



MENA Commercial Law Strengthening CLS project

Competition Law and Policy in Tunisia

December 2009



MENA-CLS Project is supported by the Middle East Partnership Initiative

Draft

General framework of the study

This study comes within the MENA-CLS Project implemented by ACRLI in cooperation with MEPI in each of UAE, Tunisia, Lebanon and Yemen.

The two-year project (2008 – 2010) aims at promoting and strengthening commercial laws in the MENA region with a view to enable a business legal environment. The expected results of the project seek to improve the capacity to understand complex commercial law issues in the MENA countries; and to increase private-sector participation in commercial law policymaking.

The project includes two phases: phase one is a general assessment of the business laws in the project countries while phase two includes an in-depth study on one branch of the commercial law. Accordingly, Competition Law and policy in Tunisia was selected for the purpose of this study in view of its pioneering experience in the region.

The study offers an analysis on the legal and institutional framework of the competition policy in Tunisia as well as on the development of the national economic structure in major sectors while focusing on the status of competition and its interaction with the rest of the liberal-oriented economic policies. The aim of this study is to assess the law's implementation and its contribution to promoting competition in the national economy on the one hand and to address problems that may arise in the market on the other so as to enable the development of structural reform recommendations to strengthen competition or legislative and executive reforms to enforce the Competition Law.

The national team in Tunisia conducted this study including:

- Mohammad Ben Freij: national writer and national team coordinator
- Lotfi Bouzaiane: economic university professor – economic consultant
- Ahmed Worfali: judge/researcher at the Legal and Judicial Studies Center – legal consultant
- Roshdi AL Mohamadi: First Deputy Chairman of the Competition Council – national assistant
- Khalifa Al Tunekti: Director General of Competition and Economic Surveys at the Ministry of Commerce and Traditional Industries – national assistant

The National team relied on the guiding methodology set by the regional team and benefited from the valuable comments and observations made by public, professional and economic parties who responded positively with the project.

For the purpose of this report, the team undertook an inventory process for the most important economic legislations related to competition, more specifically the most important laws and ordinals in force to enrich the database formed by ACRLI within the framework of the project. Moreover, the team benefited from the available judicial jurisprudence and outcomes of related studies and economic reports.

The national team also carried out individual meetings with national competencies involved in this area to benefit from their opinions on the Tunisian experience in the framework of competition and development prospects.

They carried out surveys targeting 165 people from the legal, business and public communities to conduct an objective assessment on 1) their views on business laws and their role in enabling investment and facilitating business, 2) the degree of familiarity with these laws in general and the competition law in particular 3) the degree of satisfaction on the performance of agencies responsible for the implementation and 4) the level of competition in different economic sectors in general as well as strengths and reform priorities.

This study was subject to discussion and further enrichment within the framework of the national workshop held on December 17, 2009 grouping more than 100 persons representing all involved sectors such as businesspersons, representatives from the public sector, lawyers, judges, university professors and media representatives.

Draft

Preamble:

1. This report on Competition Law and Policies comes within the framework of implementing the second phase of the MENA-CLS project. The first phase included a general assessment of business laws in the country. According to the project agenda, Competition Law and Policies have been selected as the focus of study for Tunisia in view of its pioneering experience in the region.
2. The report encloses four parts:
 - **Part One:** reviews the background and the economic context of the Competition Law's implementation. This part specifically focuses on the interaction between the competition policy and other market oriented economic policies that contribute to providing enabling conditions for the law's implementation. This part also highlights the importance of the enactment of such law and provides an overview on the evolution of the national economy's structure as well as the state of competition in key sectors and their role in economic policies.
 - **Part Two:** reviews the legislative and institutional framework for competition and highlights the evolution of legal provisions and the reasons behind this evolution.
 - **Part Three:** assesses the implementation of the law by reviewing the evolution of the activities of the competition agency and the development of case law it also assesses the contribution of implementing the competition law to strengthening the national economy as well as addressing problems that may arise in the market.
 - **Part Four:** focuses on the formulation of the study's recommendations both at the level of structural reforms to enhance competition or legislative and executive reforms to implement the Competition Law.
3. Before diving into the study, we should clarify some concepts that have an impact both on the scope and field of the study.

First we will define competition policies and the difference between them and the competition law and later we will differentiate between competition laws and unfair or unlawful competition.

a- Competition Policy and Competition Law

Competition policy is the sum of actions, procedures and policies aimed at promoting market competition and increasing the competitiveness of goods and services.

From this perspective, competition policy has a broad concept that can include all economic policies, including specifically:

- Commercial policy (foreign exchange liberalization and reduced protection)
- Price policy
- IPR laws and their implementation
- Investment policy and removing hurdles facing economic transactions
- Updating business laws to enable the economic activity
- Promoting the role of the private sector, and reducing State intervention

Enacting the Competition law and properly implementing it constitute one of the competition policy's components.

Alternatively, competition law is limited to provisions aimed at ensuring the overall balance of markets and promoting competition.

These laws usually include provisions concerning 1) banning anti-competitive business behaviors, especially conventions, complicities, and abuse of dominance in markets in addition to 2) exercising prior censorship on economic concentration in various markets (mergers and acquisitions).

b- Differentiating between anti-competitive activities and unfair competition

At the implementation level, both the public and institutions often confuse between these two concepts, thus, differentiating between them is extremely important to determine their respective competences.

Anti-competitive practices focus on behaviors that have an impact on the overall market balance that would limit the price formation according to the fundamentals of supply and demand. These practices generally cover complicities and

understanding operations between institutions and the abuse of dominance in the market.

Unfair competition on the other hand, covers a variety of business practices the impact of which is usually limited to the relationship between two or more institutions without necessarily having an impact on the overall balance of the market. Of the practices that fall within this category we mention the following:

- Counterfeiting Trademarks
- Tax evasion
- Conducting unlawful business.
- Etc...

These practices are usually provided for in special laws such as IPR Laws, Labor Laws and commercial laws.

Differentiating between these two types of practices is important since the Competition Council adjudicates cases related to anti-competitive practices while the Justice Tribunal studies unfair competition cases.

This study will cover the competition policy in its broader concept, while focusing on competition laws and their practical implementation.

I- Economic Background of the Enactment of the Competition Law

The enactment of the Competition and Prices Law on July 29, 1991 came as part of the economic and legal reform package aimed at the progressive economic liberalization. The implementation of these measures began in September 1986 following the country's economic crisis that diminished the national ability to finance the economic activity.

This law was enacted in 1991 as part of a series of economic laws; however, work on its preparation started in 1986. This enactment was associated in particular with the price law liberalization movement; hence it was named "the Competition and Prices Law" which included provisions that focus on framing and controlling prices and others that focus on the legal and institutional framework of competition.

This law complemented the liberalization procedures which included myriad economic policy mechanisms, such as:

- Investment policy liberalization
- National prices liberalization
- Disengagement of the State from many competitive activities and the privatization of its institutions
- Foreign exchange liberalization, reducing protection, engaging in the multilateral trading system, and initiating negotiations with the European Union on the partnership agreement.

The Competition Law filled the legal void in this area and set the necessary controls for the 1) rehabilitation of market mechanisms and their role in price formation and 2) the establishment of bodies ensuring respect for these controls to guarantee freedom of competition, especially in light of the national economy's structure in the mid-eighties.

We will briefly review in this section:

- the most important economic reforms that enabled the enactment of the law
- the need that justified the enactment
- the development of the national economy and economic policy's structure and how they promote competition

1- The most important economic reforms that paved the way for the enactment of the law

a- liberalization of investment policy

In the framework of the economic reforms introduced since the mid-eighties, investment was liberalized especially in productive and service sectors through the cancellation of licenses in force at that time. This trend has been reinforced in 1991 by the enactment of the distributive trade law, which canceled licenses in the distribution sector and clearly recognized the principle of the free exercise of commercial activities.

In 2007 a law was passed to stimulate the economic initiative firmly establishing the principle of free exercise of activities as a general rule and considering licensing an exception. The law included a set of measures aimed at improving the business climate and reducing administrative obstacles.

This law was the culmination of the efforts made since the mid-nineties to reform administrative procedures, reduce the cost of transactions and update economic legislation. The national report on the first phase of the project reviewed in detail all of these developments.

On this basis, the investment climate became more stimulating to national and foreign capital, thus stimulating entry and competition in the domestic market.

b- Domestic price liberalization

Within the same context, a program for the gradual liberalization of prices was set up in 1986. Its implementation was carried out in phases (over the course of 10 years), the latest of which took place in June 1995. The program included initially the production stage, and then was expanded to include the distribution phase as well (trade margins).

The level of liberalization of prices has reached 87% in the process of production and 80% in the process of distribution, noting that the price controls in 1986 applied to all of the products and services and that the ratio of free price articles at the time did not exceed the 5%.

As a result of this liberal trend, the role of market mechanisms in the formation of prices according to the fundamentals of supply and demand was reinforced.

The implementation of the price liberalization program began at a later phase highlighting the principle of freedom of prices at the level of Chapter II of the Competition and Prices Law for the year 1991. However, this principle is qualified by some permanent or situational exceptions: a few essential commodities and those sectors characterized by weak competition have been excluded from the principle of freedom¹ in accordance with Chapter III of the law. Furthermore, Chapter IV of the law empowered the Minister of Trade to intervene temporarily (for a period not exceeding 6 months) to determine the prices of free articles with a view to tackle the emergency situations i.e. the high prices.

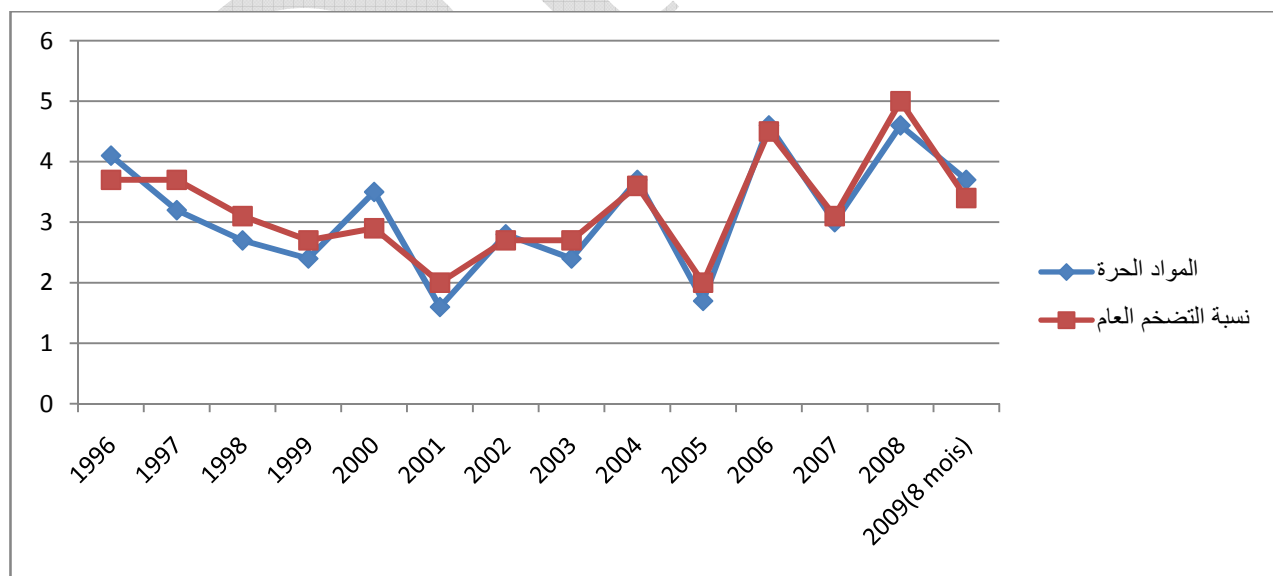
¹ See tables a, b and c attached to Order no. 1042 for the year 1995 dated June 28 1995

In all, price liberalization policy has enabled the restoration of the decision making in trade policy to the institution which is an important competition enabling factor.

This approach also led to the development of the level of competition in many sectors and reflected positively on the overall evolution of the price index (inflation rate) and on the diversification of supply and the improvement of its quality.

In this context, it is important to note of the recent evolution of inflation. Overall there was no increase in the level of prices as a result of liberalization.

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009 (8 months)
Inflation of free articles	4.1	3.2	2.7	2.4	3.5	1.6	2.8	2.4	3.7	1.7	4.6	3	4.6	3.7
Overall inflation rate	3.7	3.7	3.1	2.7	2.9	2	2.7	2.7	3.6	2	4.5	3.1	5	3.4



The gradual implementation of the liberalization program went hand in hand with the strengthening of competition in the sectors concerned.

Price liberalization not only encouraged competition in the domestic market, but also accelerated the enactment of competition legislation in order to fill the legal void in the legislative framework for economic activities.

C- The State's disengagement from economic activities and the privatization of state owned enterprises

According to the same strategy, the State disengaged from many activities, especially with regard to the competitive sectors and privatized the enterprises which were under its responsibility. Since its inception in 1987, the privatization program has included, so far 217 enterprises affiliated to the sectors of agriculture, industry and services.

Some activities which had been monopolized by the state were opened to competition, for instance in the telecom sector and within the area of supply of certain goods considered to be of strategic importance such as animal feed. On the other hand, new private investment was attracted to some major projects, such as building a new airport and a deep water commercial port in the context of concession contracts especially after the issuance of a law to regulate these contracts in 2008.

Within the framework of reorganization of seaports and airports, many concession contracts were granted to the private sector to exploit and manage the equipment and service activities.

All of these trends contributed to more investment opportunities for the private sector and paved the way for competition in the sectors concerned.

Such reforms have led to the redistribution of roles between the private and public sectors leading to the gradual withdrawal of the state from the economic activity thus focusing on its arbitration role between various parties. This explains the trend towards establishing sector oversight bodies, especially in activities that have been opened to competition.

d- Liberalizing foreign transactions and reducing trade protection

Similar to the rest of the economic mechanisms, trade policy has seen major changes towards liberalization which helped eliminate transaction obstacles and thus stimulated competition.

The reforms included the following areas:

- The cancellation of quantitative restrictions
- The cancellation of import licenses
- the gradual reduction of customs duties to reduce protection, following the accession to the GATT in 1990 and to the World Trade Organization as a founding member in 1995
- Accession to more than 10 free trade agreements with regional groupings and friendly countries, most notably the partnership agreement with the European Union (1995) and the Convention on establishing the Greater Arab Trade Zone which eliminated all of tariffs and provided trade facilitation mechanisms.

Furthermore, in recent years and within the framework of the Export Development Program, a series of measures designed to facilitate commercial transactions and reduce the cost were adopted (reduce the time of stay in ports and reduce customs and technical controls procedures).

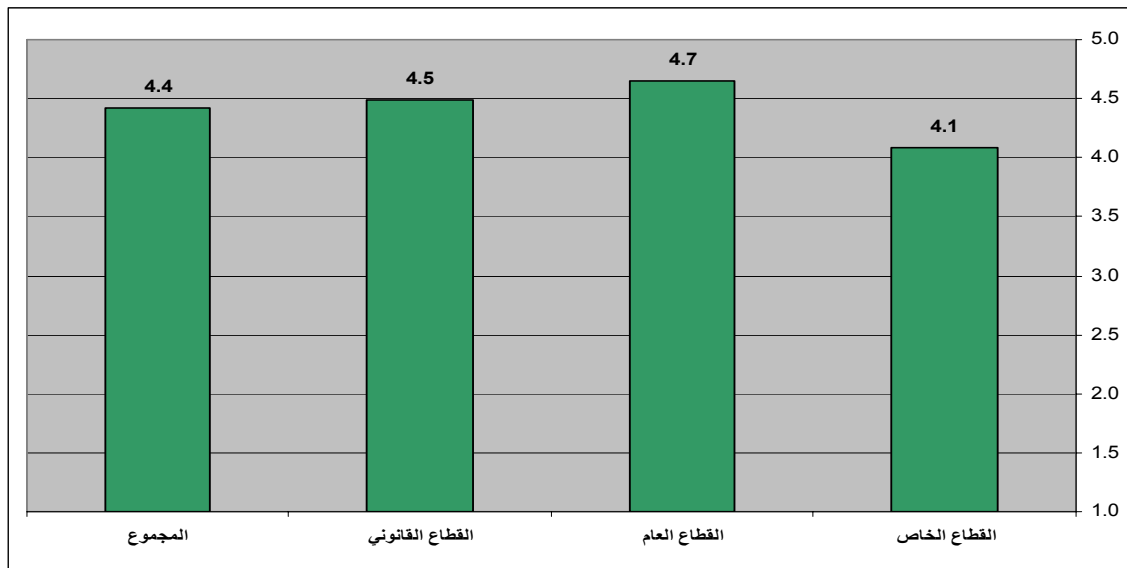
The majority of these procedures have led to reducing transaction costs and deadlines, as highlighted by various international classifications.

According to the reforms adopted, the rate of effective protection of industrial materials has been reduced to 22% at the end of 2006 as compared to 31% in 2005. The rate of tariffs on imports of non-European sources amounted in 2009 to about 17%. This effort is expected to continue and the tariff level may drop to 15% in the year 2010.

2- The need that justified the issuance of the Competition Law

Comparative studies highlight that there are many reasons that justify the resort to the enactment of a national Competition Law including:

- The promotion of economic efficiency to accelerate the pace of growth and to put pressure on costs and encourage innovation
- The protection of consumers interests by diversifying supply, improving quality and pressurizing prices
- The prevention of excessive economic concentration that is accompanied by monopolistic practices



- Preventing anti-competitive commercial practices that may be used by institutions, especially in light of the liberalization of trade and the removal of tariff barriers under the World Trade Organization.
- The provision of an investment enabling environment, since competition law is an important factor within a modern legislative framework in attracting investment and reassuring investors.
- The protection of the national economy against anti-competitive practices that may arise outside or inside the borders. Noting that the absence of a competition law could push foreign investors, especially large companies, to obtain competitive privileges or to control the national fabric of competition.

There is almost unanimity on the importance of these laws in providing an appropriate framework for the business environment, facilitating commercial transactions and achieving growth and economic development.

Survey results backed the aforementioned statement where the majority of surveyed persons considered the Competition Law as a very important component to enhance the competitive climate in Tunisia. On a scale ranging from 1 (not important at all) to 5 (very important) the overall average of assessments registered 4, 4.

For Tunisia, the enactment of this law accompanied the economic liberalization to provide the necessary preventive mechanisms to counter attempts to monopolize the market or to disrupt its normal functioning

This is evident through the first chapter of the law, which provides for the follows:

“This law aims to control provisions related to freedom of prices and define rules governing the freedom of competition. For this purpose, this law addresses

obligations of producers, traders, service providers and other intermediaries and aims at preventing anti-competition practices, ensuring price transparency and eliminating monopolistic practices and predatory pricing".

At that time, field inspections confirmed the emergence of some business behaviors that necessitated the creation of a legal framework to prosecute them. Monitoring concentration operations was included within the provisions of the law in 1995 (and not in 1991) following some concentration cases within sectors that liberalized their prices (refrigeration industry) thus creating a monopolistic situation that no longer justifies the freedom of price.

There was consensus on the need for such law; especially since the price liberalization program was already way ahead of the import liberalization program and it was thus impossible to compensate the lack of domestic competition by the imports competition. Moreover, the liberalization of prices gives effect immediately while the liberalization of investment or imports requires a certain time-space.

The national need for a Competition Law arises from the importance of interdependence between the competition policy and other economic policies, especially the trade policy. This interdependence attracted many international institutions, especially the United Nations Conference on Trade and Development as well as the World Trade Organization, to pay attention to the competition issue and its relationship with the liberalization of international trade and with development issues.

The United Nations Conference on Trade and Development (UNCTAD) conducted myriad studies, researches and analyses taking the development issue into account. In the same context, the World Trade Organization formed a Group specialized in studying the interrelationship between competition and commercial policies with a special focus on the feasibility of an international agreement on competition following the Second Conference at the Ministerial Level in Singapore.

This group carried on its efforts from 1998 until now and offered important researches and studies. Competition was also included within the agenda of the Doha commercial negotiations.

OECD also formed a distinguished team involved in competition.

In this context, we will just point out that UNCTAD established since the mid-eighties a Governmental Team on competition law and policy and conducted researches and analyses relating to 1) competition law and its impact on development, investment and foreign trade and 2) business behaviors of

multinational corporations and their repercussions on the economies of developing countries.

The aforementioned Team established an international forum for the exchange of expertise and experience in this field. It also contributed in raising awareness on the importance of competition laws, especially in developing countries. Moreover, it supported several training and technical assistance programs for these countries and published their works including the Model Law on its website².

UN General Assembly adopted in 1980 a set of principles and rules on competition enabling practices including:

- The European Union works on the subject
- The emergence of new forums on competition serving as a framework for the exchange of experience and knowledge, including in particular the International Competition Network (ICN).

Tunisia participated actively in these forums and have benefited from its work and reported their experience.

3- The development of the national economy and economic policy's structure and their encouragement of competition

Despite the absence of specialized economic surveys to measure the degree of competition in the economic sectors, we will try in this paragraph to review the characteristics of competition in key sectors and activities through the available data. We will also try to highlight the unique position that the competition policy currently enjoys within the economic policies of the country.

a- the status of competition in key economic activities and sectors

We note here that there aren't enough studies on the structure of various economic activities and their concentration level.

While analyzing the current state of this structure we noted the following:

One: Although the State has disengaged from many competitive activities and developed the privatization program, yet the public sector is still heavily involved in the economic activity especially in terms of public services (electricity/water/ / transportation ..) as well as supplying certain basic and fundamental materials such as grain, tea, coffee, vegetable oils, iron and medicines...

² www.unctad.competition

Two: certain production and distribution sectors, particularly small trades, enjoy a reasonable competition degree.

Three: in certain productive sectors, production capacity exceeds the country's needs (Excess Capacity) which leads to heightened competition in these sectors, such as mills and vegetable oil refining units, dough....

Four: The small size national market, with regards to certain sectors, lead to the emergence of quasi-monopolistic institutions in the market leading to dominant positions (as was the case of beer production, until recently, where there was only one private company that literally monopolized the market...). This dominant position is actually reinforced if it were combined with a famous mark of high repute, making the entry of competing companies to the market difficult.

Five: In contrast, the small sized national market leads in many areas of production and especially the industry sector, to the emergence of oligopoly.

Six: Since freedom of prices and freedom of competition are interconnected, prices of the majority of sectors enjoying concession contracts are still not free and subject to state control.

In light of the aforementioned general observations, the following is a description of certain major market structure.

- **Water:** is a concession granted to a public institution, a strategic sector that is not eligible for privatization.
- **Electricity:** production is open to competition, while distribution remains within the public institution.
- **Natural gas:** a distribution concession granted to a public institution
- **Fuel:**
 - **Refining:** a concession granted to the public institution that is forming a program to set up a second refining unit financed by foreign investments.
 - **Distribution:** there are 4 competing companies
- **Concessions to supply certain basic materials:**
 - grains
 - drugs
 - alcohol

- tobacco
- tea, coffee and sugar
- vegetable oil

- **Financial Institutions:**

- **Banks:**

- There is a program that is still under way to restructure and rehabilitate the sector (the merger of some public banks and privatization of two) with opening the sector to foreign contribution.
- Public contribution to the sector is still important nonetheless.
- Development Banks were converted to commercial banks and the Comprehensive Bank principle was approved
- There are many institutions in this sector: 15 commercial banks (5 Public and 10 Private Banks).

- **Insurance:**

- a program to restructure this sector is formed
- One of the most important institutions of the public sector was privatized with the opening of the sector to foreign contribution.
- There are many institutions operating in the sector (about 14 institutions)

- **Industrial sectors:**

- **Cement:**

- There are 6 competing institutions with similar market shares
- 4 public institutions operating in the sector were privatized
- There are projects to set up new production units through private investments.
- Prices are still framed

- **Iron:**

- This sector was open to competition

- There are 4 institutions working in this sector
- Prices are still framed
- **Food Industry:**
 - There is reasonable competition level in many sectors
 - dominance in the following sectors:
 - Soft drinks
 - Beer
 - Dairy products
 - Poultry
- **Transportation:**
 - **Carriage of goods:** is free and open to competition
 - **Passenger transport:**
 - Railway transportation: concession granted for the public institution
 - Public transportation within cities:
 - Dominant position for regional institutions of transport: Competition is open for the private sector in certain cities.
 - There is competition at the level of public transport alternatives.
 - Transportation between cities: granted to the public sector
 - Shipping: open to competition
 - Air transport: public institution dominance with certain private institutions operating domestically or internationally
 - Activity of air cargo and passenger transport is not regular (vols charters) and is open to competition.
- **Telecommunications:** many reform processes were introduced to open this sector to competition
 - **cellular phone:**
 - There are two competing institutions: one public and one private

- 35% of the public institution's capital was granted to a Gulf company (Al Wataniya)
- **Landlines:**
 - Concession granted to the public institution
- **Internet:**
 - Concession granted to the public institution
 - Reasonable competition at the level of service providers: 11 institutions (5 private and 6 public)
- **in 2009 the following steps were taken:**
 - these reforms enabled competition in this sector, especially the cellular phone field, which led to more investment opportunities, reduced costs and an increase in the number of subscribers
 - introducing a second landline company will enable competition in the market especially since current prices are still high.
- **Tourism:**
 - this sector is open to both national and foreign investment
 - competition level is reasonable
- **Distribution Trade:**
 - **Small Trade:**
 - Too many small traders
 - Reasonable competition level
 - **Major Trades:**
 - There is dominant positions in this area view the rationalization policy that aims to preserve small trades in light of concentration operations³
 - Unbalanced relation between these trades and producers
- **Liberal professions**

Liberal professions are characterized by diversity and pluralism. However, they are interconnected by the general legislation which considers them as trade free

³ Monoprix included company "Tuta" 2004, and Champion institution included Bonprix Supermarkets 2005

professions even though it does not exclude their right to generate revenue. This legislation enabled the adoption of mechanisms ensuring that these professions are free from the commercial activities impact. In this regard, laws prohibited, in varying degrees of clarity, resorting to commercial activity particularly:

- **Resorting to advertisement:** Laws governing liberal professions (law, medicine ...) provided for means enabling a professional to represent himself. He can set up a banner, the size of which is set by law, on the office door and distribute business cards including limited information i.e. his name, title, and his license. This issue, however, raised a serious problem on the extent permissible for a professional to create his own website.
- **Resorting to brokerage and brokers to attract clients:** myriad laws provided for that explicitly as is the case in the Legal Profession Law.
- **Restricting the determination of fees for many professions:** liberal professions are currently divided into three categories. The first category allows a professional to freely determine his fees (attorney, arbitrator, engineer, accountant, tax consultant ...) while the second allows him to set his fees in accordance with a certain criterion controlled by legislation. The third category allows him to define his fees within a certain limit (medicine ...).

However, these legislative hurdles do not negate competition as a concrete reality, and the emergence of a number of practical and legal difficulties. In this regard a certain problem emerged dealing with competition aspects between professionals of a single profession and between professions in general.

Within the same profession, many professionals are looking for new ways to present themselves outside the traditional frameworks as establishing websites. Although the "official" stance of bodies overseeing these professions did not show any flexibility, yet a number of professionals established a special website for their offices addressed towards foreign customers. A number of professionals were also keen to present themselves, their professions and experiences in foreign websites affiliated to foreign or international institutions or organizations. Resorting to brokerage has become a tangible reality, albeit to varying degrees⁴. There is a very limited number of cases in which certain professionals were disciplined or criminally prosecuted which explains the difficulty in obtaining evidence and the lack of complaints in this regard.

⁴ See for example "Doctors and Brokers: a Chronic Disease, However, Treatment is Still Possible", Journal of "facts", issue No. 90 from 1 to 14 June 2009, pp. 42 to 45. It is also noticed that fighting brokerage has become a key point in the Bar Association election campaigns.

Among professions, it is noted that certain activities have a special appeal to many professionals in other professions. Even though tax matters initially fall within the purview of the tax adviser, yet they interest several other professionals, especially accountant experts, accountants, lawyers, legal advisers, consulting offices and others which led to contention. It is noteworthy that the law automatically gives the lawyer the tax advisor quality allowing him to conduct all activities of tax advisers; therefore competition between these two activities is explicitly legitimate in the legal text. As for other professions, there is a certain ambiguity in the framework of legislation, especially when an expert accountant intervenes in the tax matter which is explicitly prohibited, with the exception of the court prosecution. The majority of these aforementioned professions actually compete with the lawyer in providing legal consultation as well as several other professions such as the real estate agent and players and artists' agents... In recent years, many deep-oriented discussions on the activity of the legal counsel and his legal framework were raised, due to the absence of clear texts governing the exercise of this activity, especially with regards to foreigners. On the other hand there are free legal professions that are not subject to certain restrictions in the area of competition such as arbitration, mediation and reconciliation and that are practiced freely by Tunisians and foreigners alike, without any restriction or boundaries to attracting clients.

Competition Council's decision No. 52104 dated June 9, 2005 on the enforcement of competition laws in the field of accounting, and tax consultation and the legislative or regulatory procedures that should be taken to promote competition

- **In terms of accounting and tax consultations, the Council determined the following problems and proposals:**

Problems:

- 1- accountants, expert accountants and tax consultants offer the same services
- 2- there is a technical difficulty to distinguish between the two professions
- 3- professions related to tax matters do not have agencies and organs governing their organization as the accounting sector

Proposals:

- 1- limit and determine services in general to avoid the problem of having more than one profession offering the same services within the same institution
- 2- organize services within the framework of professional bodies

3- review legislative texts governing services with a view to determine their competence in an accurate and transparent manner

- **in the context of certain free profession services meeting with requirements of competition law, the Council identified the most important problems and proposals as the following:**

Problems:

- 1- fees are determined through mutual agreements instead of the principle of supply and demand imposed by competition requirements
- 2- a proposed table of fees is published to facilitate coordination and agreement operations between service providers leading to misleading the consumer which is considered as an anti-competitive agreement
- 3- publicity is prohibited or limited
- 4- new dealers face numeral limitations at the level of capacities, geographical or demographical standards which limits the diversification of options for consumers and enables the emergence of local monopolies
- 5- professional agencies impose special rules in terms of the structure of institutions working in the field of services which limits the emergence of new services and the establishment of more feasible institutions

Proposals:

There is a need to review legislations and ordinals related to services to meet with competition requirements taking into account the following:

- 1- relying on the principle of supply and demand to set fees while reserving the right to set a ceiling for essential everyday products for public authorities
- 2- allowing the service provider to use different publicity means while using objective standards and ensuring respect for professional ethics
- 3- developing fair and transparent procedures for market access and review the principle of personal accountability to enable the selection of the form of the institution (establishing commercial entities)
- 4- eliminate the principle of distinguishing between the national professional and the foreign investor and respecting the principle of reciprocity

The results of the survey developed for the purpose of this study backed the majority of the structural recommendations made with regards to the market status abovementioned. The results highlighted interesting perceptions and views at this level, where the rates on the "current level of competition" ranged between 1.4 and 3.3 while rates on "optimal level of competition" ranged between 3.8 and 4.7. Pollsters considered that the various sectors do not have the requisite level of competition and that they can tolerate a greater competition level.

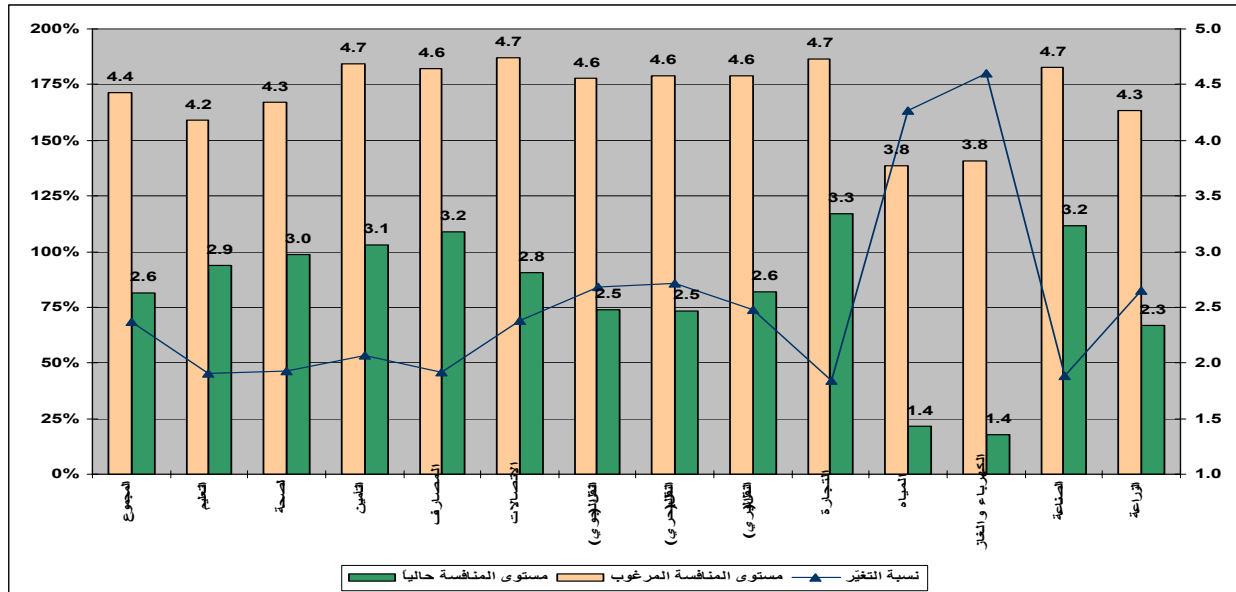
Overall, surveyed persons considered that the level of competition in the Tunisian economy is below average, where the average rate registered about 2.6.

In fact, the "Water" and "Electricity and Gas" sectors registered the lowest rates (1.4 for each). On the other hand, the "trade" sector was the forefront in regard to the competition level, recording about 3.3.

Finally, only four sectors registered rates above average, noting that none of them registered "high" competitive levels.

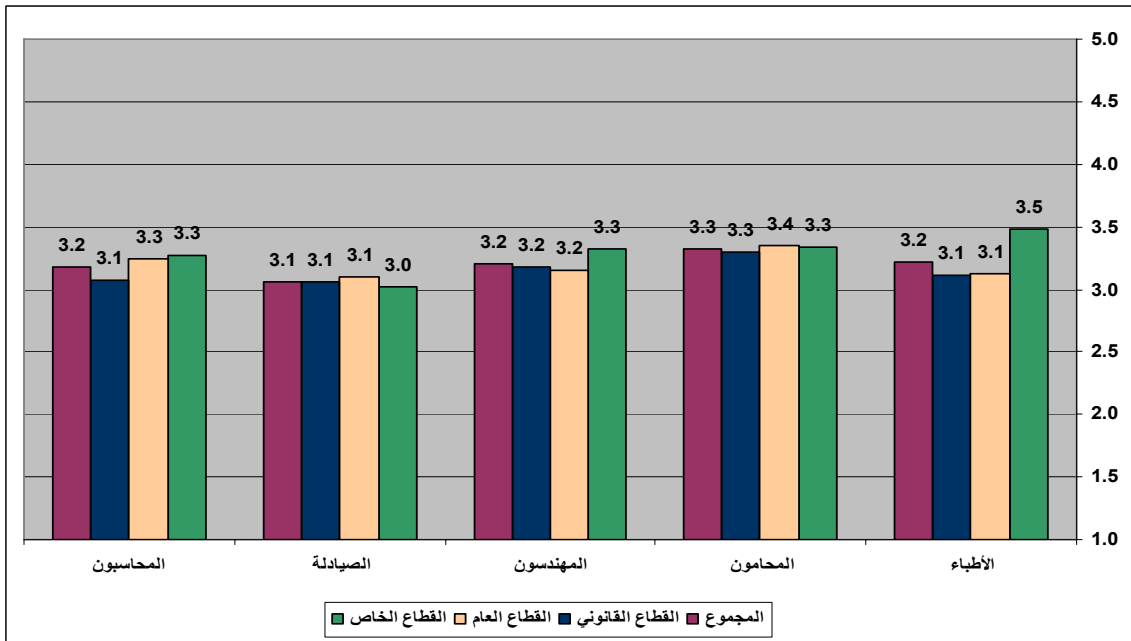
With regard to the "optimal level of competition", all markets recorded higher than average rates. Here, too, the "Water" and "Electricity" sectors recorded the lowest rate of about 3.8. However, the other eleven sectors recorded very high rates.

The following table shows that the percentage of change in rates between the "current level" and the "optimal level" of competition ranges between 42% (for the trade sector) and 180% (for electricity and gas).



Pollsters were also asked to assess the level of competition in a number of liberal professions markets (doctors, lawyers, engineers, pharmacists, accountants). Competition rates were so close ranging between 3.0 and 3.5.

Assessing the level of competition in the framework of liberal professions



b- The status of competition policy in the economic policy of the country

There is a trend towards further consolidation of the national economy and merging it with the global economy which requires speeding up the pace of economic reforms aimed to boost investment and exports and improve economic competitiveness. Therefore, competition policy has become highly regarded as the engine that pushes forward the achievement of development goals. This importance is clearly reflected in the programs aimed at restructuring economic activities and improving the performance of economic institutions such as:

- continuing the industry rehabilitation program
- starting a new program for the rehabilitation of the services sector including distribution
- strengthening the communications management program and raising the quality of administrative services
- Restructuring the public sector's role and further opening monopolized activities to competition.
- Continuing the second exportation development program and starting a third program

On the other hand, maintaining the integrity of the financial balances of the country is always a concern for state policy. The pressure on prices and containing inflation is an important component in this area as well as its social justification. In light of the freedom of prices, strengthening competition and activating its law is one of the most important mechanisms that the country resorts to, to reach the inflation target (3.5%).

The care given by the government, for economic and social reasons, to addressing some of the problems ahead, such as parallel trade and its competition with the organized sector as well as reducing monopolistic pressures on suppliers and maintaining the micro-trade is an important factor for the development of competition law enforcement.

In the context of rationalizing public expenditure which requires the activation of competition rules in public procurements and addressing collusion operations, competition laws and policies serve as a distinct mechanism that enables the achievement of these goals.

On the other hand, attracting investment and enabling the business environment are considered national economic policy constants and in view of the contributions provided by the competition policy in this area, they become an important mechanism that enables the achievement of these goals.

Most of these concerns are clearly the responsibility of the competition policy as it is stated within the eleventh plan for development.

II- The legislative and institutional framework of the competition law

Before the enactment of the Competition and Prices Law No. 64 of 1991 dated July 29, 1991, and despite the absence of integrated provisions organizing freedom of competition, there were general provisions on some unlawful practices especially with regards to IPR protection.

- **Code of Obligations and Contracts (1906):** This Code included provisions designed to prevent unfair competition. Chapters 90 and 91 provided that a damage claim can be raised by:
 - Who ever attributes for industrial or agricultural industries a name, mark, address or stamp different from the name, mark, address or stamp of the original owner whether by addition, excision or any other alteration or attributes a different place of manufacturing or production.

- Who ever without any authorization, attributes a name, mark, label or other distinguished mark on the products that were not marked at the time acquired.
- any dealer, agent, or retailer who knowingly exposes for sale or advertises objects with different or altered names

Chapter 1271 provided for “an implicit non-competition condition” in terms of Companies’ contracts. This chapter prohibits a partner in civil and commercial entities, from making transactions similar to those of the Company for his own account, “where such competition is likely to harm the interests of the company, partners may have a choice to repeat the damages claim or to take over the business incurred by him or to obtain the profits realized by him while maintaining the right to request his out of the company.

This text provides for an interesting solution that is not limited to monetary compensation for damage to the company but allowed the company to replace the offending partner and take over the project (institution).

- **Penal Code (1913):** includes in section V (chapters 138 to 141) provisions governing commercial and industrial violations. Chapter 138 criminalizes the act of tipping off manufacturing secrets where the perpetrators face imprisonment for two years and a fine.

The second paragraph of chapter 139 also criminalized “the practice or attempt to practice an individual or collective market intervention with the aim of generating a profit the supply and demand principle”. This chapter established a prison sentence from two months to two years and a fine ranging from 480 to 24 thousand dinars.

The competition and prices law saw, since its enactment in July 1991, five successive amendments⁵ taking into account the evolution of economic policies and market structures so as to overcome the shortcomings that emerged from the experience and the implementation as well as to address the need to keep pace with international standards, to develop comparative legislations and to meet the needs and privacy of the national economy.

The provisions of competition within the Competition Law and price include the following:

- Preventing anti-competitive practices
- Establishing a control for the economic concentration operations

⁵ Respectively in 1993, 1995, 1999, 2003 and 2005

- Defining competition objectives
- Controlling procedures for market surveillance, inspecting and tracking irregularities
- Creating agencies to implement competition policies and identify their respective mandates

The law also defines the scope of implementation and exceptions to the rules. It has established an exemption system to exempt certain anti-competitive practices justified by economic progress (i.e. the ones that generate public benefit).

This section of the report reviews the previous themes and ends with a comparison between the Tunisian model of Competition Law with the laws of the region, the European law and the UNCTAD Model Law.

1- Implementation of the competition law

The area of the law implementation includes in principle all activities of production, distribution and provision of services and therefore the law does not provide for sector exceptions to its provisions.

This does not preclude, however, the existence of some exceptions. In this framework it should be noted that:

- The Insurance Code includes provisions that allow insurance companies to agree on the price level and present this agreement to the Minister of Finance for approval
- Some of the laws governing certain professions such as the Doctors professional code include provisions relating to professional ethics that do not allow competition among colleagues (chapters 58, 59 and 60 of the Doctor's Obligation Code).

On the other hand, administrative decisions do not fall within the scope of jurisdiction of the Competition Council and are subject to the control of the Administrative Tribunal. The Competition Law is a source of monitoring the legality of such decisions.

It should also be noted that the provisions of the Competition Law apply to business acts and practices, regardless of the nature of the perpetrators, their legal form or identity. The provisions of the law include natural and moral persons from

the public and private sectors, as well as public institutions and professional associations and societies in the event they intervene in economic activities.

The Competition Council has developed a rich jurisprudence regarding the **definition of the institution** as well as the **public institutions adherence to the provisions of the law** and practices originating outside the borders.

The Competition Council adopts the economic institution concept as a criterion to control its competence:

The Competition Council is in charge of claims brought against non-for-profit associations and organizations since they generate, either directly or indirectly, an economic activity with a potential impact on the market. In this regard, the Council set a clear standard in a case raised against a local diving club affiliated to one of the municipalities north of Tunisia.

Accordingly, the club has diverged from its original function of providing free services for subscribers and competed against institutions that provide similar services for a charge. This club set very low prices (predatory pricing) for non-subscribers, putting tremendous pressure on its competitors forcing them outside the market.

Therefore, the Council adopted the economic institution concept since it can not rely on the legal criterion alone. This concept includes all companies, organizations, communities and other moral or legal persons exercising an economic activity regardless of the nature, form and whether their existence is de jure or de facto, or whether it was created or controlled by private or public persons.

Based on this criterion, the Council concluded that the associations proved to be exercising in whole or in part, an activity that falls within a competitive sector related to production or distribution or provision of services become de jure subject to competition law, regardless of its subject matter and objectives.

This realistic look is the basis of the work of competition authorities, which focus attention on the maintenance of markets and providing protection for the economic public order, without taking into account the formalities or qualifications of economic activities, even when this latter matter is entrusted to a judicial, administrative or other authority.

Accordingly the Council stated in the abovementioned case, that the diving club should have taken the same burdens of his competitors since it was using its boat and exploiting the port for free unlike the rest of its competitors. This situation created inequality among all competitors giving it a highly competitive power

without any technical superiority or self investments.

The Competition Council and the Public Institution:

The stance of the Competition Council with regards to this issue is considered as an extension of its jurisprudence on the concept of the economic institution. The Competition Law governs the impact of an economic behavior on market balance and mechanism, accordingly public institutions active in production or distribution or provision of services put themselves under penalty of the Competition Law when such acts do not conform to its provisions.

The Competition Council issued many decisions in this regard for example during a case brought in 2005 regarding a collusion operation between a foreign firm and a Tunisian company to promote a medicine in the Tunisian market disregarding the required legal regulations. In this case, although the proceeding was not aimed against the Central Pharmacy of Tunisia, it did not however, prevent the Council from introducing it since it may involve anticompetitive practices. Since the Central Pharmacy of Tunisia is considered a public institution, the Council justified subjecting it to its jurisdiction by the following:

- The nature of the central pharmacy as a public institution does not constitute a barrier to its competence since the Competition Law does not stop at the nature and form of the institution, and applies to all kinds of economic activities including those carried out by public institutions when proved to exercise in whole or in part a competitive economic activity.
- The Competition Council does not undertake all conflicts related to examine the adherence of the public institution to the competition rules since its only jurisdiction is related to anti-competitive practices alone.

Accordingly, the public institution can act in two ways: as an administrative authority working according to ordinal and legislative texts, in this case, its work is purely administrative and is not subject to the Competition Council. On the other hand, it has the right to engage in economic activities in a competitive sector which subjects it to the control of the Competition Council.

The distribution of competence between the Competition Council and other judicial bodies dealing with public disputes can not be considered a cause for confusion or a form of complexity which impairs the right of the parties since the Tunisian law adopts the principle of separation of judicial and administrative disputes.

Subjecting Economic activities outside the Tunisian borders to the Competition Law:

National competition authorities have jurisdiction over economic institutions based outside the national territory, whether it comes to tracking anti-competitive practices that would have an impact on the national market or undertaking economic concentration cases which includes institutions that are likely to have an impact on the structure and competition level of national markets.

The Council stated that its jurisdiction includes all practices that undermine the freedom of competition in the national market or affect its proper functioning, even if caused by people or institutions located outside the national territory. Within this framework, even though it is not explicitly provided for in the Competition and Price Law, yet the Council has a jurisdiction in this matter based on the following:

- Principles of the public international law which provides for the necessity to have agencies or bodies to track down and search for anti-competitive institutions.
- Certain chapters of the Competition and Prices Law, such as chapters 5, 7 and 34 (new) and 36 (new) which, although they do not refer explicitly to the principle of tracking foreign institutions for actions harmful to competition in the national market, however, it included paragraphs stating that when determining the jurisdiction of the Competition Council it should be based on the impacts of such acts and practices to the balance of the domestic market.

On the other hand, national competition authorities have competence over economic concentration cases which include global institutions not found on national territory in all cases where such institutions are the owner of the branches or subsidiary companies in national markets.

In this framework, and for the purpose of issuing an order in 2009, the Council mentioned the agreement concluded in Houston in the US for the purpose of a vertical merger operation aiming at supporting and expanding the scope of services provided by one of the biggest oil providers. The Council relied on the second paragraph of new chapter 7 of the Competition and Price Law to analyze its scope of competence in this matter which states: “all concentration project or economic concentration operation that create or support a dominant position in the domestic market as a whole or in part shall obtain the approval of the Minister of Commerce”.

Such provisions do not differentiate between national or foreign institutions or whether they are located inside or outside the national market. They only focus on the impact of such concentration on the market's structure, accordingly, the Council considered that the aforementioned concentration operation has a direct and indirect impact on the national market and thus it has a jurisdiction over this matter.

While comparing the implementation of the Competition Law with some Arab laws, it is noticed that it does not include important exceptions, unlike some laws such as the Egyptian or Saudi Arabian law exclude public facilities managed by the State or companies wholly owned by the state.

2- Banned anti-competitive practices:

Drawing on internationally established standards, the provisions of the Competition Law prohibit a number of business and trade practices with purposes or effects harmful to competition and that disturb the general balance of the market. Until not long ago, the practices prohibited included two types of behaviors:

- Agreements and concerted practices that are harmful to competition
- The abuse of dominance in the market

This list has been gradually expanded to include:

- Abuse of economic dependency (as amended in 1999)
- Predatory pricing (as amended in 2005)

a- Agreements, alliances and complicities:

The law (Chapter 5) prohibits all agreements and alliances with anti-competition impacts whatever the form of these agreements, expressed or implied, written or verbal.

The law does not differentiate between horizontal agreements made between competing institutions involved in the same stage of production or distribution on the one hand and between vertical agreements which involve institutions that are not competing and are present in different stages (producer/provider, producer/wholesaler, wholesaler/retailer, producer/retailers...).

Among the most important practices that are prohibited within agreements, we refer in particular to:

- The agreement to fix prices, different from the fundamentals of supply and demand
- The agreement on the sharing of markets or supply chains
- The agreement on determining the level of supply or production , marketing, or investment or technical progress
- The agreement on limiting new entry into the market with the effect of reducing competition

In view of the seriousness of these actions on the level of competition in the market, most legislation agrees on prohibiting such acts. Chapter five of the law prohibited such agreements in general and focused on the prohibition of the practices described rather than on the person of the perpetrators or the form of the agreement.

Jurisprudence within the framework of the Judiciary and the Tunisian Competition Council both confirm the specificity of the competition law in view of the close correlation of this law with the economic analysis. From this perspective, the content of the institution concept and the personal jurisdiction has been expanded in terms of implementation of Competition Laws to include natural and moral persons as well as public persons in the event they exercise economic activity, in addition to unions and professional associations, chambers of commerce to the extent they interfere in economic activities.

Equally and from the perspective of commercial law, the law allows the prohibition of practices regardless of the integrity of the proceedings as is the case for economic interest groupings or subsidiaries of competing institutions, if they aim at reducing competition or form a cover for concerted trade practices

On the other hand, the jurisprudence considered that the lack of respect for commercial law procedures in the establishment of the companies does not stand in the way of tracking anti-competitive practices that have an impact on the market balance.

Judicial jurisprudence of the Competition Council addressing anti-competitive agreements:

The first paragraph of Chapter 5 on businesses, public alliances and agreements enabled the Competition Council to track such practices, which are often confidential and rarely kept in written forms.

The Competition Council referred to such practices by Decision No. 4155 issued on December 16, 2004, stating that: "Given that the nature of these practices, which necessarily depends on confidentiality make it a difficult argument that can not be proven in most cases, and can only be proved, in certain cases, by resorting to investigation. "

A parallel decision no. 4157 and 4158 issued on December 16 stated the follows: "the majority of anti-competitive agreements are concluded in secret and are difficult to detect and identify their sources. This situation forces competition authorities to adapt their means to cope with this reality, especially in terms of adopting evidence and arguments and resorting to serious and actual indicators to avert anti-competitive practices with a view to ensure the proper functioning of the market and to maintain public order and serve the economic development goals."

It is noteworthy that the judicial control banned complicities that protect public funds and maintain the right of the public procurer to obtain the most appropriate offers in terms of prices and having a good deal.

The legislature supported the Council's oversight of anticompetitive agreements through the revision made on the Competition and Price law No. 60 of 2005 dated 18 July 2005, adding a paragraph to chapter 19 (new). It stipulates that: "after hearing the representative of the government, the Council may order an exemption from punishment or mitigate such punishment for anyone with useful information not available to the Directorate which would disclose anti-competitive agreements or acts." Noting that these provisions already exist in the legislations and systems of all States with a history in the enforcement of competition law and they aim to encourage parties involved in anti-competitive acts to inform authorities." Noting that the success of such method depends on the time of notification of the existence of practices since it is pointless once researches conducted by the Competition Authority are nearing completion. The Council adopted such mechanism to encourage the parties to cooperate with the investigation and provide with useful data and crucial means of evidence.

The status of exclusive sales contracts:

These contracts are agreements that limit access to the activity and are subject to the general prohibition of anti-competitive agreements contained in the first paragraph of Chapter V. However, there is a possibility for exemption on the grounds that they generate economic progress in accordance with the provisions of Chapter VI of the law, especially since this type of distribution may have economic benefits in terms of protecting the investor to organize a distribution network and provide the services necessary for an operation after the sale.

However, the amendment of 1995 included a paragraph on the initial and absolute prevention of Exclusive Distribution Contracts and commercial representation contracts except for special cases where these types of contracts are authorized by the Minister of Trade following the view of the Competition Council. This prohibition raised great controversy and was subject of criticism from the business sector and the legal profession. Moreover this prohibition faced major conflict with European law which does not prevent these types of contracts but subjects them to studies on a case by case basis.

For all these reasons, the paragraph on the initial prevention of the commercial representation contracts and exclusive distribution contracts was amended in 2005.

However, it is important to note that this omission brought by the amendment of 2005 does not imply exempting this type of contracts in absolute terms i.e. they remain subject to the general principle contained in the first paragraph of Chapter 5 that prevents anti-competitive agreements with the possibility of exemption.

The bottom line is that the amendment of 2005 eliminated the absolute prohibition of such contracts and left the door open for the exemption of these contracts that have anti competition freedom provisions but with the justification and economic benefits. The exemption procedure has become so commonplace and can be considered as a general rule and not an action limited to exceptional cases, as was the situation before 2005.

b- abuse of dominance in the market

The concept of market dominance can be described as a situation to which the institution or group of institutions are able, by virtue of their market power, to influence the market to the detriment of its competitors.

Jurisprudence has developed several criteria for determining the existence of market dominance the most important of these standards are: market share, economic power of the institution, the size of the barriers and obstacles to the entry of the market (financial and technological ...).

Although certain legislations define a threshold of market share for the purpose of determining a presumed dominant position, the Tunisian legislation left this matter to the discretionary power of the Competition Council on a case by case basis depending on market structure.

Definition of a Dominant Position according to the Competition Council's Jurisprudence:

The absence of a definition of the economic dominance concept in the Competition and Price Law left the door wide open to the Competition Council.

The Council defined the term dominant position in decision No.2136 issued on July 17, 2003 stating that: "a firm will be generally considered to be dominant if it holds a position of such economic strength that allows it to operate with competitors and consumers without being significantly affected by competition and market pressure and requirements in a certain sector. Such independence also enables it to impose its own terms and control market mechanisms which will have a significant impact on competitors by virtue of its market share, technological advancement, commercial style, financial sources or its geographical location".

The Council also considered the concept of market dominance in another case dated May 26, 2005 stating that "the concept of dominance is a subjective and not relative concept since it is determined according to the place of the institution concerned in the market and not given to each competitor individually. Therefore relative dominance is not stated within the Competition Law since the term "dominance of a significant share of the domestic market" mentioned in the second paragraph of Chapter 5 (new) of the aforementioned law means the geographical scope since the market can be either local, regional or national".

Accordingly, the Council tends to work on a case by case basis. The jurisprudence of the Competition Council included the concept of collective dominance as well during case No. 2142 dated September 25, 2003. The Council studied cases against two institutions working in the field of eyeglasses which concluded a commercial agreement granting one another concession terms. Market research proved that one of the institutions owned 70 percent of the second institution's capital and they were cooperating in terms of funding sources which make them in fact, a consortium of companies according to the provisions of the Business Code and therefore the Competition and Price Law shall not apply in this case.

Accordingly, the Council returned to the Commercial Entities Code to draw the conclusion that such situation does not absolve the parties from abiding to the principles of competition in accordance with Chapter 464 which stated: "collective companies can not have unlawful objective such as tax evasion or breach of competition rules." According to the Council, such grouping can be transformed into a collective market dominance whenever these institutions have, collectively the capacity to adopt a unified position on the market against customers and competitors thanks to the coordination and integration envisaged in their economic policy.

Overall, the identification of a dominant position in the Council's jurisprudence is associated with the market study regarding the market of the institution compared to the shares of the other competitors while taking into account the market structure and mobility and the existence and importance of barriers upon entry.

Market dominance is not prohibited as such and the competition laws rather prohibit the abuse of a dominant position.

As the business practices of the institutions are dynamic and changeable, the law (Chapter 5) prevents the abuse of dominant position. It provides illustrative but not exclusive examples for situations of abuse leaving that area to the jurisprudence of the Competition Council to expand the list warranted by circumstances and economic analysis on company behavior and market situations.

Abuse of Dominance according to the Council's Decisions:

According to Chapter V of the Competition and Price Law, the Competition Council has the jurisdiction to track actions considered as abuse of dominance. In accordance with the third paragraph of the aforementioned chapter: "abuse of dominance or abuse of economic dependency is to refrain from selling or purchasing, use conditional sales or purchases, impose predatory prices for resale, impose discriminatory conditions or cut off commercial relations without any objective reason or due to unfair terms of trade."

Economic violations are initially beyond the jurisdiction of the Council whether they are related to copying a mark or false advertising or trying to appeal to clients of competitive enterprises or defamation. However, when such violations are perpetrated by a party in a dominant position, they have a greater impact on the status of competitors, the market structure as well as the proper functioning of its mechanisms. Accordingly, such acts fall within the Council's competence considered as abuse of dominant position and therefore are subject to penalties.

The Council also considered that the development of a distributors' network refraining from dealing with the rest of competitors and imposing compliance contracts limit commercial freedom which is also one form of abuse of a dominant position, especially when reinforced by a situation of monopoly and control over the market.

The Council was able to establish control over the facts presented in any dispute, and to assess whether it is a case of abuse. In cases of disruption of trade relations without objective reason, the Council identifies the justifications made by the party alleged to commit that act.

The Council sought to be realistic in the matter of economic violations that come about parties in a dominant position. The economic violations are initially outside the jurisdiction of the Council whether in the form of copying a trademark or false advertising or trying to appeal to clients of competent enterprise or defaming it. However, those offenses when committed by a dominant party have a greater impact on the status of competitors and the market structure and the proper functioning of its mechanisms. From this angle, this sort of cases fall within the Council's jurisdiction since it is considered as an abuse of a dominant position and therefore is subject to penalty.

As an example, the Council reviewed a case brought by a national institution specializing in the distribution of domestic electric appliances against a foreign supplier owner of global marks. In this case sentenced on December 27, 2007 the plaintiff raised a case against the foreign supplier for refusing to continue providing needed equipment and spare parts.

The Council concluded that the machine parts with a global sign is a market reference independent of the machine parts with other signs whenever certain conditions are met, and it could be argued the existence of independent reference markets for each spare part of one mark if it is proved that o these parts are not

replaced with each other. The institution selling the mark is in a dominant position on the market of spare parts required for maintenance when other institutions are not authorized to manufacture the spare parts in question.

According to this analysis, the Council considered that the defendant is in a position of economic dominance for spare parts, which refused to provide the other institution.

On the practical side, tracking cases of abuse of dominant position on the market requires making sure first that there is an institution in such situation and then resorting to the criteria referred to above.

In this context the determination of market dominance which includes measuring the market share of the institution involved is of utmost importance.

The Tunisian law has left this matter to jurisprudence privileging economic analysis on a case-by-case basis. Accordingly the competition authorities have defined this concept in accordance with economic theory and precedent established by case law. The Competition Council has tackled this issue in several resolutions in order to refine the concept.

Market definition: although the Competition and Price law does not include a definition for the market (unlike other Arab legislations such as in Egypt, KSA, Jordan and Qatar), the Competition Council however, defined the market and set the limits of the reference market and cases where the regional market concept can be adopted.

The Council's decisions consider that the market, in terms of competition law, is the natural or virtual place where supply and demand for products or services meet.

In this sense, defining the reference market is closely associated with the concept of replacement, which can be defined as the viability of materials to satisfy the desire or need of the consumer compared to other materials that fulfill his needs within the same conditions in terms of price and the properties and place of the product.

The Council's position is clear when addressing the issue of defining the reference market in the subject of expensive perfumes: "The market reference in the present case is the expensive perfumes market that can not be substituted by regular

perfumes that belong to another market, although the use is the same, by virtues of differences in consumers, price, quality and famous brand. In this context, the judicial jurisprudence of the Competition Council defined the concept of substitution in the Competition Law as the possibility given to every potential beneficiary or user, to replace a certain product with another providing the same need or at least a strong proportion of this need. However, two similar products may not belong to the same market, such as marble, tiles or normal shoes and sports shoes, which also applies to regular and expensive perfumes. The reason is that expensive perfumes have a market of its own, since it is characterized by its high quality and relatively high prices and are distributed under a famous mark”.

In another case considered by the Council on December 13, 2007 the regional union of taxis agreed with an advertising company that all taxi owners in the union should put ads on top of their cars with a circular preventing them from dealing with other advertising companies.

The Council stated that the market of reference here is the advertising market through taxi that it is distinct from the rest of the advertising and publicity markets due to the diversity of advertising means adopted and access to the target population, as well as the differences in the techniques used to deliver the message.

The Council added that the means of publicity is divided between 1) fixed means such as poles and billboards on roads and in public places such as festivals, concerts and stadiums of various kinds as well as some walls of buildings, 2) mobile advertising such as cars, trucks, buses, trains, metro and 3) satellite television and wire or radio and internet. Thus, the Council limited the market reference in this case to the second category of techniques i.e. mobile advertising means since the case here is using the roof of taxis. Within this category specifically, the Council added that the distinction must be made between the mobile means that have an exact path and timing such as buses, trains, metro and other means of which the track is not justified. Moreover, the Council also distinguished between the latter means, i.e. without a specific track or timing, stating that there are cabs and private used for the publicity, since they differ in terms of the importance of promotional activity within the professional considerations of the owners of such means. The main activity of the taxi is the transportation of persons and secondary publicity operations while the activity of the private cars intended for the publicity is publicity itself.

c- abuse of economic dependency

Such practices are prohibited in the new Tunisian law. They have been included in the amendment of 1999, aiming to create a framework to address some of the business practices of institutions that do not necessarily have a dominant position.

This practice was inspired by the French law that was derived from German law⁶ and it was designed primarily to address the practices of economic dependency. It represents a measure aimed at restoring balance in the relations between small and big producers as an irreplaceable business behavior.

In Tunisia, the inclusion of these practices in the Competition Law enabled to respond to some commercial relations cases in the context of commercial representation contracts. These practices have been observed in recent years following the opening of the Tunisian market.

Similar to the case of the abuse of dominant position the law left the question of determining the existence of dependency as well as the definition of abuse to jurisprudence.

The case law of the Competition Council has developed this issue in accordance with the judicial precedent.

Economic dependency in accordance with the Council's Jurisprudence:

The Competition Council developed this concept stating that it is an alliance of elements where it is difficult for a merchant to get rid of the impact of the supplier in terms of activity and profits.

These elements include the reputation of the supplier's mark and the importance of its market share and the extent of impact on the turnover of the dealer or distributor or institution and difficulty to supply similar materials or services from any other party. The cause is not the behavior of the trader himself or his trade policy, since dependency is not the result of voluntary choice. The Council's jurisprudence is keen to ensure a balance between two necessary requirements for the implementation of the principles of the market economy. On the one hand, this system is based on creating a state of competition for the benefit of the consumer through product diversification and abundance and improving quality with a tendency to seek lower prices by putting pressure on the cost elements and modernizing methods of exploitation.

⁶ The German law of 27 July 1957 included three cases of economic dependency:

1. a trader who can only deal with the owner of a famous mark (dépendance pour cause d'assortiment)
2. a distributor who can not confront an economic power (dépendance pour cause de puissance d'achat)
3. The exclusive agent or representative of a prestigious brand, who can not change his activity or resort to alternative solutions (dépendance pour cause de relation d'affaires)

On the other hand, the institutions that have achieved an important position in the market given the importance of their share, or the excellent marketing methods to promote their products should not be exploit this system to dictate parties dealing with it or impose unfair commercial terms.

With regard to the forms of abuse of economic dependency, the Council aimed at expanding this concept to include the protection of small businesses that do not have alternative solutions to maintain their presence in the market. Accordingly the Council was keen to ascertain the reasons invoked by the plaintiff to untie its commercial links with dependent parties or to impose new terms of trade, or forcing them to get their supplies from a competitor in the national market. In certain cases, defendants were able to prove that plaintiffs are not appropriately protecting the trademark of the supplier or failed in the maintenance of products that need certain specifications or delayed in paying debts or is experiencing economic difficulties. In such cases, the Council decided to dismiss the suit since abuse of dependency was not proven.

d- Predatory Pricing Threatens Economic Balance

As the case of abuse of dominant positions this practice has been recently included in the Competition Law (2005), inspired by the French law but was adapted to national specificities.

The aim of the inclusion of this practice is to create a framework to address the types of practices that cannot be traced of abuse of dominance in the market, namely:

- The possibility of large suppliers to apply low prices on some products (bread, meat, sweets) in a way that is harmful to small trades, even though these suppliers are not in a position of dominance.
- The need to address some of the practices that have emerged in the tourism sector following the "September 2001" crisis, which led to reducing prices at the expense of quality to the detriment of the reputation of national tourism. It was not possible to track these practices on the basis of resale at loss (for being a service and not a merchandise) nor on the basis of abuse of a dominant position.

However, it is important to note that the legislator linked selling at excessively low prices to the interests of maintaining well balanced economic sectors and the integrity of competition.

The Council's methodology to address the predatory pricing issue:

The Council considered that predatory pricing does not reflect the real price that must include the variable and the fixed costs as well as the profit margin that would remove competitors and lead to violating competition principles in the market.

However, proving economic violations requires a study of the details of the activity being undertaken as well as the efficiency of practices. In a case raised in 2007 where a private company accused a competent public institution in the field of manufacturing lubricants for car engines, of predatory pricing, the Council concluded that the price differentials do not reflect the will of applying predatory prices, but was due to logistical superiority of the public institution "The two companies differ in the way of supply of these materials in terms of quantities supplied and the individual price at the supply, hence, the defendant and, thanks to their available storage capacity supplies high quantities at more competitive prices, which made it control the cost of these materials and meet the increase of prices. This was reflected at the level of cost compared to cost incurred by its competitor".

In another case raised during the same year, a national institution specialized in the manufacturing of ceramic coating material, which is a semi-manufactured material used in the making of ceramic wall and floor and pottery types, is setting prices different from a foreign institution active in the same area that sells the same product and at the same time at different prices up to thirty percent of difference from one customer to another, in order to encourage some distributors to stop dealing with the national institution as a prelude to removing it from the market.

The Competition Council defined the reference price as that which involves within its components a minimum of elements as the following:

- the variable cost i.e. the costs borne by the economic establishment at the time of production associated with the quantity produced (high or low) such as energy and raw materials
- the fixed cost borne by the economic institution, whether it produced products or it didn't

- The profit margin which is determined according to different factors such as demand, marketing strategy and overall objectives of the institution

The Council also noted that each offering or trading in the market with prices that do not take into account the real cost of materials or services rendered, violates competition rules when such practice reflects on the proper functioning of the market or contributes to removing a competitor or preventing him from accessing the market.

Within this context, the Council concluded that the defendant failed to provide any justification especially since the company that benefited from the largest reductions is the one that purchased less quantities, hence, beyond any doubt defendant applied very low prices that do not reflect the components of a reasonable price to exclude the only institution manufacturer of ceramic coating material from the Tunisian market and prevent the access of other institutions to that market, which hinders the freedom of competition, and is considered a breach of the provisions of Chapter 5 (new) of the Competition and Prices Law.

3-Controlling commercial concentration operations

The prior surveillance of economic concentration is intended to prevent the emergence of market domination with impacts which are hard to overcome.

In contrast to anti-competitive practices related to business conduct the control of economic concentration involves issues related to the development of the economic structure.

The control of concentration has been included in the Tunisian law in accordance with the 1995 amendment, noting that the 1991 draft law already included a chapter on the control of concentrations but was never applied as the national economy did not require, at that time, this procedure.

The national system involved in monitoring economic concentration relies on the principle of compulsory notification of monopolistic activities that would affect competition or create a dominant position on the market as well as on the need to obtain permission from the Minister of Trade as being responsible for competition policy.

The law defined certain criteria to define monopolistic activities. Accordingly, one of the following criteria should be applied:

- Turnover in excess of 20 million Tunisian dinars⁷
- 30% market share.

It should be noted that before the amendment of the law in July 2005, controlling monopolistic acts criteria required two conditions (a turnover of more than 3 million Dinars, and a market share of 30%). Since the threshold of turnover at that time was low the criteria applied in practice was the standard of market share.

The standard of market share is key but defining a second standard based on turnover was considered helpful since it is difficult to determine the market share in some cases.

It is also noted that the definition of the term economic concentration is broad and covers all areas that can lead in practice to an economic influence.

Effectiveness of the economic concentration controlling system:

The Tunisian law on competition and prices adopted a broader concept of the term economic concentration. Chapter 7 (new) stated that: “economic concentration shall include all work no matter the form that results in transferring all or part of a property or right to usufruct, rights or securities that would enable the institution or institutions to exercise a decisive control on the activity of an institution or other institutions whether directly or indirectly”.

The Competition Council has adopted two definitions for the economic concentration operations referring to the means and the result at the same time which leads to expansion of operations that are subject to censorship. In terms of the means, it is the way by which the concentration operation is done, such as institution mergers, or acquisition by another institution, namely, those operations that result in transferring a property or the right of usufruct. For the first part of the definition, the legislature did not mention the concentration operation resulting from the internal growth of the institution and also left aside the intention of the

⁷ Prior to the amendment of 2005, the turnover was set by 3 million Dinars

economic concentration, in addition he followed the principle of neutrality as long as the transfer of ownership or the right of usufruct is sufficient to have an economic concentration operation without the slightest regard for the form, hence an economic concentration operation only occurs when an institution fully withdraws from its rights or decision making for the benefit of another institution or when it gives up only a portion of its independence to another institution.

The second part of the definition i.e. the result means that when a certain institution acquires a supervisory authority over another, which makes the latter in a subordinate position. The legal concept of dependency limited to formal ties, is not enough alone, and should be associated with the economic concept. It is not enough for institutions to be linked to structural bonds; one of them should exercise an effective decisive control over the other.

This trend highlights the concept of domination that can be direct, i.e. when the dominant institution has a decisive majority of the board of another institution or has the possibility of appointing managers or the right of veto on the decisions of substance. It can also be indirect, i.e. when an institution who enjoys an excellent relationship with another institution as a supplier, can exercise an important influence on the administration as a result of a precedent situation between the parties where one of them is in an economic dependency state to the other.

The Minister of Trade has the authority to grant permissions to economic concentration operations after consulting with the Competition Council, noting that this consultancy was optional before the amendment of 2005.

These applications are subject to an economic balancing test between the economic benefits of the concentration and the reduction of competition involved.

The economic benefits of the process include the achievement of development goals especially in terms of preserving jobs, reducing production and distribution costs and improving production systems, quality and innovation, as well as supporting the competitiveness of national enterprises in foreign markets.

Concerning the elements of control conducted by the Council and the Ministry, the economic concentration process includes two phases involving 1) a data collection and analysis to make sure that the process underwent the compulsory notification and authorization and 2) an analysis of the impact on competition.

This requires in particular identifying the status of the market and studying its structure as well as the state of different competitors and the barriers to their access.

In some cases, the concentration operation has a valuable effect on competition especially when it contributes to restoring balance to the market, or enabling small enterprises to face competition especially at the level of foreign markets through mobilizing and pooling their capacity.

Decision-making is given to the Minister who is responsible for balancing between the requirements of the competition policy and economic policy.

Examining the process can have either of the following results:

- approval in accordance with the proposal of the enterprises concerned
- rejection
- conditional approval

The Minister's decision is subject to appeal before the Administrative Tribunal (for abuse of power).

It is worth mentioning that controlling economic concentration operations can be subject to the licensing of the Minister of Commerce in accordance with the provisions of the Competition Law and to the licensing of the competent sectoral authorities in accordance with investment laws:

- concentration operations in the bank sector are subject to the license of the CB Governor
- foreign contributions that exceed 50% in the service sector are subject to the licensing of the Higher Committee for Investment
- economic concentration operations between insurance companies are subject to the licensing of the Minister of Finance

Such dualism requires arbitration between competition policy priorities on the one hand and financial and monetary policy priorities on the other

Decision No. 52109 issued by the Competition Council on November 24, 2005 on the financial institutions, especially credit institutions, compliance with economic concentration monitoring procedures provided for in the Competition and Price Law.

New chapter 7 of the Competition and Price Law, No. 64 of 1999 dated July 19, 1991 provides for the following: “all concentration projects or economic concentration operations that would create or promote a dominant position in the domestic market in whole or in part shall be approved by the Minister of

Commerce”.

On the other hand, chapter 10 of law No. 65 of 2001 dated July 10, 2001 on credit institutions stipulates that: “the following are subject to the licensing referred to in chapter 7:

- all merger operations between credit institutions
- each acquisition of the credit institution’s share of the capital, and in general, all processes leading to the acquisition of a rate equal to or more than 10% of the Voting Rights
- All action that can lead to the transfer of a substantial proportion of the credit institutions’ assets leading to a change in the financial composition or in its type of activities

The Tunisian legislator subjects concentration operations related to the credit institutions to two administrative authorities interfering in parallel to grant the license: the Minister of finance and the Minister of Trade which necessitated the need to decide whether there is a conflict between Chapter 10 of Law No. 65 and Chapter 7 (new) of Law No. 64. With reference to the requirements of the aforementioned laws in relation to economic concentration operations the Competition Council stated that:

1- **There are different control methods:** the Minister of Finance and Central Bank of Tunisia’s control covers the financial and technical matters that takes into account the compatibility of concentration projects with set financial goals, while the control of the Minister of Commerce upon taking the opinion of the Competition Council monitors the freedom of competition in the market

2- **There are different standards:** the integration process is the beginning of a new activity requiring licensing, such as the case of establishing a new constitution

3- **There are different terms:** terms included in Chapter 10 of the Law on the credit institutions to obtain a license differ from the terms included in Chapter 7 (new) of the Competition and Price Law to control the operations of economic concentration

4- **There are different goals:** the Minister of Finance’s control does not cover aspects related to the general balance of the market or ensuring sufficient competition, thus, obtaining a license from the Minister of Finance is not enough alone and there is a need to obtain a license from the Minister of Commerce

4- Preventing certain anti-competitive business practices

The Competition Law prevents a range of business practices that may be detrimental to competition, regardless of the status and strength of the perpetrators in the market. The aim of this prohibition is to enhance the conditions of competition in the market.

These practices include in particular:

- Preventing the imposition of a minimum resale price for a product (Chapter 28) to protect the freedom of the dealer in determining prices he deems appropriate
- Unreasonable refusal to sell between professionals (Chapter 29)
- Resale at a loss (Chapter 26)
- Discriminatory sale conditions which might cause harm to the level of competition (Chapter 29)
- Conditional sales
- Acquiring, in the framework of commercial cooperation, concessions that are not justified by the real value of the service provided.

All of these practices are prohibited in principle and if there is market dominance; in the absence of a dominant position in the market, a restraint to competition needs to be established.

All of these practices that are prohibited in principle in case of a dominance situation can be tracked by determining an abuse of dominance position. On the other hand, in the absence of a dominant position in the market, such practices are tracked by determining a violation that is detrimental to competition.

This observation is important since it differs from case to case. In the first case the Competition Council considers the subject by assessing the behavior of the enterprise and the extent and excessive exploitation of its dominant position.

The second case falls under the jurisdiction of ordinary courts as an economic violation. The size of the penalty varies from case to case. This difference is due to the seriousness of the offender violation's ability to influence the market.

It should also be noted that certain anti-competitive practices such as refusing to sell and conditional sales are inspired by the Prices Laws. On the other hand, preventing certain practices (such as resale at a loss) aims to maintain competition between

major and small trade or between large retailers and the producers (discriminatory conditions and commercial cooperation relations).

5- Competition Requirements

The normal functioning of markets in a competitive system requires basic economic freedoms and ensuring the necessary conditions of transparency with regard to information about prices and sale conditions.

For that reason, the Tunisian Competition Law sought the appropriate conditions for the proper functioning of markets and aimed to encourage the competition level therein through the following:

- Adoption of Chapter 2 the principle of freedom of prices as a general rule for price formation linking this principle to the freedom of competition
- Requiring professionals to declare their prices to the consumer (chapter 22)
- Requiring professionals in their transactions with each other to prepare rate schedules and conditions of sale to facilitate choosing the best sources of supply
- Limiting some promotional mechanisms (such as selling bonus/ promotional games ...) to avoid misleading consumers about the real prices or using these mechanisms to influence competition
- Mandatory billing in the business transactions among professionals to ensure the documentation of applicable sale conditions and the applicable rates and to guarantee equal tax treatment.

In the context of its daily functions, the Directorate General for Competition monitors the functioning of markets to ensure respect of these requirements to provide the incentive framework for competition in commercial transactions.

6- Bodies responsible for the implementation of the Competition Law

A number of actors intervene in the implementation of the competition policy in the country, including in particular:

- The Ministry of Trade (Directorate General for Competition and Economic Surveys)
- The Competition Council

- The Administrative Tribunal (Court of Appeal and Court of Cassation related to the decisions of the Competition Council)
- The ordinary courts of justice

We can say that the Competition Council and the Directorate General for Competition and Economic Surveys at the Ministry of Trade are key stakeholders intervening in the implementation of the Competition Law.

The Competition Law specifically defines the jurisdiction, role and powers of the Competition Council and the Ministry of Trade as well as their relationship with other government departments especially the Sectoral Regulatory Bodies that can contribute to promoting competition in the market, spread a culture of competition and assisting the detection of anti-competitive practices.

a- The Competition Council:

This Council was established under the Competition and Prices Law. It was first known as the Competition Committee, and then came to be known in the 1995 amendment as the Competition Council with an expanded jurisdiction and strengthened structures. It is an independent special body with judicial powers and two fundamental functions: advisory and adjudicatory functions.

- **Advisory Function:** within this context, the council has to give an opinion in all matters relating to competition presented by the Minister of Trade or sector regulatory bodies. The Council's advice is optional with regards to most public policy issues, but mandatory in the following cases:

- Regulatory provisions related to the Competition Law
- Permissions for economic concentration operations
- Exemption of certain practices considered to contribute to economic progress.

- **Adjudicatory Function:** The Council adjudicates issues relating to competition provided for in Article 5 of the Law such as collusion, abuse of dominance in the market or economic dependency, the sale at excessively low prices that upsets the balance of the economic sector.

The Council does not consider claims for compensation related to these issues that remain within the jurisdiction of ordinary courts.

The Council consists of an Adjudicatory Authority and an Administrative Organ:

- **Adjudicatory Authority:** includes 13 members, half of which are judges and the other half are business persons with relevant experience and qualifications. The composition of this body is as follows:

- President elected among the judges or among the other independent members
- Senior Vice President who is a judge at the Administrative Tribunal
- Second Vice-President chosen from the state owned enterprise section of the Department of Accounting
- Three members who are justice judges
- Four members active in the sectors of production, distribution, traditional industries or services. They are chosen on the basis of experience
- Two members chosen on the basis of their efficiency in the economic field or in the field of competition and consumption⁸.

The law specifies the duration of the council's membership to 5 years, renewable once for the member judges, and six years, non-renewable, for the two independent members and 4-year non-renewable for the professional members. The purpose of the varying duration is to renew the Council and ensure the transfer of expertise between the various members. The president and his two deputies work on a permanent basis in the Council. The rest of the members are called for sessions and may retain their regular jobs.

- **The administrative body:** currently includes a general reporter and 9 reporters in addition to 16 administrative employees.

- **Initiating competition cases:** cases can be brought before the Council by:

- The Minister of Trade as being responsible for monitoring the functioning of the market and fair competition in various sectors of economic activity
- Economic institutions that have an interest
- Approved consumer associations

⁸ Usually they are selected from professors in economics or law

- Chambers of Commerce and Industry
- Sectoral regulatory bodies
- Local communities.

- **Powers of the Council:** decisions of the Council can include:

- Authorizing the legality of the practices presented to it
- Imposing, where appropriate, penalties against offenders with maximum fines of 5 per cent of turnover
- ordering persons directly involved to end anti-competitive practices
- Declaring the temporary closing of the enterprises condemned (maximum of 3 months) and limiting their re-opening to compliance with the provisions that have violated
- Referring the file to the public prosecutor for criminal proceedings

The plenary session of the Council considers advisory demands. Judicial files however, are considered by the council's departments, noting that a department or several departments can be established within the Council. The Chairman, at the beginning of each judicial year, adjusts the composition of the department that includes a chairman and four members, including at least one judge. The department is headed by the chairman or one of his vice presidents.

The meetings of the Council are confidential and the proceedings before the Council respect the principles of a fair trial. Appealing the decisions of the Competition Council either by appeal or cassation request is carried on before the Administrative Tribunal⁹. Noting that before 2005, these decisions were apt for appeal by cassation only before the Administrative Tribunal. However, in the framework of supporting the rights of defense, the principle of two-level judicial review was established in 2005.

⁹ Note that the Administrative Tribunal in the case of challenging the judgment by cassation, has a final adjudication of the case without referring again to the first instance judge (Competition Council)

The Competition Council drafts a report on its activity each year along with its decisions and opinions. It is submitted to the President of the Republic and subsequently published.

It should be noted that chapter 35 of the law assigned to the Minister of Trade the task of ensuring the implementation of the Competition Council's decisions, particularly those related to the termination of unlawful practices, or temporary shutdown of enterprises and the collection of fines.

b- The Ministry of Trade (the Directorate General of Competition and Economic Surveys):

This public administration within the ministry is responsible for the development and monitoring of the implementation of competition policy and law. Its field of jurisdiction is related to:

- contributing to the development of competition policy and preparing relevant legislation
- Conducting market surveys and detecting anti-competitive practices as well as preparing research reports in these matters and referring them to the Competition Council for adjudication if illegal practices are detected
- Receiving economic concentration notifications subject to authorization and examining them as well as issuing decisions on the advice of the Competition Council
- Receiving and studying exemption applications and preparing decisions after consulting the Council.
- Promoting a competition culture
- Conducting Economic Surveys on competition policy and consumption
- Monitoring the progress of various markets, gathering information on the behavior of the various players and ensuring respect for rules of transparency and the integrity of transactions
- Tracking cases of economic imbalance
- Conducting the necessary investigations and research on anti-competitive practices required by the Competition Council
- Following the evolution of the market structure
- Keeping competition policy pace with other economic policies

- Cooperating with international bodies active in the field of competition
- Defending the public interest in cases filed with the Council
- Implementing the decisions of the Competition Council

The Directorate-General has other powers relating to the prices policy and ensuring respect of various economic legislations for the organization of markets and consumer protection. It has central departments and 24 directorates in different provinces.

The Directorate General for Competition and Economic Surveys includes 3 central directorates:

- the Competition and Price Directorate
- the Directorate of Economic Monitoring
- the National Observatory for Supply and Prices

The organizational structure of the Directorate General for Competition and Economic Surveys governs the organization of the Ministry of Commerce referred to within the references¹⁰.

c- The Administrative Tribunal:

The Administrative Tribunal is an important element in the implementation of the Competition Law provided for in Law No. 64 of 1991 especially after the amendment of 2005.

The jurisdiction of this Court in matters of competition varies:

- **Implementation of competition principles at the level of administrative disputes:** the Court stressed on the need for the administration to respect the principle of industrial and commercial freedom at the decision-taking level since freedom is the principle and administrative control measures are the exception.

The court also acknowledged in terms of separate decisions concerning public transactions or concession contracts the same principles related in particular to the respect for the rules of competition, ensuring equality, and monitoring respect for the authority involved in following procedures that do not deviate from the principle of transparency to ensure equal opportunities for all.

¹⁰ Annex X

In addition, the cassation judge is keen to enforce respect for these principles in terms of taxation disputes, as a source of legitimacy, which requires the Department of Taxes to take them into consideration.

- **The implementation of Competition Law:** which aims to repeal the decisions of the Minister of Trade relating to:
 - Temporary measures justified by: a crisis, a natural pandemic, exceptional circumstances and unusual market condition in a particular sector, on the stipulation that the implementation does not exceed six months (situational pricing procedures as stated in Chapter 4).
 - Licenses issued in respect of agreements or practices proven necessary to ensure economic or technical advancement bringing to users a fair share of benefits after taking the opinion of the Competition Council (exemptions of Chapter 6)
 - Decisions of the Minister of Trade in terms of permissions for economic concentration operations in accordance with the new Chapter 7 of the law.
 - Decisions to take any precautionary measure that would ensure or restore competition conditions issued by the Minister of Trade, where appropriate, in participation with the competent Minister¹¹
 - Actions taken by the Minister of Trade imposing an economic concentration operation to ensure the technical progress or economic contribution in order to compensate for breach of competition.

- **Competence of the Administrative Judge:** the jurisdiction of the Administrative Tribunal in the subject of anti-competitive practices was equally developed by the amendments to the law No. 64 of 1991, concerning in particular the strengthening of the jurisdiction of the Competition Council¹².

The administrative judge in the Appeal¹³ phase has all the powers to reconsider de facto or de jure disputes and use his powers during investigations and can authorize all possible investigation procedures.

The number of appeals to the decisions of the Competition Council has increased as follows:

¹¹ Chapter 7 of the Competition and Prices Law

¹² Law No. 47 of 2003 dated November 11, 2003

¹³ Law No. 70 of 2003 dated November 11, 2003

	2001	2002	2003	2004	2005	2006	2007	2008	Total
appeal	-	-	2	9	8	14	3	11	47
cassation	1	-	6	4	2	3	4	1	21

d- Ordinary Courts of Justice

The ordinary courts can consider issues relating to anti-competitive practices provided for in Article 5 of the Law in two cases:

- Demands of compensation for harm caused by these practices (civil cases)
- Criminal cases referred to it by the public prosecutor (penal jurisdiction).

While the law specified, in the second case, procedures to be followed, it did not specify the procedures for compensation claims even though it is in the interest of the litigant to submit the issue of legality of the incriminated practice first to the Competition Council

On the other hand, it should be noted that anti-competitive trade practices that do not involve the abuse of a dominant position such as retail sale price maintenance discriminatory sales conditions and refusals to deal fall under the jurisdiction of the ordinary courts as unfair trade practices.

Given the difference in the nature of appeals against decisions relating to anti-competitive practices in Chapter 5 and anti-competitive practices contained in the rest of the chapters of the law, there might be a difference in the interpretation of certain provisions between the ordinary courts (Court of Cassation) and the Administrative Tribunal.

e- Regulatory Bodies:

The late eighties saw the liberalization of certain sectors that were open to competition. Moreover, other important sectors such as the energy, telecommunications and transport were granted concessions while others were completely liberated such as the cargo and maritime transport regulated by special sectoral laws.

Specialized authorities were entrusted with supervising the process of sectoral liberalization to ensure the proper implementation of respective laws, the strengthening of competition in addition to the protection of consumer interests.

These authorities are known as regulatory bodies that intervene to respond to certain technical requirements (the Telecommunication Authority/ the Banking Committee/ the Financial Market Body/ the General Insurance Body¹⁴).

The last amendment to the Competition and Prices law in 2005 clarified relations between competition authorities and regulatory bodies by introducing provisions related to:

- Enabling regulatory bodies to raise cases related to anti-competitive practices before the Competition Council.
- Requesting the opinion of regulatory bodies on technical matters in cases brought before the Competition Council.
- The need to notify the Minister of Trade about anti-competitive indicators.

This consultative approach resulted in the holding of meetings to exchange experiences and address certain problems especially in the field of publicity and promotional activities aimed at the proper implementation of legal texts and avoid conflicts between them.

7-Procedures for tracking violations

a- General Observations:

Apart from the possibility for competitors to raise cases of competition law violations before the competent courts or before the Competition Council, the Ministry of Trade has the authority to submit violations of the competition law to the courts or the Competition Council for adjudication.

As explained in paragraph six, this task is given to the Ministry of Trade, its Directorate General for Competition and Economic Surveys and the Provincial Departments of Commerce (24 Departments).

There are about 600 central and provincial departments that monitor economic affairs. The law has specifically defined the investigation n procedures (Title V/ chapters 51 to 61). We refer in this context to the following:

¹⁴ Annex VIII

- The inspectors of economic affairs are officers of the Ministry of Trade, they are considered as law enforcement officers are sworn in and have a badge showing their status.
- Normal economic violations are examined by an investigation report. For anti-competitive practices, they are subject of a research report that accompanies the Competition Council claim. This report could include inspection or hearing minutes and other means of proof. The difference comes from the fact that anti-competitive practices require in-depth research and economic analysis of the market unlike the rest of the economic violations.
- The Competition Council reporters enjoy the same powers granted to the economic inspectors at the Ministry.

b- Anti competitive practices inspection procedures at the level of the Directorate-General for competition

In the framework of following up the functioning of the market and its various activities, the Directorate-General's departments compile indicators on alleged anti-competitive practices in coordination with their correspondents specialized in competition at the level of provincial departments. Thus, they resort to all available sources: comparative analysis of prices and business behavior, gather complaints from competition institutions and consumers, follow-up media reports and economic investigation and information received from official sources ... The research conducted by the National Observatory for the Supply and Price is an important source of information on market structure and business behavior..

Compiling these indicators is done at the level of the Directorate-General (Department of Competition and Prices) in order to determine whether the anti-competitive behavior that has been found is an isolated exercise reflects a generalized pattern.

In the light of the analytical process, two measures are taken 1) closing the case in the absence of evidence 2) draft an in-depth field investigation report if there is sufficient evidence.

Afterwards, the data collected will contribute to the drafting of an administrative report on the status of competition in the market concerned and the analysis of practices that have been examined as well as their competitive impact. If the evidence collected, together with the economic analysis of the practices concerned

indicate frequent breaches of competition, the investigation report along with the evidence and a petition are referred to the Minister with a proposal to submit it to the Competition Council to prosecute parties involved in such practices.

c- Investigation procedures on cases at the level of the Competition Council

The Rapporteurs of the Competition Council assume this task, noting that when the petition is received and will be recorded, the President of the Council will issue a decision to appoint one of more reporters to investigate the case.

As indicated above, the rapporteur enjoys wide powers to investigate the case and prepare a report to present his findings. He could call for parties to present their observations on the petition, request additional information or take other steps as he deems necessary.

He can also request, under the authority of the President of the Council, the departments in charge of technical or economic monitoring to conduct research and report to him. It should be noted that for the petitions filed by the Minister, they should be accompanied by an analytical report on the status of competition in the market concerned and a compilation of evidence to support the petition. However, the rapporteur is not bound by the content of the administrative report.

At the end of the investigation, the rapporteur is expected to issue a report including his findings and conclusions. The President of the Council shall transmit the report to the offenders and to the government's representative to respond within a month. Parties can study the case file.

8- The system of exempting practices justified by economic progress:

While the Tunisian law does not contain sector exceptions in the area of implementation, it has created, much like many foreign legislations particularly European, a system to exempt anti-competitive practices that generate economic progress, in part because of its benefits for the consumer (Chapter 6 of the Competition Law).

It is incumbent upon the parties concerned to submit an application to the Minister of trade. The minister has the authority to grant an exemption after a compulsory consultation of the Competition Council. In practice, exemption is granted after considering the economic benefits of the agreement to be exempted and comparing these benefits to the restraints of competition.

Within the context of the main areas to be covered by the exemption system, we note in particular the selective distribution systems (agencies/franchise and license and commercial representation) as well as contracts for cooperation for the purposes of research, development and industrial specialization and other areas.

The importance of the exemption system lies within its ability to grant the enterprises the necessary legal security for their transactions as well as to enable the search of a flexible treatment of some types of agreements, especially vertical ones, on the basis of a study of their impact on competition on a case by case basis.

View No. 62160 dated February 1, 2007 concerning the issue of granting a bloc exemption for exploitation contracts under the license of the mark or the original trade name owner as an exception from the prohibition contained in chapter 5.

The Council defined exploitation contracts under the original name, as a contract concluded between a Foundation owner of a mark or trade name and methods of marketing, enabling an independent natural or moral person to exploit this mark or name for an exchange of a sum of money. Accordingly, The Council considered this contract as an agreement to buy or sell products or provide services and therefore its object or impact can be anti-competitive once it includes clauses related to fixing the price of exclusively get supply from the mark owner.

The exploitation contract under license of the mark or original trade name owner constitutes a vertical agreement between non competing companies, or parties aiming to develop economic viability in terms of production or distribution, given the cooperation between the exploiter and the owner of the mark, which leads to economic results and provides important technical advancement for the benefit of the consumer. Thus, this type of contracts can be exempted according to Chapter 6 of the Competition and Price Law, which are subject to licensing of the Minister of Commerce.

The Competition Council considers that taking a decision to grant a bloc exemption for exploitation contracts under the original name raises a procedural dilemma in terms of the current wording of the Tunisian law, given:

- The absence of express provisions in the Competition and Price Law allowing the bloc exemption.

- | |
|--|
| <ul style="list-style-type: none">- Chapter 6 of the Competition and Price Law provided only for practices and agreements where license requests are submitted by their owners, reflecting the individual character of these requests. |
|--|

<p>Therefore, the Council concluded that the decision of bloc exemption even if economically justified, however, it has no legal basis, which raises the need to revise Chapter 6 of the Competition and Price Law.</p>

9- Comparing the Tunisian Competition Model with regional and international experiences:

For the preparation of the national legislation on competition, the European law in general and the French law, in particular, formed an important source of inspiration adapted according to national specificities.

The partnership agreement with the European Union (Chapter 36) includes provisions relating to competition and the control of government support. This agreement indicates explicitly that the rules of European legislation on competition should serve as a frame of reference.

Based on the analysis of the Tunisian Competition Law the following observations can be made:

- There is a continuous development of the legal framework for competition in the light of the evolution of the economy.
- This framework incorporates the most important internationally established norms in the field of competition legislation and covers the most important globally accepted practices to prevent anti-competitive conduct (complicities and abuse of market power and prior control of mergers and acquisitions).
- There is substantial convergence between the national and the European legislation, especially following the 2005 amendment on the general principle of prevention of exclusive distribution arrangements that was a source of great internal debate showing a clear difference with the European legislation.
- The institutional aspect for the enforcement of the Competition Law and established procedures provide adequate safeguards to protect the rights of defense and ensure independency of adjudication, in conformity with the 2005 amendments that ensured administrative and budgetary independence of the Competition Council.

- There are some minor differences with the European legislation which are caused by the development and the in-depth review that this legislation saw in early 2000 after the experience of nearly half a century.
- While the legal framework was adequate and almost complete and only required the adoption of certain procedural improvements, the field implementation requires more impetus to further improve the performance of national bodies and bring them to the level of similar international bodies which requires additional efforts to promote training and awareness.

In comparison with the countries of the region, the Tunisian experience is a precedent as it is one of the first competition legislation in the region.

Thus, it gained an active and distinctive role in relevant international and regional forums, as well as in helping friendly and neighboring countries in drafting legislation and training their enforcement officers.

Tunisia has also actively contributed to the development of the Arabic principles and guidelines on competition law at the level of the Arab League which were adopted by some countries in the region to develop their national legislations.

While comparing the Tunisian legislation to other laws in the region we highlight the following conclusions:

- the Tunisian law lacks major sectoral exceptions, unlike some Arab laws in Egypt and Saudi Arabia ...
- Tunisia and the Maghreb countries in general, adopted a two-tier structure (Directorate-General and an independent Competition Council), while the Mashreq countries adopted the one body model with varying degrees of independence.
- There are similarities between the majority of legislations in terms of the content of prohibited anti-competitive practices
- Most Mashreq countries adopted Competition Laws independently from the Price Laws
- The Tunisian Law's approach is flexible and general with only few definitions leaving room for the judge of the Competition Council.

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III- Assessing the enforcement of the Competition Law:

It must be noted that assessing the implementation of the Competition Law is an important and difficult matter. It requires the use of several criteria for measuring the activity of organs of competition and their effectiveness. Moreover, it is difficult to isolate the implications of the law enforcement from the rest of the laws and policies.

We will try in this part to assess the Tunisian experience relying on the following available information:

1. The activity of competition organs in raising awareness on the principles of the law and building the necessary skills for its implementation the results of peer reviews, especially as Tunisia volunteered in 2006 to perform such review within the work of the Intergovernmental Team on Competition Laws and policies of the United Nations Conference on trade and development. This review is an important and neutral source for assessment.
2. The assessment conducted by the European Union in the framework of the twinning programme with the Tunisian competition authorities
3. The attempt to measure the degree of satisfaction of the economic operators on the performance of the competition organs through available national surveys and by relying on the results of the survey conducted in preparation for this study.
4. Reviewing the jurisprudence of the Competition Council's adjudicatory and administrative bodies and of the Administrative Court and determining the extent of their contribution to law enforcement and the development of methods for implementation.

Then we will conclude by:

5. Listing major hurdles facing the implementation of the Competition Law
6. Summarize key lessons learnt from the Tunisian experience

1- The activity of the competition agencies:

Following its enactment in 1991, the Competition Law was gradually implemented according to priorities. In the early years, the focus was on raising awareness on the provisions of the law and the functions of the Competition Committee and

subsequently on the Competition Council, the composition of its members and staff and the composition of the ministry officers. Promotion a culture of competition among the public and private sectors was also a priority without necessarily resorting to sanctions during the first phase.

Special attention was also attached to providing competition requirements with regard to the transparency of transactions (ensuring respect for rules of billing, disclosure of prices and conditions of sale ...).

After the first phase, work applied more rigorously to the enforcement of the law, thus the number of files registered within the Council rose to 54 cases in 2008 compared to no more than 5 in 1995-1997.

The advisory activity registered remarkable development, especially since 2005, the date of the establishment of the mandatory consultation on the draft regulatory texts and this is an important development, given the awareness raising role of the Council. Furthermore, the adjudicatory functions were enhanced in terms of quality, richness and coverage of decisions on issues of interest to interpretation of the Competition Law after noticing that most of the resolutions of the first period were essentially rejection decisions due to the lack of jurisdiction.

The following is a brief on the Competition Council, the Directorate General for Competition-Ministry of Commerce and joint activities between the two:

a- Activity of the Competition Council

- **The evolution of the Council's activity:** while analyzing the activity of the Competition Council during the seventeen years since its inception (1995-2008) the following was noted: the first period was characterized by the small number of cases and the weak awareness of its existence and nature of work. However the Competition Council witnessed a remarkable development and began imposing itself within economic and legal sectors. Promoting a competition culture was the Council's policy since the beginnings; moreover, the reform operations had a positive impact on the activity and nature of cases brought before the Council.

Overall, the Competition Council received during seventeen years three hundred and ninety-six files (396), an average of more than twenty-three (23) files each year,

including one hundred and eighty judicial cases (180) and issued one hundred and fifty-seven decisions (157) and made two hundred and thirty one opinions (231)¹⁵.

It is clear from the facts presented above, that the activity of the Council went through three periods of five years each and has seen significant development between each period:

- the rate of files brought before the Council in the framework of its two functions (Advisory and Adjudicatory) increased from 5 during the first period (1992 – 1996) to 14 during the second phase (1997 – 2001) reaching 40 during the third phase (2002 – 2006)
- The rate of cases brought before the Council also increased from 3 or 4 cases during the first and second phases to settle at around 20 case per year
- The rate of decisions issued by the Council evolved from 3 decisions during the first phase to 17 during the second phase all the way to 31 decisions during the third phase
- The rate of opinions also increased from 1 during the first phase to 11 during the second phase reaching 20 opinions during the first phase.

It is clear that the third period was the most important for the Competition Council and was the result of many factors including: the support of many actors, especially the Ministry of Trade, the efforts to spread competition culture throughout the economic and legal communities, raising awareness on the merits of competition, supporting the human resources of the Council through the development of internal training programs, recruiting personnel with legal and economic backgrounds in addition to establishing an information database on the most important economic areas in cooperation with the Directorate General for Competition and Economic Surveys.

The following table shows the evolution of the number of cases, sessions and decisions and opinions from 2002 to 2008.

The Evolution of the Council’s Activity during the last 7 Years

	2002	2003	2004	2005	2006	2007	2008
I- registered files	26	24	34	43	75	78	54

¹⁵ Check the tables attached to the reports on the development of the adjudicatory and advisory activity of the Competition Council

- lawsuits	11	9	19	33	22	30	19
-	-	-	-	-	3	4	4
- Consultations	15	15	15	10	50	44	31
II- Sessions	28	34	33	52	73	74	65
III- decisions and views	20	26	27	35	68	74	50
- decisions	8	11	10	24	20	22	21
- automatic adjudication	-	-	-	-	3	4	4
- views	12	15	17	11	45	48	25

This significant progress is due to the principle of automatic consultation according to the amendment of 2005, as well as the effectiveness of the program aiming at disseminating a competition culture, the definition of Competition Law and its implementation organs in addition to the annual reports of the Council. This evolution is also due to the publication of the Council's decisions through written and audio-visual media, lectures and participation in events organized by colleges and high institutes or different structures and bodies.

Adjudicatory Function

Judicial files are distributed according to the source i.e. the party entitled to bring cases provided for in Article 11 of the Competition Law as follows:

	2006	2007	2008
Economic	19	23	15

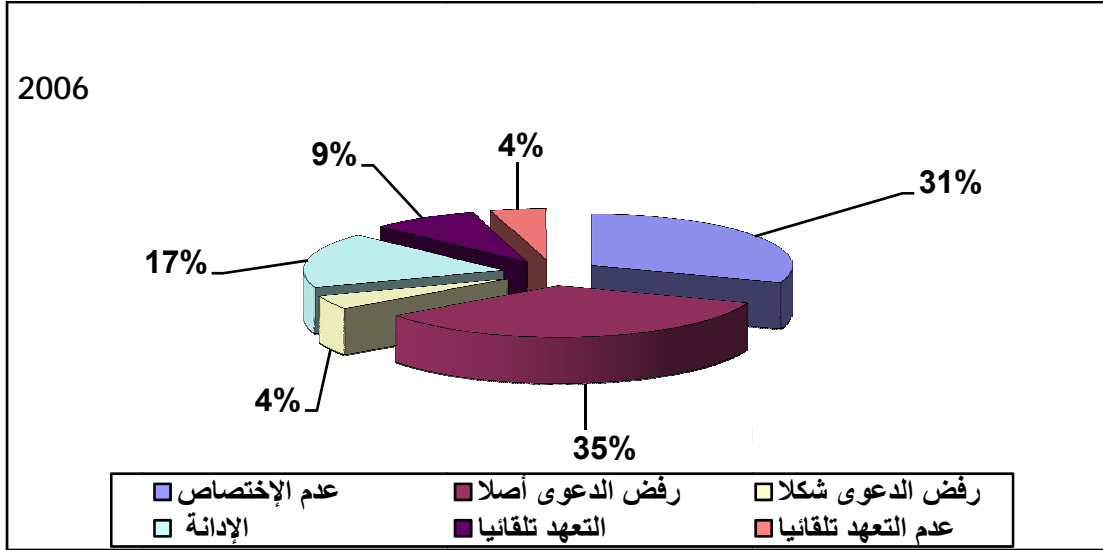
institutions			
Organizations and syndicates	1	1	-
Minister of Commerce	2	6	4
Automatic review	3	4	4

According to the economic sectors proceedings are distributed as follows:

Sector	2002	2003	2004	2005	2006	2007	2008
Industry	7	5	3	6	10	7	3
Commerce	1	1	3	9	5	10	6
Services	3	3	13	18	10	13	14
Total	11	9	19	33	25	30	23

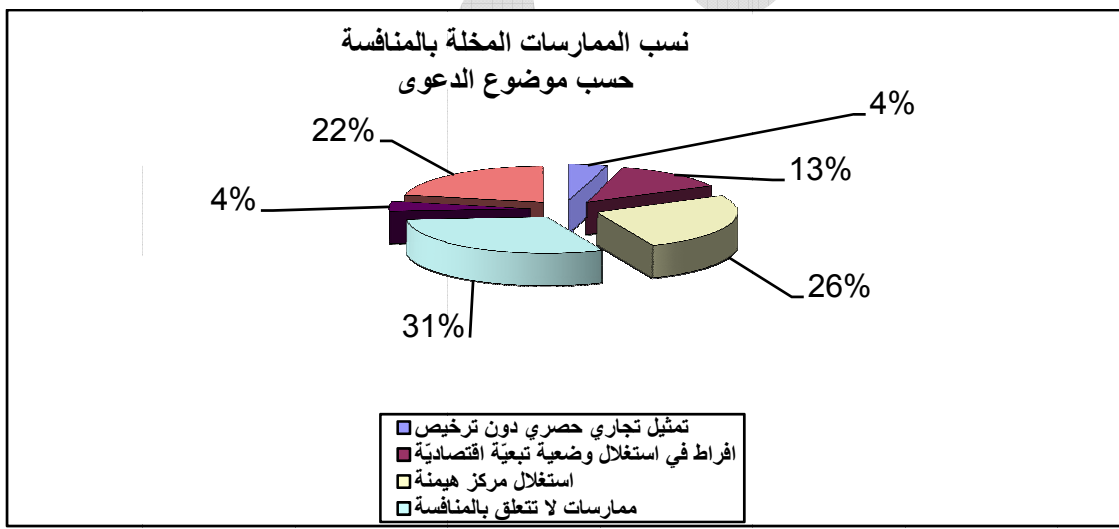
It is worth mentioning **that the average duration of adjudication** is no more than **eight and a half months**, which can be reduced when the Council, in the framework of investigations, relies on the data bank that contains accurate and updated data and statistics about the status of market institutions. Moreover, the duration of adjudication can also be reduced once the new recruitment program is adopted.

The following graph shows the number of judicial cases during 2006.



According to the above graph, the percentage of studied files amounted to 52 per cent in 2006 while the percentage of rejected files for lack of jurisdiction recorded 30 per cent.

The following graph shows the rates of anti-competitive practices related to judicial files adjudicated in 2006:



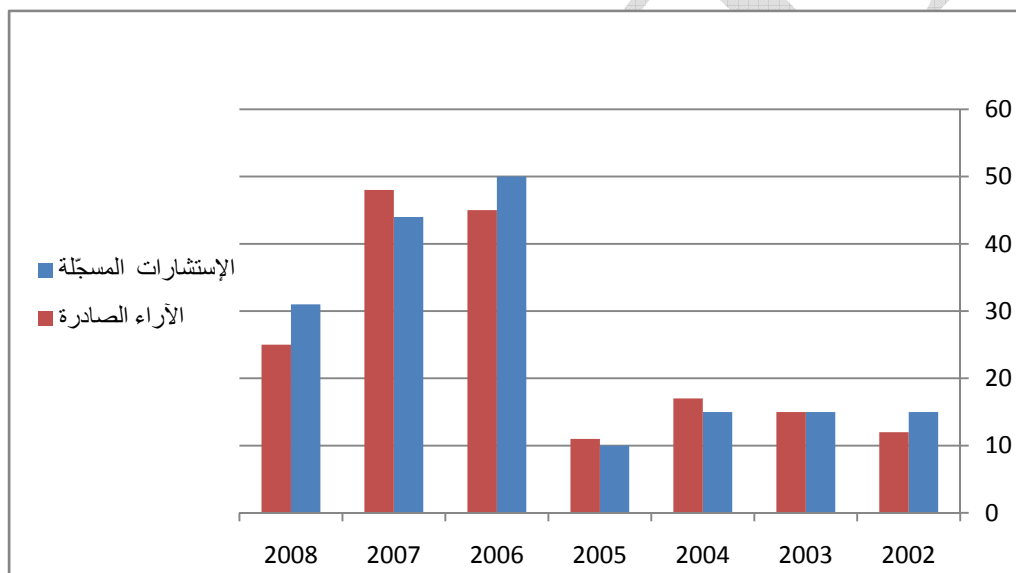
According to the foregoing and with the exception of the judicial files that are not related to anti-competitive practices, "abuse of a dominant position on the market" represents the majority of cases brought before the Council (26%), followed directly

by predatory pricing (22%) than economic dependency (13%), and finally anti-competitive agreements (4%).

It is worth mentioning that the ratio of judgments based on the proof of abuse of a market dominant position reached around 50%. In parallel, judgments based on the abuse of economic dependency and those related to the conclusion of exclusive contracts without a license recorded 25% each.

Advisory Function

The advisory role of the Competition Council was backed by the issuance of Law No. 60 of 2005 dated 18 July 2005, which expanded the circle of those eligible to request consultation and added new cases of compulsory consultation. The below chart shows the number of views recorded and the number of views expressed by the Competition Council during the last five years from 2002 to 2008:



Studying each advisory file takes one-month in average.

The following table shows the distribution of opinions by subject:

	2002	2003	2004	2005	2006	2007	2008
1- legislative and ordinal texts	6	5	1	2	7	13	8

2- lists of requirements	2	2	3	1	32	27	16
3- economic concentration projects	1	2	2		3	3	-
4- offer applications	1	1	1		-	-	-
5- practical and legal problems	1	5	2	2	1	3	-
6- agreements on the interpretation of chapter 6 of the Competition and Price Law	1	-	-	-	2	2	1
7- Views on competition in certain sectors	-	-	8	6	-	-	-
Total	12	15	17	11	45	48	25

b- the Activity of the Directorate General for Competition

It should be noted that the activity of this department is diverse and includes in addition to the implementation of the Competition Law, many other areas related to monitoring the functioning of markets, consumer protection and ensuring the transparency and integrity of transactions and generally ensuring respect for economic and commercial legislations.

Overall, the Directorate General for Competition in collaboration with the provincial departments in the U.S. make each year about 400 thousand visits to shops and economic institutions and lift more than 45 thousand violation referred to the competent courts.

The following table shows the evolution of the number of visits and violations brought by the public administration and the provincial departments from 2002 to 2008:

	2002	2003	2004	2005	2006	2007	2008
No. of visits	188000	210000	313520	319150	349230	417000	409130

No. of violations	41748	42166	36460	45592	46564	47777	45544
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In areas related to competition, the role of the Directorate General for Competition is as follows:

- Monitor the functioning of markets to ensure transparency of transactions and respect the requirements of competition especially the disclosure of prices and conditions of sale and billing ...
- Promote a culture of competition
- Track and investigate cases for breaching market balance and refer anti-competitive practices to the Competition Council or Courts of justice (according to the nature of the violation, whether it is anti-competitive or detrimental to competition)
- Consider licensing applications in terms of economic concentration operations and decide after consultation with the Competition Council
- Examine requests for exemption of practices that generate economic progress and decide after consultation with the Competition Council
- Conduct studies on the status of competition in various economic sectors
- Address certain unfair competition practices such as parallel trade and counterfeiting.

• **Monitoring Transparency of Commercial Transactions**

The Directorate intervenes in this area to ensure price transparency and respect for consumer information, strengthen its arbitral role in terms of competition and to establish fair competition. Moreover, it monitors different sectors to ensure and respect formation of prices and the mandatory billing and meet sale and price requirements. It also seeks to guarantee the credibility of price advertising as well as promotions (discounts / promotional games ...) in accordance with conditions of free competition. The number of violations filed in this framework is as follows:

Type of violation	2002	2003	2004	2005	2006	2007	2008
No billing	23789	14499	13126	13182	14904	14303	13578
Declaration of prices	22575	12131	14584	16780	16421	15906	16114
Products with unknown sources	838	827	1094	729	454	666	468
Violating governing provisions predatory pricing		383		380	293	370	293
Total of violations	41748	42166	36460	45592	46564	47777	45544

In this framework, there is a remarkable decline in the rate of violations related to publicizing prices, which reflects the evolution of the competition culture among commercial dealers as well as the evolution of the role of prices in promoting competition in the market.

The Department monitors other business practices such as refusal to sell between professionals and re-selling at a loss and conditional sales ... due to the potential adverse impact on competition in the sector, especially in the case of a dominant position.

• Promoting a Competition Culture

Given that disseminating a competition culture and raising awareness of its principles is an important factor facilitating the implementation of competition laws and policies, the Directorate's work in this area included the following:

- Organizing awareness seminars for the benefit of institutions and various stakeholders including businesspersons, academics, civil society organizations and legalists
- Establishing a close cooperative relationship with the media in the form of files, articles and interviews with the Directorate to ensure media coverage.
- Publishing booklets including all updated amendments related to the Competition Law and commercial laws and texts that have been enacted to ensure transparency of transactions and consumer protection.

- Preparing and distributing booklets on the functions of the public administration and on some topics related to its activities
- Including competition legislations within universities and high schools' curriculums.
- Developing awareness programs for the administrative bodies responsible for developing and implementing economic policies to ensure compatibility with the Competition Law.

On the other hand the Directorate is seeking, on-demand, to provide advice or interpretation of certain legal provisions for economic institutions or law firms, particularly with regard to the compatibility of certain clauses contained in the commercial representation contracts or respecting the rules of competition.

• **Addressing Anti-competitive Practices**

In the framework of anti-competitive practices and with a view to maintain the transparency of commercial transactions, the Directorate General for Competition and Economic Surveys attributes great importance to controlling the market to track indicators and combat anti-competitive practices through:

- Collecting information during daily market interventions or through Ministry representatives in the public transactions committees
- Compiling and analyzing information on the status of the market
- Periodic analysis of questionnaires carried out by the National Observatory on the evolution of prices in various sectors.
- Addressing complaints of consumers or economic institutions
- Information provided by certain official bodies on anti-competitive indicators

Given the privacy of research in the field of competition, the Directorate General for Competition formed a specialized cell in this research grouping around 10 researchers (in addition to the staff of the Directorate), to undertake field research planned by the Directorate or requested by the Competition Council in cooperation with the Ministry's staff in the provincial departments.

As a result of training programs and promoting a culture of competition, the number evolution of indicators increased up to 142 Index between 2002 and 2009 (9 months).

Years	2002	2003	2004	2005	2006	2007	2008	2009	Total
No. of indicators	8	2	28	15	17	24	19	29	142

We refer particularly to the increasing number of indicators relating to predatory pricing in 2009 particularly in terms of public transactions which is due to the revision of Chapter 79 of the Ordinance on public transactions requiring the public procurer to inform the trade minister on predatory pricing indicators.

	2002	2003	2004	2005	2006	2007	2008
No. of conducted competition researches	6	4	3	3	3	6	6
No. of cases raised by the Minister before the Council	4	0	2	1	2	6	4

The most important research carried out by the Directorate General for Competition, which led to litigation before the Competition Council, are the following:

Sector	Tracked practices	Year
Transfer of cement over the roads to the benefit of others	Agreement on the definition of transport services	2002
Eyeglasses and accessories	Abuse of dominant position by imposing low prices	2002
Public transaction (bread)	Agreement to offer coverage offers	2002
Red products (brick)	Agreement to set selling prices	2003

Banking services	Case raised by oil stations against a group of banks	2004
Ceramic paint	Unlawful activities in terms of import and promoting raw materials (supplementary research at the request of the Competition Council)	2004
Public transaction [REDACTED] ???	Complicity to determine share prices	2004
Public transaction (providing food for an educational institution at Al Kaf province)	Breach of the rules of competition in the market by the adoption of resale at a loss principle to win deals	2005
Red products (brick)	Agreement to raise the price of bricks	2006
Public transaction: providing food for educational institutions at the province of Kusrin	Predatory pricing	2006
Pharmacy injection services	Agreement to set a fee for this service	2007
Distribution of lubricants	Abuse of economic dependency Agreement to set selling prices	2007
Public transaction: providing red meat for educational institutions at Al Kusrin Province	Predatory pricing	2008

Public transaction to print and publish books	Price agreement	2008
Public transaction: providing cleaning services for hospital Farhat Hashad	Predatory pricing	2009

- **Economic Concentration Operations**

As highlighted by the following table, the activity of public administration in this area was stable where 47 cases were addressed from 1997 until 2009. An average of 4 files per year:

	Filed cases	No. of decisions	approved	rejected	Not subject to the license of the Minister of Trade
1997	2	2	2		
1998	2	2	2		
1999	4	4	3		1
2000	1	1			1
2001	3	3			3
2002	8	8	3		5
2003	6	6			6
2004	6	6	2	1	3
2005	2	2			2

2006	3	3	3		
2008	5	5	2		3
2009	2	2			2
Total	47	47	17	1	29

There are about 29 files or approximately 60% of operations that were not subject to mandatory notification of the Ministry to obtain a license. This explains the number of referrals to the Competition Council that was nearly 29 files until September 2009.

It is noteworthy in this context that the Directorate General for Competition has directly requested the Council's opinion despite the fact that taking the advice of the Council was optional until the amendment of 2005.

The limited number of economic concentration files is due to several factors, including:

- the absence of a major wave of mergers
- weakness of the stock market
- family nature of the economic fabric

Moreover competition authorities were not notified of big mergers since they were done in accordance with laws or under the direct supervision of the official bodies responsible for the sector (such as is the case for the merger of Metro Tunisia and the national company for transportation), as well as the merger of certain public banks.

The most important economic concentration files processed by the Directorate General for Competition and Economic Surveys include:

Year	Nature of the operation	Result
2004	Buy shares of companies active in the refining of vegetable oils by a competing firm	This operation was rejected by the Minister of Trade, since the goal is strengthening the company's position in the oil refining market in the

		north, nor does it benefit the consumer or the General Fund for compensation.
2006	Control of the company "Kojital" competent in the production of packaging materials on company "Seyad" active in services related to wrapping and packaging.	approved since it is not inconsistent with competition and justified by many economic benefits
	Economic concentration operation between two companies active in the distribution sector ("Olis Ibar for distribution" and "Bonprix")	Conditional approval
2009	Transferring Exxon Mobil oils Tunisia and Tunisia oils to the Libya holding company	This operation was done at the international level and was approved by the Minister of Trade

- **Exempting practices that generate an economic progress**

Although Chapter 6 of the Law gives institutions the opportunity to seek exemption for agreements or practices that restrict competition but generate economic progress, however, the number of exemption requests is low where this number did not exceed 6 applications since the law was passed. 3 applications were approved and 3 rejected in view of the dominance position of the involved institutions.

This can be due to the unawareness of institutions about this mechanism and their tendency to hide the exclusive nature of commercial contracts in view of the general prohibition of exclusive commercial representation contracts from 1995 to 2005.

- **Addressing Certain Unlawful Competition Practices**

The Directorate General for Competition in cooperation with other regulatory bodies of other ministries (such as Customs) play a catalytic role in addressing

certain phenomena that affect the balance of the national economy, including in particular parallel trade and counterfeiting.

In the area of parallel trade, which is not limited to the Tunisian economy, the Directorate interferes by:

- Addressing the structural aspects that lead to the emergence of this phenomenon by facilitating the conditions for access to activities in a systematic manner, as well as reducing the level of tariff protection
- Intensifying field control within the framework of teams cooperating with the Customs department in order to address the increasing phenomenon of parallel markets according to sectors and focusing on products harmful to the health and safety of consumers
- Developing media means and raising awareness about the seriousness of these phenomena and their repercussions on the national economy and the interests of consumers which requires the combined efforts of various parties.

In the framework of counterfeiting, a national plan was developed in collaboration with various related parties to combat this phenomenon including many steps namely reviewing legislation, especially by making counterfeiting an economic violation that can be addressed without waiting for a claim from the affected trademark owner¹⁶.

This along with the development of field control and awareness programs to raise awareness about the dangers of counterfeiting and invoke the consumer to cooperate and boycott counterfeit goods.

Accordingly, a National Council to Combat Counterfeiting¹⁷ was established in 2009 to coordinate the various regulatory bodies and develop related statistics. The Ministry of Commerce is the Chairman of the Council.

In 2008, the Directorate General for Competition achieved alone the following:

- formed a cell specialized in counterfeiting
- addressed around 75 counterfeit cases
- organized 25 sectoral monitoring campaigns
- participated in more than 15 television and radio programs

¹⁶In accordance with the amendment of the law on the Protection of Marks, trade and services under law No. 50 of 2007 dated 23 July 2007 on the revision of Law No. 36 of 2001 dated 17 April 2001.

¹⁷ Order No.418 of 2009 dated 16 February 2009 providing for the establishment of a National Council to Combat Counterfeiting

- raised awareness about the dangers of counterfeiting
- organized open days on the counterfeiting phenomenon and mechanisms to address this problem

Sectoral Studies

In the context raising the level of knowledge about the economic sector structure and the degree of concentration as well as competition problems that may result from the dynamics of this structure, the Directorate developed the information database. It had completed its series of studies of particular interest to competition, detergents, cosmetics, communications, transport, chemical fertilizers, internet services...

c- Joint Activities Between the Directorate General for Competition and the Competition Council

In addition to cooperating in promoting a competition culture, the Directorate-General for Competition and the Competition Council conduct a set of joint activities related especially to the development of international cooperation programs with parallel bodies and training programs.

• Training Programs

In an effort to enhance staff performance and train them, the competition authorities highlighted in Tunisia adopted since the beginning, a policy to promote national capacity-building in the implementation of competition law through periodic training programs depending on their own competencies as well as the expertise provided by the programs of international cooperation with parallel bodies.

In this context, it should be particularly noted that the national experience has benefited from the start and even before the promulgation of the law from the cooperative relations that had existed since 1988 between the Directorate General for Competition in Tunisia and the French and Belgian counterparts.

This cooperation has expanded later to include members and staff of the Competition Council, which in turn formed cooperation relations with its counterparts in these countries.

Relations of cooperation included later other experiences including Germany, the United Kingdom, the European Community and other countries.

The twinning program financed by the European Union in 2006 and implemented by the French competition authorities is an important milestone that contributed in national competition authorities' capacity building.

The most important activities of the twinning program in the framework of the competition authorities

The implementation of the twinning program in the field of competition achieved most of the objectives set, however, the most important activities that took place are the following:

Preparation of procedure manuals: 8 procedure manuals were formed related to economic concentration operations, vertical and horizontal agreements, economic research techniques, transparency and abuse of dominance.

Documentation and references: a joint information database was formed between the public administration, the Council and the provincial departments. Additionally, the needs of public administration and the Competition Council in relation to the necessary references have been determined and addressed in coordination with the Management Unit in the program of supporting the partnership agreement.

Media: in this framework, the current situation was diagnosed and the media means included in the program were used.

Training:

- In the field of training: 45 training days were organized in the field of competition gathering between 45 and 50 members from the public administration, other provincial departments and the Competition Council.
- 3 training workshops were conducted in Tunisia in addition to a formative training session in France on online training.
- Formation Policy: the current situation on competition formation was diagnosed enabling a plan taking into account needs and potentials.

Promoting a competition culture among different structures and professions:

9 forums were organized in this context:

- Forum on raising awareness about competition and development
- Forum on competition and consumer protection organizations
- Forum for the monitoring structures to other ministries

- Forum for the Tunisian Union for Industry and Commerce in Sfax
- Forum for the Chamber of Industry and Trade in Sousse
- Forum for the Executive Office of the Tunisian Union for Industry and Commerce in Tunisia
- Forum for the public procurers
- Closing forum on “Competition, Distribution and Consumption”

During the implementation of the program the following were also carried out:

- The preparation and distribution of special monthly magazine on the twinning program and the preparation and distribution of two issues of the magazine "Competition and Development"
- The preparation of a handbook on competition in public transactions and another on the advantages of the competition policy in Tunisia.

• **International Cooperation programs in the framework of competition**

Competition authorities in Tunisia formed since the early nineties cooperation relations with parallel bodies abroad and attended relevant international forums on competition.

In this context, it should be noted that Tunisia regularly keeps pace with UNCTAD in the area of competition, by attending the Intergovernmental Panel on competition law and policy on a yearly basis. Tunisia is also a member of the World Trade Organization, attends the sessions of the Working Group on the interrelation between competition policy and trade policy of the organization organized following the Ministerial Conference of Singapore and then stopped working after the Cancun conference.

Further, the Tunisian competition authorities engaged in the International Competition Network (ICN) and are also attending the annual meetings organized by the OCDE on competition as well as regional meetings within the framework of the Euro-Mediterranean region.

Tunisia has played an active role within the Committee of Experts on the Arab competition guiding principles resulting from the Economic and Social Council of the League of Arab States which held 3 periodic meetings from 2001 to 2003 and drafted the aforementioned guiding principles.

At the bilateral level and in addition to the cooperation relations with the competition authorities in certain European countries and the partnership agreement with the EU including provisions relating to competition and cooperation between the parties, Tunisia has concluded a number of cooperation agreements with certain neighboring and friendly countries, including Morocco, Jordan, Egypt and Syria.

The provisions of this agreement include:

- consultations to resolve problems facing the law's implementation
- coordination with respect to anti-competitive practices that affect the interests of the two parties
- assistance in research
- collaboration and exchange of experiences between bilateral competition authorities involved in competition

The Tunisian experience attracted the attention of certain Arab and African countries on competition laws. Within this framework, on a bilateral level or in cooperation with UNCTAD, foreign delegations visited Tunisia to explore and benefit from the Tunisian experience (Syria, Jordan, Qatar, Saudi Arabia, Burkina Faso, Ivory Coast, Madagascar...). Tunisian experts assisted in the drafting of the laws of friendly or neighboring countries and trained staff of competition authorities in the framework of bilateral cooperation and in coordination with UNCTAD (Madagascar, Jordan, Benin, Algeria, Iraq ...). This cooperation will be further strengthened especially after the Agreement concluded between Tunisia and UNCTAD to establish a regional center for formation and documentation in Tunisia.

2- Assessing the activities of the competition authorities through peer review

Peer review is an important mechanism to measure the enforcement of competition laws and policies and the effectiveness of competent bodies. Such mechanism is similar to the mechanism of the Trade Policy Review by the "World Trade Organization."

Therefore, a number of specialized organizations conduct such reviews to identify strengths and weaknesses in the experiment as well as the most important lessons learned from this. OECD conducts such reviews on the experiences of its members on a regular basis even the experiences of other willing countries in the context of competition policies and laws.

UNCTAD which is one of the first international organizations that have worked since the mid eighties on the competition subject, have voluntarily conducted annual peer reviews on the competition policies of certain Member States since 2005.

In this context, on the sidelines of the fifth session of the Meeting of Intergovernmental Group of Experts on Competition Law and Policy (October 2005) Tunisia volunteered to conduct this exercise. The request was approved and prepared for the sixth session (October / November 2006). This was the second peer review experience carried out by UNCTAD.

In this context, the Secretariat of UNCTAD assigned two international experts¹⁸ to prepare a comprehensive study on competition law and policy in Tunisia to be presented and discussed during the sixth session of the Intergovernmental Group of Experts held in October 31 to November 2, 2006.

The study published by UNCTAD¹⁹ included a review on the status of the law enforcement in Tunisia and made a number of recommendations aimed at enhancing the experience particularly with regard to promoting awareness of competition culture and the work of competition authorities and developing national capacity in this context.

The Intergovernmental Working Group on competition law and policy was satisfied with the progress made in the implementation and enforcement of competition laws in Tunisia. In this context, its recommendations included the following²⁰ **"expresses its appreciation to the Government of Tunisia for volunteering to be the subject of peer review** during the seventh session of the Intergovernmental Group of Experts, and expresses its appreciation to all Governments participating in the review, and **notes the progress made so far in the enforcement of the Tunisian competition law.** Furthermore calls upon all Member States to assist UNCTAD on a voluntary basis, by providing experts or other resources for activities to be undertaken in the future with respect to voluntary peer reviews, and decides that UNCTAD should, in light of the experiences with the voluntary peer reviews undertaken during the Fifth Review Conference and the seventh session of the Group of Experts, and according to available resources, further conduct voluntary peer reviews on competition law and policy of the Member States or regional groupings of States, in conjunction with the eighth session of the Group of Experts".

¹⁸ Pierre Bouigues et khaled Sakli

¹⁹ UNCTAD /DITC/CLP/2006/2

²⁰ Paragraph 5 of the closing list of the meeting published in document TD/B/COM.2/ CLP/57

Based on this review, a Regional Center for Training and Documentation in the field of competition in Tunisia was established in collaboration with UNCTAD to be the basis for the dissemination of a competition culture for the Arab States and African countries and for staff training. In March 2007 an agreement between the Ministry of Commerce and the Secretariat of UNCTAD was concluded aimed at finding the resources necessary to launch the center's activities.

3- Assessing the activity of competition organs through exploring the views of economists

a- Assessing the activity of competition organs through individual meetings

Overall, the individual meetings held in the framework of the study with a group of characters highlighted the following:

- A unanimity on the importance of the Competition Law in achieving growth rates
- A positive vision on the activity of competition organs and satisfaction with the remarkable development
- The lack of resources especially within the framework of the Directorate General for Competition and the need to support this organ
- The lack of awareness of most professional sectors, especially small and medium enterprises on the provisions of the law which underlines the need for its organs to continue their competition awareness

b- Assessing the Competition Law according to the results of the annual survey

The annual surveys conducted by the Institute for Competitiveness and Quantitative Studies includes a sample of 851 institutions involved in the development of the business environment and aims at compiling views on the evolution of the level of competition in the economy.

The results of these surveys, especially the latest survey done in 2008, highlighted that the level of competition in the domestic market is still weak, and about 60% of the enterprises complain of competition problems.

Perhaps this high percentage translates the complaints of many institutions of unfair competition resulting from the unstructured sector rather than the existence of anti-

competitive practices mentioned in Chapter 5 of the Competition and Prices Law (alliances, or abuse of a dominant position in the market).

c- Assessing the Competition Law in accordance with the results of the survey conducted for the purpose of this study:

The results of the survey, conducted in preparation for this study confirmed the findings of this study i.e. there is a remarkable year to year development with regards to the implementation of competition law.

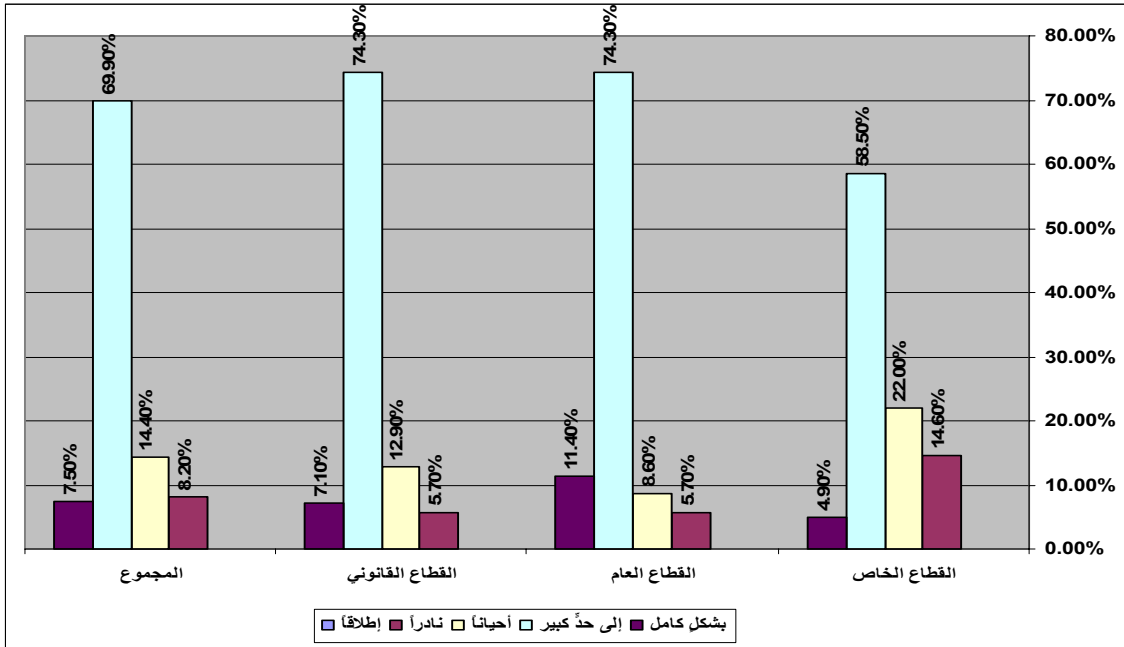
This applies at the level of the implementation of commercial rules in general or the implementation of the Competition Law in particular.

At the level of commercial laws, survey results highlighted the following:

- Tunisians respect commercial laws and regulations: 77% of pollsters confirmed this statement
- The implementation and enforcement of current laws: 86% of pollsters confirmed this statement, noting that the degree of satisfaction is more than 90% within surveyed businesspersons

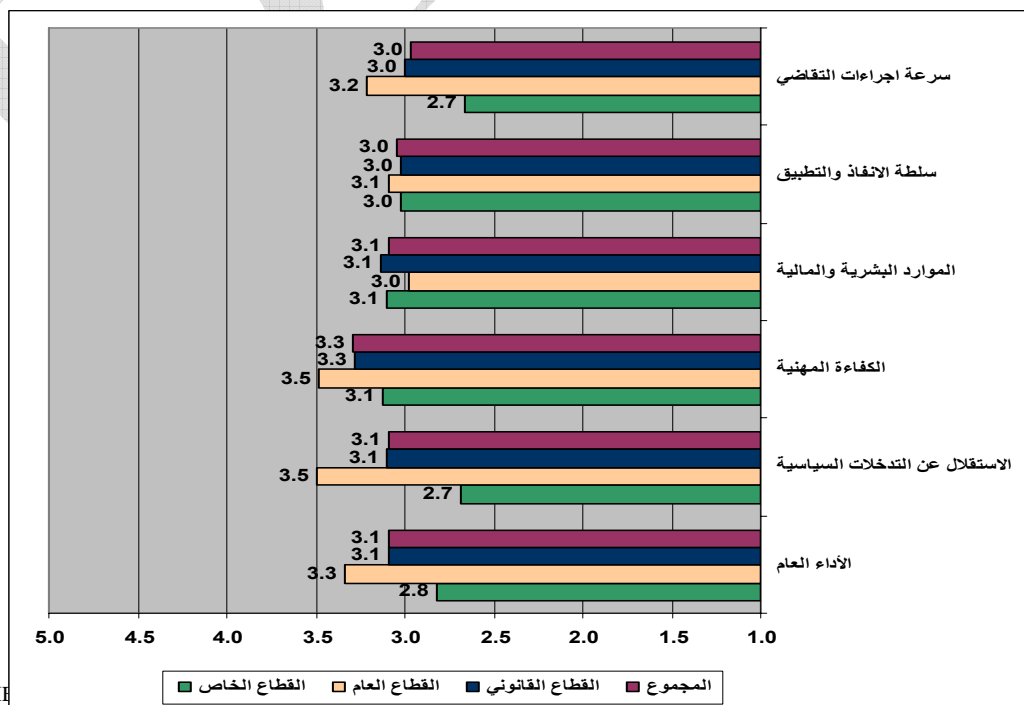
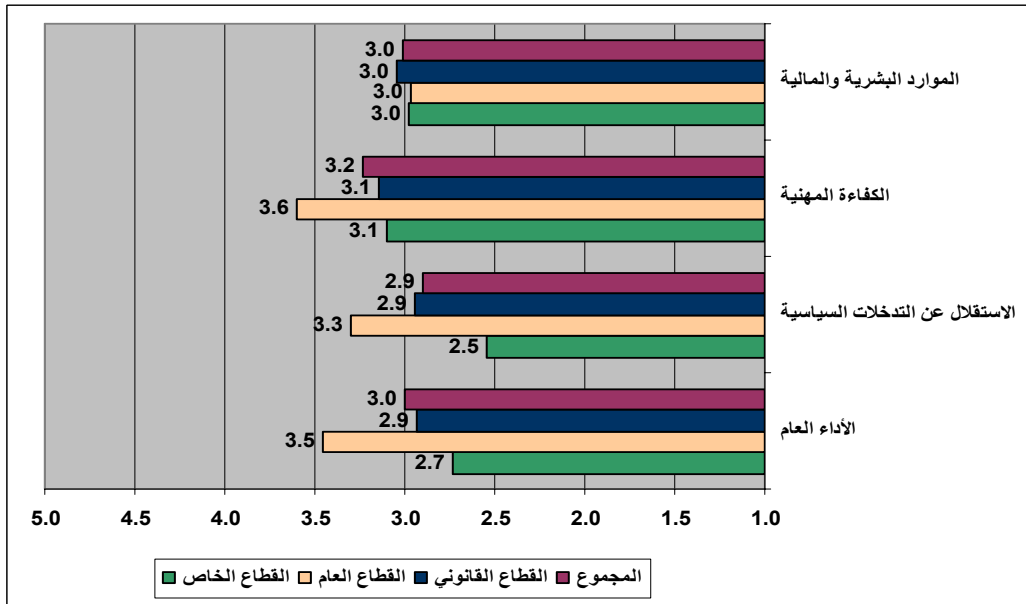
In the framework of implementing the Competition Law, survey results highlighted the following:

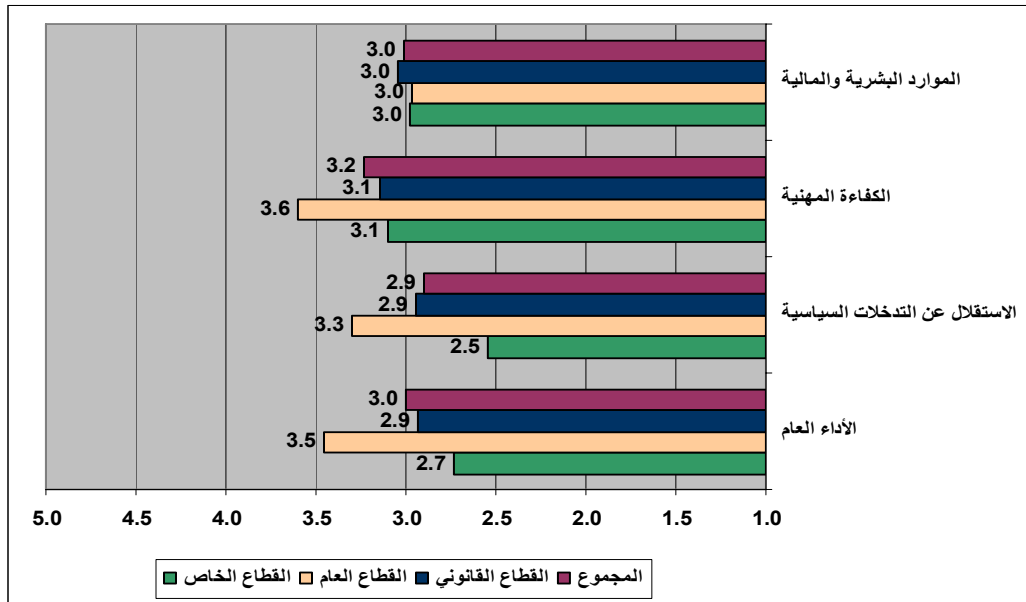
- The law is implemented and enforced often or always: confirmed by 77% of surveyed albeit to different variations (80% for legalists and the public sector and 64% for the public sector).



- There is an acceptable satisfaction degree on the performance of the competition organs (Competition Council and the Directorate General for Competition). Satisfaction degrees recorded the following:

- General performance: 3.1 for the Competition Council and 3 for the Directorate General (from a scale from 1 to 5)
- Professional efficiency: 3.3 for the Competition Council and 3.2 for the Directorate General





- Surveyed persons agreed that anti-competitive practices in the national economy are not reported;
- Surveyed persons considered that the government kept enforcing competition rules even through periods of economic decline

4- the Jurisprudence of the Competition Council's Jurisprudence

Decisions and opinions of the Competition Council as well as how competition authorities (Directorate General for Competition and the Competition Council) deal with imbalances of the market are considered a framework that enables the assessment of their impact on the market mechanisms and good functioning.

In this framework, the implementation of the law on competition and prices ensured, through its provisions as well as the jurisprudence of the Competition Council, efficiency in addressing the existing practices in the economy, thus, guaranteeing respect for market mechanisms and their proper functioning.

The interventions of competition authorities raised awareness of the economic institutions on the need to comply with the principles of market economy and

respect the principles of free competition. It is noted that these institutions are viewing the issue of compatibility with the competition law by taking steps towards expanding or changing their commercial means.

The Council is keen to further support this climate by being efficient in terms of its judicial intervention. According to the 2005 amendment, the Competition Council can automatically undertake the reported practices, which forms an additional pressure on the violating institutions to take into account competition rules and the proper functioning of market mechanisms.

Through reflecting on the decisions of the Competition Council, it is clear that the highest percentage of cases brought before it are related to the abuse of economic dominance or abuse of economic dependency. This reflects to some extent the structure of the market that allows the emergence of these two types of practices.

Although the Tunisian Competition Law does not organize certain matters related to the scope of implementation, the Competition Council, however, made efforts in the development of appropriate solutions to those issues.

The advisory function of the Council enabled it to clarify its position on a number of questions related to competition such as the licensing mechanism, requirements, the intersection of certain liberal professions, the organization of professional services, as well as the relevance of certain types of market regulation, such as the programming of agricultural production, with the requirements of competition

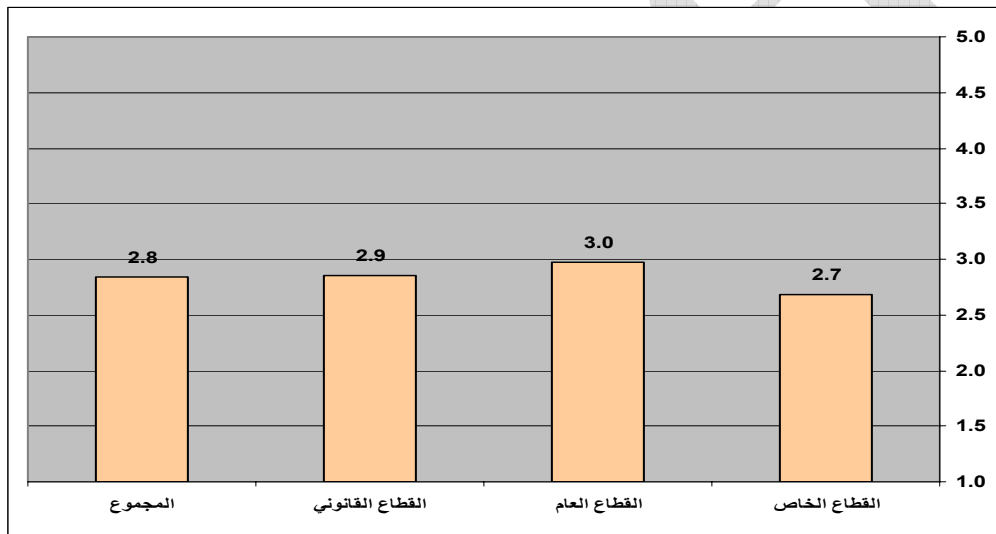
5- The most important hurdles that hinder the implementation of the Competition Law

Despite the progress registered from year to year in the implementation of the Competition Law, promoting the level of economic competition continues to face a number of obstacles which affect the implementation of the law:

- The small size of the market and its control by some operators with their growing market power that has an impact on prices.
- The structure of many markets is characterized by the oligopolies which facilitate the exchange of information and collusive behavior
- Some sectoral legislations apply rules that do not strengthen competition.
- The importance of the state intervention in some economic sectors, despite the adoption of liberalization policies

- Low awareness of the provisions of the law and lack of knowledge on the protection against anti-competitive practices it provides to enterprises which is particularly important to small and medium enterprises.

Surveyed persons were asked to assess how aware the people of Tunisia are on the competition laws and systems from a scale from 1 (not familiar at all) to 5 (fully familiar). 82,2% considered that the Tunisian are semi familiar or not familiar at all. All the three categories covered by the survey agree on this matter where the lowest rates were recorded in the private sector where the rate was about 2,7.



- Non-experienced lawyers in the specificities of the competition law (with the exception of certain lawyers specialized in business laws)
- The reluctance of many enterprises affected by anti-competitive practices to raise complaints with the Competition Councils. According to the survey results, the degree of satisfaction on “human and financial resources” was low and recorded 3.0.

6- The most important lessons learnt from the Tunisian experience:

While studying the Tunisian experience we noted a number of characteristics that highlight its prominent position today.

Among the most prominent of these characteristics, we note the following:

- **The gradualism that characterized this experience:** This is apparent at the level of improvement of legal rules according to the evolution of economic structures and market dynamics of the market and the evolution of business practices. For example, the inclusion of provisions relating to the economic concentration only occurred in 1995 when the need arose to do so. The inclusion of provisions relating to abuse of economic dependency and those relating to trade cooperation happened in 2003 in parallel with the entry of the major areas to Tunisia (hypermarchés).
- **Flexibility in the implementation:** This is reflected in the evolution of the policies that focused initially on developing a competition culture and raising awareness on the provisions of the law, capacity building and adoption of rather symbolic or educational penalties or focusing on the termination of illegal practices.
- **The importance of awareness-raising programs to improve the understanding of the role of competition agencies:** the development of the activities of these agencies highlights a reduction in the number of cases outside the jurisdiction of the Council. However, the need to develop these programs still exists.
- **The importance of technical cooperation programs in developing national capabilities and in disseminating the Tunisian experience:** Tunisia has benefited at the beginning of the experience from technical cooperation programs, especially with European countries (France, Belgium, European Union) and UNCTAD. It has also benefited from the exchange of experience with these bodies and the countries of the region and from its participation in relevant international forums. Tunisia also shared its experience with friendly countries and assisted in the development of their legislations and building their capacities.
- **The importance of the advisory role of the Competition Council:** Apart from the importance of the adjudicatory role of the Council, the advisory role played by this body contributed to the development of knowledge on the structure of markets and raising awareness on the problems of competition in

some sectors. The compulsory consultation on the regulatory draft texts that may have an impact on the level of competition and access to the activities is considered one of the most prominent reforms that were entered to the law since its enactment. This reform contributes to approximating provisions of the sectoral legislations with the principles of the Competition Law.

- **Adopting the right choice: the two-tier structure:** The Directorate General for Competition is key in keeping pace with the dynamics of markets in different regions of the country and in investigating practices within these market structures, especially in light of the reluctance of enterprises to bring cases to the competent bodies (the Council or the courts). The Directorate General also has an important role in preparing the content of the files submitted to the Council... It should be noted that the investigation file should include a careful analysis of the market which leaves the rapporteur the main task to review the petition, to ensure the soundness of the procedures and the analysis, and enrich it with the observations of the parties concerned...

- **The difficulty to change the behavior of economic agents (professional and consumer sectors):** The experience has proved the difficulty to discard some of the traditions inherited from earlier economic periods, especially the price controls administered by the state. Despite the liberalization of prices, some professional structures are still involved in determining prices. Productive enterprises often seek to set prices for the distribution network of wholesale and retail salesmen. Moreover, some enterprises advocate agreement on prices as a contribution to the fight against inflation and consumer protection.

The consumer often seeks the protection of the Directorate despite the freedom of prices that are subject to the rule of supply and demand.

- **The connection between the level of competition and the progress of the actual liberalization of the economy:** The experience emerging in key sectors such as the telecommunication shows that the liberalization of these sectors led to the development of competition.

VI- Recommended Reform and development

According to the previous analysis, the experience with the implementation of competition policies and laws in Tunisia shows significant progress due to the pace of economic reforms, the vitalization of the competition law and the strengthening of enforcement agencies

This analysis also highlighted the existence of some obstacles to the implementation and broad areas for further development, particularly since achieving greater economic efficiency and utilization of all factors of is needed to enhance the competitiveness of the economy and to achieve the targeted growth rates.

The paths of reform, as highlighted by the findings of the report, include proposals relating to further activating competition policy in its broader sense including reforms affecting the various mechanisms of economic policy and other aspects relevant to the development of the legal framework for competition and its enforcement.

1- Structural reforms to promote economic competition and strengthen interaction between the competition policy and sectoral policies

As already mentioned, competition policy understood in a broad sense includes the general policies and actions aimed at enhancing the level of competition in the market. From this perspective, the competition policy is affected by the rest of the economic policies, especially those relating to:

- Promoting investment and facilitating access to economic activities
- Reducing the level of tariff and non-tariff protection to raise the import pressure on competition, especially in productive sectors characterized by an oligopolistic structures
- Reducing the number of privileges and monopolies granted and opening the relevant sectors to competition.

The analysis of the status of competition in some sectors of the economy highlighted some obstacles hindering the development of competition due to causes related to regulation or to the protectionism policy followed for these sectors. Consequently, the development of the level of competition in the economy and the performance of these sectors requires accelerating the pace of reforms in the following areas:

One: further simplify procedures for the access to business activities by:

- Continuing the implementation of the program to delete administrative authorizations and replacing them with appropriate terms of reference or standards limited to the technical aspects and requirements for the activity, noting that this trend became the subject of mandatory consultation with the Competition Council as of 2005..
- Accelerating the review of the standards adopted before 2005, which were not subject to the control of the Competition Council, noting that the decision to bring these regulatory texts under the review of the Competition Council has been adopted in 2009.
- Allowing the private sector to gradually exercise some activities reserved to public institutions by granting private operators exclusive concessions to promote competition and investment opportunities focusing first on non-strategic sectors.
- Continuing efforts to reduce administrative procedures to the exercise of the activity reducing the cost of the transactions.

Two: develop the rules of competition in some specific sectors by reviewing their regulations.

Some specific sectors face legislative and regulatory impediments to the development of competition, as is the case in many liberal professions where professional ethics restrain competition. The sectors that face competition obstacles as highlighted by the previous analysis of the competition surveys are the following:

- The liberal professions in general (legal, medical and advisory services)
- Insurance
- Health sector services...

Promoting competition in these sectors, especially liberal professions, is one of the main concerns of the competition authorities in the European Union, where work is under way on a full assessment of the status of competition in these sectors. This assessment process highlighted the most important problems that prevent the development of competition, including in particular:

- Pricing policies (setting fees)
- Restraints to advertising Limitations to entry.

In these areas developing economies, including Tunisia, face similar problems as their European counterparts for historical reasons.

The program of rehabilitation of the services sector implemented by the Ministry of Trade included a legal analysis of many service sectors, including business services. Therefore, we can benefit from the recommendations of this analytical study for the regulatory reform in these sectors.

To maximize the usefulness of the analytical process under consideration, it is recommended to:

- Call upon the Ministry of Trade and the Competition Council to develop a program to diagnose the regulatory obstacles to competition in specific

sectors and to propose procedures to override them in collaboration with sectoral regulatory bodies

- Submit the development of regulatory reform plans resulting from the analytical process to the Competition Council for advice.

Three: promote the freedom of transactions and reduce tariff and non-tariff protection.

Competitive pressure resulting from imports remains an important factor in the development of competition in the market. Thus, it is recommended to:

- Continue the current efforts to alleviate the tariff protection especially on imports from outside the European Union (after the elimination of tariffs on European-origin goods)...
- Develop systems to monitor the risks on the health and safety of the consumers and to develop selective quality control systems, according to the seriousness of the product risk which would replace the automatic technical controls of imported products.

Four: Progress in the policy of price liberalization, particularly in some sectors where there is sufficient degree of competition, such as fruits and vegetables...

Five: further activate the role of consumers in raising competition and rationalizing consumption choices while benefiting from the activities of the National Institute of Consumption established in November 2008.

2- Developing the legal and institutional framework of competition

The competition and price law underwent five consecutive amendments since 1991, i.e. one amendment every four years. This has allowed updating and developing the provisions of this law in light of the evolution of international best practices. These amendments also enhanced the status of competition policy and the role assigned to the agencies responsible for implementation. Overall, the reforms underlined the importance of competition policy in improving the business environment.

Accordingly, we can state that the current legal framework for competition has become integrated and it meets the need of a growing economy, especially since the

various amendments made it possible to integrate international standards for competition taking into account the specificities of the national economy.

However, despite what was noted before, there is scope for improvements to overcome procedural shortcomings and to enrich the legislation with numerous concepts clarified by the jurisprudence of the Competition Council.

The reform proposals are justified by many factors, most notably:

- The ongoing need to approximate the national legislation with European legislation and international standards, especially in light of the comprehensive review of the European legislation on competition in 2000.
- The necessity to take into account the economic development of the country and its opening up to foreign investment in services as well as the emergence of modern patterns of distribution by large retailers and selective distribution systems .
- The need to clarify some of the technical concepts of the Law to improve the procedural aspects for the proper implementation
- The need to take into account the recommendations of many studies, particularly the assessment of the twinning programmes with the European Union (2007), as well as the peer review process that took place during the meeting of the Group of Governmental Experts on Competition Laws and Policies of the United Nations Conference on Trade and Development "UNCTAD" (2006)
- The need to ensure a higher degree of cooperation and coordination at the operational level between the various parties intervening in safeguarding the Competition Law.

a- Strengthening the Council's Jurisdiction:

- Expand the field of mandatory counseling to cover the draft laws that have an impact on the level of competition in the market, noting that this consultancy is currently limited to ordinal texts.

- Expand the list of parties that may seek the Council's judiciary to cover consumers regardless of their affiliation to one of the approved consumer advocacy organizations.

b- Developing the procedural aspects in competition cases:

To ensure greater transparency in the implementation of the law, it may be useful to introduce the following improvements:

One: enrich the legislation by integrating definitions and concepts developed by the jurisprudence, particularly with regard to:

- II- The concept of the institution subject to competition
- III- Market definition under Competition Law
- IV- Elements in determining the market dominance
- V- The concept and elements of economic dependency
- VI- The concept of extremely low prices

Improving the format of investigatory reports in terms of Content of the file

- VII- Elements of preliminary evidence
- VIII- Standards for filing petitions and annexes

Two: Expand the list of parties that may bring cases to the Competition Council to include consumer representatives, regardless of their belonging to one of the approved consumer advocacy organizations.

Three: Expand the list of sanctions to include fines for non-compliance with the orders of the Competition Council or sanction for non compliance with requests for information

Four: Strengthen the independence of the investigation body at the level of the Competition Council by entrusting the Rapporteur-General with the task of supervising the summons to the parties and requesting information under the administrative authority of the President of the Council.

Five: the Council's rapporteurs as well as its non judicial members should be sworn

Six: the State's representative shall submit his observations automatically during the appellate and the cassation stage.

Seven: Provide for the possibility of exempting agreements with weak impact on the market (agreements between small and medium enterprises) with a clarification of the de minimis rule.

c- Developing some procedural aspects relating to economic concentration files

The current provisions of the Competition Law determine the procedures for permission applications submitted to the competition authorities. These rules stipulate a six months' time frame without clarifying whether this term starts from the beginning of the filing date or from the date of completion of the file in the event it did not include the data necessary for evaluation

Moreover these provisions did not clarify the form and content of the Minister's decision with regard to accepting or rejecting the permission application as well as how to record the opinion of parties that may be affected by the process such as competitors, customers or suppliers.

Therefore it is suggested to further clarify provisions relating to the economic concentration by:

- Determining the term to respond to requests for authorization of economic concentration processes as of the date of completion of the file while developing a mechanism for requests to complete the documentation
- Requiring the publication of a newspaper announcement to inform the public of the concentration operations submitted for authorization and to invite interested parties to provide competition authorities with their observations in respect thereof.
- Requiring the motivation of the decision to grant or reject approval for a concentration operation, as well as establishing a mechanism for the disseminations of these decisions which will enable the parties concerned, or parties who have an interest in this matter to challenge the decisions which in any event are subject, like other decisions, to appeal before the Administrative Tribunal.
- Establishing a special official Code to publish the decisions and opinions of the Competition Council and the decisions of the Minister in authorization procedures relating to economic concentration or exempting practices justified by economic progress in accordance with Chapter 6 of the law...

- Avoiding the duplication of authorization procedures for economic concentration operations by better coordinating the review of these operations by the agencies involved.

d- Developing provisions to address vertical agreements and the system of exemptions

According to the provisions currently in force, vertical agreements are subject to the general prevention of anti-competitive agreements contained in chapter 5 of the Competition Law with the possibility of exemption if the agreement can be shown to generate economic or technical progress which offsets the restraint to competition. Many distribution contracts fall under the above-mentioned scope such as commercial concession contracts and commercial representation. As these contracts rely on an agent or selective distribution systems, they may be considered anti-competitive in terms of reducing access to the market or in terms of the geographical protection for the agent or limiting his freedom in setting resale prices.

Since the theory and the economic analysis proved that such systems can contribute to the modernization of distribution channels and improvement of the quality of services, benefits may outweigh the restraints to competition. Therefore, competition authorities seek to remove them from automatic prohibition by creating a flexible exemption system so as to provide a degree of legal security for operators

While the Competition Law stated in the sixth chapter the possibility of exempting such agreements by the Minister of Trade following the opinion of the Competition Council, the wording of this chapter is general and open to interpretation regarding justification for a request for an individual exemption or a block exemption.

This chapter and the rest of the provisions of the law do not explicitly include provisions that allow for competition authorities to grant negative clearance (Attestation négative).

In the framework of trade modernization and services rehabilitation, the country aims at promoting modern distribution systems and encourages the improvement of

services offered to the consumer; thus, it is proposed to improve the drafting of Chapter VI by:

- Providing for the possibility of granting a block exemption for a whole class of contracts (such as contracts for commercial agents)
- Authorizing competition authorities to grant negative clearance to enhance legal security for distribution contracts.
- Providing exemption time-line.
- Reviewing provisions of the resale at a loss

3-Developing the institutional and operational framework for the Competition Law implementation

Strengthening the implementation of the Competition Law in a more efficient manner requires redoubling efforts in the direction of:

- Promoting the development of a competition culture to make it a priority for the different horizontal and sectoral policies and to activate the contribution of all operators and parties to the process
- Enhancing the interaction between the various actors intervening in the implementation of the law and between economic agents.
- Strengthening programs on developing national capacities for the implementation of the law
- Developing monitoring and information systems on the status of competition in various sectors of the economy
- Enhancing organizational capacities of the competition authorities

Promoting a culture of competition

Despite the efforts made by the competition authorities to publicize the benefits of competition policy and procedures of the law to protect the interests of various parties and to define its activities, the reality is that the level of knowledge is weak and beneath the required level.

Moreover, some professional sectors are unaware of the principles of competition and confuse anti-competitive practices with unfair competition.

At the level of sectoral policy-makers, the principles of competition policy are not always considered a priority.

Therefore, it is recommended to intensify programs to further raise awareness on competition laws and policies and the benefits they bring to economic development. The procedures that can be adopted for this purpose include:

- The organization of regular forums for the benefit of the various targeted persons and institutions (such as industry sectors, consumer protection advocates), in cooperation with national organizations, chambers of industry and trade.
- The development of information programs on the subject of competition (newspapers articles / radio and television programs ...)
- The development of websites for the Directorate General for Competition and the Competition Council for the purpose of identifying the benefits of competition and the provisions of the law and the activities of these structures
- The preparation of briefs on the tariff law
- The organization of specialized seminars with the various parties that relate to the implementation of the law mainly:
 - Universities
 - Lawyers and judges
 - Government departments responsible for sectoral policies
 - Printing and distributing a revised version of the law including all amendments to facilitate the understanding of the law along the lines of what was done by the Directorate General for Competition and Economic Surveys in 2004.

Promoting cooperation between the various parties involved in the implementation of the Competition Law

The implementation of the Competition Law requires raising the level of cooperation and integration between the various structures intervening in its

implementation, especially the Directorate General for Competition at the Ministry of Trade and the Competition Council and between these structures and other official bodies that can help implement the law especially sectoral regulatory bodies.

Promoting cooperation between the Competition Council and the Directorate General for Competition

Tunisia has opted for a two-tier structure that is responsible for implementing the Competition Law and distributed powers in a balanced manner between the Ministry and the Competition Council.

In order for it to be successful, this system requires a high degree of coordination between the Council and the Directorate General for Competition, where the latter, by virtue of its constant follow up of the functioning of markets and its presence in different regions of the country, has the capacity to bring well documented cases to the Council. On its part, the Council shall cooperate with the Directorate to conduct analysis on issues requiring field research.

While this relationship was characterized by fruitful cooperation between the two parties, it should be strengthened in the future. And in this area, it is recommended to do the following:

- Conclude a Memorandum of Understanding between the parties to clarify areas of cooperation
- Encourage the Council to have recourse to the Directorate General's expertise in the field of research. A more systematic sharing of resources and expertise could help accelerate the process of adjudication.
- Hold periodic joint workshops between the Council and the Directorate General with a view to discuss research and jurisprudence as well as to exchange views and experience with the implementation of the law and on the development of competition in various sectors of national economy.

Promoting cooperation between the Competition Council and the regulatory bodies as well as other governmental departments:

Although this law has defined the nature of the relation between the competition authorities and the regulatory bodies and has acknowledged the horizontal aspect of the jurisdiction of competition authorities, there is still scope for improving cooperative relations between them.

In this framework, it is recommended to do the following:

- hold regular meetings between the competition authorities and the regulatory agencies to exchange views on the state of competition in the involved sectors
- organize an annual forum on the state of competition
- exchange annual activities reports
- invite the regulatory bodies to the activities and meetings organized by the competition authorities
- Encourage a better pooling of the resources and expertise between these parties

In terms of the relationship with Public Procurement Committees, it is recommended to do the following:

- organize workshops for the benefit of State observers and members of the committees to further raise their awareness on the provisions and procedures of the Competition Law
- issue leaflets for this purpose
- benefit from these resources by compiling indicators to detect collusive bidding by competitors

Developing tracking and information systems for the state of competition in various economic sectors

To facilitate the implementation of Competition Law and define the priorities of competition authorities' intervention, it is desirable to develop economic data systems and studies on the development of competition and market structures while benefiting from the results of research and investigations conducted in the context of the adjudicatory and advisory functions of the Council. It is therefore recommended to:

- Prepare sectoral studies on the status of competition (Monographies sectorielles)
- Develop activities for the National Observatory for Supply and Prices to include the development of commercial structures as well as the level of competition between the major and small trades and the nature of the business practices of these areas

- Benefit from experience to enrich the annual reports of the Competition Council and the Directorate-General for Competition with data on the evolution of competition in the economy.
- Encourage sectoral research within graduation theses in economic colleges.

Strengthening national capacity-building programs in the field of competition

National training capacities are important for the success of law enforcement. Perhaps one of the most important factors in the success of the Tunisian experience is that it took into account this matter. Thus, capacities were developed within the framework of bilateral and international cooperation programs event before the law entered into force which enhanced the harmonization of competition law provisions with the country's economic policies

Since the need to build national capacities and raise the level of knowledge on the case law and legal precedent as well the quality of analytical research requires an ongoing effort, it is recommended to take the following action in cooperation with interested parties:

- Speeding up the actual focus of the Regional Center for Training in cooperation with UNCTAD in order to provide a tool for exchange of experience with countries of the region and to spread the benefits of research and studies
- Benefiting from the exchange of information and experience provided by bilateral cooperation agreements
- Developing internal training programs for the Directorate General for Competition and the Competition Council as well as for the Council's rapporteurs by relying on available national competencies
- Promoting competition and consumer law and consumption education in the university curricula
- Encouraging research and graduation thesis specialized in legal or economic aspects relevant to the Competition Law and issues.
- Promoting the formation of judges, especially Administrative Tribunal judges in the area of competition benefiting from the program of cooperation with the European Union for the modernization of the judicial system and other programs available.

Recommendations on the regulatory aspects at the level of competition organs

- **At the level of the Competition Council:**

Recent years have seen a growing trend towards strengthening the special rapporteurs system and achieving a kind of balance in the composition of the Council among economists and legal experts. The Council proposes continuing these efforts with a focus on:

- Strengthening the composition of the Council and its rapporteurs in the field of economic competence
- Resorting to external expertise, particularly university expertise, in the context of short-term contracts to conduct economic analysis on the state of competition in specific markets.

- **at the Level of the Directorate-General for Competition and its subordinate departments:**

- Strengthen the functions of this department in the areas of market analysis and law enforcement
- Review the current structure of the department creating a special research unit in the area of competition law.

This can be done through the establishment of a Competition Department that includes two wings:

- A sub-directorate dealing with the general competition policy
- Another sub-directorate that conducts researches on competition and conducts field research in coordination with its correspondents in provincial departments.

Recommendations on future work priorities at the level of competition organs

Apart from dealing with ordinary issues and with competition problems in the market, there are some issues and dilemmas that require the focus of competition authorities in the coming years:

- Devote greater attention to the practice of major distribution channels and their relationship with producers
- Pay attention to concentration trends among large retailers to prevent anti-competitive practices
- Conduct a full regulatory impact assessment in specific sectors of interest to competition (liberal professions, banks, insurance, health sector and other sectors with competition problems as highlighted by the survey)
- Contribute to the elaboration of a strategy to address the growing phenomenon of parallel trade and its negative repercussions on the evolution of the organized sector
- Continue the study of standards for economic activity to ensure they do not include conditions limiting competition.

V- Conclusion

This analysis highlighted the importance of competition policy and laws in achieving the targeted growth rate, vitalizing the business climate and strengthening economic competitiveness so as to achieve greater efficiency, ensure better protection of consumer interests and reinforce the national economy against practices that may impede development and harm the economy.

Over the past twenty years, Tunisia took important steps towards establishing a climate that is competition enabling. It has gradually applied an economic reform package including in particular the enactment of the Competition Law in 1991 and the establishment of specialized agencies responsible for the enforcement, development and support of the legal and institutional framework on an ongoing basis to keep pace with development of the economic structure, overcome shortcomings and provide opportunities ensuring implementation success.

While analyzing the activity of various agencies intervening in the law enforcement including the Public Administration of the Ministry of Trade, the Competition Council and the judicial system, both at the Judicial and administrative levels, **significant implementation progress** has been tracked making the Tunisian experience a pioneer in the Arab and African region in this area:

- It has reserved an excellent position for the competition policy within the economic policy
- It has enriched the national jurisprudence in this area
- It has gained an important status and a good reputation in the framework of national competition authorities both at the national and international levels
- It has combined the legal and institutional framework with the enforcement policy so as to protect the national economy from anti-competitive practices that may disrupt market balance.
- It has gained an excellent rating in the field of competition in the context of peer review that was conducted in 2006 under the Intergovernmental Working Group on competition law and policy of the United Nations Conference on Trade and Development (UNCTAD).

The **survey** conducted in the framework of the current study highlighted **the importance of competition law in vitalizing the business environment** and accelerating the growth pace as well as the **Government's intention to implement**

this law without reluctance even in periods of economic decline. The survey also highlighted the **satisfaction on the performance of the competition agencies and the degree of the actual implementation of the law.**

It is worth mentioning that the debate at the National Workshop to discuss the study (17 / 12 / 2009) highlighted some of the findings contained in this survey and relating to:

- The feasibility of accelerating the process of privatization to vitalize competition
- The feasibility of including a prison sentence against any violation to the competition laws and policies since Tunisia tend to abandon penalties that deprive economic freedom

According to this study, the current legal framework is considered in general developed and matching with international standards in force, even though it requires further development and improvement. Moreover, enforcement agencies enjoy competence and capacities to successfully progress in the implementation of the law.

On the other hand, this analysis highlighted **certain obstacles** to the implementation **particularly:**

- The small size of the market and its control by some operators with their growing market power that has an impact on prices.
- The concession contracts that characterize some economic sectors
- The structure of many markets is characterized by the oligopolies which facilitate the exchange of information and collusive behavior
- Some sectoral legislations apply rules that do not strengthen competition.
- The protectionist trends in many professions that do not apply the principles of competition
- The importance of the state intervention in some economic sectors, despite the adoption of liberalization policies
- Low awareness of the provisions of the law and lack of knowledge on the protection against anti-competitive practices it provides to enterprises which is particularly important to small and medium enterprises.

- Non-experienced lawyers in the specificities of the competition law
- The reluctance of many enterprises affected by anti-competitive practices to raise complaints with the Competition Councils
- Weak resources of the competition authorities and especially the General Directorate of Competition in the context of its growing functions.

Accordingly, the **study produced a number of recommendations aimed at strengthening** the economic climate of competition, further developing the legal framework for competition, enhancing the activity of competition authorities and finally increasing the degree of coordination between these authorities on the one hand and between them and the rest of the official bodies especially the regulatory agencies. The study also identified certain areas and sectors that are considered a priority for the activity of the competition authorities.

In the area of structural reforms aimed at enhancing the level of competition in the national economy, the study's recommendations included in particular:

- Further facilitating access to economic activities through continuing efforts to simplify procedures and reduce cost as well as opening certain sectors granted to public institutions in the form of concessions taking into account the social dimension and maintaining the amending role of the state in strategic sectors.
- Promoting competition in certain sectors that are still framed or characterized by a weak level of competition, such as the free professions.
- Benefiting from the underway legislative diagnosis on the services sector for the development of competition rules.
- Promoting freedom of trade and continuing efforts to reduce the level of tariff and non-tariff protection.
- Progressing in the liberalization of prices in certain sectors that are still framed and that meet the necessary conditions of competition.
- Further activating the role of consumers in raising competitiveness and taking advantage of which is provided by the National Institute of Consumption which was finally established.

With regard to the development of the legal and ordinal framework of competition policy to ensure greater compatibility with European legislation and the requirements of the next stage, the recommendations included the introduction of a number of amendments to improve the formulation of law and develop its content especially in relation to:

- The development of a vertical agreement processing system by granting bloc exemptions to selective distribution contracts in line with the trend to encourage these types particularly franchise in accordance with Chapter 6 of the Competition Law.
- Expanding the field of mandatory counseling of the Competition Council to cover ordinal texts as well as draft laws that have an impact on competition.
- Expanding the resort to the Competition Council's jurisprudence by authorizing the gathering of a certain number of consumers, to appeal to the Council without the necessity of being affiliated to the Consumers Association.
- Strengthening the independence of the investigation body of the Council (reporters).
- Calling on the government's representative automatically in cases of appeal and cassation to the decisions of the Competition Council and empowering him to make notes and observations
- Requiring the Council's reporters and non-judge members to take the oath as is the case for the Directorate General for Competition and the judges.
- Enriching the legal drafting with certain concepts developed by the Council's jurisprudence such as the concept of the institution, the reference market, components of a dominant position and of an economic dependency and the concept of predatory pricing (extremely low prices)
- Requiring the exemption of agreements with weak impact

In the framework of developing procedures related to processing files of economic concentration, recommendations included in particular:

- Avoiding the duplication of authorization procedures for economic concentration operations by better coordinating the review of these operations by the agencies involved
- Requiring the motivation of the decision to grant or reject approval for a concentration operation which will enable the parties concerned, or parties who have an interest in this matter to challenge the decisions
- Requiring the publication of a newspaper announcement to inform the public of the concentration operations submitted for authorization and to invite interested parties to provide competition authorities with their observations in respect thereof.
- Establishing a special official magazine to publish the decisions and opinions of the Competition Council and the decisions of the Minister in authorization procedures relating to economic concentration or exempting practices justified by economic progress
- Determining the term to respond to requests for authorization of economic concentration processes as of the date of completion of the file while developing a mechanism for requests to complete the documentation

With regard to support for the practical and operational aspect of competition law, the recommendations focused on:

- Promoting the development of a competition culture and activating the contribution of all operators and parties to the process
- Enhancing the interaction between the various actors intervening in the implementation of the law and between economic agents.
- Developing monitoring and information systems on the status of competition in various sectors of the economy, drawing on the work of the National Observatory for the Supply and Prices and the cooperation with the university (researches and studies).
- Strengthening programs on developing national capacities for the implementation of the law and benefiting from all available mechanisms and international cooperation

- Enhancing the teaching of competition and consuming laws in Tunisian universities

The study also recommended the **promotion, strengthening and reorganization of competition authorities and their resources** focusing on:

- Strengthening the composition of the Council and its rapporteurs in the field of economic competence and resorting to external expertise, in the context of short-term contracts
- Strengthening the Directorate General for Competition by human capacities and establishing a special department focused on conducting researches in the field of competition.

As for the recommendations on future work priorities at the level of competition organs, they emphasized in particular the need to pay more attention to addressing certain intricacies of competition that characterize the current economic activity, particularly those relating to the following aspects:

- Devote greater attention to the practice of major distribution channels and their relationship with producers
- Pay attention to concentration trends among large retailers to prevent anti-competitive practices
- Contribute to the elaboration of a strategy to address the growing phenomenon of parallel trade and its negative repercussions on the evolution of the organized sector
- Continue the study of standards for economic activity to ensure they do not include conditions limiting competition.
- Study the status of competition in major economic sectors and activities

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1. Websites:

- www.wto.org
- www.unctad.org
- www.justice.gov
- www.Europa.eu
- www.ftc.gov
- www.internationalcompetitionnetwork.org

2. Laws and Texts:

- **Law No. 64 dated July 29, 1991 on Competition and Prices** edited by the following laws: No. 83 of 1993 dated July 26, 1993, No. 42 of 1995 dated April 24, 1995, No. 41 of 1999 dated May 10, 1999, No. 74 of 2003 dated November 11, 2003, No. 60 of 2005 dated July 18, 2005
- **Order No. 1996 of 1991 dated December 23, 1991 on products and services exempted from the freedom of price principle** amended by Order No. 59 of 1993 dated January 10, 1993 and Order No. 1142 dated 1995
- **Order No. 3238 of 2005 dated December 12, 2005** on limiting the minimum of turnovers to subject economic concentration operations to a prior approval
- **Order No. 370 of 2006 dated 3 February 2006** related to controlling procedures of mandatory consultancy of the Competition Council on the draft ordinal texts.
- **Order No. 2966 of 2001 dated December 20, 2001** concerning the organization of the Ministry of Commerce
- **Order number 2965 of 2001 dated December 20, 2001** on controlling the purview of the Ministry of Commerce
- **Order No. 477 of 2006 dated 15 February 2006** related to adjusting the administrative and financial management and the functioning of the Competition Council.

- **Law of Administrative Tribunal No. 40 of 1972 dated June 1, 1972**, the total revised texts, especially the Basic Law No. 39 of 1996 dated June 3, 1996 and the Basic Law No. 70 of 2003 dated November 11, 2003
- **Legal Codes**

3. **General Publications:**

- **Annual reports of the CB of Tunisia**
- **Economic development plans**, publications of Ministry of Economic Development and International Cooperation
- **Economic Balance**
- **Data available on the sites of ministries and public institutions**
- **Publications of the ITCEQ**
- **Publications of the INS'**
- **WTO report on the review of the commercial policy of Tunisia – 2005**
- **WB Report: *Intégration mondiale de la Tunisie : une nouvelle génération de réformes pour booster la croissance et l'emploi (2007)***
- **Peer Review report : EXAMEN COLLÉGIAL VOLONTAIRE DE LA POLITIQUE DE CONCURRENCE TUNISIE 2006 (UNCTAD/DITC/CLP/2006/2)**

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- **Competition Law** (December 2009) Directorate General for Competition and Economic Surveys
- **Competition Policy in Tunisia** (April 2009) – Directorate General for Competition and Economic Surveys
- **Annual Reports of the activity of the Directorate General for Competition and Economic Surveys**
- **Competition, Prices and the Distribution Trade: legal texts** of the Directorate General for Competition and domestic trade (1993)
- **Etude du plan directeur de l'implantation des grandes et moyennes surfaces (2007)**

- **Etude de l'Urbanisme commercial en Tunisie (2004)**
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- **Manuels de procédures sur :** les ententes verticales/ les ententes horizontales/ les techniques d'enquêtes / les pouvoirs d'enquêtes et droits de la défense/ la saisine d'office / les concentrations économiques/ les abus de domination/ la veille concurrentielle dans la commande publique.

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- **Annual Reports of the Competition Council (1995 – 2008)**
- **“Role of the Administrative Tribunal in Enforcing the Competition Law”**
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- ***« Ouverture économique, concurrence et concentration », actes du colloque organisé à Tunis les 16-17 mai 1995 Tunis décembre 1995,***
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- ***« Le rôle du commerce dans l'environnement économique nouveau de la Tunisie » Mohamed Ben Frej- Revue Conjoncture Juin 1996.***
- ***« Le Commerce de Distribution » Mohamed Ben Frej - Revue Conjoncture n° 218-2001.***
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- « *Problématique de fonctionnement du marché*» Mohamed Ben Frej- *Revue Conjoncture* n° 192-1995.

- *Georges Flecheux et Yannick Scaramozzino (1998) commission européenne :“Mission identification, d’instruction et études préparatoire sur la mise en place d’un programme d’assistance technique dans le domaine de la concurrence »*

Documents élaborés dans le cadre du programme de jumelage (mai 2006-décembre 2007)

Annexes:

- i.** Statistical tables on the development of the Competition Authorities’ activities
- ii.** List of the most important decisions of the Competition Council (33 decisions)
- iii.** List of the most important general views of the Competition Council
- iv.** List of the most important commercial concentration files
- v.** Individual meeting minutes
- vi.** Panel discussion minutes

- vii.** List of competition laws in the regions
- viii.** Regulatory Agencies
- ix.** The regulatory structure of the Competition Council
- x.** The regulatory structure of the Directorate General for Competition
- xi.** Updated version on all amendments on the Competition and Price Law

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