Competition Law and Competition Policy: What does Egypt Really Need?

First Draft:
By Ahmed Farouk Ghoneim[1]

Paper Submitted for the ERF 9th Annual Conference, 2002

Non-technical Summary

The paper raises a provocative question which is whether a developing transitional economy like Egypt needs a competition law or a competition policy or both. Applying a new institutional economics (NIE) approach, the paper proceeds by posing this question, while distinguishing between competition policy and competition law. The NIE approach emphasizes the fact that the absence of incentives among the major stakeholders in designing the competition law is a crucial element in explaining why the competition law cannot be effective if adopted in Egypt. This is complemented by the absence of an effective "collective action" among other beneficiaries from such law. The study proceeds by arguing that the competition law, despite important, is just one pillar among other important pillars necessary for having an effective competition policy. Due to the weakness of the whole institutional infrastructure governing competition in Egypt and the absence of other major pillars for an effective competition policy combined with the absence of incentives among major stakeholders and fragile collective action among other beneficiaries, the author emphasizes that the adoption of a competition law at this stage will not be effective. In other words, benefits arising from enacting a competition law at this stage are oversold. The paper then proceeds by arguing that the first best approach is to strengthen the other major pillars of competition policy before enacting the competition law. If the second best approach of enacting a competition law at this stage is adopted, then there are certain aspects that have to be taken in consideration in designing and implementing this law to make it as effective as possible. After discussing the major loopholes in the current draft, the paper provides some general guidelines to be adopted. Such guidelines include building the right political and institutional support, emphasizing the policy advocacy role of competition authority, adopting a simple and progressive piece of legislation, etc. The study concludes by emphasizing that what is needed is a full comprehensive reform for the competition law to be fruitful. Any piecemeal reform in this field is not likely to bring significant positive results.

[1] Assistant Prof., Faculty of Economics & Political Science, Cairo University

Competition Law and Competition Policy: What does Egypt Really Need?

First Draft:
By Ahmed Farouk Ghoneim[2]

Paper Submitted for the ERF 9th Annual Conference, 2002

Abstract:
There is proliferation in the number of developing countries worldwide adopting a competition law. The evidence available indicate that they face sever problems in implementing competition laws. This paper addresses the question of whether Egypt is in need of adopting a competition law. The paper differentiates between the competition policy and the competition law. Adopting a new institutional economics approach, the paper concludes that Egypt is in definite need of a competition policy. When it comes to competition law, then given the absence of incentives among the major stakeholders for implementing such law and given the weak institutional infrastructure that Egypt currently has, then emphasizing the need for having a competition law at this current stage is oversold.

[2] Assistant Prof., Faculty of Economics & Political Science, Cairo University

Competition Law and Competition Policy: What does Egypt Really Need?

First Draft:
By Ahmed Farouk Ghoneim[3]

Paper Submitted for the ERF 9th Annual Conference, 2002

Introduction:

Adopting a competition law by different countries, especially developing and transitional economies has experienced an unprecedented growth in the 1990s. In October 2001 there were more than 90 countries with competition laws (WTO, 2001, p. 34). However, the degree of success of enforcing competition law in the majority of developing countries was relatively low, where the overall existing institutional environment prevented those countries from enjoying the benefits of such law (see for example, Stewart, 2001). Competition policy and competition law have been always used in a wrong way to refer to same thing, mainly competition law— a fact that has been neglected as a major element in explaining the failure of competition laws to succeed. This paper investigates whether a developing transitional economy like Egypt is in need of a competition law, and if the answer is yes then what kind of competition law is likely to succeed in achieving its objectives, given the overall weak institutional environment. After this introduction, section one provides the theoretical framework of the paper using a new institutional economics (NIE) approach. Section two then applies the theoretical framework to the competition policy in developing countries. Section three moves to the Egyptian economy identifying the status of different industries and gives an overview of the complexity of institutional environment currently prevailing. Section four poses the question whether Egypt is currently in a need to adopt a competition law identifying the costs and benefits from adopting such law. Section five concludes and provides policy implications.

Section One: The Theoretical Framework: A New Institutional Economics Approach

In this section we concentrate on three main issues: The importance of institutions in developing healthy market economies; the sequence of institutional building and reform; and finally the NIE approach in explaining how institutions are formed.

The Importance of Institutions in developing healthy market economies:

There is an overall consensus that institutions are needed to support markets function properly. According to the World Bank Development Report, "Institutions support markets by helping to manage risks from market exchange, increasing efficiency and raising returns hence reducing the transaction costs arising from inadequate Information, incomplete definition and enforcement of property rights" (World Bank, 2001, p. 5). There is as well an overall agreement that there is no "one size that fits all" kind of institutions and hence institutions that fit the developed economies are different from that that fit economic environments of developing countries (World Bank, 2001; Hoekman 1997; World Bank and OECD, 1998; Hoekman and Holmes, 1999). Hence, it can be safely argued that developing countries experiencing transition to market economies are indeed in need of new forms of institutions that are

[3] Assistant Prof., Faculty of Economics & Political Science, Cairo University

not necessarily those adopted by industrialized countries and that are needed to ensure the well functioning of their infant market economies. This leads us to ask a question of what sequence of institutional building should be adopted?

Sequence of Institutional Building and Reform:
The ultimate goal of institutional reform in developing countries is fairly clear. That goal can be described as creating a market-friendly environment, with supportive government services that ensure its well functioning. But agreement on this ultimate goal does not resolve the crucial issue of how to get there. One way to frame this question is in terms of sequencing.

It is generally agreed that there are clear steps to follow to arrive at the right sequence. The first step is to *recognize inadequate institutions* that need to be tackled.
This means asking which institution is missing or not working properly. After identifying the areas that need institutional building, the next question to be asked is what *functions* are needed from the new institutions to perform. In general, institutions that support market transitions perform three functions: smoothing information asymmetries (that is ensuring that all market participants have access to reliable information), defining and enforcing property rights and contracts, and regulating competition (Islam, 2002). Finally, we should concentrate on the *relevant institutional design or structure* that fits with the overall institutional environment prevailing in the economy. The heterogeneity of the content of those three steps across different countries led NIE theorists to conclude that there is no blue print for institutional development across all countries. In other words, there is no agreed upon sequence of institutional development (Islam, 2002; Clague, 1997) and that each country should follow the steps identified above following its own priorities and taking in consideration the differences in constitutional orders, cultural endowments, and inherited institutional arrangements – the facts that imply that institutional reforms are certainly path dependant. However, there has been a shared observation by a number of experts that strengthening the government administration and/or civil society is a cornerstone for the success of any institutional reform and should be implemented at the early stages without delay (Clague, 1997).

The NIE approach underlines the need for incentives to undertake reform. This is contrasted with other approaches as standard “institution free” neo classical approach and the “incentive free” social engineering approach (For more elaboration see Clague, 1997). The NIE emphasizes that what is required are reform strategies based on a careful understanding of the incentives facing actors in the current situation and on an examination of different alternatives for changing the institutional equilibrium (Clague, 1997).

A NIE Model of Building Institutions:
After agreeing on the steps to build institutions and taking in consideration the differences among different countries in identifying their own priorities for institutional reform we provide a simple demand supply model that describes the evolution of institutions.

Once it is decided what type of institution is required, we need to reach the right decision and building consensus for reform. This requires investigating both the demand and the supply sides. For some institutional reforms, the demand is already

there; for others, various groups might need to be convinced; and still for others, there is neither opposition nor support. The demand for institutional change is normally made either by agents who expect that new arrangements will provide them with better opportunities of capturing gains that are lost under existing arrangements (greater efficiency), or by actors dissatisfied by the current distribution of income or wealth. Important factors motivating the demand for institutional change are "relative product and factor prices, the law making process, level of technology, and the size of the market. (Zaki, 1999, p. 22).

On the supply side, institutions are created by principals (political rulers, or the owners of resources) to govern their relationship with other principals and with their agents (citizens, bureaucrats, employees, etc.) and that these principals are motivated to create institutions that maximize their individual utility. Policymakers need to be aware of the incentives the new institutions will create— that is, the rewards and penalties for not complying with new rules and regulations— which will be heavily influenced by the kinds of institutions that exist already (for a similar argument see Islam, 2002). The factors that influence the calculus of the political decision makers will include their vision and knowledge, and the expected costs of designing and implementing the new institutional arrangements— which in turn depend on "getting the factor prices right". These include the costs of the required physical and human infrastructure) required for the design and implementation of the new institutional reforms. It is worth mentioning here the complexity of this issue since institutional change never occurs in vacuum. It alters the impact of existing laws, so identifying the groups or individuals the new institutions will affect is crucial. Hence, "getting the prices right" is not confined here to the monetary value, but to the cost of the terms of alternative choices (of institutional arrangements) available in the social, political and economic domains (Zaki, 1999, p. 24).

Integrating the demand and supply sides together imply that the pressure of a competitive market as suggested by North (1991), is the most viable mechanism for selecting the most efficient economic institutions, forcing out these that fail to perform in a utility maximizing way". The market's competitive pressure will select socially beneficial forms of economic organization, regardless of the intentions of the actors. If, instead, the creation of institutions is left in the hand of any dominant actor— such as the state, or a cohesive self dominant class— the product will be institutional rules that will give that actor a strategic advantage vis a vis other actors, regardless of how socially sub optimal the outcome of these institutions may be. In sum while demand pressures are important, taken alone they are insufficient to explain the path of institutional change. Consideration of the political economy is essential, and the political and economic costs and benefits to the ruling elites are the key to explaining the nature and scope of change. (Zaki, 1999, p. 25).

Section Two: Applying the Theoretical Framework for Enacting a Competition Policy in Developing Countries:

With most developing countries experiencing a transitional state to market economies, the need for a competition policy is indispensable. The breaking up of state monopolies and the privatization waves require a complementary institutional infrastructure that is able to ensure a healthy competitive environment (see for

example, World Bank, 2001). The diagnosis of a typical economy in transition identifies clearly the need for a competition policy. In many cases, the lack of the required competitive environment is a result of the government policies that prevent markets from being contestable (free exist and entry), impose different restrictions that preserves monopolistic situations, etc (see for example, World Bank, 2001; World Bank and OECD, 1998). But a crucial aspect of embarking on adopting a competition policy is identifying its functions and its design. Here the complexity of the issue begins. In many cases, the governments of developing countries are not clear of the functions of the competition policy they are willing to adopt. In most cases, the functions are spelled out explicitly in their competition laws identifying efficiency enhancement or public interest and or other objectives as the main objective. The design of the competition laws (and not competition policies) are put in line with the identified objective. But competition policy is a much wider and deeper concept than competition law. According to Khemani and Dutz (1995), "Competition policy … is defined in the broad sense as consisting of two parts—one which is commonly referred to as antitrust or competition law and the other, which compromises micro industrial policies such as tariff and non-tariff policies, foreign direct investment, unnecessary government intervention in the market place and economic regulation designed o prevent anti competitive business practices by firms. Both parts of the policy impact on economic agents in the market place"[4]. The main problem with developing countries is that they mix both together. The situation ends up by the failure of their competition laws to implement their objectives of competition policies.

Part of this failure can be explained using the NIE model adopted above. The main emphasis in the NIE has been on "incentives" which motivate both the demand and the supply sides to create the welfare maximizing kind of institution. Moreover, often governments are concerned with the design and efficiency of the new institutional tool, while the building up the political support among the different stakeholders lags behind (Lamy, 2001). Looking at the status of many developing countries in their transitional phases reveal the following facts: The substantial presence of governmental monopolies, the entrenched interest of several key businessmen in preserving the monopolistic situations after privatization, the absence of consumer moves and awareness. In other words there is absence of incentives to change the status quo. Those three factors are enough to explain why competition laws end up as a failure in enacting a fully fledged competition policy. The reason is that the law is often tailored to allow for exceptions and those exceptions are often not shielded from political interference and key interest groups influence. Even if the law is rightly

[4] Another definition following Hoekman and Holmes, 1999: National competition *law* can be defined as the set of rules and disciplines maintained by governments relating either to agreements between firms that restrict competition or to the abuse of a dominant position (including attempts to create a dominant position through merger). Competition *policy* has a much broader domain. It comprises the set of measures and instruments used by governments that determine the "conditions of competition" that reign on their markets. Antitrust or competition law is a component of competition policy. Other components can include actions to privatize state-owned enterprises, deregulate activities, cut firm-specific subsidy programs, and reduce the extent of policies that discriminate against foreign products or producers. Often the competition policy stance of a government may be determined in part by the international treaties it is a party to, including e.g., regional integration agreements. A key distinction between competition law and competition policy is that the latter pertains to both private and government actions, whereas antitrust rules pertain to the behavior of private entities (firms).(Hoekman and Holmes, 1999)

implemented, the other cornerstones of a successful competition policy are missing and hence a competition law can never alone succeed in achieving its ultimate aim of enhancing the competition policy (for an extensive elaboration of the absence of other cornerstones of competition policy, see World Bank 2001). In other words, the developing countries adopt some kind of a piecemeal reform, whereas for the success of establishing the right kind of a competitive environment what is needed is a comprehensive reform (for a similar argument though used in another context see Hoekman and Messerlin, 1999).

Section Three: The Case of Egypt:

Egypt has embarked on a comprehensive economic structural reform program since 1991. Commonly referred to as the Economic Reform and Structural Adjustment (ERSAP) program that has been implemented in collaboration with the World Bank and IMF, the reform program tackled a wide range of issues related to policy and institutional reform. The main objective of the program was to transform the economy into a market economy and cure the major imbalances that the economy faced in the 1970s and the 1980s. The reform program has been appraised by the international institutions in correcting a number of major imbalances in the Egyptian economy (IMF, 1998). However, the sustainability of reform have been skeptical. Moreover, insurance of a full competitive business friendly environment was never achieved. The following anecdotes identify the lack of the expected competitive environment.

The privatization program in Egypt has suffered lately a number of delays. Moreover, a number of the privatized companies remain "semi privatized" where the government still owns the lion's share in their capital. The size of the state owned enterprises remain large by developing countries' norms (World Bank, 1995). The tariff and non tariff barriers remain substantial. The inflows of FDI remain constrained by various bureacratic and red tape measures. The labor market lacks the competitive institutional pillars that ensure full flexibility. Box 1. identifies the lack of competition in some key service sectors.

Box. 1.

In Egypt the lack of competition in services that facilitate trade reduces the gains from the liberalization of merchandise trade. Only Egyptian nationals are allowed to engage in the business of importing, which clearly reduces competition in distribution and competition in domestic markets. Also, the lack of competition in the provision of port services in Egypt, which are provided by public companies, has resulted in handling and storage fees 30% higher than in neighboring countries, which have broadly similar quality of services. There is also no competition in maritime shipping in Egypt which is monopolized by a state owned firm. According to a 1994 survey, the cost of shipment and handling in Egypt of a standard container was 20 to 30% higher than in the nearby countries of Jordan, Syria and Turkey (World Bank, 2001, p. 145).

Moreover, there are a number of regulatory measures that impede competition and are not tackled by competition law but rather related to trade facilitation: Examples include the technical standards which are predominantly related to food products, engineering goods, and consumer products. The majority of these national standards have no equivalence to international standards. For instance according to the latest WTO Trade Policy Review Report, there were around 1,000 standards in Egypt, of

which only 25 to 30% are in conformity with international standards (WTO, 1999). Other measures include quality control measures where for example Egypt raised the number of imported products subject to quality control measures from 69 in 1992 to 182 in 1998. While such measures are necessary to ensure minimum health and safety standards, they may have been applied in a discriminatory fashion depending upon the use of the imported items (Zarrouk, 1999, p. 4). Other examples include the cumbersome administrative customs procedures where the average customs clearance transaction in Egypt requires 25-30 stages and takes from one day to several weeks (Zarrouk, 1999, p. 4).

To sum up, it is clear that Egypt lacks the competitive environment that allows competition to be enhanced and creates the required business friendly environment. Tables 1, and 2 identify the status of two key industries in the Egyptian economy where mergers and acquisitions have lately increased. Other observers asserted that the Egyptian economy has experienced lately a large number of mergers and acquisitions that could have not been properly investigated and could have negative anticompetitive effects where the number of mergers and acquisitions reached more than 90 cases in different sectors in the last five years despite the slow down of the Egyptian economy (see for example, Ali- El Dean and Moheildin, 2001, p.3; Al-Ahram newspaper 03/09/2002). But the question is whether the government and the major key stakeholders are in favor of adopting a comprehensive competition policy? To answer this question we need to check three issues, namely:

- The incentives of the government to create this competitive environment
- The incentives of business stakeholders to attain the similar objective
- The role of the consumers

Table 1. Market Share of Local Steel Rebar Producers, 2000

Supplier	Production in (000) tons	Market Share
Ezz Steel	1147	27.5%
Alexandria National Iron and Steel	1375	33.2%
Ezz-Dhekhila	**2522**	**60.7%**
Int'l St. R.M.-Beshay	275	6.6%
Kouta Group	360	8.6%
Dela Steel	91.8	2.2%
Menouefya Steel	46	1.1%
Al-Said Steel	50	1.2%
Suez Co. Al-Koumy	82	2.0%
Ayyad Rolling	36	0.9%
Misr Iron & Steel	24	0.6%
Sarhan Steel	0	0.0%
Egyptian Iron& Steel	56.2	1.3%
Al-Temsah Steel	24	0.6%
Egyptian Copper Wk	34.2	0.8%
Al-Arabi Planet Sharkawi	33	0.8%
Egyptian Metal Hatem	80	1.9%
National Metal Ind.	16.9	0.4%
Total	3731.1	89.65%
Imports	440	10.55%

Source: EFGH-Hermes Report (2001)

As can be identified from table 1., there are 17 players in the local steel industry.
In October 1999, Al-Ezz Rebars acquired a controlling stake in Alexandria National Iron and Steel Company, the largest steel producer in Egypt . It acquired 28% of the company. Al-Ezz's purchase has enabled it to enlarge its share of the Egyptian steel market to 69%. EZDK's objective is to maintain its dominance over the Egyptian steel market share by holding on to its increasing market share. Moreover, Alexandria National Iron and Steel Company board of directors appointed Mr. Ahmed Ezz joint chairman and managing director of Al Ezz steel and Alexandria National Iron and Steel Company. The move was an attempt to consolidate both companies fully. The brands of the two companies have been entirely unified as both companies produce rebars under the name EZZ-Dekhila and use the same sales force.(EFGH-Hermes, 2001). Turning to our initial point of enacting a competition policy in the field of steel industry we find that there are several entry barriers to the steel industry in Egypt. Firstly, quality steel production requires sizeable capital. Secondly, local capacity exceeded consumption in 2000. Moreover, the fact that the new merger makes a single company controls almost 70% of the total local market seriously discourages new players from attempting to enter the market (EFGH-Hermes, 2001)

Steel prices have a tendency to be fairly elastic. However, the new merged company 69% market share, combined with the fact that the company is a quality steel producer, give it a considerable flexibility when setting prices. The difference in price between the steel produced by the merged firm and the other market players reach 10% with the merged firm prices normally at the higher end of the market (EFGH-Hermes, 2001).

The Cement Industry has seen recent moves of acquisitions as well which raised the share of one firm (Suez Cement) to 28% after buying Tourah in the year 2000. Table 2. identifies the different market shares of local cement producers in Egypt.

Table 2.: Market Share of Cement producers in Egypt in 1999

Company	Market Share
Suez Cement	14%
Tourah	13%
Suez and Tourah	28%
Assuit Cement Co. (CEMEX)	13%
Helwan Cement Co.	11%
Egyptian Cement Co. (ORASCOM)	12%
Amreyah Cement Co. (CIMPOR)	9%
National Cement Co.	11%
Beni Sweif Cement Co. (Lafarge)	5%
Alexandria Cement Co. (Blue Circle)	3%
Misr Beni Sweif Cement Co.	0%
Misr Cement Qena Co.	0%
Sinani Cement Co.	0%
Total Domestic Supply in 1999 (22.5 million tons)	100%
Total Demand in 1999 (26.7 million tons)	
Imports	0%

Source: (EFGH-Hermes, 2001)

Other sectors have experienced several mergers and acquisitions (both horizontal and vertical) in the fields of the audiovisual sector which created an intensive need among the groups affected to call upon the government for enacting a competition law as they saw it as the panacea that can solve their problems (Ghoneim, 2002). Other sectors are experiencing similar developments. For example, the wood industry suffers from dominant position in the wholesale distribution (Ahram El Iktsady, No. 1746, 2001). Indeed, the size of the private sector, through privatization, has increased significantly in Egypt. According to Ali El Dean and Mohieldin 2001, it is now responsible for 66% of total investment and 72% of GDP (Ali El Dean and Mohieldin, 2001, p. 23).

It is clear that the government is rather pushed to enact a fully comprehensive competition policy which arises from the international institutions' pressures. The lax willing of the government to embark on an effective trade policy (see El-Mikawy and Ghoneim, 2002) raises the question of what are the objectives behind having a protectionist trade policy and whether the government uses trade policy as a tool to redistribute income or to shield its SOEs from foreign competition or whether other vested interests where able to convince the government of its lax trade liberalization. Hence, the incentive of the government for enacting a comprehensive competition policy is absent even though, willingness to enact a competition law has been raised since 1995 where the first draft was ready and have pending for approval by the Parliament since 1997.

The business community in Egypt is divided into various factions with conflicting interests. They are mainly divided into industrialists and importers. While the former would like to see some kind of special tariff protection for domestic industries, importers and agents of foreign manufactures wish to do away with all such privileges. The matter is further complicated by the fact that domestic manufacturers wish to exclude from such protection imported inputs needed for their operations— an exemption which is of course strongly opposed by domestic producers of such imports (Zaki, 1999, p. 132). The resolution of such conflicts requires collective action, which entails sacrifices on the part of certain groups and individuals. But there is no incentive for the members of the business community to change the status quo. The free rider problem inhibits the cohesion of capitalist, even when facing potential threats to their class from other social forces. (Zaki, 1999, p. 132). The greater involvement of the industrialists (versus importers) in the decision making process (37 businessmen are now members of the Parliament) shows that the government has started to take in consideration their interests. However, as identified by some observers such greater involvement of businessmen in the decision-making process has not precluded the state from acting unilaterally at its discretion, sometimes against business interest in pursuit of its own goals (Zaki, 1999, p. 136). Other commentators have argued that the lax consideration of enacting a competition law in Egypt was because of the pressure coming from the private sector which feared the enacting of such law for several reasons (Ali El Dean and Moheildean, 2001)[5]. In other words, the

[5] According to Ali El Dean and Moheildean, 2001, p. 27: "The issuance of a competition law has been facing some resistance, this time not from the state but from the private sector, that has various concerns regarding this law, such as:
1. Fear of government intervention in a new form under the notion of protection of competition.

absence of effective collective action that calls for a comprehensive competition policy complemented by the lack a clear transparent framework for lawmaking in Egypt was translated in the absence of incentives on interested parties in calling for a full comprehensive effective competition policy.

Consumers in Egypt can be described to have no role in enacting competition policy. There is no law for consumer protection, consumer protection NGOs are week and have no significant role in policy advocacy and they lack collective action initiatives.

Hence, it can be safely argued that the three main stakeholders in enacting an efficient competition policy lack the incentives to create such a policy. The role of the affected groups from the lack of competition has been strengthened lately, however they are not strong enough and myopic in believing that a competition law can cure their ills.

Section Four: Does Egypt need a Competition Law:

Before answering the main question of whether Egypt is need of a competition law we have to differentiate between competition policy and competition law. Certainly every economy is need of a competition policy that enables the business environment to flourish according to fair set rules of competition. Hence, Egypt is no exception when we argue that it is in need of a competition policy. The various anecdotes cited in *Section Three* assert the fact that Egypt lacks many important aspects of an effective competition policy. But this does not answer the question of whether Egypt is in need of a competition law or not? Observers that have discussed the case of Egypt were divided into two main groups. Some argued that Egypt is in need of a competition law while others argued against adoption of a competition law at the current status of the economy.

Among the first group were Ali-El Dean and Moheildean (2001) who fell in the same mistake of mixing up competition policy with competition law. They concluded that Egypt is in need of competition law but posed the question of what kind of competition law will be suitable for Egypt[6]. Others who argued in the reverse direction asserted that Egypt should not embark on adopting a competition policy before taking in consideration its anticipated costs (again probably mixing up competition policy with competition law) . According to Aranson (1999), "Egypt should not embark upon the enactment of a competition policy without serious

2. Possible abuse of the law by particular firms, that may use it, unjustifiably top charge competitors with unfair trade practices.
3. The law will cover only registered firms, leaving informal activities and smuggling intact.
4. Those that will be responsible for implementing the law may not have sufficient knowledge of the idiosyncrasies and peculiarities of particular segments of the market.
5.Just implementation of the law may be hindered by corruption and profiteering"

[6] Following this point of view is that of some members of the WTO where it was mentioned that "Experience had shown that it was important to introduce competition policy at an early stage of development because, particularly in the context of privatization, monopolies and other anticompetitive tendencies tended to take root if inadequate instruments existed to address them.(WTO, 2001, p. 14).

consideration of its anticompetitive consequences. As Noll and other have argued, a nation open to foreign trade need not fear market power or its alleged effects. Where local monopolies or cartels persist, they more likely arise from government regulation and the political construction of entry barriers than from normal market forces".

In trying to answer the question of whether Egypt should adopt a competition law or not we have to emphasize that competition law is just one element of a full comprehensive competition policy which embraces a large number of institutional and policies that can either support or adversely impinge the application of full comprehensive competition policy as identified in Box2.

Box 2: Set of Policies that are crucial for having a comprehensive competition policy

Trade policy, including tariffs, quotas, and subsidies, antidumping actions, domestic content regulations, and export restraints.
Industrial policy
Regional development policy
Intellectual property policy
Privatization and regulatory reforms
Science and technology policy
Investment and tax policies
Licenses for trades and professions.
In addition, various sector specific policies in environment, health care, telecommunications, cultural industries, financial markets, and agricultural support schemes tend to have measures more likely to restrict than to promote the objectives of competition policy (World Bank and OECD, 1998, p. 8).

As has been discussed in *Section Three,* it is crystal clear that Egypt has deficiency in the implementation of a number of policies identified in Box2. that is crucial for a successful implementation of a competition policy. Moreover, on the institutional front there are a number of conflicting aspects that lend the whole institutional setup to be described as a poor setup for the implementation of a competition policy. We mention here just few examples which are either loopholes in the existing draft of the competition law or are provisions in other sets of rules and regulations that contradict with the objectives of the competition law.

Starting with the existing final draft of competition law, we find that it has adopted a hybrid set of rule of reason as well as per se approach. It identifies a threshold of 30% as a starting point to investigate the possibility of existence of dominant position (per se approach) complemented by other rule of reason measures to fully examine a case. This is a reasonable approach given the full set of complexities available in the Egyptian economy. The main objective has been identified to enhance economic efficiency. However, the identification of the 30% threshold is not justified by any means and it is not clear who set it or why it has been set. Debates in the newspaper has elaborated the business community has not been consulted on that issue. The above examples of the two industries identified in tables 1. ands 2 show that this threshold is likely not to be adopted in many cases unless the competition authority starts to include the rule of reason approach. There are numerous industries in Egypt

that are characterized by full monopoly including alcoholic beverages, potato chips, etc.. This means that the simple per se approach is likely to be idle and the competition authority will have to follow the complex rule of reason approach which complicates the investigation procedures.

The existing draft has not mentioned the relation between the law itself and other sectoral regulations and has not identified the relationship between the competition authority and the sectoral regulatory bodies. This loophole is of crucial importance as it can create lack of coordination in the future and sends conflicting signals to the affected market participants[7].

The policy advocacy role of the competition authority has not been stressed in the draft law. Policy advocacy refers to activities undertaken by staff of competition agency or related authority to influence the design and/or implementation of government policies, legislation or administrative actions that affect competition (WTO, 1999). The absence of emphasis on this role means that it is likely that the competition authority's voice will not be heard effectively and its role in developing the rules and regulations concerned with competition will not be significant.

The current draft of the competition law was silent regarding the issues related to intellectual property rights. This is a major drawback which is likely to create several future problems when competition policy conflicts with intellectual property rights issue[8]. Despite the fact that the TRIPS agreement has given the right to competition authorities to include certain provisions in their national laws to preserve the adverse effects of monopolization of intellectual property rights (see Hoekman and Holmes, 1999), the drafters of the Egyptian competition law seem to have missed this issue despite its vital importance.

The law itself contradicts with several provisions of other laws and regulations. For example, Law 8/1997 that is concerned with promotion of investment identified in one of its provisions that it provides generous tax breaks for firms in the audiovisual sector where their capital exceeds 200 million L.E.. this is a clear invitation for mergers and acquisitions given that the existing firms in the field of cinema film production do not acquire such capital (see Ghoneim, 2002, forthcoming). The competition law on the contrary calls for controlling the excess of market shares of firms by providing this threshold of 30%. In the Cinema Industry, a firm controls now about 30% of the ownership of cinemas and has been created recently following Law8/1997, is it likely to face the accuse of adopting anticompetitive behavior or is it likely to be given a waiver based on stimulating economic efficiency and enjoying

[7] For example, the failure to develop strong cooperation mechanisms between the competition authority and regulatory authorities also led to many problems and conflicts, as was the case in South Africa between the competition Authority and the Banking Regulator. For more details see Stewart 2001.

[8] This not only the case of Egypt. It is a general case in developing economies where the prohibition of abuse on intellectual property monopoly is not evident in many competition laws of developing countries. This is versus the case in developed countries where in exists in the EU as its Technology Transfer Directive in which abuse of IP monopoly is strictly prohibited. The same applies to the US Anti-trust law. The case against Microsoft is a recent example. For more details on the negative impact of the absence of such provision on developing countries see(Stewart, 2000).

economies of scale (see Ghoneim 2002 for more elaboration on the structure of the Cinema Industry market).

The absence of a consumer protection law adds to the possibility of the failure of enacting a competition law. The draft of the competition law has included the consumer interest as one of the objectives to be preserved when discussing economic efficiency. But the question is how are the perceptions of the consumers going to be channeled in the absence of a consumer protection law and active movement of NGOs in that field.

The information infrastructure in Egypt is rather weak. A fact that has severely affected the process of decision making in several occasions. A successful implementation of competition law requires the presence of a comprehensive database on the micro level..

Table 3. summarizes the major loopholes in the current draft competition law and provides some solutions for its drawbacks.

Table 3: Major Loopholes in the Current Draft of the Competition Law and Some Suggested Solutions

Loopholes	Solutions
30% as a threshold for dominant position situation	Increase the threshold after consultation with business community and taking the status of the existing firms' situation in consideration
Absence of the relationship between the law and other sectoral regulations	Need to be clearly stated and identified which rules and regulations will prevail in sectors that have their own regulations
Not emphasizing the policy advocacy role of the competition authority	Requires a separate statutory provision with clear mandate for the competition authority
Contraditicions with some provisions of other major laws	Clarify and solve this conflict
Absence of provision related to intellectual property rights monopoly	Should be included as a separate provision
Vagueness of including consumers' representatives in the board of the competition authority	Should be stated clearly
Vagueness of complete fledge independency of the competition authority	Emphasize this independency by eliminating the power given to the concerned minister and delegating it to the head of the competition authority

This leads us to the conclusion that adoption of a competition law in Egypt with such a weak policy and institutional infrastructure, absence of incentives among major stakeholders, and weak collective actions among potential gainers from the adoption of such law is likely to result in a failure of enacting the law, if adopted. In addition to such specific characteristics of the Egyptian economy, we add the common features among developing countries which include the lack of human capacity and physical

infrastructure required for a successful implementation of such law. Despite, our conclusion might be surprising to many observers, it should be emphasized that even international institutions have backed up this argument. For example, in the World Bank Development Report 2001 it has been asserted that "In resource-constrained countries governments may benefit from focusing on removing barriers to entry and exist in markets and opening the economy to international competition before turning their attention to building competition laws and agencies" (World Bank, 2001, p. 135) or as it has been put by OECD "Competition policy instruments are blunt not refined surgical instruments and have to be handled with care. For countries without experience in this field, a rules-based approach to competition would be appropriate and there should be the fullest interplay for market forces and mobility of resources, deregulation and lowering of barriers to entry as instruments for promoting competition rather than law itself" (OECD, 1994, p. 14). The main fact that has to be emphasized is that for a competition policy to be effective there is need for than just simply enacting a competition law. There is a need for effective enforcement, a well thought out agenda in terms of the relationship between competition policy and other government policies and finally cooperation of the business community in the development of policies and institutions to implement them (See OECD, 1994). All such factors seem to be not well represented in the Egyptian economy when it comes to the issue of competition policy. Moreover, there are examples of countries that have been successful in having an effective competition policy without the existence of a competition law, and there are examples of such policies that rely on instruments other than competition legislation (e.g. a high degree of market openness supplemented by sectoral rules and other instruments, where necessary as in Hong Kong and China (WTO, 1999)

There has been some arguments which assert the need to adopt a competition law, especially that the trade policy is not likely to cure the ills of lack of competition in the services and non tradable sectors (for a similar argument see Ali El Dean and Moheildean, 2001, p.7; Hoekman, 1997; Pittman, 1999; Hoekman and Holmes, 1999). The argument emphasizes that because of the closed nature of the economy, and the inability of the trade policy to invoke the required level of competition in such sectors that remain shielded from international competition, then the competition law is likely to play a positive role here. Suctinizing this argument reveals that the adoption of a competition law in this case is a second best which is not likely to yield the optimistic results as identified. The reason is that as has been mentioned by several authors, given the limited resources and lack of human capacity in developing countries, the main concern of their governments should be to concentrate on eliminating the barriers to entry and exist thus making the markets more contestable (see for example, World Bank 2001, World Bank and OECD, 1998; Hoekman, 1997, Pittman, 1998). Moreover, it has been emphasized by some practical commentators and international organizations that it is so difficult or even impossible to determine precisely the stage of economic development at which it was most appropriate or under what conditions competition legislation should be adopted (WTO, 2001, p. 17). If a competition law is to be adopted in an economy that refuses to open up effectively to the world, it is likely that the same vested interests behind the refusal of opening up will dominate the process of decision making when it comes to the implementation of competition law, hence leading to an idle tool in the economy. However, it should be asserted that in other cases, anticompetitive practices can completely close a country's

markets to inbound trade and investment. This happens as a result of the tolerance of some governments of private domestic anticompetitive practices and allowing favored domestic companies to block out competing foreign goods or services. This strategy can wholly or partially nullify the benefits of an open trade regime (COT, 1997, p. 3).

Conclusions and Policy Implications:

The paper concludes that the impact of adopting a competition law should not be oversold. In other words, Egypt's adoption of a competition law is not likely to be effective if other pillars of competition policy remain absent. The lack of incentives among the key stakeholders is the main reason behind the expected failure of adopting a competition law. Given the limited resources available to the Egyptian economy, the government of Egypt should opt for a first best approach by eliminating the barriers that negatively affect competition in various goods and services markets. Hence, it should embark on a serious trade liberalization policy regarding tradebale goods and should work on removing existing barriers to FDI in services and other non tardeable sectors. Finally, it should continue creating sectoral regulations that fit the nature of each sector if some sort of competition rules need to be clear for the players in that particular field especially in the area of services and non-tradeables where absence of a competition law is a major deficiency[9].

If Egypt should go for the second best approach of the necessity of having a competition law for example as a result of the external pressures that pushes Egypt to adopt a competition law[10], then the design of such law should follow certain principles.:

Simplicity:
As asserted by some institutional economists, the developing countries in general have a different institutional setup from that of a developed nation. For example, there is a higher cost of public funds due to an inefficient tax system, a higher cost of auditing and control due to a lack of human and financial resources, lower transaction costs of side contracting due to less control, greater family ties or traditions, weak technical knowledge, and greater asymmetries of information (Laffonat, 2000; Islam, 2002). This leads to the necessity of adopting some sort of competition law that fits in general with the overall institutional environment prevailing in Egypt and does not necessarily follow the competition law of the major trading partner as has been asserted in a general context by some economists.

The law should concentrate on few issues that are likely to face a transitional economy like Egypt like horizontal integration. With respect to most other practices that may be of concern (e.g. vertical restraints, actions by dominant firms, and mergers), apparent restrictions on competition may be justified on efficiency grounds

[9] This view is challenged by some experts who fear from the substitution of a comprehensive law by sectoral regulations that are likely, from their point of view to create more uncertainity and inconsistency in the application of laws (see for example, Fels, 2001, p. 16).

[10] Among the most important pressures are its regional agreements with other partners (e.g. EU-Mediteraean Partnership Agreement and the COMESA) which call for harmonization of national competition laws.

(see Hoekman, 1997). Most laws therefore allow competition agencies to make judgments in such cases following a so called "rule of reason" approach. Hence, in the Egyptian case, the law should concentrate on horizontal restraints to competition.
In addition and in light of the human resources constraints the competition authority may want to focus its efforts on issues as cartels and exclusive supply or distributional contracts. Other issues such as price discrimination, predatory pricing or complex vertical restraint cases are more complicated and less critical. (For a similar argument in a general context of developing countries see World Bank, 2001, p. 141-142).

Progressivity:
The communication from Trinidad and Tobago contributed to the Working Group on the Interaction between Trade and Competition Policy in 2001 has identified a clever feature for introducing competition laws in developing economies, mainly progressivity. Progressivity, refers to the approach or methodology in developing and implementing a competition regime. It allows for gradual and selective introduction of instruments to control anti-competitive behavior. This allows the authority, other government departments and stakeholders the time to accommodate and adjust to the changes that are required. Further, as the economy develops, the regime matures, the instruments could be deepened in this approach. Progressivity is particularly important as it allows a country time to build a firm foundation for the competition regime by fully assimilating one aspect of competition rules before progressing to the next[11].

Independence of the Competition Authority and its role in Policy Advocacy
To ensure effectiveness of the competition law, the competition authority must enjoy independency and shielding from political and other vested interests' influence (for a similar argument see World Bank, 2001) . In the case of Egypt, the case is not clear as the law has asserted the independency of the competition authority where the head is appointed by the Prime Minister. However, the authority is likely to follow the Minister of Trade and Supply which contradicts with its independency as a separate body. Despite the fact that other countries follow in many cases the same procedures (see WTO, 1999), where they emphasize the independency of their competition authorities and in the same time they follow different ministries, the case of Egypt asserts that this is not likely to be the case as the law has given the concerned Minister certain responsibilities to undertake. This means in practice that the authority is not independent and is not shielded from political influence. A major factor that is likely to affect the transparency and predictability of this authority.

[11] Perhaps a practical application of the concept will be instructive. For instance, addressing "abuse of dominance" involves such complex rule of reason procedures that it may consume too many of the economy's resources at an early stage. Instead, the competition authority could focus on consumer protection, so that consumers can gain a positive understanding of competition law and how it works in their favor. This approach would also allow the personnel in a new Competition Authority the time they need to ride the learning curve. They could get technical training during this time, accessing technical assistance that is available, and also do internships in more mature competition authorities. After a critical mass of experience has been garnered, the country is then able to introduce the more complex aspects of anti-competitive agreements and "abuse of dominance" provisions. At that phase, a greater degree of focus could be given to sanctions.(WTO, 2001).

Most of the competition agencies in countries with competition legislation are engaged in competition advocacy. A case that has been mentioned with no emphasis in the Egyptian draft law (even there is no complete article that is devoted to this issue)[12]. The absence of emphasizing this role complemented by the expected weak independency of the competition authority are not likely to yield positive results. Hence strengthening those provisions are crucial for enhancing the role of competition authority. A proactive stance should be adopted by the Competition Authority to promote competition by attacking not only infringements of the law but also institutional arrangements and public policies that interfere with the appropriate functioning of markets (for a similar argument see World Bank and OECD, 1998, p. 8; OECD, 1994, p. 40). Moreover, through competition advocacy the competition authority can influence government policies by proposing alternatives that would be less determinable to economic efficiency and consumer welfare. It can serve as a buttress against lobbying and economic rent seeking behavior by various interest groups. And it can foster greater accountability and transparency in government economic decision-making and promote sound economic management and business principles in both the public and private sectors (World Bank and OECD, 1998, p. 93).

Building the required information database:
The importance of strengthening capacity to collect and analyze information cannot be over emphasized. A common mistake made by governments involved in regulatory reform is to reduce the ability of agencies to compile the information needed to monitor the impact of reforms (Hoekman and Messerlin, 1999). It should be noted that the absence of information in many sectors that are affected by competition may be more a consequence of old regulations (secrecy, non transparency, etc) and market closure than an intrinsic feature of the economies of developing countries, including among which Egypt. Hence, the competition authority needs some sort of statutory authority to force firms to supply necessary information.

Building the right support and public awareness:
The government needs to set the objectives of the law both in terms of substance and process. On substance, a system that can both regulate, and ensure effective competition is needed to allow fair and sustainable development. On process, the system should ensure interconnections between governments, markets and civil society (Lamy, 2001). Experiences of other countries has shown that the issue of public awareness is of crucial importance for the success of the law to be

[12] There may be both an explicit, statutory basis for the competition agency's competition advocacy functions and an implied or informal basis. The laws of some countries, such as Canada, Italy, the Republic of Korea, and the Russian Federation give the competition agency a specific mandate to submit its views on particular matters to the appropriate ministry or regulatory agency, for example, on the restructuring of telecommunications industry. In other countries he law may be silent about the role of the competition agency in such areas. Unless the law forbids participation by the competition agency, however, the agency should, through its law enforcement role actively seek opportunities to state the case for competition in the public forum. This has been largely the practice in France, Germany, and the United States, for example. It is unlikely that any other party would do so, or be as effective. The benefits to the economy and to consumers from effective competition advocacy are almost certainly to be significant, at least as great as those from more traditional competition enforcement (World Bank, 1998, p. 94).

implemented. Without informed stakeholders, particularly the business sector and consumer organizations, the law lacks meaning[13].

We conclude by asserting that a comprehensive, versus piecemeal, reforms are needed to ensure a better allocation of resources. By comprehensive, we do mean both policies and institutional to arrive at some sort of general equilibrium in terms of reforms undertaken (for a similar argument see Hoekman and Messerlin, 1999). Moreover, the general equilibrium should cover both services and goods, tardebles and non-tradebles to consider the interaction effects between both sets. Actions taken in services markets can affect competition in goods markets and vice versa. To have an effective competition law, we need o have the other major pillars of competition policy functioning in the right way. Hence we need to have a credible trade liberalization policy, elimination of entry and exist barriers in different markets. Opening up trade in goods, services, and having a strong informational database can pave the way for other far reaching institutional changes by influencing demand for institutions as well as the supply of new ideas and designs. The major lesson learned is that there need to be consistency in the set of the policies adopted by the government to ensure an effective competition law if adopted.

[13] For evidence on the consequences of lack of awareness on the functioning of the competition law see Stewart 2001.

References:

Ahram El-Iktsady, Issue No. 1746 (24/6/2002).

Ali El Dean, Bahaa and Mahmoud Mohieldin (2001), "On the Formulation and Enforcement of Competition Law in Emerging Economies: The case of Egypt", ECES Working paper o. 60, Cairo: ECES

Aranson, Peter H. (1999), "Wealth Increasing law, with Applications to Egypt" in ECES, Growth Beyond Stabilization: Prospects for Egypt, conference Proceedings.

Clague, Christopher (1997), "The New Institutional Economics and Institutional Reform", in Christopher Clague (editor) *Institutions and Economic Development: Growth and Governance in Less Developed and Post Socialist Countries*, John Hopkins: The John Hopkins University Press

Coalition for Open Trade (COT) (1997), "Addressing Private Restraints of Trade: Industries and Governments Search for Answers Regarding Trade and Competition Policy"

EFG-Hermes (2001), Egypt Steel Industry Report

EFG-Hermes (2001), Egypt Cement Sector Report

EFG-Hermes (1999), Egypt Banking Sector Review Report

EFG-Hermes (1999), Egypt Pharmaceutical Sector Review Report

El_Ahram Newspaper (03/09/2002)

El-Mikawy, Noha and Ahmed Ghoneim (2002), "The Political Economy of Trade Reform in Egypt", paper presented at the Center for Economic and Financial Research and Studies Conference held on the 26-27th May 2002.

Fels, Allen (2001), "Competition Policy: Lessons from International Experience", ECES Working Paper No. 62, Cairo: ECES.

Ghoneim, Ahmed F. (2002), "Audiovisual Sector and the GATS: Case Study of Egypt, Morocco and Tunisia", Research Project undertaken in collaboration with the World Bank and the Institute of International Affairs, Italy (forthcoming)

Hoekman, Bernard (1997), "Competition Policy and the Global Trading System: A Developing- Country Perspective" Policy Research Working Paper No. 1735.

Hoekman, Bernard and Peter Holmes (1999), "Competition Policy, Developing Countries and the WTO", World Bank Working Paper No.??, Washington D.C: World Bank

Islam, Roumeen (2002), "Institutions to Support Markets", *Finance and Development*, March 2002, Volume 39, Number 1.

International Monetary Fund (1998), "Egypt: Beyond Stabilization Toward a Dynamic Market Economy", IMF Occasional Paper No. 163, Washington D.C.: IMF

Khemani, Shyam and Mark A. Dutz (1995), "The Instruments of Competition Policy and their Relevance for Economic Development", in Claudio Frischtak (ed.) *Regulatory Policies and Reform in Industrializing Countries*.

Laffonat, Jean-Jacques (2000), "Institutions, Regulation and Development", Distinguished Lecture Series 16, Cairo: ECES.

Lamy, Pascal (2001), "The Multilateral Trading System and Global Governance after Doha" Speech delivered at the German Council on Foreign Relations, Berlin, 27 November, 2001)

North, Douglass C. (1990), *Institutions, Institutional Change and Economic Performance*, Cambridge: Cambridge University Press.

OECD (1994), Competition Policy: 1994 Workshop with the Dynamic Non-member economies" OECD document Number: OCDE/GD(96)59

Pittman, Russell (1999), "Competition Policy: Especially for Developing Countries" Economic Perspectives, USIA Electronic Journal, Vol. 4 No. 1

Stewart, Taimoon (2000), "The Functioning of Patent Monopoly Rights in Developing Economies: In Whose Interest?, Jaipur: CUTS Centre for International Trade, Economics & Environment.

Stewart, Taimoon (2001), "Public Awareness is the Key", CUTS Regular Letter, No. 5 December 2001

World Bank and OECD (1998), "A Framework for the Design and Implementation of Competition Law and Policy", Washington D.C. and Paris

World Bank (2001), "Building Institutions for Markets", World Bank Development Report: Oxford: Oxford University Press published for the World Bank

World Trade Organization (1999), Trade Policy Review of Egypt, Geneva, August, 1999.

World Trade Organization (1999), "Overview of Members' National Competition Legislation" Working Group on the Interaction between Trade and Competition Policy" WT/WGTCP/W/128

World Trade Organization (2001), "Report (2001) of the Working Group on the Interaction between Trade and Competition Policy to the General Council, WT/WGTCP/5

World Trade Organization (2001), Communication from Trinidad and Tobago: Working Group on the Interaction between Trade and Competition Policy" WT/WGTCP/W/179

Zaki, Moheb (1999), *Egyptian Business Elites: their visions and investment behavior*, Cairo: Konrad Adenaur Stiftung and the Arab Center for Development and Future Research

Zarrouk, Jamel (1999), "Dealing with Regulatory Regimes and Trade Costs in MENA Region". Paper prepared for the Workshop on Preparing for the WTO 2000 negotiations: Mediterranean Interests and Perspectives, Cairo 14-15 July, 1999 organized by ERF jointly with IAI and the World Bank