

# Dominance

*Contributing editors*

Patrick Bock, Kenneth Reinker and David R Little



2018

GETTING THE  
DEAL THROUGH

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Patrick Bock, Kenneth Reinker and David R Little  
Cleary Gottlieb Steen & Hamilton LLP

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# Preface

## Dominance 2018

Fourteenth edition

**Getting the Deal Through** is delighted to publish the fourteenth edition of *Dominance*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Austria, Belgium, Saudi Arabia, Sweden and Taiwan.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Patrick Bock, Kenneth Reinker and David R Little of Cleary Gottlieb, for their continued assistance with this volume.

GETTING THE  
DEAL THROUGH 

London  
March 2018

# Morocco

Corinne Khayat and Maija Brossard

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## General questions

### 1 Legal framework

**What is the legal framework in your jurisdiction covering the behaviour of dominant firms?**

The Moroccan rules applying to the behaviour of dominant firms were formerly set out in Law No. 06-99 of 5 June 2000 (Dahir No. 01-00-225) on free pricing and competition (the Former Law) and its enforcement decree No. 2-00-854.

However, a new set of laws relating to competition and dominance has been adopted: Law No. 20-13 of 30 June 2014 (Dahir No. 1-14-117) relating to the Competition Council (and its enforcement decree No. 2-15-109 of 4 June 2015) and Law No. 104-12 of 30 June 2014 (Dahir No. 1-14-116) on free pricing and competition (and its enforcement decree No. 2-14-652 of 1 December 2014) (the Law).

Abuses of dominant position are regulated by article 7 of both the Former Law and the Law, which prohibit the abusive exploitation by an undertaking or a group of undertakings of a dominant position on the interior market or a substantial part of it, if the abusive exploitation has as object or may have as effect to prevent, restrict or distort competition.

Under the Former Law, the Moroccan authorities responsible for enforcement were:

- the Chief of Government, who could adopt certain measures or refer the matter to the King's Prosecutor at the relevant first instance court for the purposes of prosecution; and
- the Competition Council, which had a consultative role: it could issue opinions on matters of principle submitted for its assessment or make recommendations that could lead to the issuance of orders or prosecution. The opinions of the Competition Council mentioned in this article were released by the Competition Council under this former legal framework.

Under Law No. 20-13 and the Law, the Moroccan Competition Council is now granted decision-making power over abuses of dominance cases.

It should be noted that Law No. 20-13 and the Law will only take effect after the appointment of the new members of the Competition Council (the mandate of the former members ended in October 2013) and that the new functions of the Competition Council are, therefore, not yet operational. In the meantime, the Competition Council continues its former consultative function, but no opinion or annual report has been issued since 2013.

### 2 Definition of dominance

**How is dominance defined in the legislation and case law? What elements are taken into account when assessing dominance?**

The concept of dominance is not defined under Moroccan law.

However, the Competition Council uses the definition retained by international case law and doctrine and defines dominance as the position enjoyed by an undertaking that affords it the power to evade the market conditions and to behave independently to an appreciable extent from its competitors and consumers.

The market power depends not only on the market share but can also be inferred from other elements such as belonging to a group,

enjoying financial power or being present at all stages of the production process.

### 3 Purpose of the legislation

**Is the purpose of the legislation and the underlying dominance standard strictly economic, or does it protect other interests?**

The Moroccan Competition Council has clearly stated that the Moroccan competition legislation aims at promoting the economic and social development (information letters of the Competition Council of September and October 2010, of April 2011 and of December 2012), in particular dealing with poverty, as well as furthering competitiveness of Moroccan undertakings within the international context.

Under article 9 of the Law, the practices, whose perpetrators can prove that they have the effect of ensuring economic or technical progress, including by creating or maintaining jobs, and that they reserve for users a fair share in the resulting profit without giving the undertakings involved the opportunity to eliminate competition for a substantial part of the products or services in question, are not subject to the provisions of article 7. Those practices may impose restrictions on competition only insofar as these are essential to achieve this aim of progress. Certain categories of agreements or certain agreements, in particular when they are intended to improve the management of small or medium-sized undertakings or the marketing of farmers' products, may be recognised as meeting the conditions set out in article 9 by the administration after a favourable opinion from the Competition Council.

### 4 Sector-specific dominance rules

**Are there sector-specific dominance rules, distinct from the generally applicable dominance provisions?**

Certain specific sectors are regulated by sectoral regulators who aim notably at helping the sectors reach their competitive maturity. These sectoral regulators include the National Telecommunications Regulatory Authority (ANRT) for the telecommunications sector, the High Authority for Audio-visual Communication (HACA) for the audio-visual market, the Bank Al Maghrib for banks, the Council for Ethical Standards in the Securities Market for the stock exchange, the Insurance and Social Security Directorate for insurance and the National Ports Agency (ANP) for ports.

However, there are no sector-specific provisions relating to abuses of dominance and the sectoral regulators usually take into account or apply the provisions of article 7 of the Law.

According to article 109 of the Law, the Competition Council will be granted jurisdiction over all sectors within the competence of the sectoral regulators at a date that will be set by regulation, except when the relationship between the Competition Council and the sectoral regulators is ruled by the texts establishing these sectoral regulators. This is particularly the case for the ANRT and the HACA, which have powers to settle disputes pursuant to article 7 and must inform the Competition Council of their decisions. In 2017, Orange, a telecommunication operator, lodged a complaint with the ANRT against the historic operator Maroc Telecom for anticompetitive practices.

Moreover, article 8 of Law 20-13 relating to the Competition Council states that the Competition Council shall receive the opinion of the sectoral regulators when the matter concerns their sector. The Competition Council is also entitled to call on the skills and expertise of these sectoral regulation authorities for the purpose of the investigation.

Similarly, the Competition Council may also be consulted by the sectoral regulators on any matter of principle concerning competition (article 5 of Law 20-13 relating to the Competition Council).

## 5 Exemptions from the dominance rules

### To whom do the dominance rules apply? Are any entities exempt?

Article 7 of the Law applies (article 1):

- to any natural or legal person, whether or not it has its registered office or establishments in Morocco, if its transactions or behaviour have as an object, or may have an effect on, competition on the Moroccan market or a substantial part of such market; and
- to all production, distribution or services activities, including those carried out by legal public persons when they act as economic operators and not in the exercise of their prerogatives of public power or in the performance of their public service tasks. For instance, in Opinion No. 6/09 of 9 September 2009 relating to marine pilotage, the Council accepted making recommendations about the legality of the commercial activities carried out by the ANP, but refused to examine the measures adopted by the ANP within the framework of its public authority tasks.

## 6 Transition from non-dominant to dominant

### Does the legislation only provide for the behaviour of firms that are already dominant?

Article 7 applies only to already dominant firms.

However, it should be noted that the transactions through which firms acquire or strengthen a dominant position are, in principle, examined through Moroccan ex ante merger control procedure.

## 7 Collective dominance

### Is collective dominance covered by the legislation? How is it defined in the legislation and case law?

Collective dominance is clearly covered by article 7 of the Law, which prohibits abusive practices by one undertaking or 'a group of undertakings'.

In its Opinion of 22 December 2011 relating to the acquisition of insulin, the Competition Council considered that two undertakings were holding a collective dominant position on the market, by taking into account the following reasons:

- the market had an oligopolistic structure and was split between the two main undertakings (which respectively held around 48 per cent and 47 per cent of market shares);
- the market was transparent, each member of the dominant duopoly knowing the other undertaking's conduct;
- both undertakings had adopted a common course of action to exclude their main competitor from the market; and
- there was no potential competitor on the market after the exclusion of the main competitor.

## 8 Dominant purchasers

### Does the legislation apply to dominant purchasers? Are there any differences compared with the application of the law to dominant suppliers?

Moroccan law relating to abuses of dominance appears to apply to dominant purchasers. It has, for instance, been the case in the Opinion No. 26/10 of 13 November 2012 relating to the market of maritime transport of Casablanca's tramway train sets in which the Competition Council held that an undertaking that was the only buyer in a market, therefore, in a monopsony situation, enjoyed a dominant position.

## 9 Market definition and share-based dominance thresholds

### How are relevant product and geographic markets defined?

### Are there market-share thresholds at which a company will be presumed to be dominant or not dominant?

The relevant market is defined as the meeting place of supply and demand of certain products or services that are regarded as substitutable from the demand side perception (nature of the products, prices and use) and from the supply side perception (ability to access the market in the case of price increase) in a determined geographic area (Opinion No. 5/09 of 7 September 2009 of the Competition Council relating to the sector of the scholar book).

The test for market definition does not appear to differ from the test for merger control purposes.

The provisions of Moroccan law relating to abuses of dominance do not provide for a market-share threshold above which a company will be presumed to be dominant.

Nevertheless, it follows from the Competition Council's case law that firms that were qualified as dominant all hold market shares above 40 per cent. Moreover, it should be noted that Moroccan merger control rules provide for a 40 per cent market-share notification threshold.

However, the existence of a dominant position is not automatically established when the market share is higher than 40 per cent. For instance, in its Opinion of 22 December 2011, relating to the acquisition of insulin, where two undertakings both had important market shares (around 48 per cent and 47 per cent), the Competition Council considered that there was no individual dominant position, as the existence of a dominant position must be assessed in the light of the competitors' market shares (a collective dominant position was, however, identified by the Competition Council in this case).

## Abuse of dominance

### 10 Definition of abuse of dominance

#### How is abuse of dominance defined and identified? What conduct is subject to a per se prohibition?

Abuse is not defined by Moroccan law. However, article 7 of the Law specifies that the abusive exploitation of a dominant position is prohibited if the abusive exploitation has 'as an object' or 'may have as an effect' to prevent, restrict or distort competition. Article 7 also provides a non-exhaustive list of examples of abuses such as refusal to sell, tying sales, discriminatory selling conditions, termination of an established commercial relationship on the sole ground that the partner refuses to consent to unjustified commercial conditions and direct or indirect imposition of a minimum resale price for goods or services or of a minimum sales margin.

Therefore, it appears that Moroccan law follows both an effects-based and a form-based approach to identify abusive practices.

### 11 Exploitative and exclusionary practices

#### Does the concept of abuse cover both exploitative and exclusionary practices?

The concept of abuse covers both exploitative (eg, tying sales to consumers in Opinion No. 22/12 relating to competition between banks and insurance agents and brokers concerning presentation of insurance) and exclusionary practices (eg, refusal to sell in the Opinion relating to the market of the sale of plane tickets and the Opinion relating to competition in Marrakech's movie sector in 2013).

### 12 Link between dominance and abuse

#### What link must be shown between dominance and abuse? May conduct by a dominant company also be abusive if it occurs on an adjacent market to the dominated market?

The holding of a dominant position is needed for the application of article 7 but the decisional practice of the Competition Council still has to clarify whether a causal link must be shown between dominance and abuse and under which conditions a conduct can be abusive if it takes place on an adjacent market to the dominant market.

### 13 Defences

#### What defences may be raised to allegations of abuse of dominance? When exclusionary intent is shown, are defences an option?

Under article 9 of the Law, the prohibition of abuse of dominance shall not apply:

- when the practices result from the implementation of an act or regulation (see, for instance, Opinion No. 26/10 of 13 November 2012 relating to the market of maritime transport of Casablanca's tramway train sets in which the Competition Council considered that a company, which had issued a call for tenders and had rejected a tender because of the Moroccan nationality of the tenderer, had not abused its dominant position because its selection was made in conformity with agreements between France and Morocco); and
- to the practices whose perpetrators can prove that they have the effect of ensuring economic or technical progress, including by creating or maintaining jobs, and that they reserve for users a fair share in the resulting profit, without giving the undertakings involved the opportunity to eliminate competition for a substantial part of the products or services in question. Those practices may impose restrictions on competition only insofar as these are essential to achieve this aim of progress (see, for instance, the Opinion relating to the movie sector in Marrakech of 2013 in which the Competition Council took into account the fact that a dominant company accused of refusal to sell had made substantial investment for the development of the sector).

Moreover, certain categories of agreement or certain agreements, in particular when they are intended to improve the management of small or medium-sized undertakings or the marketing of farmers' products, may be recognised as meeting the conditions set out in article 9 by the administration after a favourable opinion from the Competition Council.

It is, thus, possible to invoke efficiency gains. The Competition Council has not pronounced itself yet on whether defences are an option when exclusionary intent is shown but the requirement not to eliminate competition on the market makes it difficult for an exclusionary practice to meet the exemption conditions.

Further, agreements of minor importance that do not appreciably restrict competition (in particular, agreements between small and medium-sized companies) may also fall outside article 7 of the Law.

### Specific forms of abuse

#### 14 Rebate schemes

Despite the fact that the provisions of the Law do not expressly refer to them, rebate schemes can be considered as abuses of dominant position. For instance, in a study of 2011 relating to mobile telephony, the Competition Council stated that targeted discounts could be considered as abusive if they restrict market fluidity. Moreover, in its Opinion No. 32/12 relating to a concentration between the SNI group and Danone, the Competition Council underlined the potential anti-competitive behaviour of the Centrale Laitière, which was, despite its dominant position, engaged in an aggressive rebate policy.

#### 15 Tying and bundling

Under article 7 of the Law, tying sales by a dominant undertaking can be prohibited. Tying sales occur whether two products are only sold jointly or are also available separately but at a higher price.

In its study relating to mobile telephony of 2011, the Competition Council indicated that tying sales constitute an abuse of dominant position when they restrict the fluidity of the market, unless they produce efficiency gains.

#### 16 Exclusive dealing

Though exclusive dealing (which requires a customer to exclusively – or almost exclusively – purchase from or deal with a dominant undertaking) is not expressly listed among the examples of abusive practices provided by article 7 of the Law, the Competition Council considers that exclusivity obligations may sometimes have as an object or as an effect to prevent, restrict or distort competition.

For instance, according to the Competition Council, if a firm requires exclusivity from a specific distributor while not requiring it from others, such obligation may fall into the category of the abuses of dominance (information letter No. 10 of March 2011).

The Competition Council has also considered that the exclusivity stipulations contained in a dominant supplier's contracts (relating to the fitting out of its products displays) could be seen as an exclusive supply obligation as a result of its broad portfolio of products and, thus, have an anticompetitive effect owing to its dominant position (Opinion No. 23/12 of 15 May 2012 relating to competition on manufactured tobacco).

#### 17 Predatory pricing

According to the Competition Council, an undertaking abuses its dominant position by its low-price policy when it has as the object or the effect of eliminating its victim from the market. In its Opinion of 22 December 2011 relating to the acquisition of insulin, the Competition Council took into account the fact that the dominant undertakings concerned had both adopted predatory pricing policies to evict their main competitors from the market before raising their prices following its eviction.

#### 18 Price or margin squeezes

To the best of our knowledge, the Competition Council has not yet rendered its opinion regarding this kind of practice, which we assume should be considered abusive if it has as object or may have as an effect to prevent, restrict or distort competition and, in particular, to exclude a competitor from the market. A price or margin squeeze occurs when a vertically integrated firm holding a dominant position on the upstream market charges prices on this market which, compared with the prices it charges on the downstream market, does not allow a competitor to generate profits on the downstream market.

#### 19 Refusals to deal and denied access to essential facilities

According to article 7 of the Law, refusals to sell may be prohibited (for applications, see the Opinion relating to the movie distribution market in Marrakech and the Opinion relating to the market of the sale of plane tickets of 2013).

Concerning access to essential facilities, in its information letter No. 3 of March 2010, the Competition Council referred to the essential facilities doctrine of European Union case law and stated that an undertaking occupying a dominant position on an upstream market infringes the prohibition of abuses of dominance if it refuses access, without objective justification, to a facility: whose access is essential to carry out an activity on a downstream market; and which is impossible to duplicate under reasonable conditions, preventing, consequently, the appearance of a new product or a new technology.

#### 20 Predatory product design or a failure to disclose new technology

Although there is no case law regarding these issues yet, we can surmise that the Competition Council may prohibit such practices if they have as an object or may have as an effect to prevent, restrict or distort competition.

It should be noted that, according to the Competition Council, the protection of intellectual property must reconcile with competition requirements and intellectual property rights may constitute an abuse of monopoly, in particular when the essential facilities doctrine is applicable (see question 24 regarding access to essential facilities and the information letter of the Competition Council No. 3 of March 2010).

#### 21 Price discrimination

Article 7 of the Law provides that discriminatory selling conditions can be considered as an abuse of dominant position.

#### 22 Exploitative prices or terms of supply

Excessive prices and discriminatory or unjustified terms of supply that limit the commercial freedom of the undertaking's economic partner might be considered as exploitative abuses. Article 7 indicates in this regard that an abuse may notably consist in tying sales and direct or indirect imposition of a minimum resale price for goods or services, or of a minimum sales margin to the dominant undertaking's economic partner.

### 23 Abuse of administrative or government process

Although the Law does not clearly state that an abuse of dominant position can be the consequence of an abuse of government process, it should be noted that, in a study of 2011 relating to competition in the pharmaceutical industry, the Competition Council denounced the 'abusive' use of the proceedings of marketing authorisations by certain multinational groups that hold monopolies awarded by patents in order to prevent the market entry of generics.

### 24 Mergers and acquisitions as exclusionary practices

To the best of our knowledge, the Competition Council has not, to date, ruled on whether mergers and acquisitions as exclusionary practices can be regarded as abusive (which could, in particular, potentially be the case when the merger control rules are not applicable).

### 25 Other abuses

It should, in particular, be noted that, under article 7, an abuse may also consist in the termination of an established commercial relationship on the sole ground that the partner refuses to consent to unjustified commercial conditions.

Moreover, the list of examples of abuses provided by article 7 is not exhaustive.

## Enforcement proceedings

### 26 Enforcement authorities

**Which authorities are responsible for enforcement of the dominance rules and what powers of investigation do they have?**

#### Under the former law

The Moroccan authorities responsible for enforcement under the current law were:

- the Chief of Government, who could adopt conservatory measures, order the parties to put an end to the abusive practices, impose conditions on them or refer the matter to the King's Prosecutor at the relevant first instance court for criminal sanctions applicable to natural persons or impose fines; and
- the Competition Council, which had a consultative role: the Competition Council could issue opinions on matters of principle submitted for its assessment or make recommendations that could lead to the issuance of orders or prosecution.

#### Under the current law

Under the law, the Competition Council, in addition to its consultative role to the parliament, the government, the courts and various organisations (article 5 of Law No. 20-13 relating to the Competition Council), is granted the decision-making power over abuses of dominance cases. The Competition Council may be adopted by the undertakings and is now able to avail itself of practices (articles 3 and 4 of Law No. 20-13 relating to the Competition Council).

The Competition Council is also granted powers of investigation. The President of the Competition Council is entitled to ask the administration to carry out any useful investigation and to call on relevant expertise. The investigations will be carried out by inspectors, including case officers of the Competition Council, administrative officials and price controllers. The officers are entitled to visit any premises, land or transport employed for professional use, to request the communication of all professional documents (including books and bills) and copy them, and to collect any information and justification (article 68 and following of the Law).

If an undertaking or related organisation does not comply with a summons, does not respond within the time limit to an information or a document request of the Competition Council or obstructs the investigation (eg, by providing false or incomplete documents), sanctions are applicable.

### 27 Sanctions and remedies

**What sanctions and remedies may the authorities impose? May individuals be fined or sanctioned?**

The Competition Council, under the Law, is, in particular, empowered to:

### Update and trends

New Law No. 20-13 of 30 June 2014 relating to the Competition Council and Law No. 104-12 of 30 June 2014 on free pricing and competition, which transfer the decision-making power over dominance cases to the Competition Council, will take effect after the appointment of the new members of the Competition Council.

- adopt conservatory measures (article 35 of the Law);
- order the firm to put an end to its abusive practice or impose specific conditions (article 36 of the Law);
- accept remedies proposed by the firm to remove the competition concerns (article 36 of the Law); and
- impose a fine, either immediately or where the firm does not comply with an order or does not respect an accepted remedy (article 39 of the Law).

If the offender is not a company, the maximum amount of the penalty is 4 million dirhams. The maximum amount of the penalty for a company is 10 per cent of the highest worldwide or national (if the firm does not have international activities) turnover, net of tax, achieved in one of the financial years ended after the financial year preceding that in which the practices were implemented. If the accounts of the company concerned have been consolidated or combined by virtue of the texts applicable to its legal form, the turnover taken into account is that shown in the consolidated or combined accounts of the consolidating or combining company.

The fine takes into consideration the seriousness of the offence, the scale of the damage caused to economy and the situation of the company.

The maximum amount of the applicable fine may be doubled in the event of a subsequent offence within five years.

The maximum amount of this fine may be reduced by half if the company does not contest the facts (article 37 of the Law).

A transaction may also be proposed by the competent governmental authority to undertakings whose abusive practices affect a local market, provided that their turnovers do not exceed certain thresholds (article 43 of the Law).

Moreover, the Competition Council may refer the matter to the King's Prosecutor at the relevant first instance court if the facts are likely to justify the application of article 75 of the Law, which provides that a natural person who fraudulently or knowingly takes a personal and decisive part in the conception, organisation or implementation of the practices referred to in article 7 shall be punished by a prison sentence of between two months and one year and a fine of between 10,000 and 500,000 dirhams.

Finally, it should be noted that the Competition Council could, in the event of an abuse of a dominant position, enjoin, by a reasoned order, the undertaking or group of undertakings to amend, supplement or cancel, within a specified period, all agreements and all acts by which the concentration of economic power allowing the abuse has been carried out, even if these acts have been subject to the merger control procedure (article 20 of the Law).

### 28 Enforcement process

**Can the competition enforcers impose sanctions directly or must they petition a court or other authority?**

Under the Law, the Competition Council is empowered to impose sanctions directly to the abusive undertakings without petition a court or another authority.

If the facts are likely to justify the application of article 75 of the Law (which provides that a natural person who fraudulently or knowingly takes a personal and decisive part in the conception, organisation or implementation of the practices referred to in article 7 shall be punished by a prison sentence of between two months and one year and a fine of between 10,000 and 500,000 dirhams), the Competition Council shall, however, refer the matter to the King's Prosecutor at the relevant first instance court.

### 29 Enforcement record

#### What is the recent enforcement record in your jurisdiction?

Because Law No. 20-13 and the Law will only take effect after the appointment of the new members of the Competition Council, the Competition Council continues, in the meantime, its former consultative function and no opinion or annual report has been issued since 2013.

Between 2009 (the year of its reactivation) and 2013, the Competition Council had, on average, issued several opinions and studies each year relating to abusive practices. In its latest annual report, issued in 2013, the Competition Council rendered an Opinion relating to the market of the sale of plane tickets in which the legality of Royal Air Maroc's commercial policy was examined. In this case, travel agencies accused Royal Air Maroc of abusing its dominant position by selling some preferential rate tickets exclusively through its own website. However, the Competition Council considered that this practice did not constitute an abuse of Royal Air Maroc's dominant position.

It should be noted that, in 2016, a complaint was lodged against the company BeIN Sports for abuse of dominant position related to the conditions of broadcasting the UEFA soccer championship in Morocco.

### 30 Contractual consequences

#### Where a clause in a contract involving a dominant company is inconsistent with the legislation, is the clause (or the entire contract) invalidated?

According to article 10 of the Law, any commitment, agreement or contractual clause referring to a practice prohibited by article 7 shall be null and void. This nullity may be invoked by the parties or by a third party (but may not be raised by the parties against a third party) and may be declared by the courts having jurisdiction (to which the Competition Council's opinion or decision, if any, shall be communicated and which can also consult the Competition Council).

### 31 Private enforcement

#### To what extent is private enforcement possible? Does the legislation provide a basis for a court or other authority to order a dominant firm to grant access, supply goods or services, conclude a contract or invalidate a provision or contract?

Private enforcement is possible before the courts to which the Competition Council's opinion or decision, if any, may be transferred, in order to obtain, in particular, the invalidity of an agreement or contractual clause referring to a practice prohibited by article 7.

Moreover, article 106 of the Law provides that registered consumers' associations may obtain compensation of the prejudice suffered by the consumers by filing a civil suit. Moroccan law is not clear as to whether individuals may claim damages before civil courts without a previous investigation by the Competition Council.

The Law provides a basis upon which the Competition Council may order a dominant firm to grant access to infrastructure or technology, supply goods or services or to conclude a contract, as the Law entitles the Competition Council to impose specific conditions, to accept remedies proposed by the dominant firm to remove the competition concerns (article 36 of the Law) or to enjoin, by a reasoned order, the undertaking or group of undertakings to amend, supplement or cancel, within a specified period, all agreements and all acts by which the concentration of economic power allowing the abuse has been carried out (article 20 of the Law).

### 32 Damages

#### Do companies harmed by abusive practices have a claim for damages? Who adjudicates claims and how are damages calculated or assessed?

Companies harmed by abusive practices have a claim for damages before the courts, which assess the damage suffered by the plaintiff. Unfortunately, the decisions of the Moroccan courts (which have jurisdiction to grant damages for an abuse of a dominant position) are very difficult to access and therefore, we are not able to provide any examples.

### 33 Appeals

#### To what court may authority decisions finding an abuse be appealed?

The decisions of the Competition Council may be appealed to the Court of Appeal of Rabat within 30 days from the date of receipt of the notification (articles 44 and 46 of the Law). When the Court of Appeal annuls or invalidates a decision, it is required to give a ruling on the case without referring it.

### Unilateral conduct

### 34 Unilateral conduct by non-dominant firms

#### Are there any rules applying to the unilateral conduct of non-dominant firms?

Moroccan law provides several rules applying to the unilateral conduct of non-dominant firms.

The abusive exploitation by an undertaking or a group of undertakings of the economic dependence of a client or supplier that does not have an equivalent alternative, if the abusive exploitation has as its object or may have as an effect to prevent, restrict or distort competition, is prohibited under article 7 of the Law.

Moreover, article 8 of the Law has introduced a new rule by prohibiting selling price offers or selling price practices to consumers that are abusively low compared with production, transformation and commercialisation costs, if the offer or practice has as its object or potential effect to exclude from the market, or to prevent from entering into a market, an undertaking or its products (these provisions do not apply to goods or services purchased for resale in the same condition).



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Finally, articles 58 to 61 of the Law provide rules regarding the unilateral restrictive competition practices of all firms.

In particular, article 60 of the Law forbids the direct or indirect imposition of a minimum resale price to goods or services or of a minimum sales margin.

Moreover, under article 61 of the Law, it is, in particular, forbidden to all producers, importers, wholesalers or service providers:

- to apply to an economic partner, or obtain from an economic partner, discriminatory and unjustified prices, payment deadlines and conditions or terms of sales;
- to refuse to fulfil a buyer's request made in the context of his or her professional activity if the request is not abnormal and is made in good faith; and
- to subordinate the sale of a product or service for professional use to the concomitant purchase of other products, to the purchase of an imposed quantity or to the provision of another service.

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