



...with **Chairman Amir Nabil Ibrahim**

In this month's edition of CPI Talks we have the pleasure of speaking with Mr. Amir Nabil Ibrahim, the Chairman of the Egyptian Competition Authority ("ECA").

Thank you, Chairman Ibrahim, for sharing your time for this interview with CPI.

1. What are the sectors in the Egyptian economy in which you see a lot of potential welfare gains from ECA's interventions? What are the sectors (e.g. technology, healthcare, etc.) where monopolies are known to operate or in which mergers take place at a high rate?

Digital markets have recently proven to be among the most powerful, dynamic sectors of the economy. The Egyptian economy benefits greatly from these markets, as they attract many users and many employment opportunities. At the same time, increasing concentration through mergers or acquisitions often takes place on these markets, making them prone to monopolization.

Given these characteristics, and given the importance of the digital sector to the Egyptian economy, the ECA finds that it is often necessary to intervene to prevent potentially anti-competitive behavior. This can take the form of intervening against cartel behavior, abuses of dominance, or anti-competitive mergers or acquisitions that may lead to irreversible harm on these nascent markets; as well as using the expertise gained from these interventions to advocate for changes in relevant laws when necessary.

The ECA's intervention in this sector aims to ensure that products and services stay affordable and of high quality for consumers and that new entrants are encouraged to compete. Encouraging new entrants specifically would create more start-ups in Egypt and, presumably, the region as a whole, attracting investment from foreign and local entities. This would not only vitalize the start-up scene, but also create employment opportunities in Egypt and in the region.

A recent example of such intervention is the ECA's *ex ante* assessment of the acquisition of Careem by Uber. The ECA issued interim measures in October 2018, ordering the ride-hailing service-providers to notify the ECA before the occurrence of any such transaction. The Parties complied, triggering an assessment of the transaction by the ECA, as well as an ongoing positive dialogue between the ECA and the Parties. The assessment was recently finalized through commitments ensuring that, post-transaction, consumers (both riders and drivers) would not be harmed through price increases or decreases in quality and innovation. The commitments also encourage market entry, as they ensure that the incumbent, for the first time in the ride-hailing sector, will share data with new entrants, allowing them to compete more effectively.

Similarly, in the case of the delivery service provider Glovo, the ECA intervened upon finding out that a minority shareholder in Glovo, Delivery Hero, used its rights in a way that led to the elimination of effective competition. The ECA's intervention led to the re-entry of Glovo to the Egyptian market, keeping it as a competitor and preserving jobs for around 3,000 employees, while allowing more space for the new competitors to grow.

The ECA is also of the view that intervention in other, more traditional, sectors is increasingly necessary. These sectors, among others, include the pharmaceutical and health care sector, the automotive sector, and the agriculture sector. Such intervention, whether in the form of investigations or advocacy, ensures that these sectors remain competitive and open for investment, despite any legislative or institutional changes (be they local or international) that may affect them.

2. What are the challenges that the ECA faces that are specific to Egypt or other economies in the region that are not well tackled by Western-centered antitrust analysis or literature? Are there any analytical tools you would like to have at your disposal but do not have the time to develop?

The ECA believes that competition enforcement must take account of global trends. For that reason, the ECA often relies on and refers to international best practices, especially from the EU, in its research and analysis.

However, it is also necessary for the ECA to take into account the specifics of the Egyptian economy, in order to ensure that its application of competition law and policy reflects any characteristics or challenges that may be unique to the Egyptian market.

One of the most prominent and unique challenges that the Egyptian market is prone to, and that is especially felt by local players, is the difficulty of accessing funding in the face of international players with greater exposure and prominence. Superior access to funds can be regarded as a barrier to entry, especially for local players, as the reputation and prevalence of international players will often make them more attractive for international investors. This may often lead to a reduction in the number of potential competitors on the market and an increase in the market power of existing incumbents. For that reason, the ECA finds it especially necessary to take this barrier to entry into account when assessing and investigating behavior on the Egyptian market. The existence of this barrier makes it all the more necessary to ensure the vitality of the competitive process, which should only open markets and encourage more investment, strengthening players and pushing the competitive process further.

Another, more general, issue is the lack of awareness of the importance of competition law and its relationship with investment. However, the ECA addresses this lack of awareness by offering programs to educate both students and professionals. For example, the ECA hosts law and economics students at its annual Competition Authority Simulation (“CAS”) program, giving them the opportunity to learn about competition law and to apply the information gained to real-life simulations. The ECA also contributes to the competition module taught to master’s students at the Université Paris 1 Panthéon-Sorbonne program at Cairo University. As regards professionals, the ECA often hosts workshops and delivers talks on competition law and policy for different governmental entities. More generally, the ECA’s communications team uses press outreach to advocate for the importance of competition law, and publishes non-confidential reports and explanatory infographics and videos concerning its high-profile decisions. These initiatives make the role of ECA clearer to the public, and clarify the importance of maintaining the competitive process.

3. Antitrust enforcement is a quasi-judicial process in Egypt, as it is in many other countries (notably in Europe). According to international human rights norms, quasi-judicial processes can be appropriate for the enforcement of civil law provisions (such as competition rules) but this is critically dependent on there being sufficient independence for decision making bodies from external interference. Is administrative independence for antitrust authorities sufficiently guaranteed in Egypt (and neighboring countries) at present? What reforms would you suggest in this regard?

Independence is indeed one of the core pillars of the ECA’s existence. It is for that reason that the Egyptian Competition Law (“ECL”) has been amended to ensure greater independence for the ECA. As it currently stands, the ECA has the autonomy to issue decisions, through its Board of Directors, in the form of Interim Measures (under Article 20 ECL), or in the form of choosing to refer a case to the public prosecutor.

Moreover, the government has recently approved further amendments, which have now been submitted to the parliament and should be issued soon. These amendments would give the ECA greater decision-making powers through a number of means, including by limiting government and business representation on the Board of Directors. These measures will give the ECA greater independence, allowing it to exercise its powers and make decisions accordingly.

4. Merger control is one of the pillars of effective antitrust enforcement. Different jurisdictions adopt different approaches and thresholds for the notification and review of mergers, tailored to the specificities of their economies, balancing the need for effective enforcement against the need to conserve the resources of both enforcers and merging companies. What are your views on the relative merits of pre- or post-merger notification regimes? Specifically, relating to Egypt, do you believe that the law ought to be reformed (as discussed in 2018) to bring in a new pre-merger notification regime, or *ex ante* powers as you have previously suggested?

The ECA is indeed proposing a pre-merger notification regime as part of the amendments under discussion. This would allow the ECA to more effectively monitor markets, prevent the creation and abuse of dominant positions, to contribute to the lowering of barriers to entry, and thereby increase the potential for investment.

The ECL currently gives ECA *ex post* notification powers. Article 19 provides that undertakings must notify the ECA of mergers or acquisitions within a 30 day deadline if the turnover of one of the undertakings (or of both combined) exceeds EGP 100,000,000.

However, the proposed amendments would require undertakings to notify the ECA *before* the occurrence of mergers, acquisitions, joint ventures, or, in some cases, the acquisition of minority shareholdings (subject to a certain threshold).

That being said, even in the absence of *ex ante* notification powers, the current substantive provisions of the ECL (namely Articles 6, 7, and 8), as well as the powers to issue Interim Measures granted under Article 20, give ECA adequate power and jurisdiction to intervene and investigate mergers and acquisitions before their occurrence and before any anti-competitive harm resulting from them materializes.

5. The recent high-profile acquisition by Uber of the regional ride-sharing platform Careem attracted the attention of authorities in various countries. In particular, the ECA publicly warned the companies against implementing any potentially anticompetitive agreement between competitors, and engaged with the parties to assess the potential competitive impact of the transaction. What is to be learned from this experience for merger control in Egypt (and the broader region), and any potential review of the relevant rules? In hindsight, what do you think the effects of this merger have been? For example, is the ECA preparing a retrospective study on the effects on prices/innovation in the transportation sector?

The ECA, as well as other competition authorities in the region, have indeed recently studied and investigated the acquisition of Careem by Uber. In particular, the ECA issued Interim Measures in October 2018, obliging the Parties to notify the ECA of any merger or acquisition they may wish to carry out. The Parties complied with this obligation, on which basis the ECA began its investigation. The investigation concluded with the ECA's approval of the transaction subject to commitments. The investigation produced a number of lessons for the case team and for the ECA as a whole. These included the challenges of market definition in new and dynamic sectors, and the importance of studying and understanding non-traditional barriers to entry and theories of harm.

One of the first challenges the ECA faced when conducting this investigation was defining the relevant market, given the nascent nature of ride-hailing, its dependence on non-traditional assets, such as data, and the controversies surrounding defining such markets. To understand this debate, the case team studied many recent papers and studies conducted by both academics and other competition authorities around the world. These included the 2018 report by the Digital Competition Expert Panel, as well as market studies and reports by the Bundeskartellamt, the Autorité de la Concurrence, the Competition and Markets Authority, and the Australian Competition and Consumer Commission. This analysis was also guided by a study of the specifics of the Egyptian market: the team was careful to conduct meetings with different stakeholders in the broader digital sector, to analyze a consumer survey (carried out by the Information and Decision Support Center on behalf of the ECA), as well as to study the legal and institutional framework that governs transport in Egypt. Through this approach, the ECA was able to define the market in question in a way it found to realistically and thoroughly reflect the Egyptian transportation sector as a whole.

Similarly, analyzing the barriers to entry on the relevant market, as well as the theories of harm that may result from the transaction, rested on a study of international academic literature as well as local specifics. This study revealed that the ECA, again, had to take into consideration assets that, traditionally, would not be considered as key facilities – such as data. Data was shown to be a key barrier to entry, and was the subject of one of the key commitments imposed on the Parties.

In light of the above-mentioned processes and lessons, and after a number of commitments proposals by the Parties, the ECA decided, on December 19, 2019, to clear the transaction subject to conditions that would benefit consumers (both riders and drivers), ensure competition on adjacent markets, and encourage entry. These commitments include caps on price increases and on surge occurrence, caps on the commission the Parties can deduct from trip fares, as well as commitments to introduce new safety and innovation features in Egypt. The Parties also committed to adjust their pricing on adjacent markets, namely app-booked high capacity vehicles, in order to cease any pricing below cost, allowing competitors on that market to compete more effectively. Finally, to encourage entry, the Parties committed to share mapping and anonymized trip data with new entrants, and to encourage users to port their data to competing applications – which is unprecedented in the ride-hailing sector. The Parties also committed to change the Careem logo and marketing to indicate its relationship with Uber, reducing consumer confusion and marketing and advertising costs for potential competitors.

As the decision has only been issued recently, the ECA has yet to observe the effects of the commitments. Nevertheless, we trust that the commitments, which were only implemented after a thorough study of the market and after multiple proposals from the Parties, will benefit the market and ensure that it will become more competitive.

6. *Uber/Careem* also raise broader issues regarding the role of competition enforcement in fostering innovation and startups in the North Africa and Middle Eastern region. Do you believe that there may be an enforcement “gap” in terms of the (potential) acquisition by multinationals of national or regional startups? What role do you see competition authorities playing in fostering innovation?

In the study of the acquisition of Careem by Uber, the ECA realized the importance of addressing innovation as a key component of digital markets. The above-mentioned study of academic literature revealed the importance of non-price factors, such as quality and innovation, in nascent digital markets – even in markets that do not adhere to the zero-price model, such as ride-hailing. This finding was supported by the ECA’s consumer survey, which revealed that consumers take into account non-price factors (even more than price factors) when choosing between transportation methods. This meant that the ECA had to consider theories such as decreased innovation and quality in its theories of harm, leading to the imposition of commitments that will lead to increased innovation on the Egyptian market.

In a more general sense, the experience revealed to ECA the importance of accounting for innovation on digital markets; any intervention by competition authorities must aim at enhancing and harvesting innovation, avoiding any over-enforcement that may deter innovation. This was indeed the ECA’s approach in assessing the *Uber/Careem* transaction. For example, the above-mentioned commitment pertaining to the app-booked high capacity vehicle market, first and foremost aimed at protecting the innovation that had led to the creation of this market – a new market that was created in Egypt, by local start-up Swvl, and has been expanding to other countries in Africa and Asia, through the efforts of Swvl and by Uber and Careem themselves. This commitment ensures not only that existing innovation is protected, but that start-ups are encouraged to try new, innovative ideas without the fear of being ejected by international players with superior access to funds. Competition authorities must be mindful of their role with respect to start-ups and smaller competitors, reaching out to them and explaining the role of competition law in protecting their right to enter the market and to expand.

7. Similarly, the *Uber/Careem* case highlights the need for coordination between competition authorities in the region. In particular, technological developments provide for competition not only between national players, but also between global and regional players that may raise similar concerns across various neighboring countries. What efforts should the ECA and other regional authorities take to coordinate their enforcement standards in light of such developments?

The *Uber/Careem* transaction did indeed highlight the importance of cooperation between competition authorities in the region and beyond. Given the global presence of the undertakings in question, the ECA recognized the importance of cooperating with other authorities around the world. In the process of the investigation, the ECA received confidentiality waivers from the Parties, allowing us to cooperate with authorities that were also investigating the transaction, such as the General Authority for Competition (Saudi Arabia), the Competition Commission of Pakistan, and the COMESA Competition Commission. The ECA also cooperated more generally with other authorities that were not studying the transaction in question but that have experience in the sector, such as the Bundeskartellamt. Similarly, by publishing our report (in English), we hope that other competition authorities around the world will reach out to the ECA when they analyze similar transactions.

International cooperation in this investigation enhanced the ECA's investigation, creating more opportunities for capacity-building and brainstorming, as well as enhancing cross-border relationships. Some of the authorities the ECA has cooperated with have come to similar conclusions, meaning that the ECA looks forward to cooperating with them further. More generally, and from this positive experience, the ECA will surely, in the future, cooperate with authorities both with respect to specific transactions and by sharing expertise and knowledge.



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