&sig=HdyBxQE0u8xOsf1dvQ8KrSUnUuqWrK8vXWPmBU0vQ3w%3D&se=2022-09-07T10%3A12%3A17Z&sp=r</p>

<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>ECA's Leniency Guidelines, as discussed in Section 6, and linked to in Question 6A.</p> <p>ECA Compliance toolkit, which includes a chapter on anticompetitive horizontal agreements (substantive and procedural). The toolkit is available in English at: https://drive.google.com/file/d/1d7QdCSrQQgl2CiF9bFpdX6J0tJ6f5GYi/view?usp=drivesdk</p>
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2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p>	<p>ECL does not define the term "Cartel" but it's used interchangeably with the term "horizontal agreements".</p> <p>ECA, in its reports, as well as the Economic Court's judgements, refer to the definitions set forth in Article 6 ECL.</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas²) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</p>	<p>ECL does not distinguish between different types of cartels. All horizontal agreements stated by Article 6 are by object violations. Article 6 paragraph 2 only provides for an ex ante exemption for horizontal agreements as explained in the next question.</p>
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</p>	<p>Article 6 paragraph 2 ECL states that:</p> <p><i>“The Authority, upon the request of the concerned parties, may exempt the agreement or the contract intended to achieve economic efficiency, from the ban stipulated in this article, if proved that the aforementioned agreement or contract attains benefits to the consumers exceeding the effects of restricting the freedom of competition, and the Executive Regulations shall determine the procedures, the conditions of submitting the request and the regulations of issuing the decision by the Authority.”</i></p>

² In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

	In light of this article, the Authority can grant exemption to an agreement before its conclusion if it will result in economic efficiencies and benefits to the consumer, that outweigh its anticompetitive effects.
D. Is participation in a hardcore cartel illegal <i>per se</i>³? [If the situation differs for civil, administrative and criminal liability, please clarify this.]	Participation in hardcore cartels is illegal per se under ECL. The law does not require proof of harm nor proof of the execution of the agreement.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	It is a criminal offence.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]	The Egyptian Competition Authority.
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	Address: B19 Building, Smart village, KM 28 Cairo-Alexandria desert road. Cairo, Egypt Telephone: +202 35351900 Fax: +202 35370436 Email: info@eca.org.eg Website: www.eca.org.eg
C. Information point for potential complainants:	The Egyptian Competition Authority email: info@eca.org.eg Telephone: +20235351900
D. Contact point where complaints can be lodged:	Complaints can be presented physically at the premises of ECA or via email: info@eca.org.eg . The complainant is requested to fill a complaint form and provide all the possible details about their complaint.
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	Assistance may be requested of the public prosecution, if additional powers, other than those already granted to ECA's employees, are needed for an investigation. The powers of the public prosecution include, notably, mandatory interviews with the defendants and other relevant persons.

³ For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

4. Decision-making institution(s)⁴ [to be filled in only if this is different from the investigating agency]

<p>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</p>	<p>According to ECL, ECA can issue cease and desist decisions on the cartel members. ECA may also request the Public prosecutor to initiate the criminal procedures, and it's the criminal judge of the Economic courts who imposes the penalties on the cartel members.</p>
<p>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</p>	<p>For ECA: see above.</p>
<p>C. Contact point for questions and consultations:</p>	<p>For ECA: see above</p>
<p>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</p>	<p>ECA conducts a full investigation by collecting evidence and undertakes the necessary legal and economic analysis. Upon finding and establishing an infringement, ECA issues an administrative cease-and-desist decision. It also may request the Public prosecutor to initiate the criminal procedures, and it's the criminal judge of the Economic courts who imposes the penalties on the cartel members</p>
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>See answers to questions 4A and 4D.</p>

5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</p>	<p>ECA can investigate cartels following complaints received by any person, ex officio, or following a leniency application.</p>
<p>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a</p>	<p>The complaints may be presented in writing at ECA's premises, or through emails, on the designated form. The details requested in the form are laid out in Article 32 of the Executive Regulations of ECL and include mainly: the name</p>

⁴ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

specific form, please, indicate its location (website address).]	of the complainant, the name of the entity complained against, and the subject matter of the complaint.
C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]	There are no legal requirements for filing a complaint. Any person may file a complaint to ECA even if they are not affected by the anticompetitive practices.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]	If the complaint filed meets the requirements of Article 32 of the Executive regulations of ECL; ECA is obliged to take action on each complaint and does not have any discretion in this regard.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	ECA must issue a decision for each complaint (as explained in the previous question), The decision must be addressed to the complainant explaining its reasons.
F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	The executive regulations of ECL states a time limit of three months to investigate all cases, which can be renewed on a case-by-case basis.

6. Leniency policy⁵

A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]	The official name of ECA's leniency policy is: "Guidelines on Leniency Policy stated by Article 26 of the Egyptian Competition Law". These guidelines are available in Arabic at: http://eca.org.eg/ECA/Upload/Publication/Attachment_A/129/Leniency%20Guidelines%20ECA.pdf
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e.	Article 26 ECL states that violators of Article 6 ECL can be fully exempt from prosecution and penalties if they are the first to provide ECA with evidence of the anti-competitive agreement (Full immunity). Article 26 ECL also provides that the judge can grant a reduction of 50% of the fine to the other violators if they provide evidence of the anti-competitive agreement (Partial immunity).

⁵ For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

<p>reduction in the sanction / fine), depending on the case?</p>	
<p>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</p>	<p>Article 46 paragraph 1 of the Executive Regulations states that: <i>“In the event any crimes specified in article 6 hereof are committed, no criminal suit shall be filed against infringers who first rushed to the authority to report violations, if he/she satisfies the following 2 conditions:</i></p> <ol style="list-style-type: none"> <i>1. If breach communication is made before a criminal lawsuit initiated, or in advance of a resolution by the Board to adopt measures, provided for in article (20) of the law and article (41) hereof, is issued.</i> <i>2. In case the person in breach provides evidence he/she possesses which undoubtedly prove the commission of the crime disclosing and establishing its elements.”</i> <p>In light of this article, only the first infringer who communicates the breach to the Authority when the two-abovementioned conditions are fulfilled is eligible for full leniency.</p>
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation ?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications ?</p>	<p>An applicant can be eligible for leniency even if ECA already has knowledge of the cartel (through a complaint made by a different person or otherwise), however the applicant must provide ECA with an element of the violation that it has not yet uncovered (the members of the cartel or the subject of the agreement). The date/moment of the application only matters if there is more than one applicant, as only the first applicant (to provide evidence that helps ECA uncover one of the lements of the violation) will be granted full leniency.</p>

<p>E. Who can be a beneficiary of the leniency program (individual / businesses) ?</p>	<p>As ECL infringements are of criminal nature, leniency is applicable to the individual and not the business. Nevertheless, if a company submits a leniency application and meets all the procedural and substantive conditions, the leniency should cover all its employees.</p>
<p>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement , restitution, etc.]</p>	<p>The conditions of granting leniency are set forth in Article 46 of the Executive regulations stated in Section 6.C.</p> <p>Also, see answer to question no 6H</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</p>	<p>The Economic Court has the full discretion regarding whether or not to grant partial leniency.</p> <p>The level of evidence requires is the same as for full leniency; the applicant must help uncover elements of the violation.</p>
<p>H. Obligations for the beneficiary after the</p>	<p>The leniency guidelines states that the leniency beneficiary should fully cooperate with ECA as follows:</p>

<p>leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p>	<ul style="list-style-type: none"> - Providing all the relevant data and documents requested by the Authority as well as any available additional information, - Not tampering evidence or hiding any information that might be required by the Authority, - Not to get involved in any kind of competition infringement in the future, - Not disclosing any information regarding the leniency application.
<p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/ data, must they be in writing or can they be made orally, etc.]</p>	<p>The leniency application should be made in writing and signed as stated by Article 47 of the Executive Regulations of ECL: <i>“Communication of violations, set forth in article (23) of the law, shall be made in writing or through the forms so intended by the authority. Verbal reporting shall be transcribed in minutes signed by the violator, the judicial officer present and the minutes editor.”</i></p>
<p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]</p>	<p>The leniency applicant shall submit an official written leniency request to ECA, where ECA commences the review immediately in order to verify that all conditions are met. When ECA's Board of Directors take the decision, the applicant is officially informed of the decision.</p>
<p>K. At which time during the application process is the applicant given certainty</p>	<p>This can happen at any moment during the investigation and before initiating the criminal lawsuit. Practically, an application is not considered accepted until after a violation decision is issued, at which point a decision regarding the leniency application is also made. In addition, it's the Public prosecutor who takes a final decision on the leniency by not transferring the applicant to the Court, based on ECA's decision.</p>

<p>with respect to its eligibility for leniency, and how is this done?</p>	
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications ?</p>	<p>The decision to accept or reject the application is taken by ECA's Board of Directors. The Board issues a decision, which is communicated to the applicant in writing.</p>
<p>M. Do you have a marker⁶ system? If yes, please describe it.</p>	<p>Yes, ECA does have a marker system. When the leniency applicant does not submit all the required evidence to prove the violation, they have to fill a specific form entailing all the details of the infringement, such as the parties of the agreement, its subject matter, as well as, the relevant market. They are then granted a period of 30 days to provide all the relevant documents, that may be extended according to ECA's discretion.</p>
<p>N. Does the system provide for any extra credit⁷ for disclosing additional violations? [e.g. a hardcore cartel in another market]</p>	<p>No.</p>
<p>O. Is the agency</p>	<p>Yes, all leniency applicants informations are confidential according to Article 16 ECL, which states that:</p>

⁶ A marker protects an applicant's place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

⁷ Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p>required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p><i>“The Chairperson and the members of the Board of Directors and the employees of the Authority are prohibited to disclose the deliberations of the Board, any information, data or the sources thereof, in relation to cases falling under the scope of this law which are submitted or circulated during review, taking actions and issuing decisions in such cases.”</i></p>
<p>P. Is there a possibility of appealing an agency’s decision rejecting a leniency application?</p>	<p>All the decisions issued by ECA are considered administrative decisions, hence, they can be challenged in front of the Authority within 60 days. If the grievance is rejected by ECA for procedural or substantive reasons, the appellant can then proceed to appeal before the Council of State.</p>
<p>Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</p>	<p>The leniency applicant should present the leniency request physically in the premises of ECA mentioned in Section 3.B. If there any inquiries regarding leniency, they may contact the Authority via e-mail at: leniency@eca.org.eg</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>No.</p>
<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of</p>	<p>Yes, this may happen when the Authority decides that one of the parties has the ability to cooperate and provide evidence about the cartel under investigation. The person would then have to apply for leniency as outlined above.</p>

<p>the agency approaching potential leniency applicants?</p>	
<p>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what does protection actually mean.</p>	<p>Yes, all the material in the possession of ECA are confidential, according to Article 16 ECL (stated above in Section 6.Q.).</p>

7. Settlement

<p>A. Does your competition regime allow settlement?</p> <p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	<p>ECL allows settlement in any violation to its provisions as per Article 21 paragraph 2:</p> <p><i>“The Board, upon the approval by the majority of its members, may settle with regard to any violation of the provisions of this Law as follows:</i></p> <p><i>a) Before the request to initiate the criminal lawsuit, or any procedure taken therein, in return for the payment of an amount not exceeding the minimum of the prescribed fines.</i></p> <p><i>b) After the request to initiate the criminal lawsuit, or any procedure taken therein, and before the final judgment, in return for the payment of an amount not less than triple the minimum of the prescribed fines, and not exceeding half of its maximum.”</i></p>
<p>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p>	<p>Any type of violation mentioned in ECL can be the subject to settlement, but the Board of Directors has a discretionary power to accept or reject the settlement request.</p>
<p>C. What is the reward of the settlement for the parties?</p>	<p>The settlement leads to the lapse of criminal lawsuit regarding the violation in question. As shown below,</p>

	settlement amounts are less than the fines that the court can apply.
D. May a reduction for settling be cumulated with a leniency reward?	No. ECA takes a decision whether to accept or reject the leniency application, but it is the Public prosecutor who takes the final decision on leniency based on ECA's decision (see answer to question 6.K). Consequently, once the case is settled by ECA, the criminal lawsuit will be elapsed and, therefore the leniency decision won't be taken by the Public prosecutor. Nevertheless, the approved leniency application is taken into consideration by ECA when deciding the settlement.
E. List the criteria (if there is any) determining the cases which are suitable for settlement.	All violations to ECL can be subject to settlement: horizontal agreements set forth in Article 6 ECL, vertical agreements set forth in Article 7 ECL, and abuse of dominant position set forth in Article 8 ECL, as well as failure to cooperate with ECA or to submit a merger notification, or submitting false information (Article 22 bis), or non-cooperation with an ECA employee (Article 22(b) bis). There are no specific criteria for determining the cases for settlement, which is conducted on a case-by-case basis.
F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].	According to ECL, the parties can submit a settlement request to ECA at any point of the investigation, including before a decision is issued, but before a final judgment is rendered.
F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].	Settlements help finalizing the case procedures in a shorter period of them. This contributes in optimizing ECA's resources and, most importantly, in immediately ceasing the anticompetitive practices.
G. Does a settlement necessitate that the parties acknowledge their liability for the violation?	Under the Egyptian law, settlements do not require admission of guilt or liability for the violation. Nevertheless, the violators must show that they have ceased the violation in order for the settlement to be considered or accepted by ECA.
H. Is there a possibility for settled parties to appeal a settlement decision at court?	The settlement decisions can be challenged by the parties before ECA within 60 days. However, settlement decisions are not considered as administrative decisions susceptible of appeal before the Council of State courts.

8. Commitment

A. Does your competition regime allow the possibility of commitment? If yes, please indicate its public availability [link to the	ECL does not provide for commitment procedures. Article 20 ECL allows the Board of ECA to only impose injunctions on the violations to cease and desist the violations. Nevertheless, as stated above in question no 7.G., the Board of ECA only accepts settlement requests if the parties provide measures taken to cease the violation, which can include further commitments to ensure complying to ECL. As
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relevant rules, guidelines, etc.].	there are no specific commitment procedures, all measures must be fully implemented before deciding the settlement.
B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]? Are there violations which are excluded from the commitment possibility?	All violations are eligible for commitments according to the answer to question 8.A..
C. List the criteria (if there are any) determining the cases which are suitable for commitment.	See answer to questions no 7.E. and 8.A
D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]	See answer to question no 8.A.
E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]	See answer to question no 7.F and 8.A
I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?	See answer to question no 7.G and 8.A
J. Describe how your authority monitors the parties' compliance to the commitments.	See answer to question no 8.A
K. Is there a possibility for parties to appeal a commitment decision at court?	See answer to question no 7.H and 8.A

9. Investigative powers of the enforcing institution(s)⁸

⁸ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁹, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>According to Article 11 paragraph 3 ECL, all persons are obliged to provide the requested data and documents by ECA within the timeframe set by the latter.</p> <p>In addition, according to Article 17 ECL, ECA employees are granted the status of law enforcement officers. This allows them to review records and documents, whether physical or electronic, as well as to obtain any information or data from any governmental or non-governmental authority for the purpose of fulfilling ECA's mandate (Dawn raids). In general, dawn raids do not require a court warrant.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>Dawn raids and searching usually occur on work places, not private places such as residences and cars. Personal devices such as personal phones or computers can only be searched if the owner of these devices clearly gives their consent in writing (usually as a note in the official signed transcript of the meeting with the person). Otherwise, a court warrant is required.</p>
<p>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>According to Article 38 of the Executive Regulations, the evidence obtained during a dawn raid may be used by ECA for all its cases.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>No.</p>

10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against</p>	<p>ECA does not have the power to impose fines or any sanctions on undertakings; it only has the power to issue limited administrative decisions. If ECA wants fines to be imposed on the violators, it may request from the Public prosecutor to initiate criminal procedures. Accordingly, ECL does not provide explicitly for rights of defense for the proceedings before ECA. All rights of defense are explicitly available and guaranteed during the criminal proceedings before the Public prosecutor and the criminal judge according to the Egyptian criminal procedures law. In addition, the parties have the rights to appeal ECA's decisions before the administrative courts. In that case, all due process rights are</p>
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⁹ "Searches/raids" means all types of search, raid or inspection measures.

<p>the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</p>	<p>also explicitly available and guaranteed according to the administrative law.</p> <p>On the other hand, in order to respect due process principles, ECA adopted a policy to conduct hearing sessions with the infringers in order to hear their arguments and take it into consideration before issuing the decision. Only non-confidential information may be shared with the infringers due to confidentiality restrictions stated by ECL as explained</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</p>	<p>There is no distinction made in these cases; all information provided to the authority, which is not publicly available, is confidential under the confidentiality rules explained above.</p>

11. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</p>	<p>As ECL infringements are of criminal nature, the relevant rules stated by the Egyptian criminal procedures law are applicable. Since ECL infringements are considered as a misdemeanor, their statute of limitations is three years, which starts by the date of the end of the violation. The statute of limitation can be restarted by any actions taken by ECA or the Public Prosecutor to confront the infringers of their violation. These actions include meetings, request for information, dawn raids, etc...</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</p>	<p>In general, the time-limit for issuing a decision is three months for complaints, that may be extended on a case-by-case basis. There is no deadlines for initiations.</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision</p>	<p>The administrative decisions issued by ECA may be challenged by the relevant parties before ECA within 60 days. The relevant parties may also appeal ECA decisions before the Council of State courts within 60 days.</p>

regarding sanctions? (see also 15A)	
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12. Types of decisions

A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]	<p>The Board of Directors of ECA can issue two types of administrative decisions: as follows:</p> <ul style="list-style-type: none"> - According to Article 20 paragraph 1 ECL, ECA can issue a decision of finding of an infringement (cease-and-desist decision). - According to Article 20, paragraph 2 ECL, ECA can issue a decision imposing interim measures when there is an irreparable harm to competition or consumers.
B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).	N/A.
C. Can interim measures¹⁰ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both¹¹.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	<p>According to Article 20 paragraph 2 ECL, ECA may impose interim measures when there is prima facie evidence of an anticompetitive practice that would cause an irreparable harm to competition or consumers.</p>

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

A. Grounds for the imposition of procedural sanctions /	Article 22 bis ECL tackles the sanctions for not submitting documents or data requested by ECA and the submission of
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¹⁰ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

¹¹ Only for agencies which answered “yes” to question 2.B. above

<p>fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</p>	<p>false information. Article 22(b) bis states fines on the persons who obstructs the work of an ECA employee.</p>
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</p>	<p>Sanctions for procedural infringements are criminal fines (pecuniary).</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>As previously explained, all ECL infringements, including procedural violations, are of criminal nature. Therefore, fines and sanctions are only imposed on natural persons. On the other hand, according to Article 25 paragraph 2 ECL, the relevant juristic person may be jointly liable for the payment of the fines.</p>
<p>D. Criteria for determining the sanction / fine:</p>	<p>There are no criteria for determining the fines. The fines are determined based on the criminal judge's discretion.</p>
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>Yes. Article 22 bis states that:</p> <ul style="list-style-type: none"> - the fines for failing to submit information requested by ECA are within EGP 20,000 and 500,000. - the fine for submitting false information are between EGP 50,000 and EGP 1,000,000. <p>Article 22(b) states that obstructing an ECA employee's work can result in a fine between EGP 20,000 and EGP 500,000.</p>

14. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</p>	<p>Sanction for cartels (Article 6 ECL violations) are criminal fines. ECL does not provide for prison sentences for any infringement.</p> <p>Because of the criminal nature of ECL infringements, fines and sanctions are only imposed on natural persons. On the other hand, according to Article 25 paragraph 2 ECL, the relevant juristic person may be jointly liable for the payment of the fines.</p>
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B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]	There are no criteria for determining the fines. The fines are determined based on the criminal judge's discretion.
C. Are there maximum and / or minimum sanctions / fines?	<p>Yes. For cartels (Article 6 ECL violations), Article 22 ECL sets the minimum and the maximum amount of the fine as follows:</p> <p>The minimum fines shall be 2% of the gross revenues of the product subject to the violation during the period of the violation, and the maximum shall be 12%. In the case of the inability of calculating these revenues, the minimum fines shall be EGP 500,000 and the maximum shall be EGP 500,000,000.</p>
D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	N/A.
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	Yes.

15. Possibilities of appeal

A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	<p>For the cease-and-desist decisions issued by ECA, the relevant parties may challenge them before ECA on legal or factual grounds. In addition, they may appeal the decision before the competent administrative court on factual and legal grounds, but the control of the administrative judge is only limited to manifest error of assessment (legality control). However, the appeal at the cassation level can only be on legal grounds.</p> <p>For the criminal proceedings, the relevant parties may appeal the first instance court decision or the appeal court decision on factual and legal grounds. The appeal at the cassation level can only be on legal grounds.</p>
B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]	See answers to the previous question.

16. Private enforcement

<p>A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?</p>	<p>Private enforcement of competition law is possible under the Egyptian law. Although ECL does not provide for specific rules for competition violations, the general rules of civil and criminal law (substantive and procedural ruleAcs) pertaining to private enforcement of criminal infringements are applicable.</p>
<p>B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]</p>	<p>See answer to previous question.</p>
<p>C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>N/A</p>
<p>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</p>	<p>All types of antitrust violations can be subject to private actions, based on the general provision set out in Section 16B.</p>
<p>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</p> <ul style="list-style-type: none"> • is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals? • if a finding of infringement by competition authority is required, is it also 	<p>According to the applicable civil and criminal rules, the plaintiffs may file a stand-alone claim before the civil judge or the criminal judge (civil action) notwithstanding whether there is a decision issued by ECA. On the other hand, if the plaintiff files a claim before the civil judge, and the infringement is still subject to criminal proceedings before the criminal judge, the civil judge must stay the proceedings until the criminal judge issues a final judgement.</p> <p>Regarding ECA's decisions (whether cease-and-desist or settlement), neither the criminal judge nor the civil judge are obliged to abide by ECA's decisions in civil claims. Accordingly, if the plaintiff files a claim after the ECA's decision, it is considered as a stand-alone claim.</p> <p>Regarding the final judgements of the criminal judge, the plaintiff may file follow-on claims before the civil judge, who is obliged to abide by the criminal judgment. In this case, the plaintiff does not have to establish the existence of a infringement, and only has to establish the existence of harm and a causal link.</p>

<p>required that decision to be judicially finalised?</p>	
<p>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</p>	<p>Yes.</p>
<p>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</p>	<p>No, leniency applicants can still be subject to civil claims. Nevertheless, as the leniency applicant is not implicated in the criminal proceedings and not considered as a violator in the court decision, the plaintiffs must establish before the civil judge that the applicant committed the infringement (also see answer to question no 16.A)</p>
<p>H. Name and address of specialised court (if any) where private enforcement claims may be submitted to</p>	<p>The Economic courts (civil and criminal)</p>
<p>I. Information about class action opportunities</p>	<p>N/A</p>
<p>J. Role of your competition agency in private enforcement actions (if at all)</p>	<p>In principle, ECA does not have a legal role in private enforcement actions. However, practically, the Egyptian civil judge may request the expert opinion of ECA or its employees regarding a private claim pertaining to competition law.</p>
<p>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</p> <ul style="list-style-type: none"> • Role of your competition agency in the damage calculation (if at all) 	<p>The burden of proof relies on the plaintiff. Any evidence can be presented. The plaintiff should also prove a causality link between the antitrust violation and the damage suffered. For the role of ECA in this regard, see answer to the previous question.</p>
<p>L. Discovery / disclosure issues:</p> <ul style="list-style-type: none"> • can plaintiff obtain access to competition authority or prosecutors' files or documents collected during investigations? • is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? • summary of the rules regulating the disclosure of confidential information by the competition agency to the court 	<p>The plaintiff cannot access any confidential information in the possession of ECA. However, the Court can request the relevant information to be submitted by ECA, and in that case the Authority submits the requested documents.</p>

<ul style="list-style-type: none">• summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court	
<p>M. Passing-on issues:</p> <ul style="list-style-type: none">• how is passing-on regulated / treated in your jurisdiction?• is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims?	<p>According to the Egyptian civil law, indirect victims may bring claims and may be compensated.</p>